



**National Highways Limited**

# **NEC4 Engineering and Construction Contract (June 2017)**

**Volume 1**

## **Contract Data Parts 1 and 2**

**National Highways Limited – Historical Railways Estate Works – January 2020**

### CONTENTS AMENDMENT SHEET

Issue. No.	Revision No.	Amendments	Initials	Date
		Issued with tender	JC	June 2023

# Contract Data

## PART ONE – DATA PROVIDED BY THE CLIENT

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

### 1 General

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

Main Option

B

Option for  
resolving and  
avoiding disputes

W2

Secondary  
Options

X1, X2, X5, X7, X11, X12, X15, X17, X18, X22  
Y(UK)1, Y(UK)2,  
Z1 to Z18, Z50 to Z62, Z103 to Z106

The *works*  
are

A repair and refurbishment scheme for a ten span brick arch viaduct with stone voussoirs, parapets, spandrels, piers and abutments. Repairs required to the remove the associated risk of structural collapse and harm to the public. Works to include the installation of a waterproofing scheme to minimise further deterioration and provide 25-year major maintenance free period. Additional information forming the Scope is contained within Volume 2 – Scope.

The *Client* is

National Highways Limited, a company incorporated in and in accordance with the laws of England, having as its registered number (company No.

Address for  
electronic  
communications

The *Project Manager* is

Name

Address for  
communications

[Redacted]

Address for  
electronic  
communications

[Redacted]

The *Supervisor* is

Name

[Redacted]

Address for  
communications

[Redacted]

Address for  
electronic  
communications

[Redacted]

The Scope is in

HXH/4a ECC Volume 2 - Scope

The Site  
Information is in

HXH/4a ECC Volume 3 – Site Information

The *boundaries of  
the site* are

The boundaries of the site are defined by the extents of the permanent works and detailed in the Scope.

The *language of  
the contract* is

English

The *law of the  
contract* is the law  
of

England, subject to the jurisdiction of the Courts of England and Wales.

The *period for  
reply* is

two weeks

except that

The *period for reply* for

n/a

is

weeks

The *period for reply* for

n/a

is

weeks

The following matters will be included in the Early Warning Register

Ecological constraints due to the potential bat roosting features present within flood channels/culverts. A European Protected Species Licence is required.

Landowner access agreements for the Contractors proposed compound location and access routes.

Early warning meetings are held at intervals no longer than

one month

## 2 The *Contractor's* main responsibilities

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

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

	<i>condition to be met</i>	<i>key date</i>
(1)	N/A	N/A
(2)	[...]	[...]
(3)	[...]	[...]

## 3 Time

The starting date is

[18<sup>th</sup> September 2023...]

The access *dates* are

part of the Site

date

1 The bridge deck

[18<sup>th</sup> September 2023]

2

3

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

one month

The *completion date* for the whole of the *works* (excluding landscaping aftercare) is

Contractor to determine

The *Client* is not willing to take over the *works* before the Completion Date

The period after the Contract Date within which the *Contractor* is to submit a first programme for acceptance is

2 weeks

#### 4 Quality Management

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

N/A wks

The period between Completion of the whole of the *works* (other than landscaping aftercare) and the *defects date* is

52 wks

The *defect correction period* is four weeks except that:

The *defect correction period* for

N/A

is

N/A

wks

The *defect correction period* for

N/A

is

N/A

wks

#### 5 Payment

The *currency of the contract* is the

pound sterling (£)

The *assessment interval* is

one

calendar month

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

3

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

#### 6 Compensation events

The place where weather is  
to be recorded is

Ovenden (Latt. 53.7430, Long. -1.8764)

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

- the cumulative rainfall (mm)
- the number of days with rainfall more than 5 mm
- the number of days with minimum air temperature less than 0 degrees Celsius
- the number of days with snow lying at 0900 hours GMT

and these measurements:

N/A

The *weather measurements* are supplied by

Met Office

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

which were recorded at

Ovenden (Latt. 53.7430, Long. -1.8764)

and which are available from

Met Office

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

N/A

[The *value engineering percentage* is 50%, unless another percentage is  
stated here, in which case it is

[...] %]

[The *method of measurement* is

CESMM3

These are additional compensation events

- n/a
- 

## 8 Liabilities and insurance

These are additional *Client's* liabilities

(1)

n/a

(2)

(3)

See Scope for insurance details

### Resolving and avoiding disputes

The *tribunal* is

arbitration

The *arbitration procedure* is

The Institution of Civil Engineers Arbitration Procedure (April 2012).

The place where *arbitration* is to be held is

London

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

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

The *Senior Representatives* of the *Client* are

Name (1)

[REDACTED]

Address for  
communications

[REDACTED]

Address for electronic  
communications

[REDACTED]

Name (2)

[REDACTED]

Address for  
communications

[REDACTED]



Address for electronic  
communications

The *Adjudicator* is the person chosen by

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

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

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

The *Adjudicator nominating body* is

the Institution of Civil Engineers

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**Option X15: The *Contractor's* design**

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

12 years

**Option X18: Limitation of liability**

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

[...]

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

[...]

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

[...]

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

[...]

The *end of liability date* is

12

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

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

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

The *conditions of contract* are (...) secondary options Y(UK1), Trust Deed, Joining Deed, (...) Not used

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

The first *invoice date* is

To be agreed with the Contractor

Later *invoice dates* occur on the same day of each calendar month after the first *invoice date* until all amounts due to the *Contractor* under the contract have been paid.

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

term

None

*beneficiary*

None

**Option Z: Additional conditions of contract**

The *additional conditions of contract* are the following clauses

[Z1-Z18, Z50-Z62, Z103,  
Z105-Z106]

**Contract Data entries relating to Z Clauses**

**Clause Z106** *Extended liability period* for Plant

The *extended liability period* for

N/a

is

N/a

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

[state Plant]

is

[...]

[state Plant]

is

[...]

**PART TWO – DATA PROVIDED BY THE CONTRACTOR**

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

**1 General**

The *Contractor* is

Name

Address for communications

Address for electronic  
communications

The *Contractor's* nominated representative is (Fill in if the *Contractor* is an unincorporated JV)

Name

Address for communications

Address for electronic  
communications

The *fee percentage* is

%

The *working areas* are

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

The following matters will be included in the Early Warning Register

--

## 2 The *Contractor's* main responsibilities

The Scope for the *Contractor's* design is in

--

## 3 Time

The programme identified in the Contract Data is in

--

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

--

## 4 Quality Management

The Quality Statement is in

--

## 5 Payment

The *bill of quantities* is in

--

The tendered total of the Prices is

--

## Resolving and Avoiding Disputes

The *Senior Representatives* of the *Contractor* are

Name (1)

--

Address for communications

--

Address for electronic communications

--

Name (2)

--

Address for communications

Address for electronic communications

**Contract Data entry relating to Data Protection Legislation**

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

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

The *project bank* is

*named suppliers* are

All known Tier 2 and 3 suppliers must be listed as *named suppliers*

**Option Z: Additional conditions of contract**

**Clause Z9**

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

Party

rating agency

*credit rating*

*Contractor*

Consortium Member

Guarantor

**Data for the Shorter Schedule of Cost Components**

The *people rates* are

category of person

unit

rate


The published list of Equipment is the edition current at the Contact Date of the list published by

--

The percentage for adjustment for Equipment in the published list is

--

% (state plus or minus)

The rates for other Equipment are

Equipment

rate


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

category of person

rate


--

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Z Clause Contents	
Number	Title
Z1	Changes to Core and Secondary Option Clauses
Z2	Interpretation
Z3	Recovery of sums due from <i>Contractor</i>
Z4	Assignment and transfer
Z5	Confidentiality
Z6	Adjudication
Z7	Termination – Public Contract Regulations 2015
Z8	Subcontracting
Z9	Change of Control and financial distress
Z10	Joint ventures
Z11	Parent Company Guarantee
Z12	Discrimination, Bullying and Harassment
Z13	Intellectual Property Rights (IPRs)
Z14	Project Bank Account
Z15	Tax Non - Compliance
Z16	Value Added Tax Recovery
Z17	Removal of <i>works</i> from the Scope
Z18	Corruption or loss of data
Z19 – Z49	Not Used
Z50	Health and Safety Plan
Z51	Changes to Prices
Z52	Not Used
Z53	Not Used
Z54	Extension to the Completion Date
Z55	Payment of the <i>Contractor's</i> share
Z56	Construction Industry Scheme
Z57	Infrastructure Act 2015
Z58	Revisions to Promises Statement
Z59	Indemnified claims
Z60	Tax Arrangements of Public Appointees
Z61	Enhancements
Z62 – Z102	Not Used
Z103	Landscaping aftercare
Z104	Single point design responsibility
Z105	Innovation - Title to Equipment
Z106	<i>Extended liability period</i> for Plant
Z107	Not Used

**Z1 Changes to core & Secondary Option clauses**

11 Identified and defined terms

11.2 Add the following defined terms

(36) Associated Company is any of

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

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

(38) Community Partner is an organization (other than the *Contractor*) engaged by the *Client* to provide works in relation to the contract.

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

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

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

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

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

(43) The Data Protection Acts are the General Data Protection Regulation (EU 2016/679) and any other laws or regulations relating to privacy or personal data.

(44) Delivery Phase Incentive Schedule is the delivery phase incentive schedule unless later changed in accordance with this contract

(45) Development Phase Incentive Schedule is the development phase incentive schedule unless later changed in accordance with this contract

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

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

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

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

prohibition or improvement notice under any contract.

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

- reducing the cost to the *Client* of the *works*,
- improving the quality or effectiveness of delivery of the *works*
- otherwise enhancing the achievement of the *Client's* vision, outcomes and key objectives,

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

(51) EU Reference is any European Union

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

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

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

(54) General Anti-Abuse Rule is

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

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

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

(57) Health and Safety Plans are

- A completed Supply Chain Health and Safety Maturity Matrix (SCMM) for the *Contractor* or each Consortium Member in the form required by the *Client*, recording the level of safety maturity within the organisation at the date of the SCMM,
- An implementation plan, setting out the actions to be taken by the *Contractor* or each Consortium Member over a period of 12 months following the date of the SCMM in order to improve the scores recorded in the SCMM by not less than the percentage specified from time to time by the *Client*, including the timescale for each action and
- An action plan, setting out the specific actions to be taken under this contract by the *Contractor* and its subcontractors (at any stage of remoteness from the *Client*) in order to support delivery of the improvements identified in the

implementation plans for the *Contractor* or each Consortium Member.

(58) Incentive Amount is an amount (not exceeding £1,000,000 in respect of any one Enhancement) payable to the *Contractor* if an Enhancement is successfully implemented.

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

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

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

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

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

(64) Intellectual Property Rights or IPRs are copyright and related rights, database rights, design rights, patents, inventions, trade marks (and goodwill attaching to those trade marks), domain names, applications for and the right to apply for any of the foregoing, moral rights, confidential information and any other intellectual or industrial property rights, whether or not registered or capable of registration, whether subsisting now or in future in any part of the world.

(65) Licence is the document entitled “ National Highways Limited : Licence” dated April 2015 listed in Annex 3 to the Scope.

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

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

(68) Outgoing Contractor is any agent or contractor appointed by the *Client* or Others to carry out works similar to the *works* in relation to the Site during the period immediately prior to the *access date*.

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

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

(71) Personal Data are any data relating to an identified or identifiable individual that are within the scope of protection as “personal data” under the Data Protection Acts.

(72) Quality Management Points are points accrued by the *Contractor* in accordance with the quality table in the Scope.

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

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

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

(76) RIDDOR Incident is an incident occurring under any contract between

- The *Contractor* or an Associated Company and
- The *Client* or any other person

Which results in death or serious injury to any worker or non-worker and for which

the *Contractor* is responsible under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (or any replacement of it).

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

(78) Stage One Incentive is the incentive for Stage One calculated in accordance with the Development Phase Incentive Schedule.

(79) Stage Two Incentive is the incentive for Stage Two calculated in accordance with the Delivery Phase Incentive Schedule.

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

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

- Is found on or after 1 April 2013 to be incorrect as a result of a Relevant Tax Authority successfully challenging the *Contractor* or a Consortium Member under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rule or legislation with similar effect or
- The failure of an avoidance scheme in which the *Contractor* or a Consortium Member was involved which was (or should have been) notified to a Relevant Tax Authority under the DOTAS or a similar regime or
- Gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax-related offences which is not spent at the date of award of this contract or to a civil penalty for fraud or evasion.

(82) Threshold Level is the threshold level of Quality Management Points stated in the Scope.

(83) Transferring Employees are employees of an Outgoing Contractor (or of a Subcontractor of an Outgoing Contractor) employed for the carrying out of work or the provision of works similar to the *works* in relation to the Site during the period immediately prior to the *access date*, other than employees who object to being transferred to the *Contractor*.

(85) TUPE is the Transfer of Undertakings (Protection of Employment) Regulations 2006.

Amend the following terms

### **11.2 (31) Price for Work Done to Date**

Amended definition to read as follows

The Price for Work Done to Date is

- for all sections of the works (other than the landscaping aftercare section), the total Defined Cost which the *Project Manager* forecasts will have been paid by the Contractor before the next assessment date plus the Fee and
- for the landscaping aftercare section of the works, the total of the Prices for each completed activity.

## **12 Interpretation and the law**

### **12.2 Delete & replace clause with**

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

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

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

## **26 Subcontracting**

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

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

## **28 Assignment**

Delete clause 28

## **29 Disclosure**

Delete clause 29

## **44 Correcting Defects**

44.3 In the first bullet point after “defect correction period” insert “(other than any such period relating to landscaping aftercare)”; in the second bullet point after “Defects” insert “(other than any Defects relating to landscaping aftercare)”.

## **51 Payment**

51.2 Delete the first sentence.

## **60 Compensation events**

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

or

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

Insert an additional sub-bullet after the second main bullet point

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

## **83 Insurance cover**

Delete clause 83 and insert

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

### **93 Payment on termination**

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

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

### **Option X2 Changes in the law**

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

### **Option X18 Limitation of liability**

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

- loss of or damage to the *Client’s* property,
- delay damages,
- *Contractor’s* share,
- fraud or fraudulent misrepresentation,
- events for which the contract requires the *Contractor* to insure (but only up to the required level for each type of insurance stated in the (Scope),
- infringement of the rights of Others,
- loss or damage
  - to third party property or
  - due to pollution,
- loss arising from breach of
  - confidentiality or data protection obligations or
  - anti-bribery or anti-corruption obligations,
- interest on debt and
- losses caused by the *Contractor’s* illegal acts, deliberate default, deliberate abandonment or reckless misconduct.]

### **Option X22 Early Contractor Involvement**

X22.7 delete and replace with

X22.7 On issue of the notice to proceed to Stage Two, the *Project Manager* calculates the Stage One Incentive in accordance with the Development Phase Incentive Schedule. The Stage One Incentive is included in the amount due following issue of the notice to proceed to Stage Two.

If the notice to proceed is not issued then the bonus becomes void.

Add new clauses

X22.8 At the last *defects date*, the *Project Manager* calculates the Stage Two Incentive in accordance with the Delivery Phase Incentive Schedule. The Stage Two Incentive is included in the amount due following the last *defects date*.

X22.9 The *Client* may modify the Development Phase Incentive Schedule or the Delivery Phase Incentive Schedule to reflect

- any revised business priorities and
- identified work that needs to be delivered by a Key Date
- provided that the change is not specifically intended to
- penalise the *Contractor* for poor performance in relation to any particular performance measures or
- prejudice the *Contractor's* ability to earn a Stage One Incentive and a Stage Two Incentive.

The *Client* consults with the *Contractor* before modifying the Development Phase Incentive Schedule or the Delivery Phase Incentive Schedule, but the *Contractor* acknowledges that the *Client* has the final decision.]

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

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

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

## **Z2 Interpretation**

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

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

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

## **Z4 Assignment and transfer**

- Z4.1 The *Contractor* does not assign, transfer or charge the benefit of the contract or any part of it or any benefit or interest under it without the prior agreement of the *Client*.
- Z4.2 If the *Contractor* wishes to transfer the benefit and burden of the contract to a new contractor, it seeks the *Client's* agreement to do so. The *Contractor* explains the reasons for the proposed transfer and provides the *Client* with all such information as the *Client* may require in order to make its decision. If the *Client* (in its absolute



discretion) agrees to the proposed transfer, the Parties and the new contractor execute a novation in the relevant form set out in the Scope or such other form as the *Client* may reasonably require.

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

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

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

## **Z5 Confidentiality**

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

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

except that the *Contractor* may disclose information

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

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

## **Z6 Adjudication**

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

“Any information concerning the contract obtained by either the *Adjudicator* or any person advising or aiding him is confidential, and is not used or disclosed by the *Adjudicator* or any such person except for the purposes of this Agreement. The

*Adjudicator* complies, and takes all reasonable steps to ensure that any persons advising or aiding him comply, with the Official Secrets Acts 1911 to 1989.”

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

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

- Z7.1 The *Client* may terminate if one of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Contractor* at the Contract Date.
- Z7.2 The *Client* may terminate the contract with immediate effect
- if the contract has been subject to substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015 or
  - the Court of Justice of the European Union declares in a procedure under Article 258 of the Treaty on the Functioning of the European Union, that a serious infringement of the obligations under the European Union Treaties and the Public Contracts Directive has occurred.
- Z7.3 The procedure and amount due on termination are the same as for
- R18 if the modification or infringement was due to a default by the *Contractor*,
  - R19 if the modification or infringement was due to a default by the *Client* and
  - R20 if the modification or infringement was due to any other reason

## **Z8 Subcontracting**

- Z8.1 The *Contractor* assesses the amount due to a subcontractor without taking into account the amount assessed under the contract.
- Z8.2 If the *Contractor* subcontracts work to an Associated Company, the Defined Cost of the work subcontracted is assessed as if the work had not been subcontracted unless otherwise agreed by the *Client*.
- Z8.3 The *Client* may, having stated the reasons, instruct the *Contractor* to remove a subcontractor. The *Contractor* then arranges the removal of the subcontractor and the appointment of a replacement in accordance with the contract.
- Z8.4 The *Client* may terminate if a key Subcontractor or another key resource needed for the *works* is no longer available and the *Contractor* is unable to propose an alternative resource acceptable to the *Project Manager*. In the event of a termination under this clause, the termination procedures followed are P1, P2 and P3 and the amounts due on termination are A1 and A3.
- Z8.5 Before
- appointing a proposed Subcontractor or
  - allowing a Subcontractor to appoint a proposed subsubcontractor

the *Contractor* submits to the *Project Manager* for acceptance

- either
  - a European Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed Subcontractor or subsubcontractor or
  - other means of proof (as specified in regulations 60(4) and 60(5) of the Public Contracts Regulations 2015) that none of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applies to the proposed Subcontractor or subsubcontractor and
- details of any RIDDOR Incident under any contract for which the proposed Subcontractor or subsubcontractor is responsible and of any Enforcement Action brought against the proposed Subcontractor or subsubcontractor

Z8.6 The *Contractor* does not appoint the proposed Subcontractor (or allow the Subcontractor to appoint the proposed subsubcontractor) until the *Project Manager* has accepted the submission. A reason for not accepting the submission is that

- it shows that there are grounds for excluding the proposed Subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015 or
- the *Project Manager* is not satisfied that the proposed Subcontractor or subsubcontractor has put in place adequate measures to ensure that similar matters to the RIDDOR Incident or the event giving rise to Enforcement Action will not occur.

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

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

- one of the grounds for excluding the Subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015 applies or
- the Subcontractor or subsubcontractor has not put in place adequate measures to ensure that similar matters to the RIDDOR Incident or the event giving rise to Enforcement Action will not occur

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

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

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

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

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

- the direct or indirect legal or beneficial ownership of any shareholding in the *Contractor* (or a Consortium Member). A change is material if it relates directly

or indirectly to a change of 3% or more of the issued share capital of the *Contractor* (or a Consortium Member), or

- the composition of the *Contractor* or a Consortium Member. A change is material if it directly or indirectly affects the performance of this contract by the *Contractor* or is considered substantial in accordance with Regulation 72(8)(e) of the Public Contracts Regulations 2015.

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

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

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

Z9.5 If a Change of Control occurs and is likely to give rise to an actual or potential conflict of interest, the *Contractor* and the *Project Manager* meet within one week to discuss the actions to be taken by either Party in order to overcome or mitigate the conflict. If the Parties do not agree and implement the actions needed to overcome or mitigate the conflict, the *Client* may terminate the *Contractor's* obligation to Provide the Works with immediate effect. In the event of a termination under this clause, the termination procedures followed are P1, P2 and P3 and the amounts due on termination are A1 and A2.

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

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

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

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

- certified copies of the audited consolidated accounts of the Controller for the last three financial years,
- a certified copy of a board minute of the Controller confirming that it will give to the *Client* a Parent Company Guarantee if so required by the *Client*,

- any other information required by the *Client* in order to determine whether the Controller meets the Financial Standing Test and
  - any other information requested by the *Client* in order to satisfy itself that the *Contractor* remains in a position to perform its obligations under this contract.
- Z9.8 If a Change of Control or any of the events listed in clauses Z9.2 to Z9.4 occurs, the *Client* may require the *Contractor* to give to the *Client* a Parent Company Guarantee from the Controller or (if the Controller does not meet the Financial Standing Test) an alternative guarantor proposed by the *Contractor* and accepted by the *Client*.
- Z9.9 A reason for not accepting an alternative guarantor proposed by the *Contractor* is that it does not
- meet the Financial Standing Test,
  - provide the legal opinion required in clause Z9.13 or
- have a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z9.4 has occurred.
- Z9.10 If so required by the *Client*, the *Contractor* within four weeks after the *Client* notifies the requirement gives to the *Client* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Client*.
- Z9.11 The *Client* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Contractor* who does not meet the Financial Standing Test if the *Contractor* gives to the *Client* an assurance that the Controller or the alternative guarantor will meet the Financial Standing Test within 18 months of the *Client's* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Client* that it will meet the Financial Standing Test by the end of that period.
- Z9.12 If
- the *Contractor* fails to notify the *Client* that an event listed in clause Z9.4 has occurred,
  - neither the Controller nor any alternative guarantor proposed by the *Contractor* complies with the Financial Standing Test within the timescale stated in clause Z9.11 or fails to provide the legal opinion required by clause Z9.13
  - the *Contractor* does not give to the *Client* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Project Manager* within four weeks of a request from the *Project Manager* to do so or
  - the *Contractor* fails to demonstrate to the *Project Manager* that the Controller or the alternative guarantor accepted by the *Project Manager* will meet the Financial Standing Test within 18 months of the *Project Manager's* acceptance
- the *Client* may treat such failure as a substantial failure by the *Contractor* to comply with its obligations.
- Z9.13 If the *Contractor*, a Consortium Member, a Guarantor or an alternative guarantor proposed by the *Contractor* (in this clause referred to as a "relevant entity") is not a company incorporated in and subject to the laws of England and Wales, the *Contractor* provides a legal opinion from a lawyer or law firm which is

- qualified and registered to practise in the jurisdiction in which the relevant entity is incorporated and
- accepted by the *Client*

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

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

## **Z10 Joint ventures**

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

## **Z11 Parent Company Guarantee**

- Z11.1 If required by the *Client*, the *Contractor* gives to the *Client* a Parent Company Guarantee. If a Parent Company Guarantee was not given by the Contract Date, it is given to the *Client* within four weeks of the date of award of the contract, or of the *Client's* request, whichever is later.

Parent Company Guarantees are given for:

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

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

- Z11.2 A failure to comply with this condition is treated as a substantial failure by the *Contractor* to comply with its obligations.

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

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

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

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

## **Z14 Project Bank Account**

- Z14.1 The *Client* may at any time notify the *Contractor* that payments under the contract will no longer be made using the Project Bank Account. This notice is a compensation event. Within one week of the *Client's* notice, the *Contractor* notifies the Named Suppliers that the Project Bank Account is no longer to be used and proposes an alternative method to ensure that the Named Suppliers receive payments in accordance with its contracts.

## **Z15 Tax Non – Compliance**

- Z15.1 The *Contractor* warrants that it has notified the *Client* of any Tax Non-Compliance or any litigation in which the *Contractor* (or a Consortium Member) is involved relating to any Tax Non-Compliance prior to the Contract Date.

- Z15.2 The *Contractor* notifies the *Client* within one week of any Tax Non-Compliance occurring after the Contract Date and provides details of
- the steps the *Contractor* is taking to address the Tax Non-Compliance and to prevent a recurrence,
  - any mitigating factors that it considers relevant and
  - any other information requested by the *Client*.
- Z15.3 The *Contractor* is treated as having substantially failed to comply with its obligations if
- the warranty given by the *Contractor* under clause Z15.1 is untrue,
  - the *Contractor* fails to notify the *Client* of a Tax Non-Compliance or
- the *Client* decides that any mitigating factors notified by the *Contractor* are unacceptable.

## **Z16 Value Added Tax (VAT) Recovery**

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

## **Z17 Termination and removal of part of the works**

- Z17.1 The *Project Manager* may instruct the *Contractor* that
- part of the *works* is to be permanently removed from the contract or
  - for urgent reasons of health and safety, part of the *works* is to be temporarily removed from the contract.
- In either case the *Contractor* acknowledges that the *Client* may itself, or may appoint another supplier in place of the *Contractor* to provide works similar to the removed *works* (or part of it).
- Z17.2 An instruction given under clause Z17.1 is assessed as a compensation event, except that if the instruction is given for one of the reasons R1-R15, R18 or R22, the assessment includes a deduction of the forecast of the additional cost to the *Client* of completing the removed *works*.
- Z17.3 If the *Contractor's* obligation to Provide the Works is terminated for any reason, the *Contractor* if instructed by the *Project Manager*
- completes the performance of any part of the *works* started prior to the date of termination and
  - co-operates with the *Client* or any Incoming Contractor so as to ensure a smooth transfer of functions.
- Z17.4 The *Project Manager* may give the *Contractor* an instruction to Provide the Works (or parts of the *works*) in relation to highway assets outside the Site owned by the *Client* or a third party. The instruction states
- the assets to which it relates,
  - the parts of the *works* which the *Contractor* is to provide in relation to them,
  - the expected duration of the instruction and



- any constraints on how the *Contractor* is to Provide the Works.

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

## **Z18 Corruption or loss of data**

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

## **Z19 - Z49 Not Used**

## **Z50 Health and Safety Plan**

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

## **Z51 Changes to Prices**

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

## **Z52-Z53 Not Used**

## **Z54 Extension to the Completion Date**

- Z54.1 The *Client* may notify the *Contractor* that the Completion Date is to be extended by the extension period or such lesser period as the *Client* may specify.

Z54.2 If the Completion Date is extended by less than the extension period, the *Client* may further extend the Completion Date so that the total period of extension does not exceed the extension period.

Z54.3 The *Client* does not notify the *Contractor* of any extension or further extension to the Completion Date later than [6 months] before the expiry of the Completion Date.

#### **Z55 Payment of the Contractor's share**

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

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

Z55.2 In clause 54.3, in two places, after *works* insert "other than the Section comprising landscaping aftercare"

#### **Z56 Construction Industry Scheme**

Z56.1 In this clause (but not otherwise)

- the "Act" is the Finance Act 2004 and
- the "Regulations" are the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045).

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

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

- is registered for gross payment,
- is registered for payment under deduction,
- is exempt from registration as a local authority or other public body or
- is neither registered nor exempt from registration.

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

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

#### **Z57 Infrastructure Act 2015**

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

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

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

## **Z58 Revisions to Promises Statement**

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

- it will not enable the *Contractor* to meet a Performance Requirement,
- it will unacceptably increase the risk of failure to meet a Performance Requirement,
- it will not enable the *Contractor* to achieve the level of performance specified in the Promises Statement or

it will unacceptably increase the risk of failure to achieve the level of performance specified in the Promises Statement.

Z58.2 A revision to the Promises Statement accepted by the *Project Manager* is not a compensation event.

## **Z59 Indemnified claims**

Z59.1 The *Client* notifies the *Contractor* as soon as practicable of any notice or demand which it receives in respect of a matter for which the *Contractor* is liable under the contract (an Indemnified Claim).

Z59.2 The *Contractor* may elect to conduct the defence of any Indemnified Claim (including any settlement negotiations) in the name of the *Client*. The *Client* co-operates with and gives reasonable assistance to the *Contractor* in defending the Indemnified Claim.

Z59.3 The *Contractor* keeps the *Client* fully and regularly informed and consults with the *Client* as appropriate in relation to the conduct of any Indemnified Claim.

Z59.4 Where the *Contractor* is diligently conducting the defence of an Indemnified Claim, the *Client* does not settle nor agree to make a payment in respect of the Indemnified Claim without the prior consent of the *Contractor*.

Z59.5 The *Contractor* bears the costs which it incurs in defending an Indemnified Claim. The *Contractor* indemnifies the *Client* against any costs incurred by the *Client* arising out of the *Contractor's* defence of the Indemnified Claim.

- Z59.6 The *Client* may, at any time prior to the settlement of an Indemnified Claim, give the *Contractor* notice that it is taking over the conduct of an Indemnified Claim. On receipt of the *Client's* notice the *Contractor*
- takes all the steps necessary to transfer the conduct of the Indemnified Claim to the *Client* and
  - co-operates with and gives reasonable assistance to the *Client* in defending the Indemnified Claim.
- Z59.7 Where the reason for the *Client's* notice is not due to the fault of the *Contractor* in conducting the Indemnified Claim, the *Contractor* is released from its indemnity to the *Client* in respect of it.

## **Z60 Tax Arrangements of Public Appointees**

- Z60.1 Where any Staff are liable to be taxed in the United Kingdom in respect of consideration received under this contract, the *Contractor* complies, and procures that the Staff comply, with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.
- Z60.2 Where any Staff are liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, the *Contractor* complies, and procures that the Staff comply, with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.
- Z60.3 The *Client* may, at any time during the term of this contract, request the *Contractor* to provide information to demonstrate either how any member of Staff is complying with clauses Z60.1 and Z60.2 or why those clauses do not apply to it.
- Z60.4 If the *Contractor* fails to provide information in response to a request under clause Z60.3
- within the period for reply or
  - which adequately demonstrates either how any member of Staff is complying with clauses Z60.1 and Z60.2 or why those clauses do not apply to it
- the *Client* may
- treat such failure as a substantial failure by the *Contractor* to comply with his obligations or
  - instruct the *Contractor* to replace the relevant member of Staff.
- Z60.5 If the *Client* receives or identifies information through any means which demonstrates that a member of Staff is not complying with clauses Z60.1 and Z60.2, the *Client* may treat such non-compliance as a substantial failure by the *Contractor* to comply with its obligations.
- Z60.6 The *Contractor* acknowledges that the *Client* may
- supply any information which it receives under clauses Z60.3 or Z60.5 or
  - advise the non-supply of information
- to the Commissioners of Her Majesty's Revenue & Customs for the purpose of the collection and management of revenue for which they are responsible.

Z61	Enhancements
Z61.2	<p>Before developing a proposed Enhancement, the <i>Contractor</i> prepares and submits to the <i>Project Manager</i> an outline business case setting out brief details of</p> <ul style="list-style-type: none"> <li>the proposed change to the design, materials used, methods of construction or maintenance or operational performance requirements,</li> <li>the expected long-term benefit to the <i>Client</i> if the proposed Enhancement is implemented,</li> <li>any significant risks to the successful development and implementation of the proposed Enhancement,</li> <li>any resulting change to the Prices or the <i>Client's</i> other costs and</li> </ul> <p>any incentive payment which the <i>Contractor</i> proposes should be paid to it if the proposed Enhancement is successfully implemented.</p>
Z61.3	<p>The Parties jointly review the <i>Contractor's</i> outline business case. The <i>Project Manager</i> assesses whether the Enhancement is likely to achieve the expected benefits and (based on that assessment) indicates to the <i>Contractor</i> whether the <i>Client</i> is likely to accept the proposed Enhancement.</p>
Z61.4	<p>The <i>Contractor</i> continually monitors the development of a proposed Enhancement to assess whether it is likely to achieve the expected benefits and takes all necessary steps to mitigate any costs and risks associated with its development.</p>
Z61.5	<p>The <i>Contractor</i> may propose to the <i>Project Manager</i> that trials, testing or a pilot project be carried out to assist with the development of a proposed Enhancement. If the <i>Project Manager</i> agrees, it may instruct the <i>Contractor</i> to develop a detailed specification for and/or to carry out the trials, testing or pilot project.</p>
Z61.6	<p>The <i>Contractor</i> may prepare and submit to the <i>Project Manager</i> a detailed business case for the proposed Enhancement. A detailed business case includes</p> <ul style="list-style-type: none"> <li>full details of the revised design, materials used, methods of construction or maintenance or operational performance requirements,</li> <li>full details of the expected long-term benefit to the <i>Client</i> if the Enhancement is implemented and the period over which the benefit is to be assessed,</li> <li>how any risks associated with the implementation of the Enhancement are to be allocated,</li> <li>a cost benefit analysis,</li> <li>any resulting change to the Prices,</li> <li>any expected change to the <i>Client's</i> other costs and the timescale over which the change will occur and</li> </ul> <p>the proposed Incentive Amount and a proposal as to how it is to be paid to the <i>Contractor</i> if the Enhancement is successfully implemented.</p>
Z61.7	<p>The <i>Client</i> decides whether (and if so on what terms) to implement the proposed Enhancement. The <i>Project Manager</i> instructs the implementation of an agreed Enhancement as a change to the Scope.</p>

- Z61.8 If the *Contractor* decides not to pursue a proposed Enhancement, the *Client* may take forward the proposal and arrange for a detailed business case to be prepared by Others. If so, the *Client* may use or adapt any material submitted by the *Contractor* as part of its proposal and outline business case.
- Z61.9 Other than where instructed by the *Project Manager* to carry out trials, testing or a pilot project under clause Z61.5, the *Contractor* is not entitled to payment for the design or development of an Enhancement (including the preparation of business cases), nor for the use or adaptation by the *Client* of the *Contractor's* proposal and outline business case under clause Z61.8.
- Z61.10 A change to the Scope instructed by the *Project Manager* under clause Z61.7 following the submission of a detailed business case by the *Contractor* is not a compensation event.
- Z61.11 If an Enhancement instructed by the *Project Manager* under clause Z61.7 following the submission of a detailed business case by the *Contractor* delivers the benefits described in the *Contractor's* detailed business case before the *defects date*, the *Client* pays to the *Contractor* the Incentive Amount. If such an Enhancement delivers part of the benefits so described, the *Client* pays to the *Contractor* a proportionate part (as assessed by the *Project Manager*) of the Incentive Amount.
- Z61.12 The Incentive Amount (or the proportionate part assessed by the *Project Manager*) is included in the final amount due under the contract, except that the Parties may agree to include it in an earlier amount due if the *Client* has actually received the full benefit of the Enhancement by an earlier date.
- Z61.13 In consideration of the *Client's* agreement to pay the Incentive Amount (or a proportionate part) to the *Contractor*, the *Contractor* assigns to the *Client* the Intellectual Property Rights in the Enhancement.
- Z61.14 Where an Enhancement is proposed jointly by the *Contractor* and one or more Community Partners, clause Z61 applies except that
- the outline and detailed business case are prepared jointly by the *Contractor* and the relevant Community Partners,
  - the detailed business case includes a proposal for how the Incentive Amount is to be shared between the *Contractor* and the relevant Community Partners,
  - the *Client* may instruct the *Contractor* or any Community Partner (or a combination of them) to develop a detailed specification for and/or to carry out any trial, testing or pilot project under clause Z61.5 and
- if the Enhancement delivers the benefits (or part of the benefits) described in the detailed business case before the *defects date*, the Incentive Amount (or the proportionate part of it) is shared among the *Contractor* and the relevant Community Partners in the proportions stated in the detailed business case.

## **Z62– Z102 Not Used**

### **Z103 Landscaping aftercare**

- Z103.1 The following apply after the *defects date* in relation to the Section comprising landscaping aftercare only

- (1) Until the Completion Date, the *Supervisor* notifies the *Contractor* of each Defect as soon as he finds it and the *Contractor* notifies the *Supervisor* of each Defect as soon as he finds it.
- (2) The *Contractor* corrects a notified Defect before the end of the *defect correction period*. The *defect correction period* begins when the Defect is notified.
- (3) If the *Contractor* is not given access in order to correct a notified Defect before the end of the *defect correction period*, the *Project Manager* assesses the cost to the *Contractor* of correcting the Defect and the *Contractor* pays this amount. The Scope is treated as having been changed to accept the Defect.
- (4) If landscaping aftercare is to be paid for as a series of lump sums each linked to an activity on the Activity Schedule, the date when each such activity is completed is an assessment date.

**Z105 Innovation – Title to Equipment**

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

**Z106 Extended liability period for Plant**

- Z106.1 If, prior to the issue of the Defects Certificate, the correction of a Defect in the Plant stated in the Contract Data requires the replacement of part of the Plant, the *Contractor* corrects any further Defect in the part which has been replaced during the *extended liability period*.
- Z106.2 The *Contractor* carries the risk of loss or damage caused by or resulting from work in correcting a Defect after the *defects date*.

**Z107 Not used**