



**Highways England Company Limited**

**NEC4 Engineering & Construction Short Contract**  
**(June 2017 with amendments January 2019)**

**SCOPE**

in relation to *works* for

**Ground Investigation**

## CONTENTS AMENDMENT SHEET

*[Note to Compiler to delete the contents of the Amendments Page prior to Tender issue]*

Amend. No.	Amendments	Initials	Date
1	Clarified drafting in S401.8 to state explicitly third party public and products liability insurance	PD	27/11/19

*[Entries in red are to be determined by the compiler or are recommended entries; these should be reviewed and accepted or changed as appropriate and as agreed by the Procurement Officer. Guidance is given in red italics and should be removed when compiling a tender document.]*

*[Any proposed departures from the approach set out in this model document are to be discussed and agreed between the contract procurement officer and the contract policy owner.]*

*[Below is a link to the Preparing an Engineering and Construction Short Contract document for information – ensure this is removed prior to Tender issue]*

<http://share/Share/llisapi.dll?func=ll&objaction=overview&objid=75171352>

## Contents

<b>S 100 Description of the works.....</b>	<b>7</b>
S 101 Project Objectives	7
S 102 Description of the works	7
S 103 Design Responsibility	7
S 104 Design submission procedures and acceptance criteria	7
S 105 Design approvals from Others	7
S 106 Access to information following Completion	7
<b>S 200 Drawings .....</b>	<b>7</b>
S 201 Drawings	7
<b>S 300 Specifications .....</b>	<b>7</b>
S 301 Specifications	7
S 302 Tests and Inspections	8
S 304 Management of tests and inspections and provision of samples	9
S 305 Covering up completed work	9
S 308 Security	9
S 311 Services and other things provided by the Contractor for the use by the Client, or others	10
<b>S 400 Constraints on how the Contractor Provides the Works .....</b>	<b>10</b>
S 401 General Constraints	10
S 401 Risk Management	10
S 402 Confidentiality	12
S 403 Security and protection of the site	12
S 404 Security and identification of people	12
S 405 Protection of existing structures and services	12
S 406 Protection of the works	13
S 407 Cleanliness of roads	13
S 408 Temporary Traffic Management	13
S 409 Condition survey	14
S 410 Consideration of others	15
S 411 Industrial Relations	16
S 412 Control of works	16
S 413 site Cleanliness	17

S 414 Waste Materials	17
S 415 Project Team – others	17
S 417 Management Procedures	21
S 418 Contractor’s application for payment	21
S 419 Use of the works	21
S 420 Co-ordination	22
S 421 Co-operation	22
S 422 Sharing the site with others	22
S 423 Authorities and utilities providers	23
S 424 Health & Safety requirements	23
S 424A Reporting Requirements	24
S 425 Method Statements	25
S 426 Legal Requirements	25
S 427 Inspections	26
S 428 Pre-Construction Information	26
S 429 Materials from excavation and demolition	27
S 430 Quality management system	27
S 431 Quality Plan (scheme)	27
S 432 Performance Management	27
S 433 Environmental Requirements	27
S 434 Construction Environmental Management Plan (CEMP)	28
S 435 Site Waste Management Plan	28
S 436 Air quality strategy	28
S 437 Sustainable development requirements	29
S 438 Energy Efficiency Directive	29
S 439 Conflict of interest	30
S 440 Data protection	31
S 441 Information Systems	31
S 442 Information Security	31
S 443 Offshoring	32
S 444 Provision of cost information	33
S 445 Provision of price information	33
S 446 Subcontracting	33

S 447 Restrictions of requirements for subcontracting	33
S 448 Fair Payment	34
S 449 Contracts Finder	35
S 450 Accounts and records	36
S 451 Title	36
S 452 Marking	36
S 453 Building Information Modelling	36
S 454 Performance Bond	36
S 455 Undertaking to Others	36
<b>S 500 Requirements of programme .....</b>	<b>36</b>
S 501 Programme	36
S 502 Information to be shown on the programme	36
S 503 Submitting the programme	37
S 504 Completion Requirements	37
S 505 Sectional Completion	38
S 506 Documents	38
S 507 Handover between contractors	39
<b>S 600 Services and other things to be provided by the Client.....</b>	<b>39</b>
S 601 Services and other things to be provided by the Client	39
<b>Annex 1 – Reference Documents .....</b>	<b>40</b>
<b>Annex 2 – Insurance Requirements .....</b>	<b>43</b>
<b>Annex 3 - Client's Personnel Security Procedures.....</b>	<b>49</b>
<b>Annex 4 – Data Protection .....</b>	<b>70</b>
<b>Annex 5 – Performance Bond.....</b>	<b>77</b>
<b>Annex 6 – Form of Collateral Warranty.....</b>	<b>83</b>

## SCOPE GUIDANCE FOR COMPILERS

[The Scope is to be prepared in accordance with the structure set out in the NEC4 Preparing an ECSC guidance. Include the following provisions as applicable.]

### Document Structure

Section	Scope ( <i>Client's</i> )
S 100	Description of the <i>works</i>
S 200	Drawings
S 300	Specifications
S 400	Constraints on how the <i>Contractor</i> Provides the Works
S 500	Requirements for the programme
S 600	Services and other things provided by the <i>Client</i>

[Guidance relating to each Scope section and checklist of optional topics are provided below.

Entries contained within red brackets [ ] are guidance for the compiler or are recommended entries; these should be reviewed and accepted or changed as appropriate and as agreed by the Procurement Officer.

Guidance and notes to document compilers are given in **red** or in comment boxes and must be removed when compiling a tender document.

Text in **black** is mandatory text and must not be changed.

Any proposed departures from the approach set out in this model document are to be discussed and agreed between the Procurement Officer and the contract policy owner/ Contract Development and Assurance (CDA) team.

**Green** text has been used for example where an Annex is referred to, simply to highlight to compilers that any cross referencing or numbering needs checking or that a hyperlink or e-tendering system document needs including or referencing in Annex A (list of hyperlinks and documents). The green text can remain to highlight cross references to tenderers.

Under NEC, any term that is identified in the Contract Data, is written in *italics* (and does not therefore need re formatting) e.g. *Client* is an identified term.

Under NEC, capital initial letters are used for a word or phrase that is a defined term, (and therefore do not need grammatically correcting). e.g. "Provide the Works" is a defined term.

Terms used in the Scope should match with both parts of the Contract Data and with the Conditions of Contract and Z clauses. Use cross references where appropriate.] [NB Any documents referenced within this document (e.g. specification) must be available to the Contractor (or the Tenderer at tender stage). This availability can be electronically (e.g. web site,) public domain (web site, published book etc) or by providing a contact from where the documents may be obtained].

[NOTE following the recent Court Judgment in C368/10 Commission v Netherlands

- All relevant standards need to be transparently listed so to enable the tenderers to determine the subject of the contract and
- all reference documents are to be hyperlinked rather than referred to]

## S 100 Description of the *works*

### S 101 Project Objectives

- S 101.1 [Explain “why” the specific project is being undertaken. Specific objectives may include outcomes on safety, quality, time and functionality.
- Compiler to include any contract specific *Client/Contracting Bodies* objectives for the contract.
- This is to align with ICE Schedule 1 Section 1.4]

### S 102 Description of the works

- S 102.1 The *works* is described in the document entitled *Description of the Works*, Schedule 1, sections S1.4 and S1.5.
- [A detailed description of the main work to be carried out under the contract is covered in the ICE Schedule 1. The description is to be consistent with the description in Additional Contract Data Part 1, and identify the detailed scope of *works* to be provided].

### S 103 Design Responsibility

Not Used

### S 104 Design submission procedures and acceptance criteria

Not Used

### S 105 Design approvals from Others

Not Used

### S 106 Access to information following Completion

- S 106.1 [State the *Client's* requirements for access to information once the Defects Certificate is issued including timescale for the retention of information after Completion. Consider any need for computer software source code for example.if there are none state, “Not Used”]

## S 200 Drawings

### S 201 Drawings

- S 201.1 The drawings are included in *Description of the Works*, Schedule 1, section S1.7.

## S 300 Specifications

### S 301 Specifications

- S 301.1 In Providing the Works, the *Contractor complies* with

- the “UK Specification for Ground Investigation”, Second Edition, published by Institution of Civil Engineers, (“ICE”) (see Annex 1),
- the *Description of the Works* including schedules 1 to 5 to the ICE [./and]
- [Insert any other relevant specification for elements of the *works*].

S 301.2 For interpretation of the “UK Specification for Ground Investigation”

- the Investigation Supervisor is the *Client* and
- references to clauses are to mean paragraphs.

S 301.3 [Include the following where the *Contractor* is required to provide traffic management, if not required delete the following and S 408 and state “Not Used”]

[The *Contractor* carries out any temporary traffic management, design, implementation, safety audits, applies lessons learned and checks and challenges proposals for compliance with

- Traffic Signs Manuals Chapter 7 and Chapter 8 (see link in Annex 1) and
- ‘Roadworks a Customer View’ (see link in Annex 1) and expected best practice and
- Major Projects Dynamic Roadworks – a vision for the future (see link in Annex 1).]

### Standards and Procedures

S 301.3 Except where otherwise directed, the *Contractor* ensures all materials, workmanship, designs and assessments comply with the *Client’s* standards and procedures current at the date the contract came in to existence. The current standards and procedures are identified in the above section S301.

S 301.4 If a standard or procedure subsequently changes, the *Contractor* complies with the revised standard or procedure if instructed by the *Client*. [Insert all relevant standards and procedures for the contract]

### S 302 Tests and Inspections

[Refer to clauses NEC ECSC 40.1, ECSC 60.1(5) and ICE Schedules for testing and inspection requirements.]

S 302.1 The *Contractor* carries out testing and inspection requirements as stated in ICE schedules 1 to 5 (see *Description of the Works*).

### S 303 Samples

S 303.1 The *Contractor* carries out sampling requirements as described in ICE schedules 1 to 5 (see *Description of the Works*).



### S 304 Management of tests and inspections and provision of samples

- S 304.1 The *Contractor* carries out the management of tests and inspections and the provisions of samples as described in ICE schedules 1 to 5 (see *Description of the Works*).

#### Defects in relation to Tests and Inspections (cross referenced with S430 and S309)

- S 304.2 [State any project specific requirements and constraints for Defects in relation to Tests and Inspections generally or state 'Not Used']
- [State any arrangements for accessing network to correct or inspect defects if not already covered in S309]

### S 305 Covering up completed work

- S 305.1 The *Contractor* covers up *works* which have been tested and inspected as stated in ICE Schedules 1 to 5 (see *Description of the Works*).

### S 306 Training

Not Used

### S 308 Security

- S 308.1 [State any project specific requirements and constraints for security arrangements and handover at Completion or state 'Not Used']

### S 309 Correcting Defects

- S 309.1 (NB see also (defects & non-conformities generally, & linked to quality "Audits and Non conformities in the framework information) (linked to tests and inspections) and NEC 4 ECSC Clause 42)
- [State any specific requirements and constraints for correcting Defects after Completion e.g. procedures / arrangements for accessing the network for the correction of any Defects; notice periods etc. and procedure for liaison with the *Client*. If there are none state "Not Used"]

### S 310 Deleterious and hazardous materials

- S 310.1 The *Contractor* complies with the requirements for deleterious and hazardous materials as stated in ICE Schedule 1, section S1.8.4 and S1.8.13 (see *Description of the Works*).

#### Asbestos

- S 310.2 Where the *Client* knows asbestos to be present, the *Client* supplies such asbestos information to the *Contractor*. The *Contractor* provides a method statement for undertaking such work to the *Client* for acceptance. A reason for not accepting the method statement is

- it does not demonstrate how any asbestos is to be dealt with safely or
- it does not comply with the *Client's* standards and guidance documents.

S 310.3 When instructed by the *Client*, re the *Contractor* is required to assess if asbestos is present as part of its risk assessment, the *Contractor* uses the current version of Form A and Form B of the AGS Site Investigation Asbestos Risk Assessment (see link in Annex 1).

S 310.4 In the event that asbestos containing materials are required to remain in place, the *Contractor* ensures that the *works* are carried out safely.

S 310.5 For buildings and structures, asbestos surveys and any necessary removal of asbestos is undertaken by *Client* as required.

### **S 311 Services and other things provided by the *Contractor* for the use by the *Client*, or others**

S 311.1 The *Contractor* provides services and other things as listed in ICE Schedule 3, section S.3 for use by the *Client* and others (see *Description of the Works*).

### **S 312 Requirements of others**

S 312.1 The *Contractor* obtains and satisfies any authority requirements that are stated in ICE Schedule 1, section S1.8 (see *Description of the Works*).

S 312.1 [State what the *Contractor* is required to do for obtaining and satisfying any necessary authority requirements (for example planning officials or Government departments) if not already outlined in Schedule 1, section S1.8]

## **S 400 Constraints on how the *Contractor* Provides the Works**

### **S 401 General Constraints**

[State any general constraints on how the *Contractor* Provides the Works, which are not covered by other Scope sections.

If project objectives are included, state the requirements imposed on the *Contractor* in helping to achieve them.]

[State any constraints on the sequence and timing of work and on the methods and conduct of work including the requirements for any work by the *Client* .]

### **S 401 Risk Management**

S 401.1 The *Contractor* advises the *Client* of any risks associated with Providing the Works and suggests any recommendations to mitigate the identified risks.

### **Insurance**

S 401.2 Without prejudice to its obligations to the *Client* under the contract (including its indemnity and liability obligations), the *Contractor* takes out and maintains, or procures the taking out and maintenance of the insurances as set out in the

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Insurance Table in Annex 2 and any other insurances as may be required by applicable laws (together the “Insurances”). [See Annex 2 and amend insurance levels as needed, it is envisaged that the majority of the work will not exceed the insurance levels as stated in Annex 2, but for exceptional circumstances this may need to be adjusted for work above water, or near Network Rail property]

- S 401.3 The *Contractor* ensures that each of the Insurances is effective no later than the date on which the relevant risk commences unless any different requirements are required by the contract.
- S 401.4 The Insurances are maintained in accordance with good industry practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market.
- S 401.5 Upon the effective date and within 20 days after the renewal or replacement of the Insurances, the *Contractor* provides evidence, in a form satisfactory to the *Client*, that the Insurances are in force and effect and meet in full the requirements of the Insurance Table in Annex 2.
- S 401.6 The supply to the *Client* of any evidence of insurance cover does not imply acceptance by the *Client* that the extent of insurance cover is sufficient or that the terms and conditions thereof are satisfactory nor be a waiver of the *Contractor's* liability under the contract.
- S 401.7 The insurance is taken out and maintained with insurers who are of good financial standing, appropriately regulated and of good repute in the international insurance market.
- S 401.8 The *Contractor* ensures that the third party public and products liability insurance policy contains an indemnity to principals clause under which the *Client* is indemnified in respect of claims made against the *Client* in respect of death or bodily injury or third party property damage arising out of or in connection with the for which the *Contractor* is legally liable.
- S 401.9 The *Contractor* notifies the *Client* at least 10 days prior to cancellation, suspension, termination or non-renewal of any of the insurances required by the contract.
- S 401.10 The *Contractor* does not (and ensures that none of its subcontractors at any remoteness from the *Client*) take any action or fail to take any action or, insofar as is reasonably within its power, permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the insurances required by the contract.
- S 401.11 The *Contractor* promptly notifies the insurers of any matter arising from, or in relation to the contract, for which it may be entitled to claim under any of the Insurances. In the event that the *Client* receives a claim relating to or arising out of the contract, the *Contractor* co-operates with the *Client* and assists in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.

- S 401.12 Where any Insurance requires payment of a premium, the *Contractor* is liable for this and promptly pay such premium.
- S 401.13 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the *Contractor* is liable for such excess or deductible. The *Contractor* is not entitled to recover from the *Client* any sum paid by way of excess or deductible under the Insurances whether under the terms of the contract.
- S 401.14 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the *Contractor* is liable for such excess or deductible. The *Contractor* is not entitled to recover from the *Client* any sum paid by way of excess or deductible under the Insurances whether under the terms of the contract.

#### **S 402 Confidentiality**

- S 402.1 Within two weeks after the *defects date* or termination of the *Contractor's* obligation to Provide the Works, the *Contractor* returns to the *Client* any confidential or proprietary information belonging to the *Client* in the *Contractor's* possession or control and deletes (and procures that any subcontractor (at any stage of remoteness from the *Client*) deletes) any electronic information or data held by the *Contractor* or any subcontractor (at any stage of remoteness from the *Client*) relating to the *Client* or the contract.

#### **S 403 Security and protection of the *site***

[State any additional contract specific requirements and constraints for security and protection of the *site*, if there are none state "Not Used"]

#### **S 404 Security and identification of people**

- S 404.1 The *Contractor* carries out a security check on its Staff before they are involved in Providing the Works. The checks are carried out in accordance with the *Client's* procedures (see Annex 3).

[State any additional details of security arrangements for the *site* under the contract, including any additional responsibilities of the *Contractor* with respect to *site* security, the protection of the public and safeguarding of Materials and Plant.]

#### **S 405 Protection of existing structures and services**

- S 405.1 The *Contractor* complies with the requirements in the ICE Schedule 1 for the protection of existing structures and services (see *Description of the Works*).
- S 405.2 [Refer to Site Information found in ICE Schedules for location of existing things to be protected or procedures for identifying them.] [State any additional specific requirements and constraints for the protection of existing services, services, mains, trees and other plants. Requirements for maintenance of existing services. Procedures for working on existing structures and services.]

## S 406 Protection of the works

- S 406.1 [State any additional specific requirements and constraints for the protection of the works against damage or state]

## S 407 Cleanliness of roads

- S 407.1 The *Contractor* ensures that public roads remain clean and mud free whilst onsite until the *defects date*.
- S 407.2 The *Client* instructs the *Contractor* to clean any detritus resulting from the *works* from the public roads where
- it deems it a risk to safety or a nuisance to road users and
  - it is the result of the Providing the Works.
- S 407.3 [State any project specific requirements agreed with authorities for protecting and cleaning of access roads to the *site*]

## S 408 Temporary Traffic Management

[Note to compiler: only use this Section S408 if Traffic Management is to be carried out by the Ground Investigation *Contractor*. If it is not required from the GI *Contractor*, then remove paragraph in Specification S 301.3 (above) and the paragraphs below and insert “Not Used”]

- S 408.1 Unless otherwise authorised by the *Client*, traffic management measures which could cause traffic flows to be impeded or restricted are to be removed for bank holiday periods and other periods as set out below:
- S 408.2 Traffic management to be removed before 06.00 on the Friday before the bank holiday Monday and not reinstated before 00.01 on the Tuesday after the bank holiday.
- S 408.3 Traffic Management to be removed before 06.00 on the Thursday before Good Friday and not reinstated before 00.01 on the Tuesday after Easter Monday.
- S 408.4 Traffic Management to be removed before 06.00 on the morning of the third working day\* before Christmas Day and not reinstated before 00.01 on the first working day\* following the New Year’s Day bank holiday.
- \*note: “working day” means a weekday, but not an English public holiday, Saturday or Sunday. A “working day” would include Christmas Eve where it falls on a weekday.
- S 408.5 Unless otherwise agreed by the *Client*, key freight routes have no total closures and minimal lane closures in place. Traffic management is to be removed before 06.00 on the morning of “Black Friday” and not reinstated before 00.01 on the Saturday

following Cyber Monday. Key freight routes comprise: [add note of the routes as required.] [Note to compiler: check wording with Customer Service Division]

S 408.6 [Contract compiler to identify conflicts and how-to co-ordinate between *Client* & *Contractor* to mitigate any potential conflicts]

\*note: “working day” means a weekday, but not an English public holiday, Saturday or Sunday. A “working day” includes Christmas Eve where it falls on a weekday.

S 408.7 The *Contractor* ensures

- the temporary traffic management audit team includes a practitioner who holds ‘Temporary Traffic Management Engineering PC3 Professional Higher Diploma in Temporary Traffic Management’ and
- none of the temporary traffic management audit team undertakes any temporary traffic management design for the *works*.

S 408.8 [State any additional contract specific requirements, procedures or constraints for management of traffic, road closures and public highways including any communications and information requirements or constraints. Specifically, state information about any diversion routes.]

#### S 409 Condition survey

S 409.1 The *Contractor* carries out a risk assessment of the effects the design and construction of the *works* (temporary and permanent) may have on the structural integrity of adjacent roads, railways, buildings, structures and the like. This includes any survey works to inform the design development which has the potential to effect fields, access roads and the like.

S 409.2 The *Contractor* highlights any issues from the risk assessment to the *Client*.

S 409.3 As a minimum requirement, such roads, railways, buildings, structures, fields and the like require surveys to determine condition before and after the *works* are complete.

S 409.4 The *Contractor* does not enter land or property, or contact the land or property owner, without prior agreement of the *Client*. The *Contractor* has no authority to commit the *Client* to any payment for land/property entry. The *Contractor* coordinates all access requirements, and submits the survey scope, methods, etc. for acceptance by the *Client*. A reason for rejecting the survey scope, methods etc is that they do not meet the requirements of the contract.

S 409.5 Unless otherwise agreed with the *Client*, the *Contractor* records, all survey arrangements in writing and submits a copy of this correspondence to the *Client*, no later than 48 hours prior to taking access.

S 409.6 The *Contractor* carries out a pre-condition photographic survey of the *site* before commencement of the site activities/works and at the Completion of the site works/activities. This is submitted to the *Client*.

S 409.7 [State any additional specific requirements and constraints for condition surveys and any associated reinstatement works.]

#### S 410 Consideration of others

S 410.1 The *Contractor* complies with the principles of the Considerate Constructor Scheme's Code of Considerate Practice in Providing the Works.

S 410.2 Where the duration of the site activities/works is six weeks or longer, the *Contractor*

- registers the site under the Considerate Constructor Scheme and
- scores a minimum of 25 points following Considerate Constructor Scheme inspections.

#### Customer

S 410.3 The customer is any person or organisation that uses or is affected by the *works*, including

- road users,
- communities and community groups,
- tenants and persons and organisations that lease from the *Client* and
- the public who use the *works*.

S 410.4 The *Client* has published an overarching Customer Service Strategy (see link at Annex 1), which sets out the approach to improving works and services provided to its customers. The *Contractor* collaborates with the *Client* to support the successful delivery of this strategy. Key aspects of this strategy include

- consistently delivering the basics; working to manage delays and make journeys as safe and stress free as possible,
- improving our service and network; being more effective in the way we operate, maintain and improve our roads and
- developing our relationships with customers; building strong dialogue with our customers and communities, providing information to help people make the best choices and understanding the needs and expectations of the customer.

S 410.5 The *Contractor* notifies the *Client* of any customer service issues and provides support in the mitigation of any negative consequences that could affect the delivery of the works or services or achievement of the aims and objectives in the Customer Service Strategy.



- S 410.6 The *Contractor* embeds throughout its workforce an understanding of *Client* imperatives, values, culture, strategy and objectives. Awareness is fostered at every opportunity including at; on-boarding and induction and site meetings.
- S 410.7 The *Contractor* ensures that *Client* customer requirements are cascaded to and adhered by its supply chain.
- S 410.8 The *Contractor* ensures that delivery of *Client* customer service requirements are fully inclusive and accessible and that this is evidenced within the framework Inclusion Action Plan detailed in the Framework Information.
- S 410.9 The *Contractor* reviews their policies, procedures and processes to ensure that there are no adverse customer equality impacts throughout Providing the Works or Services on protected characteristics or affected groups.
- S 410.10 The *Contractor* provides any information that is needed to enable the *Client* to prepare statements or responses to questions or issues raised by or on behalf of any customer. The *Contractor* provides such information within any time periods which may be imposed by the *Client* (acting reasonably having regard to the purpose of the provision of the information requested and to the nature and extent of the information requested). If the *Contractor* cannot provide the required information to support the *Client's* response, the *Contractor* immediately notifies the *Client*, detailing the reasons.
- The timescales are to be those as listed in the corporate customer complaints process (see link at Annex 1), unless the information relates to a freedom of information request in which case the timescales will be set by the *Client*.
- S 410.11 The *Contractor* assures that all current and future customer service standards are complied with throughout the delivery of *works*.
- S 410.12 [State any project specific requirements or constraints for Customer Service]

## S 411 Industrial Relations

Not Used

## S 412 Control of works

- S 412.1 Prior to the commencement of the *works*, the *Client* provides the *Contractor* with the names and addresses of relevant owners and occupiers within the Affected Property.
- S 412.2 The *Client* provides copies of formal entry notices or written agreements to the *Contractor*.
- S 412.3 The *Contractor* keeps records of
- the dates of their entry onto and departure from all property and land of each owner and occupier,



- the dates of the erection and removal of all enclosures and
- access to roads, footpaths and thoroughfares.

The *Contractor* provides copies of these records when required by the *Client*.

S 412.X [State any project specific requirements and constraints for control of works (i.e. any permits or licenses e.g. Permit to Dig, Waste Handling Permits, licence to go on land)]

#### S 413 *site* Cleanliness

[State any project specific requirements and constraints for *site* cleanliness, if none state “Not Used”]

#### S 414 Waste Materials

[State any project specific requirements and constraints for waste materials, if none state “Not Used”]

#### S 415 Project Team – others

S 415.1 State any project specific requirements Project Team – Others

[The Contract Data identifies the *Client* and *Contractor* and the *conditions of contract* state what each is required to do. It is important not to contradict these obligations and duties. If any of these duties are delegated to Others the extent of the delegation should be set out. If there are none state “Not Used”]

#### Investigation Supervisor

[Investigation Supervisor is a role under the ICE Specification for Ground investigations any duties. Any duties that the *Client* has delegated to this individual are to be listed below in S415.2]

S 415.2 The *Client* delegates the following duties to the Investigation Supervisor

[State delegated duties]

S 415.3 Paragraph S415.2 is the *Client*’s notification to the *Contractor* pursuant to clause 14.5.

#### Project Management

S 415.4 The *Contractor* prepares and submits to the *Client* for acceptance the following management plans and within the timescales indicated:

[State requirements in a table:

Indicate the status of each plan or report, include timescales e.g. within [xx] weeks of the date the contract came in to existence.

State whether these are to be accepted by the *Client*.

State reasons for not accepting a report. Determine consequences if they are not

followed.

State any other detailed requirements for the *Contractor's* management of the *works* including coordination, supervision, administration, interfaces between subcontractors, programme etc.]

- S 415.5 All management plans are updated at a frequency required to ensure the quality and effective integration of the works being delivered.
- S 415.6 The *Contractor* assigns a single lead to liaise with the *Client* as required throughout the duration of the *works* and until the *defects date*.

#### S 416 Communication system

- S 416.1 [The *Contractor* uses the relevant system, as listed below, or any other system identified by the *Client*.

Detail the communication system to be used. Consider the use of the following:

- internet based collaboration tool
- electronic mail system or
- standard forms and templates

State any specific requirements and constraints for communication system. If there are none state "Not Used"]

#### Communication

- S 416.2 The *Client* has an overarching communication strategy, which places emphasis on planned and targeted communications across all areas of the *Client's* work, setting out the *Client's* vision, values and company objectives. Better, more accessible communications are a key part of putting customers first.
- S 416.3 The *Client's* communications strategy places a clear, consistent visual identity, "brand" and company narrative as central to all publicity. This means that while the *Contractor* delivers the works, the *Client* will remain as the public face and will have control over the wording and design of all publicity material.
- S 416.4 Any communications or publicity activity undertaken by the *Contractor* on behalf of the *Client* requires prior discussion and approval from the *Client's* Communications Group, before any action is undertaken by the *Contractor*.

#### Publicity and Public Relations

- S 416.5 The *Contractor* provides any information that is needed to enable the *Client's* Communications Group to prepare statements or responses to questions or issues raised by, or on behalf of, any member of the public or public organisation (including the United Kingdom parliament, any local authority or any member or representatives of the foregoing). The *Contractor* provides such information within any time periods which may be imposed by the *Client's* Communications Group (acting reasonably having regard to the purpose of the provision of the information requested and to the nature and extent of the information requested). If it is

impossible for the Contractor to do so, the *Contractor* immediately gives notice to the *Client's* Communications Group setting out in full the reasons.

- S 416.6 Where such questions or issues are raised with or addressed to the *Client* (and not with the *Contractor* directly), the *Contractor* does not communicate directly with such public organisations in respect thereof, without having obtained prior written acceptance from the *Client* of the form and terms of its communications, save to the extent that they are legally required to do otherwise.
- S 416.7 The *Contractor* seeks prior approval from the *Client* before any communications or publicity activity is undertaken by the *Contractor* on behalf of the *Client*.
- S 416.8 The *Contractor* seeks prior approval from the *Client* before accepting any invitations to appear at public meetings or events relating to work being undertaken on behalf of the *Client*.
- S 416.9 The *Contractor* commits to regular and open communication with the *Client's* Regional Communications Manager and any other applicable internal/external stakeholders of the *Client*.

### Media Relations

- S 416.10 The *Contractor* seeks prior approval from the *Client's* Communications Group before any contact is made with the media in relation to the contract. The *Contractor* retains contact with the *Client's* Communications Group, where instructed to do so, throughout the process.
- S 416.11 The *Contractor* accepts that the *Client* can issue press notices and generate other publicity about work on its behalf (e.g. offering media interviews or placing articles in the press).
- S 416.12 The *Contractor* does not release any information in respect to the contract (including the commencement of works) without the agreement of the *Client*. If the *Client* does not wish to issue a press notice, it will discuss and agree an appropriate media handling plan with the *Contractor*.
- S 416.13 The *Contractor* passes all media enquiries to the *Client's* Communications Group immediately. No comments or interviews are to be given to the media without the *Contractor* without agreement of the *Client*.
- S 416.14 The *Contractor* informs the *Client* and *Client's* Communications Group, immediately, in relation to any possible reactive or proactive media opportunities including any sensitive issues that may attract media interest. Any communication strategies and plans developed by the *Contractor* are agreed with the *Client*.
- S 416.15 The *Contractor* assists the *Client* and the *Client's* Communications Group with information to enable advance and reactive notice to be given to the media and stakeholders that specifies the impact upon the road user to benefit the *Client's* customers; this includes providing details on programme dates, operational timescales, proposed lane closures, traffic safety and management measures, and alternative routes.

### Social Media

- S 416.16 The *Client* uses its own social media channels to promote work being undertaken on its behalf by the *Contractor*. The *Contractor* does not set up any social media channels on behalf of the *Client*.
- S 416.17 The *Contractor* does not release any information on social media in relation to the contract, until the *Client* has made its own announcement via its own approved media channels. The *Client* reserves the right to decline any posts, by the *Contractor*, onto social media.
- S 416.18 The *Contractor* does not respond to any customers enquiries about, or on behalf of, the *Client* via its own social media channels. The *Contractor* passes all social media enquiries to the *Client's* regional social media team, immediately, and notifies the *Client*. No comments are to be made by the *Contractor* on social media without seeking prior approval from the *Client's* Communications Group.

### Branding and Marketing

- S 416.19 The *Contractor* adheres to the *Client's* tone of voice and visual branding guidelines, particularly when undertaking any public facing activities. The *Client's* visual identity specifications are (see links in Annex 1)
- Highways England: Our visual identity and
  - 'Normal not formal. A guide to our corporate narrative, tone of voice and writing style'
- S 416.20 The *Contractor* uses the *Client's* existing approved templates and all other applicable materials, so far as is practicable when developing and producing all communication plans for the contract. The *Contractor* agrees with the *Client* the use of any other templates and materials before its use.
- S 416.21 The *Contractor* complies with the *Client's* visual identity and branding policy and technical specifications, including for the preparation and production of all information and communications materials including signs and works signage. These are set out in the *Client's* visual identity specifications and visual branding guidelines, as outlined in section S416.19 above, and further information is available from the *Client's* Communications Group. Any materials are agreed with the *Client*.
- S 416.22 All branding and design issues are the responsibility of the *Client's* Communications Group and the *Contractor* seeks, follows and implement the advice provided by this team.
- S 416.23 The *Contractor* assists the *Client* with regular information updates for the *Client's* website. All text must be cleared by the *Client* before issue to ensure efficient co-ordination of publicity and communications efforts. The *Contractor* ensures any material relating to the contract on the *Client's* or other external websites (i.e. non-*Client* websites) makes the *Client-Contractor* relationship explicit in that the *Contractor* is working on behalf of the *Client*.

### Community Relations

- S 416.24 The *Contractor* informs the *Client*, Investigation Supervisor and *Client's* regional communications manager of any significant community issues.

#### S 417 Management Procedures

- S 417.1 The *Contractor* includes moments to discuss the *Client's* three imperatives (safety, customer service and delivery) at the start of any meetings.
- S 417.2 Where a progress report is required by the *Client*, the *Contractor* includes a section on customer service.

#### S 417.3 [State any management procedures which the *Contractor* is required to follow.

Consider the following:

- meetings, location, agenda (who prepares this), attendees (*Contractor's* Manager, Design Manager, Environmental Coordinator, Health and Safety Coordinator, and support staff) and meeting records,
- reporting requirements (e.g. progress reports),
- information requirements and
- terminology and abbreviation]

#### S 418 *Contractor's* application for payment

- S 418.1 The *Contractor* ensures the purchase order number is included on its invoice and submits such records as requested by the *Client* with each invoice in the format as required by the *Client*. [compiler to check with Accounts Payables Team for up to date approach].
- S 418.2 The *Contractor* provides a Work Breakdown Structure (WBS) of the invoice in the format required by the *Client* (see Link in Annex 1).

[State any project specific requirements and constraints for invoicing]

#### S 419 Use of the *works*

- S 419.1 [State any project specific requirements and constraints for use of the *works* or state 'Not Used'.

[Review in relation to ECSC clause 60.1(5)]

Identify parts of the *works* that the *Client* requires to use prior to Completion without taking it over. Details to include

- What is being done,
- When it is being done and for how long,
- Location or parts of the *works* effected, and
- Reasons for use

*Contractor's access provision during period of use. Consider any information to be provided and by whom]*

## S 420 Co-ordination

S 420.1 When required, the *Contractor* co-ordinates with local highway authorities to ensure roadwork clashes are prevented.

S 420.2 *[State how the Contractor is to liaise with the Client and others for the co-ordination of works and access.]*

## S 421 Co-operation

S 421.1 The *Contractor* co-operates with other suppliers in obtaining and providing information needed.

S 421.2 The *Contractor* programmes works in a manner that minimises the impact on the customer, working in conjunction with the *Client's* Major Projects and Operations Directorates.

S 421.3 The *Contractor* shares information, communicates openly with the *Client*, continuously shares lessons learnt and achievements and enables embedded learning.

S 421.4 The *Contractor* does not enter into commitments when dealing with third parties that might impose any obligations on the *Client* except with the consent of the *Client*.

S 421.5 The *Contractor* cooperates with the following organisations

*[Identify the organisations and set out details of the work they are to do and any special requirements or other conditions agreed with them.]*

*Identify known information requirements, for the Contractor to obtain from Others or provide to Others, and timing.]*

## S 422 Sharing the site with others

S 422.1 The *site* is shared with others. The *Contractor* cooperates with, and shares the *site* with the following organisations

- [Identify and list any organisations that the Contractor is to co-operate with and or share the site with]*

*Provide a list of activities to be undertaken, explaining*

- what is to be done,*
- who is doing it, when it is being done, and for how long, and*
- where it is being done, and how the Contractor is to co-operate and share the site and whether it provides any services or other things (refer to scope section S 311 if necessary)*

*The interface between the Contractor and others is often complex and the obligations of the parties should be stated. This information may be conveniently*

provided in the form of interface schedules to ensure that arrangements are 'back-to-back']

Identify the organisations and set out details of the work they are to do and any special requirements or other conditions agreed with them.]

[State any project specific requirements and constraints for sharing the Working Areas with Others]

## S 423 Authorities and utilities providers

S 423.1 The *Contractor* complies with the special requirements of the following Statutory Bodies

- [List applicable bodies; include Network Rail if working close to a railway.]

## S 424 Health & Safety requirements

S 424.1 The *Contractor* supports the *Client* in achieving the goal of no accidents and no harm arising from Providing the Works.

S 424.2 The *Contractor* embraces and contributes to the *Client's* "Home Safe and Well" initiative (see Annex link in 1) and considers where a positive difference can be added to ensure everyone is able to return home safe and well every day. The *Contractor* is required to

- consider how their role in connecting the country can really make a difference and embed safety as the first imperative across all areas of responsibility,
- recognise the behaviours that enable the culture change required to achieve our vision and deliver the objectives of the organisation,
- engage and collaborate as appropriate with the wider business, supply chain and other stakeholders to promote health, safety and wellbeing, recognising behaviours that bring "Home Safe and Well" to life and
- be responsible and accountable for the health, safety and wellbeing of those employed by the *Contractor* and those the *Contractor* works with.

S 424.3 The *Contractor* complies with the relevant minimum requirements specified in the *Client's* 'raising the bar' guidance (see link in Annex 1).

S 424.4 The *Contractor* issues the information in the health and safety file, as required under the Construction (Design and Management) Regulations 2015, to the *Client* before Completion.

S 424.5 Upon request, the *Contractor* and any subcontractors, provides the *Client* with records of training of their employees.

S 424.6 The *Contractor* and the *Client* notify each other of any known special health and safety hazards which may affect the performance of the *works*. The *Contractor* informs and instructs people employed by them on the hazards and any necessary associated safety measures.

S 424.7 The *Client* may challenge any activity undertaken in Providing the Works where it considers there is a hazard to the safety of any person. Where challenged, the *Contractor* suspends the activity immediately and follows the processes set out in the quality management plan to demonstrate the activity is safe before recommencing.

S 424.8 The *Contractor* participates in working groups with the aim of improving health and safety management performance in relation to the following topics: designing for health and safety in buildability and operability and maintenance and construction health and safety improvement.

[State any additional specific requirements and constraints for health and safety requirements]

Specify all relevant requirements for the contract, including

- *Client's* safety requirements,
- reporting requirements,
- safety management, supervision and qualifications,
- management of Subcontractors,
- drug and alcohol policy and *site* induction procedures.]

#### S 424A Reporting Requirements

S 424A.1 The *Contractor* complies with *Client's* Interim Advice Note 128/15C Highways England Supply Chain Health and Safety Incident Reporting ("IAN 128") (included at Annex A), or its later update or replacement, including any time periods required by IAN 128. If no time period is specified in IAN 128 the period of reply applies unless agreed otherwise by the *Client*.

S 424A.2 If any incident occurs that the *Contractor* considers is not within the remit of IAN 128 then the *Contractor*

- notifies the *Client* of the incident; and
- reports the incident as if the incident was in the remit of IAN 128, if required by the *Client*.

S 424A.3 Any document that would otherwise fall to be disclosed by the *Contractor* to the *Client* may be withheld by the *Contractor* provided that the *Contractor's* legal advisor confirms to the *Client* that the document is

- a confidential communication between the *Contractor* and its legal advisor for the purposes of seeking or giving legal advice that the legal advisors would normally expect to be given legal privilege in the normal course of its business with the *Contractor* or
- a confidential communication between the *Contractor* or its legal advisers and third party where the communication came into existence with the dominant purpose of being used in connection with contemplated,



pending or actual litigation in adversarial proceedings (as opposed to investigations or fact finding inquiries).

- S 424A.4 In addition to any requirements in the IAN 128, the *Contractor* reports to the *Client* within 3 hours, details of any serious incidents involving any person injured or killed in connection with the *works* on the *site*.
- S 424A.5 The *Contractor* reports such incidents through the *Client's* Accident and Incident Reporting System (see Annex 1).
- S 424A.6 The *Contractor* ensures that any subcontract (at any stage of remoteness from the *Client*) contains reporting provisions to the same effect as this section S424A

#### S 425 Method Statements

S 425.1 [State any project specific requirements and constraints for method statement]

[Detail the operations for which the *Contractor* is required to submit method statements and risk assessments to the *Project Manager* for acceptance. If there are none state "Not Used"]

#### S 426 Legal Requirements

S 426. 1 [The *Client* appoints the *Contractor* to act as principal contractor for the purposes of the Construction Design Management Regulations (CDM) 2015 (and any later replacement).]

[State which organization is to be the principal contractor, i.e. is there more than one contractor on the *site* during the period the *Contractor* is Providing the Works. If the *Contractor* is to be the principal contractor include sentence above.]

S 426. 2 The *Contractor*

- where required, performs all the duties of a principal contractor as stated by the Construction Design Management (CDM) Regulations 2015 (and any later replacement),
- discharges its obligations under the CDM Regulations in compliance with any guidance issued by the Health and Safety Executive (HSE) in respect of those Regulations and provides the *Client* with evidence of compliance and
- where required, acts as principal contractor in respect of the *works* including
  - work carried out by the *Client* but only if instructed by the *Client* and
  - work carried out by others but only if instructed by the *Client*.

S 426. 3 During the pre-construction phase and before setting up the *site*, the *Contractor* draws up a construction phase plan in respect of the relevant *works* which complies with regulation 12(2) of the CDM Regulations and submits this to the *Client* for acceptance.

- S 426. 4 Reasons for rejecting the construction phase plan are that it does not meet the requirements or obligations of
- the contract or
  - CDM Regulations.
- S 426. 5 The *Contractor* amends the construction phase plan in response to any comments from the *Client* and resubmits it for acceptance by the *Client*.
- S 426. 6 The *Client*, notifies the *Contractor* when the construction phase plan is accepted and gives consent to commencement of *site* activities. The *Contractor* complies with the construction phase plan once it has been accepted.
- S 426. 7 The *Contractor* confirms to the *Client* that adequate welfare and hygiene facilities are in place prior to commencement of any *site* ground investigation/construction activities

## S 427 Inspections

- S 427.1 The *Contractor*
- includes in the construction phase plan its monitoring regime for undertaking formal *site* safety inspections,
  - ensures that it carries out formal *site* safety inspections once every two weeks,
  - ensures that competent persons carry out the inspections,
  - notifies the *Client* in advance of the date of the inspection and allows the *Client* to participate in the inspections,
  - documents the findings from the inspection and provides the *Client* with a copy of the documentation within one week following the inspection and
  - takes actions to ensure that the matters identified in the inspections are addressed.

[State any project specific requirement for review and inspection of *Contractor's* health and safety procedures by the *Client*.]

## S 428 Pre-Construction Information

- S 428.1 During the pre-construction phase and before setting up the *site*, the *Client* provides to the *Contractor* the health and safety risk register associated with the *works*. The *Contractor* includes the risks identified on the register in their construction phase plan.

[Identify areas of the Pre-Construction Information which are Scope. Information contained or identified in other parts of the Scope should not repeat, or be inconsistent, with the Pre-Construction Information]

## **S 429 Materials from excavation and demolition**

S 429.1 [State any project specific requirements and constraints for materials from excavation and demolition]

[State any exceptions to the *Contractor's* title to materials arising from excavations and demolitions.]

[State if the *Client* wishes to salvage any such material, and if so where they are to be delivered or collected from, and by whom. Refer to ECSC clause 70.2.]

## **S 430 Quality management system**

S 430.1 The *Contractor* complies with the quality management requirements as stated in the framework information.

## **S 431 Quality Plan (scheme)**

S 430A.1 [State any requirements for a scheme Quality Plan (this is in addition to the quality plan produced at framework level), if there are none state "Not Used"]

## **S 432 Performance Management**

S 432.1 The *Client* assess the *Contractor's* performance as described in the framework information.

## **S 433 Environmental Requirements**

S 433.1 In Providing the Works, the *Contractor* complies with the *Client's* environmental strategy, (see link in Annex 1) which is to invest for the long-term and capture the vision for the environment which is "a strategic road network working more harmoniously with its surroundings to deliver an improved environment". This includes: conserve energy, water and other resources; reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

S 433.2 The *Contractor* demonstrates environmental improvements in leadership and culture through accountability, capable employees and customer focused delivery.

S 433.3 The *Contractor* demonstrates recognition of health, safety and wellbeing in driving through environmental improvements which are to reduce noise pollution, improve air quality and improving resilience to flooding.

S 433.4 In Providing the Works, the *Contractor* complies with the *Client's* Biodiversity Plan (see link in Annex 1) to contribute to "that by 2020, the company must deliver no net loss of biodiversity, and that by 2040 it must deliver a net gain in biodiversity"

S 433.5 The *Contractor* ensures that any goods purchased by the *Contractor* on behalf of the *Client* (or those which become the property of the *Client*) comply with the relevant minimum sustainable procurement standards specified in the Government Buying Standards (see link in Annex 1).

- S 433.6 All printed output produced by the *Contractor* in connection with the contract complies with the relevant Government's buying standards and is printed on both sides where appropriate.

[State any project specific requirements and constraints e.g. Environmental Action Plan, consider whether there are any further ecology/environmental surveys required when the survey window is open with any mitigation works being implemented.]

#### **S 434 Construction Environmental Management Plan (CEMP)**

- S 434.1 Where applicable, the *Client* provides the *Contractor* with a copy of the Construction Environmental Management Plan (CEMP).
- S 434.2 Interim Advice Note (IAN) 183/14 provides guidance on the requirements of the Construction Environmental Management Plan (CEMP). (See link in Annex 1).
- S 434.3 The *Contractor* inputs into the development and review of the CEMP as required to ensure the satisfactory progress of the contract with respect to environmental management, mitigation and enhancement.

#### **S 435 Site Waste Management Plan**

- S 435.1 In order to reduce the need for waste disposal, the *Contractor* minimises the generation and environmental impacts of wastes arising during the *works* and maximises opportunities for the re-use and recovery of wastes.
- S 435.2 Where the total of the Prices is £300,000 or more, the *Contractor* produces and maintains a waste management plan which complies with the scheme outline Site Waste Management Plan where one exists. Where a Site Waste Management Plan does not exist, the *Contractor* follows the principles best waste management practice.
- S 435.3 The *Contractor* makes any necessary applications to the local authority or the Environment Agency, under the relevant terms of the Environmental Permitting (England and Wales) Regulations 2010 and the Town and Country Planning Act (1990) for the storage, treatment or disposal of wastes. (See links in Annex 1)

#### **S 436 Air quality strategy**

- S 436.1 The *Client's* air quality strategy (see link in Annex 1) sets out how it 'will ensure that all activity on our roads is delivered in a way that not only minimises harm, but ultimately improves the environment including air quality'. This helps support government as they work to improve air quality in the UK and deliver nitrogen dioxide compliance at the roadside in the shortest time possible. The *Client* explores 'opportunities to promote the use of low emission vehicles by our supply chain' to play its part in reducing harmful pollutants.
- S 436.2 In support, the *Contractor*
- ensures that any new vehicles purchased by it for use partly or wholly in Providing the Works comply with the minimum mandatory standards

(detailed for central government departments) detailed in Government Buying Standards for Transport 2017, or its replacement, (see link in Annex 1) and

- when requested, works in collaboration with the *Client* to prepare reports to identify how the best practice standards detailed in the Government Buying Standards for Transport 2017, or its replacement, can be achieved. (Report findings help inform setting standards for future highways contracts and any subsequent action by the *Contractor* helps reduce emissions of harmful pollutants when Providing the Works.)

[State any project specific requirements and constraints for air quality']

### S 437 Sustainable development requirements

S 437.1 In Providing the Works, the *Contractor* complies with the *Client's* sustainable development strategy (see link in Annex 1) which is to put sustainable development into practice by "...encouraging economic growth while protecting the environment and improving safety and quality of life", and demonstrates compliance with the ambitions of the *Client's* Sustainable Development Strategy and Action Plan.

S 437.2 In Providing the Works the *Contractor* ensures it

- reduces the need for waste disposal,
- minimises the generation and environmental impacts of wastes arising during the works,
- maximises opportunities for the re-use and recovery of wastes and
- promotes a circular approach, as set out in the sustainable development strategy.

S 437.3 To meet the *Client's* ambitions for responsible sourcing the *Contractor* demonstrates the environmental, social, safety and legal credentials of goods and services procured in an action plan for responsible sourcing (which may be based on BES 6001). This includes measures for complete traceability and transparency, legal origin, zero tolerance for bribery and corruption, and reduced environmental and social impacts during manufacture, supply and use.

[State any project specific requirements and constraints for the environment']

### S 438 Energy Efficiency Directive

S 438.1 The *Contractor*

- complies with the requirements of Procurement Policy Note 7/14 entitled "Implementing Article 6 of the Energy Efficiency Directive" ("PPN 7/14") (see link in Annex 1) and any related supplementary Procurement Policy Notes (e.g. PPN01/05), in Providing the Works,

- ensures that any new products purchased by it for use partly or wholly in Providing the Works comply with the standard for products in Directive 2012/27/EU (see link at Annex 1),
- demonstrates efficiency in resource use and maximisation of re-use and recycling of materials to support the *Client's* “circular economy” ambition as stated in the *Client's* Sustainable Development Strategy (see link in Annex 1),
- ensures that any new products purchased by a Subcontractor for use partly or wholly in the performance of its obligations under its subcontract complies with the standard for products in Directive 2012/27/EU,
- ensures that Subcontractors demonstrate to the *Contractor* how any new products purchased by the Subcontractor for use partly or wholly in the performance of its obligations under a subcontract complies with the requirements of PPN 7/14, and includes requirements to the same effect in any subsubcontract (at any stage of remoteness from the *Client*).

S 438.2      The *Contractor* demonstrates to the *Client* how any new products purchased by it for use partly or wholly in Providing the Works comply with the requirements of PPN 7/14.

#### **S 439 Conflict of interest**

S 439.1      The *Contractor* does not take an action which would cause a conflict of interest to arise in connection to the contract. The *Contractor* notifies the *Client* if there is any uncertainty about whether a conflict of interest may exist or arise.

S 439.2      The *Contractor* notifies its employees and subcontractors (at any stage of remoteness from the *Client*) and procures that any subcontractor (at any stage of remoteness from the *Client*) notifies its employees, who are engaged in enabling the *Contractor* to perform its obligations under the contract, that they do not take an action which causes an actual or potential conflict of interest to arise in connection with the *works*.

S 439.3      The *Contractor* ensures that any employee of the *Contractor* or of any subcontractor (at any stage of remoteness from the *Client*) who is engaged in enabling the *Supplier* to perform its obligations under the contract, completes the Declaration of Interests and Conflict of Interest form, as set out in Annex 1. The *Contractor* issues to the *Client* any completed declaration of interests and conflict of interests.

S 439.4      If there is any uncertainty about whether a conflict of interest may exist or arise, the *Contractor*

- immediately notifies the *Client* and
- procures that any subcontractor (at any stage of remoteness from the *Client*) immediately notifies the *Contractor*.

S 439.5      Following a notification from the *Contractor*, the *Client* may

- require the *Contractor* to stop performing its obligations under the contract until any conflict of interest is resolved or
- require the *Contractor* to submit to the *Client* for acceptance a proposal to remedy the actual or potential conflict of interest.

- S 439.6 A reason for not accepting the submission is that it does not resolve the conflict of interest.
- S 439.7 The *Contractor* amends the proposal in response to any comments from the *Client* and resubmits it to the *Client* for acceptance.
- S 439.8 The *Contractor* complies with the proposal once it has been accepted.
- S 439.9 A failure to comply with this section is treated as a substantial failure by the *Contractor* to comply with its obligations.

#### S 440 Data protection

- S 440.1 The *Contractor* complies with the data protection requirements set out in Annex 4.

#### S 441 Information Systems

- S 441.1 The *Client's* Information Systems are
- Customer Relationship Management (CRM) tool,
  - CEMAR,
  - Business Collaborator,
  - AIRSWeb and
  - HAGDMS

or any revised systems notified by the *Client*.

[State any project specific requirements and constraints for Information Systems. This links with requirements for data protection, Information Security and Data handling]

#### S 442 Information Security

- S 442.1 The *Contractor* complies with the *Client's* security policy and procedures, set out in the documents "Statement of Highways England IT Security Policy" and Chief Information Officer Memos 01/09, 05/08 and 04/08. (See link in Annex 1).
- S 442.2 The *Contractor* complies with the *Client's* data handling policy when working on the *Client's* systems or handling the *Client's* data. (See link in Annex 1).
- S 442. The *Contractor* does not use any confidential or proprietary information provided to or acquired by it for any purpose other than to Provide the Works. The *Contractor* implements measures to prevent the disclosure of such information by its employees or Subcontractors.

S 442. On Completion, or earlier termination, the *Contractor* gives to the *Client* all Personal Data held by them in a format specified by the *Client* (or any subcontractor (at any stage of remoteness from the *Client*) and Sub-processor) and destroys, and procures any subcontractor (at any stage of remoteness from the *Client*) and Sub-processor destroys, any electronic and paper copies of such data in a secure manner.

S 442. A failure to comply with this section is treated as a substantial failure by the *Contractor* to comply with its obligations.

### S 443 Offshoring

S 443.1 In this section, Risk Assessment is a full risk assessment and security review carried out by the *Client* in accordance with the HMG Security Policy Framework (SPF) and the *Client's* Information Security Data Security Standard (See links in Annex 1).

The *Contractor* does not store any of the *Client's* data that is classified as OFFICIAL (including OFFICIAL SENSITIVE) or higher in accordance with the HMG Government Security Classifications (see Annex 1)

- offshore or
- in any way that it could be accessed from an offshore location

until the *Client* has confirmed to the *Contractor* that either

- the *Client* has gained approval for such storage in accordance with the Information Security Data Security Standard or
- such approval is not required.

S 443.2 The *Contractor* ensures that no offshore premises are used in Providing the Works until

- such premises have passed a Risk Assessment or
- the *Client* confirms to the *Contractor* that no Risk Assessment is required

S 443.3 The *Contractor* complies with a request from the *Client* to provide any information required to allow the *Client* to

- gain approval for storing data or allowing access to data from an offshore location in accordance with S 443.2 or
- conduct a Risk Assessment for any premises in accordance with S 443.3.

S 443.4 The *Contractor* ensures that any subcontract (at any stage of remoteness from the *Client*) contains provisions to the same effect as this section.

S 443.5 A failure to comply with this section is treated as a substantial failure by the *Contractor* to comply with its obligations.



#### S 444 Provision of cost information

S 444.1 A Work Breakdown Structure (WBS) incorporating a cost breakdown structure is prescribed by the *Client*. The *Contractor* submits financial information in accordance with this WBS (see Annex 1)

S 444.2 The *Contractor* arranges for its subcontractors to make financial submissions in the same format.

[State any project specific requirements and constraints for the provision of cost information]

#### S 445 Provision of price information

S 445.1 The data to be supplied after the date the contract came in to existence includes

- a Price List structured and coded to the latest WBS (see link at Annex 1), using rates from the *quotation information* with any provisional sums fully built up and substantiated. Any deviation from the framework rates to be fully justified and put forward for the agreement of the *Client* and
- confirmation of the information used to price the Price List

[State any project specific requirements and constraints for the provision of Price information]

#### S 446 Subcontracting

[State any project specific requirements and constraints for subcontracting]

#### S 447 Restrictions of requirements for subcontracting

S 447.2 The *Contractor* includes a provision in all subcontracts stating that retention is not deducted from any amount due to the subcontractor and procures that its subcontractors (subcontractors at any stage of remoteness from the *Client*) do the same.

[Note to compiler – need to consider throughout where references are made to subcontractor with a little “s”. This means all subcontractors all the way down the supply chain (or at any stage of remoteness from the *Client*). Subcontractor with a capital S is the NEC defined term meaning an organisation that has a contract with the *Contractor*.]

S 447.3 The *Contractor* ensures that all subcontractors (at any stage of remoteness from the *Client*) are Named Suppliers.

S 447.4 The *Contractor* may propose to the *Client* that a subcontractor (at any stage of remoteness from the *Client*) is not a Named Supplier. The *Contractor* does not, and procures that a subcontractor (at any stage of remoteness from the *Client*) does not, appoint a subcontractor (at any stage of remoteness from the *Client*) who is not a Named Supplier unless the *Client* has accepted the *Contractor's* proposal. A

reason for not accepting the *Contractor's* proposal is that it is practicable for the subcontractor (at any stage of remoteness from the *Client*) to be a Named Supplier.

S 447.5 The *Contractor* ensures that all subcontracts with Subcontractors use an NEC form of contract and that any further subcontractors (at any stage of remoteness from the *Client*) have 'back to back' agreements with the Subcontractors.

S 447.6 The *Contractor* may propose to the *Client* that a subcontract (at any stage of remoteness from the *Client*) does not use a NEC form of contract. The *Contractor* does not, and procures that a subcontractor (at any stage of remoteness from the *Client*) does not, award subcontract (at any stage of remoteness from the *Client*) which is not an NEC form unless the *Client* has accepted the *Contractor's* proposal. A reason for not accepting the *Contractor's* proposal is that it is practicable for the subcontract (at any stage of remoteness from the *Client*) to be an NEC form.

State any specific submission and acceptance procedures for proposed subcontracts ECSC Clause 21 has no specific requirements for acceptance and submission. Note that the contract does not define the term Subcontractor in short form.]

## S 448 Fair Payment

S 448.1 The *Contractor* includes in the contract with each subcontractor

- a period for payment of the amount due to the subcontractor not greater than 19 days after the date on which payment becomes due under the contract. The amount due includes payment for work which the subcontractor has completed from the previous assessment date up to the current assessment date in the contract,
- a provision requiring the subcontractor to include in each subsubcontract the same requirement, except that the period for payment is to be not greater than 23 days after the date on which payment becomes due under the contract,
- a provision requiring the subcontractor to assess the amount due to a subsubcontractor without taking into account the amount paid by the *Contractor* and
- a provision requiring each further stage subcontract to contain provisions to the same effect as these requirements, with the intention that all subcontractor (at any stage of remoteness from the *Client*) are to be paid within 30 days after the date on which payment becomes due under the contract.

S 448.2 The *Contractor* notifies non-compliance with the timescales for payment

- to the *Client* and
- through the Efficiency and Reform Group Supplier Feedback Service.

The *Contractor* includes this provision in each subcontract and requires subcontractors to include the same provision in each subsubcontract with the

intention that all subcontractors (at any stage of remoteness from the *Client*) include the same provision.

- S 448.3 A failure to comply with this section is treated as a substantial failure by the *Contractor* to comply with its obligations.

## S 449 Contracts Finder

- S 449.1 Contracts Finder is the government website for information about contracts worth over £10,000 with the government and its agencies.

- S 449.2 The requirements of this section S 449 do not apply to subcontracts placed under a Category Purchase Agreement.

- S 449.3 Where the total of the Prices is £5,000,000 or more per annum at the date the contract came into existence, the *Contractor*

- subject to paragraphs S 449.5 and S 449.6, advertises on Contracts Finder all subcontract opportunities arising from or in connection with Providing the Works above a minimum threshold of £25,000 that arise before Completion,
- within 90 days of awarding a subcontract to a Subcontractor, updates the notice on Contracts Finder with details of the successful Subcontractor,
- monitors the number, type and value of the subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain prior to Completion and provides reports on this information to the *Client* in the format and frequency as reasonably specified by the *Client* and
- promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

The calculation of £5,000,000 or more per annum in this section is in accordance with footnote 1 to PPN 01/18 entitled Supply Chain Visibility (see link in Annex 1) based on an advertised contract value, averaged over the life of the contract.

- S 449.4 Each advert referred to in paragraph S 449.3 provides a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the *Contractor*.

- S 449.5 The obligation at paragraph S 449.3 only applies in respect of subcontract opportunities arising after the date the contract came into existence.

- S 449.6 The *Contractor*, may propose to the *Client* for acceptance, that a specific subcontract is not advertised on Contracts Finder. The *Contractor* provides a detailed reason for not advertising the specific contract. The *Contractor* provides further detail when requested by the *Client* to assist in its consideration. If accepted by the *Client*, the *Contractor* is relieved from advertising that subcontract opportunity on Contracts Finder.

[State any project specific requirements and constraints for Contracts Finder.]

## S 450 Accounts and records

[State any project specific requirements and constraints for project records required for the project, please refer to Framework Information requirements for accounts and records]

## S 451 Title

No additional requirements.

## S 452 Marking

Not Used

## S 453 Building Information Modelling

- S 453.1 The *Client* requires that building information modelling (BIM) is operated on all schemes.
- S 453.2 When required by the *Client*, the *Contractor* cooperates with the *Client* and Others who have responsibility for BIM for the *works*.

## S 454 Performance Bond

- S 454.1 Where the *Contractor* is required to provide a performance bond, it is provided in the form set out in Annex 5.

## S 455 Undertaking to Others

- S 455.1 If the *Contractor* is required to provide undertakings to others, it is provided in the form set out in Annex 6.

## S 500 Requirements of programme

[Ensure any requirements throughout S500 here do not conflict with the contract requirements in ECSC Clause 31.1]

## S 501 Programme

- S 501.1 [State whether a programme is required and, if it is, state what form it is to be in, what information is to be shown on it, when it is to be submitted and when it is to be updated].

## S 502 Information to be shown on the programme

- S 502.1 [If a programme is required, state what information is to be shown on the programme. These may include
- the starting date and Completion Date and any sectional completion,
  - the order and timing of the operations which the *Contractor* plans to do in order to Provide the Works,

- the order and timing of work of the *Client* and others as last agreed with them by the *Contractor* or, if not so agreed, as stated in the Scope,
- provisions for float and procedures set out in the contract.
- the dates when, in order to Provide the Works in accordance with its programme, the *Contractor* will need acceptances,
- Plant and Materials and other things to be provided by the *Client* and information from others,
- order and timing of tests, inspections and commissioning activities whether done by the *Contractor* or *Client* or others,
- Information to be provided, who it is to be provided by, and the date by which it is to be provided]

Refer to ECSC 31.1 and 50.8]

### S 503 Submitting the programme

S 503.1 If a programme is required, state when the first programme is to be submitted and, if revised programmes are required, how often they are to be submitted.

State any requirements for the *Client* to accept the programme.

State any information to be shown on revised programmes such as

- an explanation of changes,
- actual progress achieved for each operation and the effect upon the timing of the remaining work and
- how the *Contractor* plans to deal with any delays and to correct notified Defects.

Refer to ECSC 31.1

### S 504 Completion Requirements

Work to be done by the Completion Date. If required, state which parts of the works can remain incomplete. Refer to ECSC 11.2(1)

S 504.1 The work to be done by the Completion Date for the whole of the *works* is all the work required by the contract with the exception of any work listed below that is to be completed after Completion.

[State any parts of the *works* that can be incomplete at Completion, and add the words “with the exception of” and list each item.]

S 504.2 Where applicable, achieving Completion requires the activities and documents in S506 (Documents) and S 507 (Handover) to be complete and formally accepted by the *Client*. Please note that the *Client* is continually improving and updating its systems and processes and the list may be subject to amendment during the duration of the contract.

- S 504.3 Traffic management measures which could cause traffic flows to be impeded or restricted are to be removed before Completion [include for the whole of the works or section as appropriate].

### S 505 Sectional Completion

- S 505.1 If there is sectional Completion, the work to be done by the sectional Completion Date for a section of the works is all the work included in the section with the exception of any parts of the section listed below.
- List here
- S 505.2 The work to be done by the Completion Date for a section of the works is all the work included in the relevant section. If any items can be done after Completion, add the words “with the exception of” and list each item separately for each section.

### S 506 Documents

- S 506.1 The Contractor delivers to the Client on Completion the final 'deliverable' version of any data in the following formats
- AGS format “.ags”
  - Acrobat format “.pdf”
  - State any other requirements for data here
- S 506.2 [Note to compiler – confirm that scope of requirements in this section is current and exhaustive for the Scheme – ensure that there is no duplication with S504 and the definition of Completion.]
- The list of documents/ activities to be completed in order to achieve Completion is as follows
- health and safety file – the Contractor provides a completed health and safety file as required under the Construction (Design and Management) Regulations 2015,
  - as built drawings – as defined within the Construction (Design and Management) Regulations 2015, the Contractor submits all drawings prior to Completion,
  - databases – the Contractor confirms that all the Client’s systems which require updating are populated and updated prior to Completion. These include the following systems; other systems may be notified to the Contractor prior to Completion and the Contractor updates all systems notified by the Project Manager
    - HAGDMS – Highways Geotechnical Data Management System and
    - EnvIS – Environmental Information System – EnvIS.

### S 507 Handover between contractors

- S 507.1 When required, the *Contractor* arranges for the receipt through the *Client* of all information relating to the *works* from the contractor previously appointed for the delivery or procurement of the *works* or otherwise.
- S 507.2 When required, the *Contractor* arranges for the transfer through the *Client* of all information relating to the *works* to the contractor subsequently appointed for the delivery or procurement of the *works* or otherwise.

### S 600 Services and other things to be provided by the *Client*

[State any project specific requirements and constraints for Services and other things provided by the *Client*]

### S 601 Services and other things to be provided by the *Client*

May include the following

- accommodation including meeting rooms,
- welfare facilities including catering, sanitation and recreation,
- medical facilities and first aid,
- storage facilities,
- security arrangements,
- copying,
- telephone, fax, radio or CCTV,
- computer equipment and services,
- safety equipment and services, fences, screens and hoardings,
- postage,
- access roads,
- temporary facilities including scaffolding, lifting equipment, cranes and hoists,
- utilities, e.g. water & power,
- access to the *site*.
- space for accommodation,
- plant and materials and
- meter readings

State the extent of the *Contractor's* responsibilities for maintaining the above.

Refer to ECSC 16.2 and ECSC 60.1(5)

If there are none stated "Not Used"

## Annex 1 – Reference Documents

[Note to compiler to check all references documents throughout the Scope are correctly referenced in the Table below. Ensure all documents and hyperlinks are checked for the most current and applicable documents]

Reference in Scope	Document	Link
S 102	UK Specification for Ground Investigation", Second Edition, published by Institution of Civil Engineers (ICE)	The document can be purchased, see <a href="https://www.icebookshop.com/Products/UK-Specification-for-Ground-Investigation,-2nd-edition.aspx">https://www.icebookshop.com/Products/UK-Specification-for-Ground-Investigation,-2nd-edition.aspx</a>
S 310	Control of Asbestos at Work Regulations	<a href="http://www.hse.gov.uk/asbestos/regulations.htm">http://www.hse.gov.uk/asbestos/regulations.htm</a>
S 310	AGS Site Investigation Asbestos Risk Assessment Form A and Form B	<a href="https://www.ags.org.uk/item/site-investigation-asbestos-risk-assessment-ver-2-2">https://www.ags.org.uk/item/site-investigation-asbestos-risk-assessment-ver-2-2</a>
S 408	Traffic Signs Manual	<a href="https://www.gov.uk/government/publications/traffic-signs-manual">https://www.gov.uk/government/publications/traffic-signs-manual</a>
S 408	'Roadworks a Customer View'	See folder in E-TENDERING SYSTEM
S 408	Major Projects Dynamic Roadworks – a vision for the future	See folder in E-TENDERING SYSTEM
S 410	Customer Service Strategy – Better Journeys and Better Conversations	<a href="https://www.gov.uk/government/publications/customer-service-strategy">https://www.gov.uk/government/publications/customer-service-strategy</a>
S 410	Corporate customer complaints process	See folder in E-TENDERING SYSTEM
S 416	Visual identity specifications	See folder in E-TENDERING SYSTEM
S 416	Normal not formal. A guide to our corporate narrative, tone of voice and writing style	See folder in E-TENDERING SYSTEM
S 418 S 436	Work Breakdown Structure	See folder in E-TENDERING SYSTEM



S 424	Home Safe and Well	<a href="http://assets.highwaysengland.co.uk/about-us/Home+Safe+and+Well+Strategy+2019.pdf">http://assets.highwaysengland.co.uk/about-us/Home+Safe+and+Well+Strategy+2019.pdf</a>
S 424	Raising the Bar	<a href="https://www.gov.uk/government/collections/health-and-safety-for-major-road-schemes-raising-the-bar-initiative">https://www.gov.uk/government/collections/health-and-safety-for-major-road-schemes-raising-the-bar-initiative</a>
S 424A	Interim Advice Note 128/15C Highways England Supply Chain Health and Safety Incident Reporting	<a href="http://www.standardsforhighways.co.uk/ha/standards/ians/pdfs/IAN_128_15_C.pdf">http://www.standardsforhighways.co.uk/ha/standards/ians/pdfs/IAN_128_15_C.pdf</a>
S 433	<i>Clients</i> Environmental Strategy	<a href="https://www.gov.uk/government/publications/highways-england-environment-strategy">https://www.gov.uk/government/publications/highways-england-environment-strategy</a>
S 433	<i>Client's</i> Biodiversity Plan	<a href="https://www.gov.uk/government/publications/biodiversity-plan">https://www.gov.uk/government/publications/biodiversity-plan</a>
S 433	Government Buying Standards	<a href="https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs">https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs</a>
S 434	Interim Advice Note 183/14	<a href="http://www.standardsforhighways.co.uk/ha/standards/ians/pdfs/ian183.pdf">http://www.standardsforhighways.co.uk/ha/standards/ians/pdfs/ian183.pdf</a>
S 435	Environmental Permitting (England and Wales) Regulations 2010	<a href="http://www.standardsforhighways.co.uk/ha/standards/ians/pdfs/ian183.pdf">http://www.standardsforhighways.co.uk/ha/standards/ians/pdfs/ian183.pdf</a>
S 435	Town and Country Planning Act (1990)	<a href="http://www.legislation.gov.uk/uksi/1994/1056/contents/made">http://www.legislation.gov.uk/uksi/1994/1056/contents/made</a>
S 436	Air Quality Strategy	<a href="#">Air Quality Strategy</a>
S 436	Government Buying Standards transport 2017	<a href="https://www.gov.uk/government/publications/sustainable-procurement-the-gbs-for-transport-vehicles/government-buying-standards-for-transport-2017">https://www.gov.uk/government/publications/sustainable-procurement-the-gbs-for-transport-vehicles/government-buying-standards-for-transport-2017</a> <a href="#">Government Buying Standards Transport 2017</a>
S 437	<i>Client's</i> sustainable development strategy	<a href="https://www.gov.uk/government/publications/highways-england-sustainable-development-strategy">https://www.gov.uk/government/publications/highways-england-sustainable-development-strategy</a>
S 438	Procurement Policy Note 7/14 entitled "Implementing Article 6 of the Energy Efficiency Directive"	<a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/316683/PPN_07-14_implementing_article_6_of_the_energy_efficiency_directive.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/316683/PPN_07-14_implementing_article_6_of_the_energy_efficiency_directive.pdf</a>

S 438	Directive 2012/27/EU	<a href="http://www.legislation.gov.uk/eudr/2012/27/2018-12-24">http://www.legislation.gov.uk/eudr/2012/27/2018-12-24</a>
S 439	Conflict of Interest Guidance	See folder in E-TENDERING SYSTEM
S439	Conflict of Interest Declaration Form	<a href="#">Non HE Employees Form</a>
S 442	Statement of Highways England's IT security policy	See folder in E-TENDERING SYSTEM
S 442	Chief Information Officer Memos 01/09 and 04/08	See folder in E-TENDERING SYSTEM
S 442	<i>Client's</i> data handling policy	See folder in E-TENDERING SYSTEM
S 442	ISO/IEC27001 and ISO/IEC27002	<a href="https://www.iso.org/standard/54533.html">https://www.iso.org/standard/54533.html</a> <a href="https://www.iso.org/standard/69378.html">https://www.iso.org/standard/69378.html</a>
S 442 S 443	Highways England Information Security Data Security Standard	See folder in E-TENDERING SYSTEM March 2019 or any later revision or replacement
S 442 S 443	HMG Security Policy Framework (SPF)	<a href="https://www.gov.uk/government/publications/security-policy-framework">https://www.gov.uk/government/publications/security-policy-framework</a> May 2018 or any later revision or replacement Document should be provided with the text or a hyperlink link to where it can be found on the internet
S 442	HMG Government Security Classifications	<a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/715778/May-2018_Government-Security-Classifications-2.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/715778/May-2018_Government-Security-Classifications-2.pdf</a> May 2018 or any later revision or replacement Document should be provided with the text or a hyperlink link to where it can be found on the internet
S 444 S 445	Work Breakdown Structure (WBS)	See folder in E-TENDERING SYSTEM

S 447	Subcontracting	
S 449	PPN 01/18 Supply Chain Visibility	<a href="https://www.gov.uk/government/publications/procurement-policy-note-0118-supply-chain-visibility">https://www.gov.uk/government/publications/procurement-policy-note-0118-supply-chain-visibility</a>
S 575	Travel and Subsistence Policy	See folder in E-TENDERING SYSTEM
Annex 4 Data Protection	PPN 02/18	<a href="https://www.gov.uk/government/publications/procurement-policy-note-0218-changes-to-data-protection-legislation-general-data-protection-regulation">https://www.gov.uk/government/publications/procurement-policy-note-0218-changes-to-data-protection-legislation-general-data-protection-regulation</a>
Annex 4 Data Protection	Data Protection Act 2018	<a href="https://www.gov.uk/government/publications/data-protection-bill-general-processing">https://www.gov.uk/government/publications/data-protection-bill-general-processing</a>
Annex 4 Data Protection	General Data Protection Regulations	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&amp;from=EN">https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&amp;from=EN</a>

\* Access to Highways England's Supply Chain Portal will require registration, the form can be found in the additional documents folder 'SharePoint (Supply Chain Portal) Application

## Annex 2 – Insurance Requirements

[It is envisaged that the insurance amounts stated below are accurate and the levels of insurance cover will only need to be adjusted for unique work orders eg above water]

Class of insurance	Levels of insurance	Period of insurance
<b>Contractors “All Risks” Insurance</b>	The replacement cost of the relevant insured property.	From the <i>starting date</i> until the <i>defects date</i> (or earlier termination)
<b>Third Party Public &amp; Products Liability Insurance</b>	<p><b>Ten million pounds (£10,000,000)</b> in respect of any one occurrence without limit to the number of occurrences in any annual policy period, but <b>ten million pounds (£10,000,000)</b> million pounds 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).</p> <p><i>[Note to Compiler: Ranges could be from £10M to £50M potentially increasing beyond £50M relative to high risk schemes such as tunnels or complex structures or contracts containing Network Rail requirements. Consideration must be given also when working above water, Contracts requiring an Asset Protection Agreement (e.g. with Network Rail, may result in a limit of indemnity of £155M).]</i></p>	From the <i>starting date</i> until the <i>defects date</i> , renewable on an annual basis unless agreed otherwise with the <i>Client</i> .
<b>Professional Indemnity Insurance</b>	<p><b>Five million pounds (£5,000,000)</b> in respect of any one claim without limit to the number of claims in any annual policy period but</p> <p><b>Five million pounds (£5,000,000)</b> in respect of any one claim and in the annual aggregate per annum for liability arising out of pollution or contamination (to the extent insured by the relevant policy)</p> <p>and <b>Five million pounds (£5,000,000)</b> in respect of any one claim and in the annual aggregate per annum for liability arising out of asbestos (to the extent insured by the relevant policy).</p> <p><i>Note to Compilers: Ranges could be from £5M to £20M but potentially increase beyond this level relative to high risk schemes or where the professional services represent a significant risk. Any asbestos limit is to be in line with prevailing insurance market provisions.</i></p>	From the <i>access date</i> until twelve (12) years following Completion of the whole of the <i>works</i> , renewable on an annual basis unless otherwise agreed with the <i>Client</i> .

<b>Insurances required by law in the United Kingdom</b>  <i>[Note to compiler: this covers Client's Liability insurance and motor Third Party Liability Insurance so we no longer need to state £10M here as we did before]</i>	As required by law.	From the <i>access date</i> until the <i>defects date</i> , renewable on an annual basis unless agreed otherwise with the <i>Client</i> .
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## Insurance Table (Required Insurances)

### 1. "Contractors All Risks" Insurance (CAR)

#### 1.1 Insureds

- *Contractor*
- *Contracting Body* as appropriate, each for its respective rights and interests in the contract.

#### 1.2 Insured Property

The permanent and temporary works, materials, goods, plant and equipment for incorporation in the works (plus constructional machinery, plant, tools, accommodation and equipment belonging to or the responsibility of the *Contractor* or its Subcontractors) and all other property used or for use in connection with works associated with the contract.

#### 1.3 Coverage

"All Risks" of physical loss, damage or destruction to the Insured Property (in paragraph 1.2 above) unless otherwise excluded.

#### 1.4 Cover Features and Extensions

- terrorism,
- professional fees clause,
- debris removal clause,
- seventy-two (72) hour clause,
- European Union local authorities clause,
- ten percent (10%) escalation clause,
- automatic reinstatement of sum insured clause,
- temporary repairs,
- offsite storage and repairs and
- multiple insured clause incorporating the *Client* as a co-insured party with attendant non-vitiation, waiver of subrogation and notice of cancellation provisions.

#### 1.5 Principal Exclusions

- war and related perils,
- nuclear/radioactive risks,
- pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speed,
- wear, tear and gradual deterioration,

- consequential financial losses,
- cyber risks and
- inventory losses, fraud and employee dishonesty.

## 2. **Third Party Public and Products Liability Insurance**

### 2.1 Insured

*Contractor*

### 2.2 Interest

To indemnify the Insured in respect of all sums which the Insured may become legally liable to pay, whether contractually or otherwise, (including claimant's costs and expenses) as damages in respect of accidental;

- death or bodily injury, illness or disease contracted by any person;
- loss or damage to property;

happening during the period of insurance and arising out of or in connection with the contract.

### 2.3 Cover Features and Extensions

- cross liability clause,
- contingent motor vehicle liability,
- legal defence costs,
- indemnity to principals clause.
- Health & Safety at Work Act(s) clause,
- data protection legislation clause,
- defence appeal and prosecution costs relating to the Corporate Manslaughter and Corporate Homicide Act 2007.

### 2.4 Principal Exclusions

- war and related perils,
- nuclear/radioactive risks,
- liability for death, illness, disease or bodily injury sustained by employees of the insured arising out of the course of its employment,
- liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles,
- liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured,
- liability in respect of loss or damage to property in the care, custody and control of the insured,

- 
- events more properly covered under a professional indemnity insurance policy,
  - liability arising from the ownership, possession or use of any aircraft or marine vessels,
  - liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence,
  - losses indemnified under the "Contractors All Risks" Insurance policy (in paragraph 1 above),
  - liability arising from toxic mould,
  - liability arising from asbestos and
  - cyber risks.

### 3. **Professional Indemnity Insurance**

#### 3.1 Insured

*Contractor*

#### 3.2 Interest

To indemnify the Insured for all sums which the Insured are legally liable to pay (including claimants' costs and expenses) as a result of any claim or claims first made against the Insured during the period of insurance by reason of any act, error or omission arising from or in connection with the contract.

#### 3.3 Cover Features and Extensions

- loss of documents and computer records extension.
- legal liability assumed under contract, duty of care agreements and collateral warranties and,
- retroactive cover from the date of this contract or retroactive date no later than the date of this contract in respect of any policy provided on a claims made form of policy wording.

#### 3.4 Principal Exclusions

- war and related perils,
- nuclear/radioactive risks,
- insolvency of the Insured and
- bodily injury, sickness, disease or death sustained by any employee.

### 4. **Policies to be taken out as required by United Kingdom law**

The *Contractor* is required to meet its statutory insurance obligations in full. Insurances required to comply with all statutory requirements, including employer's liability insurance and motor third party liability insurance.



## Annex 3 - *Client's* Personnel Security Procedures

### 1. Mandatory Obligations

- 1.1. The *Client* is required to adopt the Personnel Security requirements and management arrangements set down in [Security Policy 3: Personnel Security of Her Majesty's Government \(HMG\) Security Policy Framework version 1.1 – May 2018](#) issued by the Cabinet Office as amended from time to time (the "Security Policy Framework").
- 1.2. The Security Policy Framework is available to be downloaded from the Cabinet Office [Website](#) (see link in Annex 1). The *Contractor* familiarises itself with the objectives and principles embodied within the Security Policy Framework, in addition to the mandatory obligations extracted from the Security Policy Framework and set down in this Annex.
- 1.3. The *Contractor* ensures that the appropriate level of Personnel Security is obtained and maintained for all Staff in accordance with the Security Policy Framework.
- 1.4. The *Client* notifies the *Contractor* of any revisions to the Personnel Security requirements arising as a consequence of subsequent amendments to the Security Policy Framework.
- 1.5. The Cabinet Office Efficiency and Reform Group has introduced security requirements in relation to site admittance, passes and photographs. These requirements are set out in Part Three of this Annex below.

### 2. Security Checks – Minimum Requirement

- 2.1. The HMG Baseline Personnel Security Standard (BPSS) forms the minimum-security check requirements for all Staff whose duties include
  - working in the *Client's* premises, including offices, Regional Control Centres (RCC), the National Traffic Control Centre (NTCC) and any outstations owned and/ or operated by the *Client*;
  - usage of the *Client's* Information Systems and/ or
  - working unsupervised in any other capacity.
- 2.2. The *Client* may notify the *Contractor* of a modification to the categories of Staff requiring BPSS security checks at any time.
- 2.3. The complete Government guidance document for the BPSS is available to be downloaded from the Cabinet Office [Website](#) (see link in Annex 1). The BPSS form and summary guidance produced by Highways England is located in Appendix A of this Annex.
- 2.4. Procedural and other details for ensuring compliance with the BPSS are set down in Part One – BPSS Compliance below.

### 3. Security Checks – Additional Vetting Requirement

- 3.1. Where Staff require unrestricted access to the *Client* areas identified in Part Two of this Annex, the *Client* notifies the *Contractor* of the appropriate level of National Security Vetting (NSV) to be carried out.
- 3.2. The *Client* notifies the Security Team via [email](#) that the applicant requires NSV to be carried out.
- 3.3. Procedural and other details for ensuring compliance with NSV are set down in Part Two - National Security Vetting (NSV) of this Annex.

## PART ONE – BPSS Compliance

### 4. Procedures

- 4.1. The *Contractor* undertakes security checks to ensure the confidentiality, integrity and availability of the *Client's* asset (documents and/ or information).
- 4.2. The recruitment controls of the BPSS are required to have been carried out for all Staff to whom paragraph 2.1 above applies prior to their employment on this contract. The recruitment control process is completed satisfactorily before an individual
  - is issued with a security pass giving unrestricted access to the *Client's* premises;
  - potentially has access to the *Client's* sensitive, possibly protectively-marked, information; and/ or
  - is given access to the *Client's* IT network.
- 4.3. The *Contractor* takes all necessary measures to confirm that any previous security checking carried out on existing Staff meets the requirements of the BPSS, either in full or by exception using the risk management assessment process guidance contained in the Security Policy Framework.
- 4.4. The *Contractor* should note that, for existing Staff with more than 3 years continuous employment and who have not had any access passes or permits revoked in that time, the requirements for references in the BPSS security check can be deemed to be discharged by a letter from a Director or Head of Personnel of the *Contractor* certifying the same.
- 4.5. The *Contractor* rectifies any unacceptable gaps identified between the BPSS and existing security checking in accordance with the requirements of the BPSS.
- 4.6. Any new Staff to whom paragraph 2.1 above applies are assessed strictly in accordance with the requirements of the BPSS.
- 4.7. The *Contractor* keeps full and auditable records of all security checks carried out on the Staff and makes such records available to the *Client* or its appointed representatives for audit purposes at all reasonable times.
- 4.8. If:
  - the *Client* discovers any non-compliance with the requirements of the BPSS from the audit process;
  - the *Contractor* fails to keep full records of security checks carried out on Staff; or
  - the *Contractor* fails to make such records available on reasonable request;

The *Client* may

  - invoke individual withdrawal of permits or passes to Staff;
  - invoke systematic withdrawal of permit or passes to Staff; or
  - require that an independent audit of the *Contractor's* BPSS security check procedure is undertaken at the expense of the *Contractor*.
  - the *Contractor* takes the appropriate action to immediately address any non-compliance with the BPSS notified to it by the *Client*.
- 4.9. It should be noted that the BPSS does not constitute a formal security clearance. It is designed to provide a level of assurance as to the trustworthiness, integrity and reliability of the individual involved.

## 5. Security check process for BPSS

5.1. The security check process of the BPSS below follows the guidance provided in the [HMG Baseline Personnel Security Standard May 2018](#).

5.2. The BPSS comprises verification of four main elements

- Identity;
- Nationality and immigration status (including an entitlement to undertake the work in question);
- Employment history (past 3 years); and
- Criminal record (unspent convictions only).

Additionally, prospective Staff are required to give a reasonable account of any significant periods (6 months or more in the past 3 years) of time spent abroad.

5.3. The specific requirements for verification of each of the four main elements are set down in [Part II - The Verification Process of the HMG Baseline Personnel Security Standard \(BPSS\)](#). An outline description of the core requirements is included below but does not relieve the *Contractor* from its obligation to comply with all the requirements of the HMG BPSS.

5.4. Information collected at each stage of the process is reviewed, assessed and recorded in line with the forms contained in Appendix A below. These forms will cover

- Verification record;
- Nationality and Immigration Status Form;
- UK Home Office's Employer Checking Service;
- Employment History Report Form;
- Her Majesty's Revenue & Customs (HMRC) Record Check Form; and
- Criminal Record Declaration.

## 6. Verification of Identity – Outline Requirements

6.1. Identity may be verified by physically checking a range of appropriate documentation (e.g. passport or other photo ID together with utility bills, bank statements etc.) or by means of a commercially available ID verification service.

6.2. Only original documents should be used for identification purposes, copies are not appropriate. Electronic signatures should be verified by cross checking to a specimen signature provided by the individual.

6.3. There is no definitive list of identifying documents. The *Contractor* should note that not all documents listed in the BPSS are of equal value. The objective is a document that is issued by a trustworthy and reliable source, is difficult to forge, has been dated and is current, contains the owner's name, photograph and signature and itself requires some evidence of identity before being issued (e.g. passport or ID card).

6.4. National Insurance Numbers (NINOs) can be obtained fraudulently and cannot be relied on as a sole means of establishing identity or right to work. Temporary numbers beginning with TN or ending in a letter from E to Z inclusive are not acceptable.

6.5. Where verification of identity is not straightforward, but a decision is nevertheless taken to employ an individual, the *Contractor* notifies the *Client* and records the matter on the Early Warning Register.

## 7. Nationality and Immigration Status (including an entitlement to undertake the work in question) – Outline Requirements

- 7.1. Nationality and Immigration Status may be verified by physically checking appropriate documentation or, in exceptional circumstances only, by means of an independent check of UK Visas and Immigration records.
- 7.2. The *Contractor* takes the necessary steps to ensure that an individual has the right to remain in the United Kingdom and undertake the work in question.
- 7.3. Checks need to be applied consistently and the *Contractor* needs to be aware of its obligations under the [Equality Act 2010](#).

## 8. Employment history (past 3 years) – Outline Requirements

- 8.1. Employment history may be verified by checking with previous clients, by following up references or by means of commercially available CV checking service or, in exceptional circumstances only, by means of an independent check of HMRC records.
- 8.2. To ensure that prospective employees are not concealing associations or gaps, the *Contractor* as a minimum verifies the individual's recent (past 3 years) employment or academic history.
- 8.3. Where there are unresolved gaps or doubts remain about an individual's employment history, an independent check of HMRC records may be made.
- 8.4. Every effort should be made to check that the individual has held the previous employment history claimed. Any gaps in the past 3 years employment history should be investigated.

## 9. Criminal record (unspent convictions only) – Outline Requirements

- 9.1. The *Contractor* should note that the requirement to verify “unspent” convictions does not apply when the BPSS is being carried out as part of the groundwork for NSV, where a full check of criminal records (“spent” and “unspent”) are made as part of that process.
- 9.2. Under the terms of the [Rehabilitation of Offender Act 1974](#), it is reasonable for employers to ask individuals for details of any “unspent” criminal convictions. The Act states that if an offender remains free of further convictions for a specified period (the “rehabilitation period”), the conviction becomes spent. Where rehabilitation has taken place, the individual is treated as if the offence had never been committed.
- 9.3. The *Contractor's* attention is drawn to the basic disclosure certificate check option available from [Disclosure and Barring Service](#).
- 9.4. Where “unspent” convictions have been disclosed, the *Contractor* carries out a risk assessment, which may include the need for legal advice, before proceeding.

## 10. Approval for employment

- 10.1. General guidance and requirements post BPSS verification are contained in [Part IV – Post Verification Process of the HMG BPSS](#). An outline description of the core requirements is included below but does not relieve the *Contractor* from its obligation to comply with all the requirements of the BPSS.
- 10.2. Subject to paragraph 10.3 below and unless advised to the contrary by the *Client*, all Staff for whom a completed BPSS Verification Record has been submitted may be treated by the *Contractor* as suitable to undertake the duties referred to in paragraph 2.1 above.

10.3. The *Client* ordinarily requires a period of 3 working days from receipt of a fully completed BPSS security check for its internal approvals process and prior to the subsequent issue of access permits and passes. The *Client* may exclude from the Working Area any individual for whom a BPSS Verification Record is not supplied, is incomplete or is otherwise unsatisfactory.

10.4. BPSS Verification Records with a sealed Criminal Record Declaration are assessed separately on a case by case basis by the *Client*. The *Client* advises the *Contractor* if the individual has been approved as suitable to undertake all or any of the duties referred to in paragraph 2.1 above.

## 11. Incomplete or unsatisfactory BPSS Verification Records

11.1. Where a BPSS is incomplete or is otherwise unsatisfactory, the *Client* advises the *Contractor* of the deficiencies and the actions needed to correct them.

11.2. The *Client* contacts the [Security Team](#) to address any actions needed as a result of an incomplete or otherwise unsatisfactory BPSS check.

## 12. Renewal of the BPSS

12.1. Under most circumstances, renewal of the BPSS is not required.

12.2. The *Contractor* rechecks the immigration status of migrant staff before their current right to remain expires or within 12 months of the previous check, whichever is the sooner. These checks are repeated until the employee can demonstrate an indefinite right to remain in the United Kingdom or until the employment comes to an end.

12.3. The *Client* instructs the *Contractor* to carry out additional security checks on any Staff required to operate in or on a [List X](#) site. *[Note to compiler: List X will need to be shown as a defined term in the Contract Data. The definition to be used is: "List X contractors are companies operating in the UK who are working on UK government contracts which require them to hold classified information. This information is at 'Secret' level or above or international partners information classified 'Confidential' or above, and is held in their own premises at a specific site."]*

12.4. If an employee, who has previously been subject of a BPSS security check, leaves the employment of the *Contractor* and is subsequently re-employed by the *Contractor* within twelve months, the original security check authorisation may be reinstated. The *Client* may require additional evidence before reinstating the original security check authorisation. In all other cases of re-employment, the full BPSS security check is carried out.

## 13. Ongoing personnel security management ("aftercare")

13.1. The *Contractor* monitors, manages and supports the required behaviours of Staff who are approved for work on this contract in line with the principles contained in the Security Policy Framework and reports to the *Client* immediately if the continuing suitability of an employee is in doubt.

13.2. Where the *Contractor* reports a case of doubt or the *Client* considers that the actions of any of the Staff do not conform to the required behaviours, the *Client* may instruct the *Contractor* to review the performance of the individual concerned. The *Contractor* takes appropriate action in consequence of the review, which may include

- Performance improvement;
- Temporary suspension of permits and passes; or
- Removal of the individual in accordance with Clause 21.3.

## 14. Retention of documentation

- 14.1. The documentation associated with the BPSS security check is retained by the *Contractor* until the expiry of the contract and for a period of twelve months after the individual has ceased to be employed on this contract.
- 14.2. The *Contractor* destroys, in an appropriate secure manner, all electronic and paper copies of documentation which it is no longer required to retain.

## PART TWO – National Security Vetting (NSV)

### 15. Procedures

- 15.1. In all cases, verification of identity and the individual's entitlement to undertake the work in question is carried out before embarking on NSV.
- 15.2. Other than in exceptional circumstances, NSV is not be undertaken before the BPSS's full controls have been applied. The *Contractor* agrees with the *Client*, on a case by case basis, any exceptional cases where NSV and BPSS procedures are required to be carried out in parallel.
- 15.3. The *Client* determines if any Staff need to undertake NSV in addition to the BPSS security check.
- 15.4. If the *Client* considers that NSV is required, the *Client* identifies, manages and undertakes the necessary vetting at the *Client's* expense.
- 15.5. Where the *Client* determines that NSV is required, the approvals process set out in section 10 does not apply, unless the *Client* instructs otherwise. Access permits and passes are ordinarily only issued on satisfactory completion of NSV.

## PART THREE – CABINET OFFICE EFFICIENCY AND REFORM GROUP REQUIREMENTS

### 16. Site Admittance

- 16.1. The *Contractor* submits to the *Client* details of people who are to be employed by it and its Subcontractors with the works. The details include a list of names and addresses, the capacities in which employed, and other information required by the *Client*.
- 16.2. The *Client* may instruct the *Contractor* to take measures to prevent unauthorised persons being admitted on to the *site*. The instruction is a compensation event if the measures are additional to those required by the Scope.

### 17. Passes

- 17.1. If required, employees of the *Contractor* and its Subcontractors are to carry a *Client's* pass whilst they are on the parts of the *site* stated in the Contract Data. *[Note to compiler/ guidance: when it refers to part of the Site, it will depend on the role the applicant is being employed for. If the role is office based, access would be given to general office areas where the applicant is to be based; if it's an IT role, the applicant may need access to equipment rooms; if the role is based in an RCC/ NTOC they may need access to the control room (not always the case). The*

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*Project Manager/ Client's hiring manager for the role will be able to advise on the specific site access required for the role in question.]*

17.2. The *Contractor* submits to the *Client* for acceptance a list of the names of the people for whom passes are required. The *Client* issues the passes to the *Contractor*. Each pass is returned to the *Client* when the employee no longer requires access to that part of the Site or after the *Client* has given notice that the employee is not to be admitted to the site.

## **18. Photographs**

18.1. The *Contractor* does not take photographs of the Site or the *works* or any part of them unless it has obtained the acceptance of the *Client*.

18.2. The *Contractor* takes the measures needed to prevent it and its Subcontractors' Staff taking, publishing or otherwise circulating such photographs.



## Baseline Personnel Security Standard Check

### Introduction

Unless advised otherwise it is the *Client's* hiring manager who completes a Baseline Personnel Security Standard (BPSS) check. The *Client's* hiring manager is a direct *Client* employee. Therefore, all *Contractors*, working on Highways England's premises or with its technology, should be BPSS approved before they begin working for the *Client*. This form has been produced to assist the *Client's* hiring managers undertaking checks and to ensure their checks meets the Cabinet Office standards set out in the [Security Policy Framework \(SPF\) May 2018](#) and the [HMG Baseline Personnel Security Standard v6.0 – May 2018](#) (and any subsequent amended versions).

This document contains the BPSS form and guidance notes to assist with the form completion.

Please read the guidance notes fully before starting to complete this form.

This document is split into:

BPSS Form sections:

1. Applicant details and identity verification
2. Nationality and right to work
3. Employment history and personal references
4. Criminal records check
5. Declarations

Guidance notes:

Annex A: General notes

Annex B: Identity verification

Annex C: Nationality and right to work

Annex D: European Economic Area (EEA) countries

Annex E: Employment history and personal references

Annex F: Personal reference template

Please note that if the applicant only requires external access to Highways England's computer systems (known as ZZ account) then please complete sections 1, 2, 3 and 5 only. The *Client's* hiring manager sends the form to [ITSecurityAdvice@highwaysengland.co.uk](mailto:ITSecurityAdvice@highwaysengland.co.uk). A criminal records check is not required for ZZ accounts.

If the applicant already has BPSS approval from their current employer, they are not required to complete another check. It does not matter how long ago the approval was given or whether there has been a period when they didn't work for their current employer. If the *Client's* hiring manager is informed of this by the *Contractor*, the *Client's* hiring manager needs to email the [Security Team](#) who will check the applicant's details against their records for existing BPSS approvals.

If assistance is required to complete this form, the *Client's* hiring manager should contact the Security Team via email on [SecurityTeam@highwaysengland.co.uk](mailto:SecurityTeam@highwaysengland.co.uk).



# BPSS FORM

## SECTION 1 - Application details and identity verification

### 1.1 *Client's* hiring manager details

Hiring manager's name:	
Company location:	
Telephone number:	

### 1.2 Applicant details

Applicant's name:	
Gender:	Male / female (please delete as appropriate)
Current home address:	
Contact telephone number:	
Prospective Highways England place of work:	
Prospective start date:	
Position:	Contractor / Consultant (please delete as appropriate)

### 1.3 Identity verification (for the *Client's* hiring manager)

The applicant presents you with appropriate documentation to prove their identity. Annex B – Identity verification provides details of which documents are acceptable and general guidance on this section. Generally, one document which contains a photo or 2 documents without photos are sufficient.

Please note the document(s) you have seen below:

Document type:		Date of issue:	
Country of issue:		Date of expiry:	

Document type:		Date of issue:	
Country of issue:		Date of expiry:	

(please replicate table for each document taken as required)

## SECTION 2 - Nationality and right to work

### 2.1 Applicant's details

Nationality (list all):

Are you subject to immigration control? Yes/no (please delete)

If yes, please specify:

Are there any restrictions on your continued residence in the UK? Yes/no (please delete)

If yes, please specify:

Are there any restrictions on your continued freedom to take employment in the UK? Yes/no (please delete)

If yes, please specify:

### 2.2 Nationality verification (for *Client's* hiring managers)

The applicant provides you with appropriate documentation to prove they have the 'right to work' in the UK. The list of acceptable documents is provided by UK Visas and Immigration accessible [here](#).

You follow their 3-step guide accessible [here](#).

Annex C below contains general guidance on this section.

Annex D below contains a list of European Economic Area (EEA) countries whose citizens have a 'right to work' in the UK.

Please note the document(s) you have seen below:

Document:	
Date of issue:	
Review date (if applicable):	

(please replicate table for each document taken as required)

## SECTION 3 - Employment history and references

### 3.1 Applicant's employment history (past 3 years)

Please provide details of all the companies you have worked for in the last 3 years (whether in the UK or overseas). You need to provide references from these employers:

Company name:	
Company address:	
Contact name:	
Period of employment:	

Company name:	
Company address:	
Contact name:	
Period of employment:	

Company name:	
Company address:	
Contact name:	
Period of employment:	

(please replicate table as required)

### 3.2 Gaps in applicant's employment history

Please describe any gaps in your employment including time spent in full-time education, any foreign travel or periods of unemployment within the past 3 years:

### 3.3 Employment verification (for *Client's* hiring managers)

You will need to obtain confirmation from all the companies listed, as well as letters from schools/ academic institutions and/ or passport visas to confirm overseas travel. Annex E below provides guidance on this section.

**Please answer the 3 sections below:**

- a) Please confirm that you have verified employment with all the companies listed: Yes/no (please delete)

If no, please explain why this was not possible:

- b) Please confirm the documents you have seen which verify any gaps in employment:

Document:	
Date of issue:	

(please replicate table as required)

- c) If you have obtained a personal reference, please record the referee's details below:

Referee:	
Relationship to applicant:	
Address:	

## SECTION 4 - Criminal record check

### 4.1 Information for applicants

We require a criminal record check to confirm if you have any unspent convictions. You do not need to tell us about any spent convictions.

A basic Disclosure and Barring Service (DBS) check is the criminal record check available for people living or working in England and Wales. If you have been living or working in Scotland or Northern Ireland for over 6 months in the last 3 years, another criminal record check will need to be applied for. Full details on how to apply can be found [here](#).

Once you have applied, please keep a copy of the reference number to provide to your hiring manager.

Further details on what information is included on each certificate are on the relevant website. It will be helpful to tell your hiring manager about offences that will be shown on your certificate, before your certificate arrives.

### 4.2 Criminal records check verification (for *Client's* hiring managers)

The applicant provides the *Client's* hiring manager with either:

- evidence that the application for the certificate has been submitted (e.g. reference number or screen shot); or
- a recent (issued within 3 months) original criminal records certificate; or
- an older original certificate if the applicant still works for the same employer and the check was carried out as part of their employment.

Please note the document you have seen below:

Document:	
Date of issue:	

(please replicate table as required)

If the application has only just been made, hiring managers will need to make sure they review the certificate when it arrives. If hiring managers are unsure about any of the details shown on the certificate, please contact the [Security Team](#).

An overseas criminal record certificate will also be required if the applicant has been outside of the UK for a period of 6 months or over in the last 3 years. The [Security Team](#) can provide guidance on how to obtain these certificates.

## SECTION 5 - Declarations

### 5.1 Applicant's declaration:

I declare that the information I have given on this form is true and complete. In addition, I understand that any false information or deliberate omission in the information I have given on this form may prevent me from working with Highways England. I will notify the hiring manager of any material changes to the information I have provided.

Name:	
Signature:	
Date:	

### 5.2 Client's hiring manager's declaration:

I certify that in accordance with the requirements of the BPSS, I have examined the documents listed on this form and can confirm that the applicant has satisfied the requirements in all sections.

I have made available to the applicant the appropriate privacy notice (see Annex A), which informs the applicant as to their statutory rights under the Data Protection Act 2018 and General Data Protection Regulation.

Name:	
Signature:	
Date:	

# GUIDANCE NOTES

## Annex A

### General notes

- The *Client's* hiring manager t sees original documents, copies are not acceptable.
- All the time the *Client's* hiring manager needs to check that birth dates, signatures and photos match. If any discrepancies are found, please contact the [Security team](#) for advice.
- The *Client's* hiring manager complies with the Data Protection Acts and General Data Protection Regulation (GDPR), therefore
  - remember to delete any electronic versions of this form/ personal documents and securely destroy paper copies of documents when they are no longer relevant. UK Visas and Immigration provide advice on how long to keep copies of nationality and right to work documents [here](#); and
  - issue the applicant with the latest [Highways England BPSS Privacy Notice document](#).
- Once the applicant starts work, the *Client's* hiring manager will need to email the [Facilities helpdesk](#) to request that the applicant's photo is taken for their building pass and a building induction is undertaken.
- If the *Client's* hiring manager is not located in the same building as the applicant, the *Client's* hiring manager will need to make sure there is someone available to greet the applicant at reception and undertake a new starter induction. The *Client's* hiring manager will also need to make sure that reception is aware of the date the applicant is starting work.

If the *Client's* hiring manager has any questions regarding this form or the BPSS check itself, the [Security team](#) can be contacted for assistance. If the *Client's* hiring manager would prefer to speak to someone, please state this in your email and a member of the Security team will call you as soon as they can.

## Annex B

### Applicant details and identity verification

Generally, one document which contains a photo or two documents without photos will provide adequate proof of identity. However not all documents are of equal value; listed below are some examples of documents that are from reliable sources, are difficult to forge and are dated. Documents with an expiration date are to be current and all others should have been issued within the last 6 months.

#### **Good examples of identity documents that contain a photo are:**

- Current UK photo-card driving licence; and/ or
- Current passport.

If the applicant is a citizen of the United Kingdom, Switzerland or one of the European Economic Area countries (see Annex D), their passport can also be used as proof of their 'right to work'. This means that no additional documentation is required to prove nationality.

#### **Good examples of identity documents without photos include:**

- Birth, adoption or gender recognition certificate;
- Marriage licence, divorce (decree absolute) or annulment papers;
- Current full UK driving licence (old 'paper' version);
- A recent utility bill (issued within the last 6 months);
- A council tax bill (valid for the current year period);
- Bank, building society or credit union statement (issued within the last 6 months) or passbook containing the applicant's current address;
- Current benefit book or card or original notification letter from the DWP confirming the right to benefit (these documents are not required to be dated within the last 6 months); and
- Police registration document or HM Forces identity card.

This is not an exhaustive list and if none of these documents are available, please contact the [Security Team](#) for further advice.

#### **What to look for when examining documents:**

- The documents shown to you are to be the original documents. If you are unsure, consider comparing them to other examples you may have to hand if applicable. Otherwise please consult Her Majesty's Passport Office guidance for checking UK Passports [here](#);
- Examine the documents for alterations or signs that the photograph and/ or signature has been removed and replaced;
- Check that any signature on the documents tallies with other examples in your possession. If you're unsure, ask the applicant to sign something in your presence;
- Check that details given on the documents corresponds with what you already know about the individual;
- Check the date of issue on each document. If all documents are newly issued and there are only minimal references available which do not cover the last three years' employment records, please contact the [Security Team](#) for more advice.

If you have any doubts about the documents you have been given, please contact the [Security Team](#), before discussing your concerns with the applicant.

#### **Young Applicants**

It can be difficult for young applicants to supply most of the documents listed above. If this appears to be a genuine problem, ask the applicant to supply a passport-sized photo, endorsed



on the back with the signature of someone of standing in the applicant's community, e.g. a justice of the peace, doctor, member of the clergy, teacher etc. The signatory should have known the applicant for a minimum of three years.

The photo is accompanied by a signed statement from the signatory giving their full name, address and phone number and confirming the period they have known the applicant.

## Annex C

### Nationality and right to work

The current advice from UK Visas and Immigration on nationality and right to work in the UK is available on their [website](#).

In addition, please note:

- You are to be satisfied that each document produced relates to the applicant, and you will need to check that all documents contain the same date of birth, photo and the applicant's appearance looks the same.
- It is not necessary to send copies of these documents to the Security Team. However, if you are unsure or unfamiliar with the documents you have been given, the Security Team are available to advise you. Please email the [Security team](#) in the first instance and, if required, the *Client's* hiring manager will be asked to scan the relevant parts of the documents in question and send it to the team for their review.
- The UK Visas and Immigration website provides advice on how long to keep copies of nationality and right to work documents [here](#).

## Annex D

### European Economic Area (EEA) Countries

Citizens of the United Kingdom, Switzerland or one of the following European Economic Area (EEA) countries, have the right to work in the UK. Further information is available [here](#).

- Austria
- Belgium
- Bulgaria
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Iceland
- Ireland
- Italy
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Norway
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden

## Annex E

### Employment history and personal references

- All employment history should be confirmed with previous employers, including overseas appointments (where the applicant was abroad for over 6 months).
- A template to send to previous employers and personal referees can be found in Annex F below. However most companies will now only provide official confirmation of when an individual worked for them (on letter headed paper). This is acceptable.
- Reasonable steps should be taken to ensure that the reference is genuine. References that are handwritten, not on letter headed paper, contain spelling or grammatical errors or is just not convincing for any reason, should be followed up directly with the individual(s) providing the reference.
- If the applicant has been unemployed, or his previous employer is no longer in business, a personal reference can be obtained instead (see below). This is not necessary if the period involved is less than 6 months long.
- If the applicant has only worked for one organisation in the last 3 years, then one reference from this company is sufficient.
- Where an applicant has been in full time education during the period, confirmation is obtained from the relevant school or other academic institution.
- Where an applicant has been overseas during the last 3 years, it is sufficient to see the entry visa (this only applies to citizens which do not hold an EEA passport). Some countries no longer issue exit visas.
- Where a young person has difficulty in providing both evidence of identity and adequate referee coverage, it may be appropriate to obtain both from the same referee.

#### Personal references

- Personal references are acceptable when no other reference is available. Family members (including in-laws) are not suitable for references.
- The applicant should provide the details of someone of professional standing (e.g. solicitor, civil servant, teacher, accountant, bank manager, doctor, officer of the armed forces) who has sufficient knowledge of the applicant to provide a considered reference. If the applicant is unable to nominate such a person, then references should be obtained from personal acquaintances. Personal acquaintances cannot provide references if they are involved in any financial arrangements with the applicant.

**Annex F**

## Personal reference template

*[The Client's hiring manager can use this template to send to both previous employers and personal referees. The hiring manager will need to include a covering letter, explaining that they are requesting this information in relation to the applicant's proposed role in Highways England.]*

Dear .....

**SUBJECT:** *[insert applicant's name]*

1. Over what period have you known the subject and in what capacity?

Date from:		Date to:	
Capacity:			

2. Are you related to the subject? If so, please state your relationship.

3. Are you involved in any financial arrangements with the subject?

YES/ NO (please delete)

4. Do you believe the subject to be honest, conscientious and discreet?

***I declare that the information I have given on this form is true to the best of my knowledge.***

Name:	
Signature:	
Date:	
Address:	
Telephone number:	
Email address:	

## Annex 4 – Data Protection

### 1.1 Definitions

- a) Data is all Personal Data collected, generated or otherwise processed by the *Contractor* in the course of the *Contractor* performing its obligations under the contract.
- b) Data Loss Event is any event that results, or may result, in unauthorised access to Personal Data held by the Processor for the purposes of this contract, and/or actual or potential and/or destruction of Personal Data in breach of this contract, including any Personal Data breach.
- c) Data Protection Impact Assessment is an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
- d) Data Protection Legislation is
  - the General Data Protection Regulation (EU2016/679),
  - the LED (Law Enforcement Directive (Directive (EU) 2016/680),
  - the Data Protection Act 2018, and
  - any other data protection laws and regulations applicable in England and Wales (see link in Annex 1).
- e) Data Subject is an individual who is the subject of Personal Data.
- f) Data Subject Request is a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
- g) EEA is the European Economic Area.
- h) Joint Controllers means where two or more Controllers jointly determine the purposes and means of processing.
- i) Personal Data is any data relating to an identified or identifiable individual that is within the scope of protection as “personal data” under the Data Protection Legislation.
- j) Protective Measures are appropriate, technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident and regularly assessing and evaluating the

effectiveness of such measures adopted by it including those outlined in PPN 02/18 (see link in Annex 1).

- k) Security Incident is a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Data.
- l) Sub-Processor is a third party (including Associated Company) engaged by the Contractor to process Data.
- m) Supervisory Authority is any regulatory, supervisory, governmental or other competent authority with jurisdiction or oversight over the Data Protection Legislation.

1.2 For the purposes of this contract and the Data Protection Legislation

- a) the *Contracting Body* is the Controller for the purposes of this Annex only,
- b) the *Contractor* is the Processor [unless otherwise specified in Appendix A], and
- c) this Annex and Appendix A (data protection) together constitute a data processing agreement where required by the Data Protection Legislation.

1.3 The *Contractor* processes the Data in accordance with the Data Protection Legislation and only to the extent necessary for the purpose of Providing the Works.

1.4 The *Contractor* complies with the requirements of Procurement Policy Note 02/18 entitled 'Changes to Data Protection Legislation & General Data Protection Regulation' ('PPN 02/18') or any later revision (see link at Annex 1) and any related supplementary Procurement Policy Notes in Providing the Works.

1.5 The *Contractor* does not knowingly do anything or permit anything to be done which might lead to a breach of the Data Protection Legislation by either Party.

1.6 The *Contractor* obtains and maintains until Completion all registrations and notifications that it is obliged to obtain and maintain pursuant to the Data Protection Legislation in respect of Providing the Works.

1.7 The *Contractor* only processes Data to the extent it relates to

- a) the types of Data,
- b) the categories of Data Subject, and
- c) the nature and purpose

Set out in Appendix A (data protection) and only for the duration specified in Appendix A (data protection).

1.8 Without prejudice to 1.3 the *Contractor* processes the Data only in accordance with the instructions of the *Client*, unless the *Contractor* is required to process Data for other reasons under the laws of the European Union (or a member state of the EEA) to which the *Contractor* subject. If the *Contractor* is required to process the Data for

- these other reasons, it informs the *Client* before carrying out the processing, unless prohibited by relevant law.
- 1.9 The *Contractor* immediately informs the *Client* if it believes that an instruction infringes the Data Protection Legislation or any other applicable law.
- 1.10 The *Contractor* has in place and maintains in accordance with good industry practice for as long as it holds any Data, taking into account the state of the art, the costs of implementing, the harm that might result from a Data Loss Event and the nature, scope, context and purposes of processing
- appropriate technical and organisational measures to protect the Data against accidental, unauthorised or unlawful processing, destruction, loss, damage, alteration or disclosure, and
  - adequate security programmes and procedures to ensure that unauthorised persons do not have access to the Data or to any equipment used to process the Data,
- in each case to ensure that the *Contractor* processing is in accordance with the Data Protection Legislation and protects the rights of Data Subjects.
- 1.11 The *Contractor* submits details of its Protective Measures to the *Client* for acceptance. A reason for not accepting them is that they are not appropriate to protect against a Data Loss Event. Acceptance (or a failure to reject) by the *Client* does not amount to approval by the Controller of the adequacy of the Protective Measure.
- 1.12 The *Contractor* ensures that all persons authorised to process Data are bound by obligations equivalent to those set out in the Framework Information and this section and are aware of the *Contractor's* obligations under the contract and the Data Protection Legislation.
- 1.13 The *Contractor* ensures access to the Data is limited to those persons who need access in order for the *Contractor* to Provide the Works and (in each case) to such parts of the Data as are strictly necessary for performance of that person's duties.
- 1.14 Where the *Contractor* obtains or collects Personal Data on behalf of the *Client*, the *Contractor*
- a) provides to Data Subjects a data protection notice in a form accepted by the *Client*, informing the Data Subject of the identity of the *Client*, the identity of any data protection representative it may have appointed, the purpose or purposes for which their Personal Data will be processed and any other information which is necessary having regard to the specific circumstances in which the Personal Data is, or is to be, processed to enable processing in respect of the Data Subject to be fair, and
  - b) where applicable, obtains all necessary consents for the processing of Data.
- 1.15 On request, the *Contractor*, takes all necessary actions and provides the *Client* with all reasonable assistance necessary for the *Client* to comply with a Data Subject Request, including
- a) the provision of access to, and information relating to, Data,



- b) the rectification of inaccurate Data,
  - c) the permanent erasure of Data,
  - d) the restriction of processing of Data,
  - e) the provision of a copy of Data in machine readable format and
  - f) the transfer of Data to a third party.
- 1.16 The *Contractor* immediately notifies the *Client* if it receives
- a) a Data Subject Request (or purported Data Subject Request),
  - b) a complaint or request relating to the *Client*'s obligations under the Data Protection Legislation or
  - c) a request from any Supervisory Authority for assistance or information, unless provided by relevant law.
- 1.17 The *Contractor* assists and co-operates with the *Client* in relation to any complaint or request received, including
- a) providing full details of the complaint or request,
  - b) complying with the request within the time limits set out in the Data Protection Legislation and in accordance with the instructions of the *Client*, and
  - c) promptly providing the *Client* with any Personal Data and any other information requested by it to enable it to respond to the request.
- 1.18 The *Contractor* does not process the Data outside the EEA (other than in the United Kingdom) without the agreement of the *Client*. Where the *Client* agrees, the *Contractor*
- a) provides evidence (acceptable to the *Client*) of appropriate safeguards as required by the Data Protection Acts, and
  - b) complies with the instructions of the *Client*.
- 1.19 The *Contractor* complies with the requirements of the *Client* in relation to the storage, dispatch and disposal of Data in any form or medium. Any requirement for the *Contractor* to destroy or delete copies of the Data is subject to any law of the European Union (or a member state of the EEA) to which the *Contractor* is subject that requires Data to be retained.
- 1.20 The *Contractor* notifies the *Client* within 24 hours of becoming aware of a Security Incident or any other breach of this section. The notification includes, as far as possible;
- a) a description of the nature of the Security Incident, including the categories and approximate number of Data Subjects concerned,
  - b) the likely consequences of the breach and
  - c) the Protective Measures taken, or to be taken, to address the breach, including measures taken to mitigate any possible adverse effects (including those outlined in PPN 02/18).

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- 1.21 In the event of a Security Incident, the *Contractor* provides the *Client* with full co-operation and assistance in dealing with the Security Incident, in particular in notifying individuals affected by the Security Incident or a Supervisory Authority as required by the Data Protection Legislation.
- 1.22 On request (but not more than once in any 12-month period) the *Contractor* provides to the *Client* all necessary information to demonstrate the *Contractor's* compliance with this Annex.
- 1.23 The *Contractor* promptly provides assistance and information requested by any Supervisory Authority or required by the *Client* in order for the *Client* to ensure compliance with its obligations under the Data Protection Legislation, including in relation to
- a) security of processing,
  - b) preparation of any necessary Data Protection Impact Assessments, and
  - c) undertaking any necessary data protection consultations.
- 1.24 The *Contractor* maintains electronic records of all processing activities carried out on behalf of the *Client*, including
- a) the information described in 1.7 of this Annex,
  - b) the different types of processing being carried out (if applicable),
  - c) any transfers of Data outside the EEA or the United Kingdom, identifying the relevant country or international organisations and any documentation required to demonstrate suitable safeguards and
  - d) a description of the technical and organisation security measures referred to in 1.10 of this Annex.
- The *Contractor* makes these records available to the *Client* promptly on request.
- 1.25 The *Contractor* does not engage any Sub-Processor without the prior consent of the *Client*.
- 1.26 Before allowing any Sub-Processor to process any Personal Data related to the contract, the Processor
- a) notifies the Controller in writing of the intended Sub-Processor and processing,
  - b) obtains the consent of the Controller,
  - c) enters into a written agreement with the Sub-Processor which give effect to the terms set out in this annex such that they apply to the Sub-Processor, and
  - d) provides the Controller with such information regarding the Sub-Processor as the Controller may reasonably require.
- 1.27 The Processor remains fully liable for all acts or omissions of any of its Sub-Processors.
- 1.28 The Controller may, at any time on not less than 30 working days' notice, revise this paragraph by replacing it with any applicable controller to process standard

- paragraphs or similar terms forming part of an applicable certification scheme (which applies when incorporated by attachment to the contract).
- 1.29 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 working days' notice to the Processor amend this annex 4 to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 1.30 Each Party designates its own data protection officer if required by the Data Protection Legislation.
- 1.31 If it is or becomes a requirement that, under the Data Protection Legislation or other applicable laws, this annex is to be governed by the laws of a member state of the European Union, and the law of the country where the *site* is located does not or ceases to satisfy this requirement, this section is governed by and construed in accordance with the laws of Ireland.
- 1.32 A failure to comply with this section is treated as a substantial failure by the *Contractor* to comply with its obligations under the framework contract or any Package Contract.

## DATA PROTECTION SCHEDULE [Appendix 1]

### 1.1 Schedule [A] – Processing, Personal Data and Data Subjects

This Appendix is completed by the *Client* who may take account of the view of the *Contractors*, however the final decision as to the content of this Appendix is with the *Client* at its absolute discretion

1. The contact details of the *Client's* data protection officer are Graham Woodhouse (dataprotectionadvice@highwaysengland.co.uk).
2. The contact details of the *Contractor's* data protection officer or nominated lead are per Contract Data part 2.
3. The *Contractor* complies with any further instructions with respect to processing by the *Client*.

Any such further instructions are incorporated into this table.

Description	Details
Identity of the <i>Client</i> and <i>Contractor</i>	The Parties acknowledge that for the purposes of the Data Protection Legislation, the <i>Client</i> is the Controller and the <i>Contractor</i> is the Processor in accordance with paragraph 2.
Subject matter of the processing	<p>[This should be a high level, short description of what the processing is about i.e. its subject matter]</p> <p><b>Example:</b> The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public].</p>
Duration of the	[Clearly set out the duration of the processing including

processing	<i>dates]</i>
Nature and purposes of the processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>Examples include: staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>

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## Annex 5 – Performance Bond

### Performance Bond

Dated

(1) [CONTRACTOR]

(1) [GUARANTOR]

(2) [CLIENT]

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Conditional Bond

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**THIS BOND** is made on [                      ]

**PARTIES:**

- (1)        the *Contractor*;
- (2)        the Guarantor; and
- (3)        the *Client*.

**BACKGROUND:**

- (A)        The *Client* and the *Contractor* entered into a framework agreement, particulars of which are set out in the Schedule ("the Agreement"). Pursuant to the Agreement the *Client* may instruct the *Contractor* to carry out work by issuing Works Contracts.
- (B)        By a Works Contract entered into between the *Client* and the *Contractor*, particulars of which are set out in the Schedule, ("the Works Contract") the *Contractor* has agreed with the *Client* to execute works described in the Works Contract ("the Works") upon and subject to the terms and conditions set out within the Agreement and the Works Contract.
- (A)        The Guarantor has agreed with the *Client* at the request of the *Contractor* to guarantee the performance of the obligations of the *Contractor* under the Works Contract upon the terms and conditions of this Bond subject to the limitation set out in **clause 5**.

**IT IS AGREED AS FOLLOWS:**

1.        **DEFINITIONS**

Terms defined in the Agreement or the Works Contract have the same meanings in this Bond unless otherwise defined in this Bond.

2.        **GUARANTEE**

The Guarantor guarantees to the *Client* that in the event of a breach of the Works Contract (including without limitation in this Bond the occurrence of any events of insolvency referred to in clause 90.2 of the Works Contract's conditions of contract) the Guarantor shall subject to the provisions of this Bond satisfy and discharge the damages sustained or debts incurred by the *Client* as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Works Contract taking into account all sums due or to become due to the *Contractor* under the Works Contract.

3.        **BOND AMOUNT**

4. The maximum aggregate liability of the Guarantor under this Bond shall not exceed the sum set out in the Schedule ("the Bond Amount") but subject to such limitation and to **clause 5** the liability of the Guarantor shall be co-extensive with the liability of the *Contractor* under the Works Contract.

5. **NO DISCHARGE OF LIABILITY**

- 5.1 The Guarantor shall not be discharged or released by any fact, event or rule of law which, but for this clause 4, might operate to release in whole or in part the Guarantor from its obligations under this Bond including (without limitation):

5.1.1 any alteration, variation or waiver of any of the terms conditions and provisions of the Works Contract or in the extent or nature of the Works, nor by the liquidation, administration or dissolution of the *Contractor*, nor by any disclaimer of the Works Contract by a liquidator of the *Contractor* and no allowance of time or other forbearance or indulgence by the *Client* under or in respect of the Works Contract or the Works on the part of the *Client* shall in any way release reduce or affect the liability of the Guarantor under this Bond;

5.1.2 any fact event or rule of law which results in any total or partial invalidity, illegality or unenforceability of the Works Contract; or

5.1.3 any legal limitation, disability or incapacity of the *Contractor*.

6. **EXPIRY**

- 6.1 Whether or not this Bond shall be returned to the Guarantor the obligations of the Guarantor under this Bond shall be released and discharged absolutely upon Expiry (as defined in the Schedule) save in respect of:

6.1.1 any breach of the Works Contract which has occurred and in respect of which a claim in writing has been made upon the Guarantor before Expiry; and

6.1.2 events which occurred prior to Expiry and in respect of which a claim in writing has been made upon the Guarantor by Expiry and which are reasonably expected to give rise to a breach of the Works Contract by the *Contractor*.

7. **CONTRACTOR'S UNDERTAKING**

The *Contractor*, having requested the execution of this Bond by the Guarantor, undertakes to the Guarantor (without limitation of any other rights and remedies of the *Client* or the Guarantor against the *Contractor*) to perform and discharge the obligations on its part set out in the Works Contract.

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8. **THIRD PARTY RIGHTS**

The Parties to this Bond do not intend that any of its terms shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise by any person not a party to it.

9. **ASSIGNMENT**

9.1 This Bond and the benefits thereof may be assigned at any time by the *Client* (and any assignee) to any person:

9.1.1 to whom the Works Contract is novated; or

9.1.2 to whom the benefit of the Works Contract is assigned; or

9.1.3 providing finance in connection with the Works Contract (and the Bond and the benefits thereof may be reassigned by such person to the *Client* or other relevant assignee).

10. **GOVERNING LAW AND JURISDICTION**

This Bond shall be governed by and construed in accordance with the laws of England and Wales and only the courts of England and Wales shall have jurisdiction hereunder.



## THE SCHEDULE

The *Contractor*: [NAME] [(registered number [number])] [whose registered office is at] [of]  
[Address]

The Guarantor: [NAME] [(registered number [number])] [whose registered office is at] [of]  
[Address]

The *Client*: [NAME] [(registered number [number])] [whose registered office is at] [of] [Address]

The Agreement: A framework agreement dated [DATE] between the *Client* and the  
*Contractor*

The Works Contract: The Works Contract dated [DATE] between the *Client* and the *Contractor*  
entered into pursuant to the Framework Agreement in respect  
of [DESCRIBE THE WORKS]

The Bond Amount: The sum of £[FIGURES] pounds ([WORDS]) exclusive of interest, legal  
fees and expenses

Expiry: [EXPIRY TIMING TO BE CONFIRMED] [the *defects date* under the Works Contract]  
which shall be conclusive for the purpose of this Bond.

**THIS DOCUMENT** is executed as a deed and delivered on the date stated at the beginning of  
this Deed.

**EXECUTED AS A DEED AND DELIVERED ON THE DATE ABOVE:**

Executed as a deed by **Guarantor** acting by )  
)

*Director*

*Director/Secretary*

Executed as a deed by **THE CONTRACTOR** )  
acting by: )

Director

Director/Secretary

## Annex 6 – Form of Collateral Warranty

DATED

20XX

(1) [NAME OF GI CONTRACTOR]

- and -

(2) [NAME OF BENEFICIARY]

**CONTRACTOR DEED OF  
COLLATERAL WARRANTY**  
relating to  
the provision of Ground Investigation  
Works at [INSERT GROUND  
INVESTIGATION DESCRIPTION]

THIS DEED is made on

20

**BETWEEN:**

- (1) **[NAME OF GI CONTRACTOR]** (company number ) whose registered office is at  (**"Contractor"**); and
- (2) **[NAME OF BENEFICIARY]** (company number ) whose registered office is at  (**"Beneficiary"**) which term includes its legal successors and permitted assignees.

(each a "Party" and together the "Parties").

**BACKGROUND:**

- A The Client intends to procure the Project.
- B By the Contract, the Contractor has agreed with the Client to carry out and complete the Works upon the terms and conditions of the Contract.
- C By an agreement in writing made or intended to be made between the Beneficiary and the Client, the Beneficiary has been engaged to **[insert details]**.
- D It is a term of the Contract, or has otherwise been agreed, that the Contractor enters into this deed with the Beneficiary in relation to the Works.

**IT IS AGREED:**

By this deed and in consideration of the sum of £1 paid by the Beneficiary (receipt of which the Contractor hereby acknowledges), the Contractor agrees to enter into the obligations set out in this deed.

**1 DEFINITIONS AND INTERPRETATION**

- 1.1 In this deed the following words and expressions shall have the following meanings, unless the context requires otherwise:

**"Client"** means Highways England Company Limited (company number 0934663) whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ;

**"Contract"** means the work order dated [date] made between the Client and the Contractor pursuant to the Framework Agreement;

**"Construction Products Regulations"** the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC);

**"Completion"** means the date of completion of the whole of the Works as certified pursuant to the Contract;

**"Deleterious"** means materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

- (a) posing a threat to the health, safety and/or welfare of any person;
- (b) posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works;
- (c) not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or
- (d) having been supplied or placed on the market in breach of the Construction Products Regulations.

**"Framework Agreement"** means the Ground Investigation Framework Agreement dated [INSERT DATE] made between the Client and a number of suppliers including the Contractor;

**"Project"** means the main works carried out by the main contractor to which the ground investigation relates;

**"Report"** means the report prepared by the Contractor in relation to the state of the ground conditions established as part of the Works; and

**"Works"** means the works and services to be undertaken by the Contractor under the Contract.

1.2 unless the context requires otherwise:

- 1.2.1 reference to any gender includes all genders, reference to the singular includes the plural (and vice versa) and reference to persons includes bodies corporate, unincorporated associations and partnerships (whether or not any of them have a separate legal personality);
- 1.2.2 reference to a recital or clause is a reference to a recital to or clause of this deed; and
- 1.2.3 reference to any legislative provision will be deemed to include any subsequent re-enactment or amending provision;

1.3 clause headings are included for convenience only and do not affect its interpretation;

- 1.4 where a Party comprises two or more persons:
- 1.4.1 any obligations on the part of that party contained or implied in this deed are deemed to be joint and several obligations on the part of those persons; and
  - 1.4.2 references to that Party include references to each and any of those persons; and
- 1.5 periods of time will be calculated in accordance with section 116 of the Housing Grants, Construction and Regeneration Act 1996.

## **2 STANDARD OF CARE**

- 2.1 The Contractor warrants and undertakes to the Beneficiary that:
- 2.1.1 it has carried out and shall carry out its duties and obligations under the Contract subject to and in accordance with the terms of the Contract; and
  - 2.1.2 in addition to and without derogation from clause 0:
    - 2.1.2.1 it has carried out and shall continue to carry out and complete the Works in a good and workmanlike manner;
    - 2.1.2.2 the Works [will on Completion comply]/[on Completion complied]<sup>1</sup> in all respects with the requirements of the Contract.
    - 2.1.2.3 in carrying out the Works it [will not use]/[has not used]<sup>2</sup> anything which at the time the Works [are/were]<sup>3</sup> undertaken is Deleterious.

## **3 NO INSTRUCTIONS TO CONTRACTOR BY BENEFICIARY**

- 3.1 Except as expressly stated in this deed, the Beneficiary may not give instructions to the Contractor under this deed.

## **4 COPYRIGHT**

- 4.1 The Contractor shall indemnify the Beneficiary against any liability which the Beneficiary may incur by reason of the Contractor infringing or being held to have infringed any copyright.
- 4.2 The Contractor shall provide to the Beneficiary a copy of any of the Report as soon as reasonably practicable after receipt by the Contractor of a written request from the Beneficiary to do so. The Contractor does not charge the

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<sup>1</sup> Delete as applicable if the deed is entered in to prior to or post completion of the Works

<sup>2</sup> Delete as applicable if the deed is entered in to prior to or post completion of the Works

<sup>3</sup> Delete as applicable if the deed is entered in to prior to or post completion of the Works

Beneficiary for any electronic copy of the Report whether or not it is issued on physical medium such as cd-rom. The Contractor provides any encryption keys to the Beneficiary in a separate communication. The Beneficiary agrees to pay the reasonable copying charges for paper copies of the Report of the Contractor for provision of the same to the Beneficiary

## **5 PROFESSIONAL INDEMNITY INSURANCE**

### **5.1 The Contractor warrants that:**

5.1.1 it has maintained and shall maintain, during the carrying out of the Works and for a period until 12 years from Completion of the Works (notwithstanding earlier termination, expiry or suspension of the Contractor's employment under the Contract), the professional indemnity insurance required by the Contract or the Framework Agreement and

5.1.2 cover under the professional indemnity insurance is extended to include the Contractor's liabilities under this deed.

5.2 As and when required by the Beneficiary, the Contractor shall produce for inspection documentary evidence that such insurance is being properly maintained.

5.3 If the Contractor is unable to obtain professional indemnity insurance, it shall promptly notify the Beneficiary.

## **6 ASSIGNMENT**

6.1 The Beneficiary may at any time assign the benefit of this deed and/or any rights arising under it by way of absolute legal assignment to any person without the consent of the Contractor being required.

6.2 The Contractor undertakes to the Beneficiary not to contend in any proceedings under this deed that any person to whom the Beneficiary assigns or has assigned its rights under this deed in accordance with the provisions of this clause is to be precluded from recovering any loss resulting from any breach of this deed (whenever happening) by reason that such person is an assignee and not the original promisee under this deed or by reason of such person not being the Beneficiary and/or the loss suffered being different or greater to any loss that may have been suffered by the Beneficiary.

## **7 LIABILITY OF THE CONTRACTOR**

7.1 Unless the contrary is stated, no provision of this deed is intended to exclude any obligation or liability which would otherwise be implied whether by statute, the law of contract, tort, equity or otherwise.

7.2 The responsibility of the Contractor under this deed is not to be reduced or in any way released or limited by any enquiry or inspection by or on behalf of any

person notwithstanding that such enquiry or inspection may give rise to a claim by the Beneficiary against a third party.

- 7.3 The rights and benefits conferred upon the Beneficiary by this deed are in addition to any other rights and remedies that the Beneficiary may have against the Contractor including (without prejudice to the generality of the foregoing) any remedies in negligence.
- 7.4 Any limitation or defence which would have been available to the Contractor in an action under the Contract shall likewise be available to the Contractor in a corresponding action under this deed,

## **8 LIMITATION**

- 8.1 The Beneficiary shall be entitled to commence legal proceedings against the Contractor at any time up to the expiry of twelve (12) years from Completion of the Works. For the avoidance of doubt, the Parties agree that any provision of the Limitation Act 1980 to the contrary shall not apply to this deed.

## **9 NOTICES**

- 9.1 Any notice required to be given under this deed is to be delivered personally (which includes delivery by courier) or sent by pre-paid recorded or special delivery post to the Party concerned at its address set out in this deed or to such other addresses as may be notified by such Party for the purposes of this clause.
- 9.2 Any notice given pursuant to this clause will be deemed to have been served as follows:
- 9.2.1 if delivered personally, at the time of delivery; and
- 9.2.2 if sent by recorded or special delivery post, 48 hours after being delivered into the custody of the postal authorities but excluding Saturdays, Sundays and public and bank holidays in England and Wales.
- 9.3 In proving service, it will be sufficient to prove that personal delivery was made or that the envelope containing the notice was properly addressed and delivered into the custody of the postal authorities as a pre-paid recorded or special delivery letter.

## **10 RIGHTS OF THIRD PARTIES**

- 10.1 A person who is not a Party to this deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act



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## **11 DISPUTES**

### **11.1 The provisions of**

11.1.1 clause 9 Termination and Resolving Disputes and

11.1.2 the additional conditions for the Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009

11.1.3 of the Contract shall apply, mutatis mutandis, and is deemed to be incorporated in to this deed.

## **12 JURISDICTION AND LAW**

12.1 This deed is governed by and is to be construed according to English law and the English courts shall have jurisdiction in relation to all matters arising under it.

Executed as a deed by )  
[**NAME OF CONTRACTOR**] )  
by a director in the presence of a )  
witness:

Signature \_\_\_\_\_

Name (block  
capitals) \_\_\_\_\_  
**Director**

Witness  
signature \_\_\_\_\_

Witness name  
(block capitals) \_\_\_\_\_

Witness  
address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Executed as a deed by )  
[**NAME OF BENEFICIARY**] )  
by a director in the presence of a )  
witness:

Signature

Name (block  
capitals)

**Director**

Witness  
signature

Witness name  
(block capitals)

Witness  
address