

Collaborative Delivery Framework

Volume 1

Form of Tender
Form of Agreement
Contract Data Parts 1 & 2
PSC Schedule of Cost Components

Highways England Collaborative Delivery Framework

Forms of Tender and Agreement

November 2014

TENDER

To: The Highways Agency on behalf of the Secretary of State for Transport, [address of office receiving tender]

This tender relates to the following Lots under the Highways Agency's Collaborative Delivery Framework:

[list Lots for which a tender is submitted]

Having examined

- (1) the Conditions of Contract, being
 - the NEC3 Framework Contract (April 2013),
 - the NEC3 Professional Services Contract (April 2013) and the NEC3 Professional Services Short Contract (April 2013) for Time Charge Orders and
 - the NEC3 Engineering and Construction Contract (April 2013) (*not applicable to Lot 1*), the NEC3 Engineering and Construction Short Contract (April 2013) (*not applicable to Lot 1*) and the NEC3 Professional Services Contract (April 2013) for Package Orders,
- (2) the Contract Data,
- (3) the Framework Information,
- (4) the Scope and
- (5) the Works Information (*not applicable to Lot 1*)

We offer to

- (i) Provide the Services in conformity with the said Conditions of Contract, the Contract Data, the Framework Information and the Scope and
- (ii) Provide the Works in conformity with the said Conditions of Contract, the Contract Data, the Framework Information and the Works Information.

[Note: (ii) above does not apply to Lot 1]

The following completed documents forming part of our offer are also returned with this tender:

Volume 1

Quality Statement

Key People Submission, including the *key people schedule*

Volume 2 [N.B. separate Volume 2 for each Lot tendered for]

Methodology statement, risk register, programme and resource schedule for each sample Work Package

Health & Safety Submission

Volume 3

Behaviour information (Case Studies and Biographies) *[N.B. submitted separately prior to main tender submission]*

Volume 4

StART Written Responses *[Lots 3a and 3b only]*

Volume 5 *[N.B. separate Volume 5 for each Lot tendered for]*

Completed Quotation Information comprising

- Lot 1 – xxxxx
- Lot 2 – xxxxx
- Lot 3a – xxxxx
- Lot 3b - xxxxx

Completed Contract Data Part Two

- Lot 1 – Framework, PSC and PSSC only
- Lots 2, 3a and 3b – All Contract Data Part Two

Signed statement confirming that the minimum required insurances for the Lot(s) tendered for are, or can be put, in place *[see additional Contract Data for details of minimum requirements]*

Statement undertaking responsibility for dealing with insurance claims or parts of such claims within the excess amount

Completed Fair Payment Charter

Completed Anti Bribery Code of Conduct

Completed Anti Fraud Code of Conduct

Freedom of Information Act 2000 Withholding Statement

Description of proposed Information Assurance Solutions

Status of registration under the Construction Industry Scheme Regulations *(not applicable to Lot 1)*

Confirmation from the Parent Compan(y)(ies) stated in the invitation to tender letter that they will enter into a Parent Company Guarantee when requested *[if required]*

Details of arrangements put in place to enable SME participation in this framework

We agree to enter, when required, into an Agreement by Deed for the provision of works and/or services under this framework in the form which you have provided to us with the tender documentation. Unless and until such a formal Agreement is prepared, executed and delivered this tender, together with your written acceptance thereof in respect of any Lot tendered for, shall constitute a binding contract between us. We understand that you are not bound to accept the lowest, or any tender you may receive.

We certify that this tender is made in good faith and that we have not fixed or adjusted the amount of the tender by or under or in accordance with any agreement or

arrangement with any other person. We also certify that we have not, and we undertake that we will not:

- (i) Before the award of any contract:
 - (a) communicate to any person other than the Secretary of State or a person duly authorised by the Secretary of State in that behalf the amount or approximate amount of the tender or proposed tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain insurance premium quotations required for the preparation of the tender; nor
 - (b) enter into any agreement or arrangement with any person that he shall refrain from tendering or as to the amount of any tender to be submitted;
- (ii) Pay, give or offer or agree to pay or give any sum of money or other valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender, any act or thing of the sort described at (i) (a) or (b).

We also certify that the principles described in paragraphs (i) and (ii) above have been, or will be, brought to the attention of all subcontractors and suppliers providing services or materials in connection with this tender and any contracts entered into with such subcontractors and suppliers will be made on the basis of compliance with the above principles by all parties.

We agree that you may disclose information submitted by us as part of our tender or otherwise during this procurement more widely within Government for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes.

In this certificate, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract. The word "person" includes any persons and any body or association, corporate or unincorporate; and "any agreement or arrangement" includes any transaction, formal or informal and whether legally binding or not.

This offer is open for acceptance for a period of 180 days after the date of this tender.

We agree, if our tender is accepted, to provide a complete and unedited electronic version of our tender in a format suitable for publication on a public website within 20 days of acceptance.

Whilst this offer is made to the Secretary of State for Transport, we are aware that the Government is currently consulting on proposals to create a separate corporation or other entity (wholly owned by Government) to which the Secretary of State intends to transfer the functions, rights and liabilities currently undertaken by the Highways Agency. We accordingly acknowledge that:

- (i) this offer is capable of being accepted by the new entity when it is formed; and
- (ii) if the contract is initially awarded by the Secretary of State, it will include a provision permitting novation of the contract to the new entity when it assumes the Highways Agency's functions.

Dated this.....day of 20

Signature.....In capacity of
(eg Director, Secretary, etc)

Name
(in capitals)

Duly authorised to sign tenders for and on behalf of:

.....

Registered Address Tel no
.....Fax no
..... E-mail

[Form of Agreement – Lots 2, 3a and 3b]

THIS AGREEMENT BY DEED is made the [.....] day of [.....] [20..]

PARTIES:

1. **THE SECRETARY OF STATE FOR TRANSPORT** of Great Minster House, 33 Horseferry Road, London SW1P 4DR ("the *Employer*") acting on behalf of the Crown and
2. [.....] a company incorporated in and in accordance with the laws of [.....] having as its registered number [.....] and its registered office at [.....] ("the *Supplier*").

RECITALS

- (A) The *Employer* wishes to appoint a number of suppliers to provide works and/or services under the Highways Agency's Collaborative Delivery Framework and for that purpose has issued invitations to tender (including the Framework Information, Scope [and Works Information]) to, amongst others, the *Supplier*.
- (B) In response to the *Employer's* invitation to tender, the *Supplier* has submitted a tender to
 - Provide the Services in conformity with the Conditions of Contract, the Contract Data, the Framework Information and the Scope [and
 - Provide the Works in conformity with the Conditions of Contract, the Contract Data, the Framework Information and the Works Information].
- (C) The *Employer* has accepted the *Supplier's* tender and now wishes to appoint the *Supplier* on the terms of this Agreement.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement (including the Recitals) words and expressions have the same meaning given to them in the Conditions referred to below.
- 1.2. The Conditions are
 - the clauses of the NEC3 Framework Contract (April 2013) (including the Z clauses set out in Appendix A to the Contract Data),
 - the clauses of the NEC3 Professional Services Contract (April 2013) (including the Z clauses set out in Appendix B to the Contract Data) or the NEC3 Professional Services Short Contract (April 2013) (including the Z clauses set out in Appendix C to the Contract Data) for Time Charge Orders and
 - the clauses of the NEC3 Engineering and Construction Contract (April 2013) (including the Z clauses set out in Appendix D to the Contract Data), the NEC3 Engineering and Construction Short Contract (April 2013) (including the Z clauses set out in Appendix E to the Contract Data) or the NEC3 Professional Services Contract (April 2013) (including the Z clauses set out in Appendix B to the Contract Data) for

[Form of Agreement – Lot 1 only]

THIS AGREEMENT BY DEED is made the [.....] day of [.....] [20..]

PARTIES:

1. **THE SECRETARY OF STATE FOR TRANSPORT** of Great Minster House, 33 Horseferry Road, London SW1P 4DR ("the *Employer*") acting on behalf of the Crown and
2. [.....] a company incorporated in and in accordance with the laws of [.....] having as its registered number [.....] and its registered office at [.....] ("the *Supplier*").

RECITALS

- (A) The *Employer* wishes to appoint a number of suppliers to provide services under the Highways Agency's Collaborative Delivery Framework and for that purpose has issued invitations to tender (including the Framework Information and Scope) to, amongst others, the *Supplier*.
- (B) In response to the *Employer's* invitation to tender, the *Supplier* has submitted a tender to
 - Provide the Services in conformity with the Conditions of Contract, the Contract Data, the Framework Information and the Scope
- (C) The *Employer* has accepted the *Supplier's* tender and now wishes to appoint the *Supplier* on the terms of this Agreement.

OPERATIVE PROVISIONS

4. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement (including the Recitals) words and expressions have the same meaning given to them in the Conditions referred to below.
- 1.3. The Conditions are
 - the clauses of the NEC3 Framework Contract (April 2013) (including the Z clauses set out in Appendix A to the Contract Data),
 - the clauses of the NEC3 Professional Services Contract (April 2013) (including the Z clauses set out in Appendix B to the Contract Data) or the NEC3 Professional Services Short Contract (April 2013) (including the Z clauses set out in Appendix C to the Contract Data) for Time Charge Orders and
 - the NEC3 Professional Services Contract (April 2013) (including the Z clauses set out in Appendix B to the Contract Data) for Package Orders.

5. AGREEMENT

- 2.1. In consideration of the *Employer* making payment in accordance with the Conditions, the *Supplier* agrees to Provide the Services in accordance with this Agreement.

Highways England Collaborative Delivery Framework Contract

Contract Data

June 2015

-

Contract Data

Part one – Data provided by the *Employer*

The Data which will apply to all work under the Framework Contract is

The conditions of the framework contract are the clauses of the NEC3 Framework Contract (April 2013) and the Z clauses in Appendix A.

The *Employer* is Highways England Company Limited, Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ

The Framework Information is in the document entitled “Framework Information”.

The *scope* is works and professional engineering design services in connection with the delivery of the strategic investment programme and other works associated with the Highways Agency’s road network, as and when required.

The *selection procedure* is in the Framework Information.

The *quotation procedure* is in the Framework Information.

The *end date* is 208 weeks after the date of award of the framework contract unless extended in accordance with the framework contract.

The *extension period* is two years.

The following persons (in addition to the *Employer*) are entitled to issue Time Charge Orders and Package Orders under the framework contract

Other Executive Agencies of the Department for Transport

Other Central Government Departments and Executive Agencies

Transport for London

Local Highways Authorities in England

Welsh Assembly Government

Northern Ireland Assembly

Transport for Scotland

Any other supplier appointed to the Collaborative Delivery Framework

Any other Tier 1 supplier to the Highways Agency

The *Adjudicator* is the person chosen by the Parties from the list of Adjudicators published by the Institution of Civil Engineers.

The *language of this contract* is English.

The *law of the contract* is the law of England and Wales, subject to the jurisdiction of the Courts of England and Wales.

The *period for reply* is two weeks.

The *Adjudicator nominating body* is the Institution of Civil Engineers.

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 *Supplier* submits revised programmes at intervals no longer than one month.

The Quality Plan for the framework contract is provided within 4 weeks of the date of award of the framework contract.

The Quality Plan for a Package Contract is provided within 2 weeks of the *starting date* under the Package Contract.

The *currency of this contract* is the pound sterling (£).

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.

If Option X2 is stated to apply in the additional Contract Data for a Package Contract, the *law of the project* is the law of England and Wales, subject to the jurisdiction of the Courts of England and Wales.

The Data which will apply to all Time Charge Orders let under the NEC Professional Services Contract is

1 General The *conditions of contract* are the core clauses and the clauses for main Option E, dispute resolution Option W2 and secondary Options Y(UK)1 and Y(UK)2 of the NEC3 Professional Services Contract (April 2013), together with the clauses Z1 to Z21 in Appendix A and those of the secondary Options (X clauses) and the Z clauses in Appendix B as are listed in the additional Contract Data for the Time Charge Order.

The Scope is in the document entitled “Scope”.

The *period for retention* is 12 years following Completion or earlier termination.

3 Time The *Consultant* prepares forecasts of the total Time Charge and *expenses* at intervals no longer than one month.

If no programme is identified in part two of the additional Contract Data for the Time Charge Order, the *Consultant* is to submit a first programme for acceptance within 2 weeks of the *starting date*.

4 Quality The *defects date* 52 weeks after Completion of the whole of the *services*.

5 Payment The *staff rates* (for Lot 1) are the rates calculated using the method set out in the document entitled “Schedule of Cost Components”.

The *staff rates* (for Lots 2, 3a & 3b) are the rates set out in the attached staff rate card unless stated otherwise in the additional Contract Data for the Package Contract.

The *assessment interval* is one calendar month.

The *expenses* stated by the *Employer* are

item	amount
Travel and Subsistence	Payment in accordance with the <i>Employer's</i> scale
<i>[add any other reimbursable expenses]</i>	

The *exchange rates* are those published in the Financial Times on the assessment date when the payment in another currency is included in the Price for Services Provided to Date.

8 Indemnity, insurance and liability The *Consultant's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is unlimited unless stated otherwise in the additional Contract Data for the Time Charge Order.

Option X1	If Option X1 is stated in the additional Contract Data to apply to the Time Charge Order, the <i>index</i> is EARN03: Average Weekly Earnings by Industry “Not Seasonally Adjusted Average Weekly Earnings – Index figures including Bonuses, including Arrears” Sector M – Professional, Scientific and Technical Activities, Tab 5, Column K5EY published by the Office for National Statistics.	
Clause Z10.2	term	person or organization
	Z25.1 and Z25.2	A Subconsultant
	The provisions of Option Y(UK)1	Named Suppliers
Clause Z51.12	The <i>failure level</i> is 6	

The Data which will apply to all Time Charge Orders let under the NEC Professional Services Short Contract is

The *Client* is the *Employer*.

The *defects date* is 52 weeks after Completion.

The *assessment day* is the 21st day of each month.

All work is to be carried out on a time charge basis.

The period for payment is 14 days.

The *Consultant's* total liability to the *Client* for matters for which insurance is provided is unlimited unless stated otherwise in the additional Contract Data for the Time Charge Order.

The *Consultant's* total liability to the *Client* for all other matters is unlimited unless stated otherwise in the additional Contract Data for the Time Charge Order.

The *conditions of contract* are the NEC3 Professional Services Short Contract (April 2013), together with the clauses Z1 to Z21 in Appendix A and those of the Z clauses in Appendix C as are listed in the additional Contract Data for the Time Charge Order.

The expenses to be reimbursed by the *Client* are

item	amount
Travel and Subsistence	Payment in accordance with the <i>Employer's</i> scale
<i>[add any other reimbursable expenses]</i>	

The Scope is in the document entitled "Scope".

Clause Z10.2	term	person or organization
	The provisions of Z23	Named Suppliers
Clause Z51.12	The <i>failure level</i> is 6	

The Data which will apply to all Package Orders let under the NEC Engineering and Construction Contract is

1 General The *conditions of contract* are the core clauses and the clauses for dispute resolution Option W2 and secondary Options Y(UK)1 and Y(UK)2 of the NEC3 Engineering and Construction Contract (April 2013), together with the clauses Z1 to Z21 (and Z22 if so stated in the additional Contract Data for the Package Order) in Appendix A, the main Option stated in the additional Contract Data for the Package Order and those of the secondary Options (X clauses) and the Z clauses in Appendix D as are listed in the additional Contract Data for the Package Order.

- The Works Information is in the document entitled “Works Information”.

If the Package Order is let under main Option C, D or E, the *Contractor* prepares forecasts of Defined Cost for the *works* and (if clause Z54 is stated to apply in the additional Contract Data for the Package Order) of the Scheme Outturn Cost at intervals no longer than one month.

3 Time The *Employer* is not willing to take over the *works* before the Completion Date unless stated otherwise in the additional Contract Data for the Package Order.

If no programme is identified in part two of the additional Contract Data for the Package Order, the *Contractor* is to submit a first programme for acceptance within 2 weeks of the *starting date*.

4 Testing and Defects The *defects date* is 52 weeks after Completion of the whole of the *works*.

5 Payment The *assessment interval* is one calendar month.

If the Package Order is let under main Option C, D or E, the *exchange rates* are those published in the Financial Times on the assessment date when the payment in another currency is included in the Price for Work Done to Date.

Option X1 If Option X1 is stated in the additional Contract Data to apply to the Package Order

- the proportion used to calculate the Price Adjustment Factor is 1.0 linked to the ROCOS Resource Cost Index of Road Construction: Combined currently published on behalf of the Department for Business Innovation and Skills by the Building Cost Information Service of the Royal Institution of Chartered Surveyors and
- the *base date* for indices is the Contract Date.

Clause Z10.2	term	person or organization
	Z25.4 and Z25.5	A Subcontractor
	The provisions of Option Y(UK)1	Named Suppliers
Clause Z51.4	The <i>failure level</i> is 6	

The Data which will apply to all Package Orders let under the NEC Engineering and Construction Short Contract is

The *defects date* is 52 weeks after Completion.

The *assessment day* is the 21st day of each month.

The United Kingdom Housing Grants, Construction and Regeneration Act (1996, as amended) applies.

The *Contractor's* liability to the *Employer* for loss of or damage to the *Employer's* property is unlimited unless stated otherwise in the additional Contract Data for the Package Order.

The *conditions of contract* are the NEC3 Engineering and Construction Short Contract (April 2013), together with the clauses Z1 to Z21 in Appendix A and those of the Z clauses in Appendix E as are listed in the additional Contract Data for the Package Order.

Clause Z10.2	term	person or organization
	Z25.4 and Z25.5	A Subcontractor
	The provisions of Z23	Named Suppliers
Clause Z51.8	The <i>failure level</i> is 6	
	The Works Information is in the document entitled "Works Information".	

The Data which will apply to all Package Orders let under the NEC Professional Services Contract is

1 General The *conditions of contract* are the core clauses and the clauses for dispute resolution Option W2 and secondary Options Y(UK)1 and Y(UK)2 of the NEC3 Professional Services Contract (April 2013), together with the clauses Z1 to Z21 (and Z22 if so stated in the additional Contract Data for the Package Order) in Appendix A, the main Option stated in the additional Contract Data for the Package Order and those of the secondary Options (X clauses) and the Z clauses in Appendix B as are listed in the additional Contract Data for the Package Order.

The Scope is in the document entitled “Scope”.

The *period for retention* is 12 years following Completion or earlier termination.

3 Time If the Package Order is let under main Option A, the *Consultant* prepares forecasts of the total *expenses* at intervals no longer than one month.

If the Package Order is let under main Option C or E, the *Consultant* prepares forecasts of the total Time Charge and *expenses* at intervals no longer than one month.

If no programme is identified in part two of the additional Contract Data for the Package Order, the *Consultant* is to submit a first programme for acceptance within 2 weeks of the *starting date*.

4 Quality The *defects date* is 52 weeks after Completion of the whole of the *services*.

5 Payment The *staff rates* (for Lot 1) are the rates calculated using the method set out in the document entitled “Schedule of Cost Components”.

The *staff rates* (for Lots 2, 3a & 3b) are the rates set out in the attached staff rate card unless stated otherwise in the additional Contract Data for the Package Contract.

The *assessment interval* is one calendar month.

The *expenses* stated by the *Employer* are

item	amount
Travel and Subsistence	Payment in accordance with the <i>Employer’s</i> scale
<i>[add any other reimbursable expenses]</i>	

The *exchange rates* are those published in the Financial Times on the

assessment date when the payment in another currency is included in the Price for Services Provided to Date.

8 Indemnity, insurance and liability

The *Consultant's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is unlimited unless stated otherwise in the additional Contract Data for the Package Order.

Option X1

If Option X1 is stated in the additional Contract Data to apply to the Package Order, the *index* is EARN03: Average Weekly Earnings by Industry "Not Seasonally Adjusted Average Weekly Earnings – Index figures including Bonuses, including Arrears" Sector M – Professional, Scientific and Technical Activities, Tab 5, Column K5EY published by the Office for National Statistics.

Clause Z10.2

term

person or organization

Z25.1 and Z25.2

A Subconsultant

The provisions of Option Y(UK)1

Named Suppliers

Clause Z51.12

The *failure level* is 6

Appendix A

Framework Contract - Z clauses

[No further Z clauses or other changes to the conditions of contract should be included unless agreed by the contract policy owner]

Clause Z1 Additional definitions

Z1.1 A Package Contract is a contract for works or services to be carried out pursuant to a Time Charge Order or a Package Order.

Z1.2 A Subcontractor is a person or organisation who has a contract with the *Supplier* to provide works or services or to supply plant, materials or equipment necessary for performance of the *Supplier's* obligations under any Package Contract.

Z1.3 In this clause Z1.3 and in any Package Contract in which the term is used, "Consortium Member" is an organisation which is a member of the consortium comprising the *Supplier*, whether as a participant in a non-integrated joint venture or a shareholder in a limited company. Where two or more Consortium Members comprise the *Supplier*

- each Consortium Member is jointly and severally liable to the *Employer* for the performance of the *Supplier's* obligations under the framework agreement and/or any Package Contract,
- each Consortium Member will give not less than four weeks' notice to the *Employer* of any proposed termination of the joint venture arrangement,
- if the joint venture arrangement is terminated for any reason, the *Employer* may
 - terminate the framework contract with immediate effect and
 - treat such termination as a substantial failure by the *Supplier* to comply with his obligations under any Package Contract,
- clause Z12.1 is amended so that any Tax Non-Compliance by a Consortium Member is treated as a Tax Non-Compliance by the *Supplier* and
- clause Z18.1 is amended so that
 - a Change of Control,
 - a material change in the ownership of shares in or
 - a change in the name or status ofa Consortium Member is treated as a change relating to the *Supplier*.

Z1.4 An amount due under the framework contract or any Package 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.

Clause Z2 Corrupt practices

Z2.1 The *Supplier* does not

- offer or give to any person in the service of the *Employer* any gift or consideration of any kind as an inducement or reward in relation to the obtaining or execution of the framework contract, any Package Contract or any other contract with the *Employer* or for showing favour or disfavour to any person in relation to the framework contract, any Package Contract or any other contract with the *Employer* or
- enter into the framework contract, any Package Contract or any other contract with the *Employer* if, in connection with such contract, commission has been paid or an agreement for the payment of commission has been made by him or on his behalf or to his knowledge.

Z2.2 If the *Supplier* breaches clause Z2.1, the *Employer* may

- terminate the framework contract with immediate effect and
- treat such breach as a substantial failure by the *Supplier* to comply with his obligations under any Package Contract.

Clause Z3 Disclosure of information

Z3.1 The *Supplier* acknowledges that the *Employer* may receive Disclosure Requests and that the *Employer* may be obliged (subject to the application of any relevant exemption and, where applicable, the public interest test) to disclose information (including commercially sensitive information) pursuant to a Disclosure Request. Where practicable, the *Employer* consults with the *Supplier* before doing so in accordance with the relevant Code of Practice. The *Supplier* uses its best endeavours to respond to any such consultation promptly and within any deadline set by the *Employer* and acknowledges that it is for the *Employer* to determine whether or not such information should be disclosed.

Z3.2 When requested to do so by the *Employer*, the *Supplier* promptly provides information in its possession relating to the framework contract or any Package Contract and assists and co-operates with the *Employer* to enable the *Employer* to respond to a Disclosure Request within the time limit set out in the relevant legislation.

Z3.3 The *Supplier* promptly passes any Disclosure Request which it receives to the *Employer*. The *Supplier* does not respond directly to a Disclosure Request unless instructed to do so by the *Employer*.

Z3.4 A Disclosure Request is a request for information relating to the framework contract or any Package Contract received by the *Employer* pursuant to the Freedom of Information Act 2000, the

Environmental Information Regulations 2004 or otherwise.

- Z3.5 The *Supplier* acknowledges that the *Employer* is obliged to publish the provisions of the framework contract and all Package Contracts in accordance with the Cabinet Office Efficiency Reform Group Procurement Policy Note entitled “*Published guidance on implementing requirements for greater transparency in central Government procurement and contracting*” (Information Note 02/11 dated 18 January 2011, or any later revision), except to the extent that any information in it is exempt from disclosure pursuant to the Freedom of Information Act 2000. The *Employer* consults with the *Supplier* before deciding whether information is exempt, but the *Supplier* acknowledges that the *Employer* has the final decision. The *Supplier* co-operates with and assists the *Employer* to publish the framework contract and all Package Contracts in accordance with the *Employer's* obligation.

Clause Z4 Official Secrets Acts

- Z4.1 The Official Secrets Act 1989 applies to the framework contract from the date of award of the framework contract until all the works and services to be carried out under all Package Contracts have been completed.
- Z4.2 The *Supplier* notifies his employees and Subcontractors of their duties under the Official Secrets Act 1989.
- Z4.3 If the *Supplier* breaches clause Z4.2, the *Employer* may terminate the framework contract with immediate effect and treat such breach as a substantial failure by the *Supplier* to comply with his obligations under any Package Contract.
- Z4.4 The *Supplier* complies with the staff vetting and training requirements stated in the *scope*.

Clause Z5 Data protection

- Z5.1 In this clause Z5
the Data Protection Acts are the Data Protection Act 1998 (as amended) and any other laws or regulations relating to privacy or personal data and
- Personal Data is information collected by the *Supplier* on behalf of the *Employer* in relation to the framework contract or any Package Contract, which relates to living individuals who can be identified
- from that information or
 - from that information combined with other details in (or likely to come into) the possession of the *Employer*.
- Z5.2 For the purposes of the framework contract or any Package Contract

and the Data Protection Acts

the *Employer* is the Data Controller and

the *Supplier* is the Data Processor.

Z5.3 The *Supplier* processes the Personal Data in accordance with (and so as not to put the *Employer* in breach of) the Data Protection Acts and only to the extent necessary for the purpose of performing its obligations under the framework contract or any Package Contract.

Z5.4 The *Supplier* has in place for as long as it holds the Personal Data

- appropriate technical and organisational measures (having regard to the nature of the Personal Data) to protect the Personal 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 Personal Data or to any equipment used to process the Personal Data.

Z5.5 The *Supplier* immediately notifies the *Employer* if it receives

- a request from any person whose Personal Data it holds to access his Personal Data or
- a complaint or request relating to the *Employer's* obligations under the Data Protection Acts.

Z5.6 The *Supplier* assists and co-operates with the *Employer* in relation to any complaint or request received, including

- providing full details of the complaint or request,
- complying with the request within the time limits set out in the Data Protection Acts and in accordance with the instructions of the *Employer* and
- promptly providing the *Employer* with any Personal Data and other information requested by him.

Z5.7 The *Supplier* complies with the requirements of the *Employer* in relation to the storage, dispatch and disposal of Personal Data in any form or medium.

Z5.8 The *Supplier* immediately notifies the *Employer* on becoming aware of any breach of this clause or of the Data Protection Acts.

Z5.9 The *Supplier* does not process Personal Data outside the European Economic Area without the agreement of the *Employer*. Where the *Employer* agrees, the *Supplier* complies with the instructions of the *Employer* and provides an adequate level of protection to any Personal Data in accordance with the eighth data protection principle set out in Schedule 1 to the Data Protection Act 1998.

Clause Z6 Confidentiality

Z6.1 The *Supplier* keeps (and ensures that its employees keep)

confidential and does not

- disclose to any person the terms of the framework contract or any Package Contract nor
- use (except for the purposes of the framework contract or any Package Contract) or disclose to any person any confidential or proprietary information provided to or acquired by the *Supplier* in the course of performing its obligations under the framework contract or any Package Contract

except that the *Supplier* may disclose information

- to its legal or other professional advisers,
- to its employees and Subcontractors as needed to enable the *Supplier* to perform its obligations,
- 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 *Supplier* consults the *Employer* and takes full account of the *Employer'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 *Supplier* or
- with the consent of the *Employer*.

Clause Z7 Conflict of interest

Z7.1 The *Supplier* does not take an action which would cause a conflict of interest to arise in connection with the framework contract or any Package Contract. The *Supplier* notifies the *Employer* if there is any uncertainty about whether a conflict of interest may exist or arise.

Clause Z8 Records and Audit Access

Z8.1 The *Supplier* keeps documents and information obtained or prepared by the *Supplier* or any Subcontractor in connection with the framework contract or any Package Contract for a period of 12 years after the *end date*.

Z8.2 The *Supplier* permits the *Employer* and the Comptroller and Auditor General to examine documents held or controlled by the *Supplier* or any Subcontractor.

Z8.3 The *Supplier* provides such oral or written explanations as the *Employer* or the Comptroller and Auditor General considers necessary.

Z8.4 This clause does not constitute a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the

examination, certification or inspection of the accounts of the *Supplier*.

Clause Z9 Extension of the *end date*

- Z9.1 The *Employer* may notify the *Supplier* that the *end date* is to be extended by the *extension period* or such lesser period as the *Employer* may specify.
- Z9.2 If the *end date* is extended by less than the *extension period*, the *Employer* may further extend the *end date* so that the total period of extension does not exceed the *extension period*.
- Z9.3 The *Employer* does not notify the *Supplier* of any extension of the *end date* later than the *end date*.

Clause Z10 Third Party Rights

- Z10.1 The people or organisations named in the Contract Data may issue Time Charge Orders, instructions to submit quotations for Package Orders and Package Orders in accordance with the framework contract. The provisions of the framework contract apply to Time Charge Orders, instructions and Package Orders issued by these people or organisations as if they were the *Employer*.
- Z10.2 The people or organisations named in the Contract Data may enforce the terms of a Package Contract stated in the Contract Data for the Package Contract.
- Z10.3 Otherwise a person or organisation who is not a Party has no right to enforce any term of the framework contract or a Package Contract under the Contracts (Rights of Third Parties) Act 1999.

Clause Z11 *Employer's Codes of Conduct*

- Z11.1 The *Supplier* complies (and ensures that any person employed by him or acting on his behalf complies) with the *Employer's* Anti Bribery Code of Conduct and Anti Fraud Code of Conduct, collectively "the Codes". The *Supplier* complies with the Codes until the *end date* and with
- paragraph 4 of the *Employer's* Anti Bribery Code of Conduct and
 - paragraph 3 of the *Employer's* Anti Fraud Code of Conduct until 12 years after the *end date*.
- Z11.2 If the *Supplier* breaches clause Z11.1, the *Employer* may
- terminate the framework contract with immediate effect and
 - treat such breach as a substantial failure by the *Supplier* to comply with his obligations under any Package Contract.

Clause Z12 Tax Non-Compliance

Z12.1 In this clause Z12

Tax Non-Compliance is where a tax return submitted by the *Supplier* 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 *Supplier* 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 *Supplier* was involved which was (or should have been) notified to a Relevant Tax Authority under the DOTAS or a similar regime or
- gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax-related offences which is not spent at the date of award of the framework contract or to a civil penalty for fraud or evasion.

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).

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.

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

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

Z12.2 The *Supplier* warrants that it has notified the *Employer* of any Tax Non-Compliance or any litigation in which it is involved relating to any Tax Non-Compliance prior to the date of award of the framework contract.

Z12.3 The *Supplier* notifies the *Employer* within one week of any Tax Non-Compliance occurring after the date of award of the framework contract and provides details of

- the steps the *Supplier* 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 *Employer*.

Z12.4 If

- the warranty given by the *Supplier* under clause Z12.2 is untrue,
 - the *Supplier* fails to notify the *Employer* of a Tax Non-Compliance or
 - the *Employer* decides that any mitigating factors notified by the *Supplier* are unacceptable
- the *Employer* may
- terminate the framework contract with immediate effect or
 - treat such breach as a substantial failure by the *Supplier* to comply with his obligations under any Package Contract.

Clause Z13 Intellectual Property Rights

Z13.1 Intellectual Property Rights are any current and future legal and equitable interests in patents, trade marks, design rights, copyright, know-how and other similar rights, whether or not registered or capable of registration..

Z13.2 All Intellectual Property Rights in documents created by or on behalf of the *Employer* in connection with the framework contract or any Package Contract are the property of the *Employer*.

Z13.3 The *Supplier* assigns to the *Employer* all present and future Intellectual Property Rights in all documents created by the *Supplier* or any Subcontractor in performing its obligations under the framework contract or any Package Contract. The *Supplier* obtains from a Subcontractor equivalent rights over the material prepared by the Subcontractor.

Clause Z14 Recovery of sums due from *Supplier*

Z14.1 Where, under the framework contract or any Package Contract, any sum of money is recoverable from or payable by the *Supplier*, such sum may be deducted from or reduced by the amount of any sum then due or which at any time after may become due to the *Supplier* under the framework contract or any other contract with the *Employer* {DoV1}.

Clause Z15 Assignment

Z15.1 The *Supplier* does not assign, transfer or charge the benefit of any Package Contract or any part of it or any benefit or interest under it without the prior agreement of the *Employer*.

Z15.2 If requested by the *Employer*, the *Supplier* executes a novation agreement (in the form set out in the Framework Information or such other form as the *Employer* may reasonably require) transferring the

benefit and burden of this framework contract or any Package Contract to

- a replacement organisation established to take over the Employer's functions or part of them,
- another public body or organisation exercising similar functions,
- Department or Office of Her Majesty's Government or
- a local authority.

{DoV1}.

Clause Z16 Discrimination

Z16.1 The *Supplier* does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Equality Act 2010, any predecessor statute of it or any amendment or re-enactment of it from time to time (the "Discrimination Acts").

Z16.2 In performing its obligations under the framework contract or any Package Contract, the *Supplier* co-operates with and assists the *Employer* to satisfy its duty under the Discrimination Acts to eliminate unlawful discrimination and to promote equality of opportunity between persons of different racial groups and between disabled people and other people.

Z16.3 Where any employee or Subcontractor employed by the *Supplier* is required to carry out any activity on the *Employer's* premises or alongside the *Employer's* employees on any other premises, the *Supplier* ensures that each such employee or Subcontractor complies with the *Employer's* employment policies and codes of practice relating to discrimination and equal opportunities.

Z16.4 The *Supplier* notifies the *Employer* in writing as soon as he becomes aware of any investigation or proceedings brought against the *Supplier* under the Discrimination Acts in connection with the framework contract or any Package Contract and

- provides any information requested by the investigating body, court or tribunal in the timescale allotted,
- attends (and permits a representative from the *Employer* to attend) any associated meetings,
- promptly allows access to any relevant documents and information and
- co-operates fully and promptly with the investigatory body, court or tribunal.

Z16.5 The *Supplier* indemnifies the *Employer* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Employer* arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the *Supplier*.

Z16.6 The *Supplier* includes in the conditions of contract for each Subcontractor obligations substantially similar to those set out above.

Clause Z17 Quality management system

Z17.1 In this clause Z17

- Package QM Total is the number of Quality Management Points in effect at any time under a Package Contract,
- Quality Statement is the statement identified in the Contract Data detailing the *Supplier's* proposals for meeting the *Employer's* objectives for the framework contract,
- Quality Plans are the quality plans prepared by the *Supplier* for the framework contract and each Package Contract in accordance with BS EN ISO 9000:2008 and
- Quality Management Points are points accrued by the *Supplier* in accordance with the Quality Table.

Z17.2 The *Supplier* performs its obligations under the framework contract and any Package Contract under a quality management system which

- complies with BS EN ISO 9001:2008 (or the current standard that replaces it),
- incorporates an environmental management system consistent with ISO 14001 (or the current standard that replaces it),
- has third party certification from an accreditation body approved by the applicable national member of the European Co-operation on Accreditation or is operating in preparation for accreditation within 12 months of the date of award of the framework contract and
- complies with good industry practice.

Z17.3 The Quality Plan for the framework contract incorporates the Quality Statement and is sufficiently detailed to demonstrate how the *Supplier* will achieve each of the commitments in the Quality Statement and meet the *Employer's* objectives for the framework contract. The Quality Plan for a Package Contract is consistent with the Quality Plan for the framework contract and is sufficiently detailed to demonstrate how the *Supplier* will meet the *Employer's* objectives for the Package Contract.

Z17.4 The *Employer* notifies the *Supplier* if he considers that a Quality Plan does not comply with the requirements of the framework contract or the Package Contract. Following such notification the *Supplier* reviews the Quality Plan and reports to the *Employer* setting out his proposed changes. If the *Employer* accepts the proposals, the Quality Plan is changed.

Z17.5 The *Employer* may carry out audits of the *Supplier's* quality

management system from time to time. The *Supplier* allows access to any place where he or any Subcontractor carries out any work that relates to the framework contract or any Package Contract at all reasonable times for the *Employer* to carry out audits, to inspect work and materials and generally to investigate whether the *Supplier* is performing his obligations under the framework contract or the Package Contract. The *Supplier* provides all facilities necessary to allow such audits and inspections to be carried out.

Z17.6 If the *Supplier* fails to comply with his quality management system, the *Supplier* accrues Quality Management Points from the date when the failure is identified in accordance with the Quality Table. Quality Management Points accrue for the failures listed on the Quality Table whether arising from an audit by the *Supplier*, the *Employer* or the relevant accreditation body. The number of Quality Management Points is reduced in accordance with the Quality Table.

Z17.7 The *Supplier* maintains a register of

- the number of Quality Management Points in effect under each Package Contract and
- the total number of Quality Management Points in effect under the framework contract.

Each register shows when Quality Management Points accrue and are removed.

Z17.8 If at any time the Package QM Total under a Package Contract is more than 25 points, the *Supplier* and the *Employer* meet within one week to consider ways of reducing the Package QM Total to 25 or less and to avoid accruing further Quality Management Points under the Package Contract. The *Supplier* submits a report to the *Employer* within one week of the meeting setting out

- the actions agreed at the meeting and
- any other actions which the *Supplier* proposes to take immediately to reduce the Package QM Total to 25 or less and to avoid accruing further Quality Management Points under the Package Contract.

Z17.9 If the *Employer* does not accept the *Supplier's* proposals or the *Supplier* does not take the agreed actions, the *Employer* serves a quality warning notice on the *Supplier*. Within one week of receipt of the quality warning notice, the *Supplier* submits a report to the *Employer* setting out the actions which the *Supplier* has taken and what further or alternative actions he proposes to take to reduce the Package QM Total to 25 or less.

Z17.10 Until the Package QM Total is reduced to 25 or less, the *Supplier* takes the actions detailed in his reports and submits weekly update reports to the *Employer* setting out the actions he has taken, the results of those actions and the actions which are still to be taken by him.

Z17.11 Failure to take actions to reduce the Package QM Total to 25 or less is treated as a substantial failure by the *Supplier* to comply with his obligations under the Package Contract and entitles the *Employer* to terminate the framework contract with immediate effect.

Z17.12 The *Employer* may at any time

- add to or delete from the list of failures in the Quality Table or
- change the number of Quality Management Points or the period of effect for any failure in the Quality Table.

The *Employer* notifies the *Supplier* of any change to the Quality Table. The change takes effect from the date stated in the *Employer's* notification and applies to all Package Contracts not yet completed at that date, but a new failure will not apply retrospectively to things done or not done by the *Supplier* before that date.

Quality Table

Failure	Quality Management Points	Period of effect
Failure to appoint a Quality Manager or to replace the Quality Manager when instructed by the <i>Employer</i>	25	Until audit confirms that failure corrected
Failure to have a complete Quality Plan in place and operating	25	Until audit confirms that Quality Plan complete and operating
A Quality Plan does not comply with the requirements of the framework contract or Package Contract	10 per failure	Until audit confirms that Quality Plan complies
Failure to identify a Non-Conformity and raise a Non-Conformity report	5 per Non-Conformity	6 months
Failure to raise a corrective action report and to correct a Non-Conformity in the time and manner set out in the corrective action report (see note 1 below)	10 per failure	Until failure corrected

Failure to correct Quality Plan in the time and manner set out in a corrective action report <i>(see note 1 below)</i>	10 per failure	Until failure corrected
Failure to implement recommendations in audit report <i>(see note 1 below)</i>	5 per recommendation	Until audit confirms that recommendation implemented
Failure to carry out internal audit	15 per audit	Until audit carried out
Carrying out work without release of hold point	10 per item	6 months
Failure to make records available for inspection by the <i>Employer</i>	10 per failure	Until the records are made available
Failure to allow access for <i>Employer</i> audits	10 per failure	Until access is allowed
Failure by <i>Supplier</i> to accrue Quality Management Points that should have been accrued	The number of Points that should have been accrued	The period applicable to the failure that should have accrued Points
	plus an additional number of Points equivalent to the Points that should have been accrued	6 months from the date when the additional Points were accrued
Note 1: For these failures additional Points are accrued at each audit until an audit confirms that rectification/correction/implementation/action has taken place.		

Clause Z18 Merger, take-over or change of control

Z18.1 In this clause Z18 Change of Control is an event where any single person, or group of persons acting in concert, acquires control of the *Supplier* or any direct or indirect interest in the relevant share capital of the *Supplier*, as a result of which that person or group of persons has a direct or indirect interest in more than 25% of the relevant share capital of the *Supplier*.

Z18.2 The *Supplier* notifies the *Employer* if a Change of Control of the *Supplier* has occurred or is expected to occur.

Z18.3 If the Change of Control will not allow the *Supplier* to perform its

obligations under the framework contract or any Package Contract, the *Employer* may

- terminate the framework contract with immediate effect or
- treat the Change of Control as a substantial failure by the *Supplier* to comply with his obligations under any Package Contract.

Z18.4 The *Supplier* notifies the *Employer* immediately of

- any material change to the direct or indirect legal or beneficial ownership of any shareholding in the *Supplier*. A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the *Supplier*, or
- any material change in the composition of the *Supplier*. A change in the composition of the *Supplier* is material if it directly or indirectly affects the performance of the framework contract or any Package Contract by the *Supplier*.

Z18.5 The *Supplier* notifies the *Employer* of any change or proposed change in the name or status of the *Supplier*.

Clause Z19 Euro (€) functionality

Z19.1 The *Supplier* performs its obligations under the framework contract and any Package Contract

- so that the *Employer* is not prejudiced by the implementation of the Euro,
- in such a way as to comply with all legal requirements applicable to the Euro in the United Kingdom, including the rules on conversion and rounding set out in the EC Regulation 1103/97,
- so that they are capable of utilising all symbols and codes adopted by the EU Commission in relation to the Euro and
- in accordance with the *Employer's* requirements both for Sterling and for the Euro.

Clause Z20 Appointment of Adjudicator

Z20.1 The NEC3 Adjudicator's Contract (April 2013) 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."

Clause Z21 Reporting: Small and Medium Enterprises

Z21.1 In this clause Z21 SME is

- a Subcontractor or
- a subcontractor to a Subcontractor
- and
- is autonomous,
- is a European Union enterprise not owned or controlled by a non-European Union parent company,
- for a medium sized enterprise (medium class) employs fewer than 250 staff, has turnover no greater than 50 million Euros and does not have a balance sheet greater than 43 million Euros,
- for a small sized enterprise (small class) employs fewer than 50 staff, has turnover no greater than 10 million Euros and does not have a balance sheet greater than 10 million Euros and
- for a micro sized enterprise (micro class) employs fewer than 10 staff, has turnover no greater than 2 million Euros and does not have a balance sheet greater than 2 million Euros.

Z21.2 For each SME employed on any Package Contract, the *Supplier* reports to the Employer each quarter from the starting date until completion of the *works* or *services* under the Package Contract and at the *defects date*

- the name of the SME,
- the class of SME (medium, small or micro),
- the value of the contract undertaken by the SME,
- the monthly amounts paid to the SME in the quarter and
- the aggregated value paid to the SME since the *starting date*.

Z21.3 The *Supplier* acknowledges that the *Employer* may

- publish the information supplied under clause Z21.2, along with the *Supplier's* name and the name of the framework contract or the Package Contract and
- pass the information supplied under this clause Z21 to any Government Department who may then publish it along with the names of the SMEs, the *Supplier's* name and the name of the framework contract or the Package Contract.

Z21.4 The *Supplier* ensures that the conditions of contract for each Subcontractor who is an SME include

- a term allowing the *Employer* to publish the information supplied under Z21.2 and
- obligations substantially similar to those set out in this clause

Z21.

Z21.5 The *Supplier* further ensures that the conditions of contract for each Subcontractor include a requirement that the conditions of contract for any subcontractor engaged by the Subcontractor who is an SME include obligations substantially similar to those set out in Z21.4.

Clause Z22 Programme Level Incentive Fund

Z22.1 In this clause Z22

- Programme is a programme of Package Contracts to which the *Employer* decides a Programme Level Incentive Fund will apply.
- Programme Level Incentive Fund is the fund accumulated for a Programme in accordance with the Programme Level Incentive Schedule, comprising for each Package Contract included in the Programme provided that the Programme Level Incentive Fund can never be less than zero {DoV1}
- the percentage stated in the Programme Level Incentive Schedule of any reduction in the Scheme Budget achieved during the period prior to the commencement of construction and
- the proportion determined in accordance with the Programme Level Incentive Schedule of any amount by which the Scheme Outturn Cost is less than the final Scheme Budget
- less
- the *Employer's* share of any amount by which the Scheme Outturn Cost is greater than the final Scheme Budget
{DoV1}
- Programme Level Incentive Schedule is the schedule of that name included in the Contract Data.

Z22.2 The *Employer* assesses the amount to be paid to the *Supplier* from the Programme Level Incentive Fund at the times stated in the Programme Level Incentive Schedule. The amount included in interim assessments is 50% of the *Supplier's* share (as stated in the Programme Level Incentive Schedule) of the lower of

- the current value and
- the *Employer's* current forecast of the final value

of the Programme Level Incentive Fund, less any amounts previously paid. The amount included in the final assessment is the *Supplier's* share of the final value of the Programme Level Incentive Fund, less any amounts previously paid. If an assessment produces a negative amount, the *Supplier* pays that amount to the *Employer*. Otherwise the *Employer* pays the amount assessed to the *Supplier*.

Z22.3 The date on which an amount to be paid becomes due is seven days

after the date of the *Employer's* assessment. The final date for payment is 14 days after the date on which payment becomes due.

Z22.4 If a payment is made late, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made. Interest is calculated on a daily basis at the *interest rate* and is compounded annually.

Z22.5 The *Employer* may (in its sole discretion) decide to make a payment to the *Supplier* on account of the *Supplier's* share of the Programme Level Incentive Fund before the amount to be paid to the *Supplier* from the Programme Level Incentive Fund has been determined. Any payment made is not taken into account when assessing the *Supplier's* share of the Programme Level Incentive Fund. {DoV1}

Appendix B

Professional Services Contract – additional Z clauses

[Clauses Z1 to Z21 apply to every Time Charge Order and Package Order and Z22 applies to a Package Order if stated in the additional Contract Data for the Package Order. In addition, those of the following additional Z clauses listed in the additional Contract Data will apply to each Time Charge Order or Package Order as applicable. No further Z clauses or other changes to the conditions of contract should be included unless agreed by the contract policy owner

[Clause Z54 applies only to Package Orders to which the CDF Incentivisation Model applies.]

Clause Z23 Project Bank Account

Z23.2 Clause Y1.6 is amended by inserting the following after the second sentence:

“The *Employer* may propose that a Supplier is added to the Named Suppliers. The *Consultant* accepts the proposal if the addition of the Supplier to the Named Suppliers is practicable.”

Z23.3 The *Employer* may notify the *Consultant* that payments under this contract will no longer be made using the Project Bank Account. This notice is a compensation event. Within one week of the *Employer's* notice, the *Consultant* notifies the Named Suppliers that the Project Bank Account is no longer to be used and proposes an alternative method to ensure that the Named Suppliers receive payments in accordance with their contracts.

Clause Z24 Changes to Prices

Z24.1 The Parties may at any time agree a reduction to the percentage for business overheads and profits stated in the Schedule of Cost Components.

Z24.3 The reduced percentage applies to any services performed after the reduction is agreed.

Z24.4 If the *Consultant* does not agree a reduction requested by the *Employer*, the *Employer* may terminate the *Consultant's* obligation to Provide the Services by notifying the *Consultant*.

Clause Z25 Fair payment

Z25.1 The *Consultant* assesses the amount due to a Subconsultant without taking into account the amount assessed under this contract.

Z25.2 The *Consultant* includes in the contract with each Subconsultant

- a period for payment of the amount due to the Subconsultant not greater than 19 days after the date on which payment becomes due under this contract. The amount due includes,

but is not limited to, payment for work which the Subconsultant has completed from the previous assessment date up to the current assessment date in this contract,

- a provision requiring the Subconsultant 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 this contract and
- a provision requiring the Subconsultant to assess the amount due to a subsubconsultant without taking into account the amount paid by the *Consultant*.

Z25.3 The *Consultant* notifies non-compliance with the timescales for payment through the Efficiency and Reform Group Supplier Feedback Service. The *Consultant* includes this provision in each subcontract, and requires Subconsultants to include the same provision in each subsubcontract.

Clause Z26 Records (SME Reporting)

Z26.1 The Consultant keeps accounts and records of his Time Charge and expenses and allows the Employer to inspect them at any time within working hours.

[Applies to Package Orders let under Option A only]

Clause Z27 Parent Company Guarantee

[This replaces secondary option X4, which must not be used]

Z27.2 If required by the *Employer*, the *Consultant* gives to the *Employer* a parent company guarantee of the *Consultant's* performance in the form set out in the Scope. If the guarantee was not given by the Contract Date, it is given to the *Employer* within four weeks of the Contract Date. Guarantees are provided for

- a standalone company – from its parent company,
- an unincorporated JV (“more than one party”) – from the parent company of each Consortium Member or
- an incorporated JV – from the parent company of each Consortium Member.

In all cases it is for the *Employer* to decide (in its discretion) whether it will accept a guarantee from a company other than the ultimate holding company.

Clause Z31 Category Management

Z31.1 In this clause Z31

- Category Purchase Agreement is a framework agreement between the *Employer* and a Category Supplier for the bulk purchase of materials, works or services for use across the *Employer's* business, under which the *Consultant* (and other

- consultants or contractors) may enter into contracts with the Category Supplier and
- Category Supplier is a supplier who enters into a Category Purchase Agreement with the *Employer*.

Z31.2 When instructed by the *Employer*, the *Consultant* enters into a contract with a Category Supplier pursuant to a Category Purchase Agreement for the purchase of materials, works or services needed to Provide the Services as identified in the *Employer's* instruction. The conditions of contract between the *Consultant* and a Category Supplier are those set out in the Category Purchase Agreement and the *Consultant* does not change them unless the *Employer* agrees.

Z31.3 The *Consultant* remains responsible for Providing the Services and for the quality of any materials, works or services supplied by a Category Supplier as if he had supplied them himself.

Z31.4 The *Consultant* makes available to the *Employer* on request copies of all records and communications with Category Suppliers.

Z31.5 The *Consultant* co-operates with the *Employer* and any other consultants or contractors who enter into contracts with a Category Supplier in forecasting demand for materials, works or services to which a Category Purchase Agreement relates.

Z31.6 Prior to entering into a contract with a Category Supplier, the *Consultant* may request the *Employer's* agreement to use an alternative supplier if the *Consultant* considers that it will offer a saving to the *Employer*. The *Consultant* provides details of the alternative supplier and the expected saving with the request. The *Employer* (in his absolute discretion) decides whether to agree the request and notifies the *Consultant* of his decision.

Z31.7 This clause Z31 does not apply where the *Employer* is not a "contracting authority" (as that term is defined in the Public Contracts Regulations 2006 (as amended)).

Clause Z32 Payment of the *Consultant's* share

Z32.1 If, prior to Completion of the whole of the *services*, the Price for Services Provided to Date exceeds the total of the Prices, the *Employer* makes an assessment of the *Consultant's* share of the difference between the total of the Prices and the Price for Services Provided to Date at each assessment date. The total of the Prices includes the *Employer's* interim assessment of the changes to the Prices for a compensation event which has not been implemented at the assessment date.

[Applies to Package Orders let under Option C only]

Clause Z42 Joint ventures

Z42.1 Clause 90.1 of the *conditions of contract* is amended by inserting after “the other Party” in each of the second, third and fourth places where it appears the words “(or, in the case of the *Consultant*, any Consortium Member)”

Clause Z46 Payment for subcontracted services

Z46.1 In assessing the amount due at an assessment date, the Time Charge for services provided by a Subconsultant (other than a Named Supplier) is retained from the *Consultant* unless, at the assessment date, the *Consultant* has paid the Subconsultant for the services.

Z46.2 An amount retained is included in the amount due at the assessment date after the *Consultant* has paid the Subconsultant for the services.

Z46.3 When submitting an invoice, the *Consultant* demonstrates that payment has been made for the Time Charge included in the invoice in respect of services provided by a Subconsultant.

Clause Z47 Confidentiality

Z47.1 Clause 70.3 of the *conditions of contract* is deleted.

Clause Z51 Termination and omission of work

Z51.9 If the *Employer* instructs a change to the Scope which involves the omission of part of the *services*, the *Employer* may engage other people to carry out the part omitted. The instruction is assessed as a compensation event, except that if the instruction is given for insolvency or a default by the *Consultant*, the assessment includes a deduction of the forecast additional cost to the *Employer* of completing the *services*.

Z51.10 The following is added at the end of the first bullet point in clause 91.1 of the *conditions of contract*.

“unless instructed otherwise by the *Employer*”.

Z51.12 The following are treated as a substantial failure by the *Consultant* to comply with his obligations

- the *Consultant's* performance as measured in accordance with the current edition of the Highways Agency's Motivating Success Toolkit (or any replacement for it) is below the *failure level* or
- a key resource needed by the *Consultant* to Provide the Services is no longer available and the *Consultant* does not propose an alternative resource acceptable to the *Employer*.

Z51.13 The *Employer* may terminate the *Consultant's* obligation to Provide the Services by notifying the *Consultant* if the *Consultant's* financial capacity statement for this contract (as referred to in Annex 4 of the Framework Information) is inaccurate. The procedures followed and amounts due on termination are in accordance with clauses 91.1, 92.1 and 92.2.

Clause Z52 Termination by the *Employer*

Z52.1 The *Employer* may terminate the *Consultant's* obligation to Provide the Services for a reason not stated in this contract by notifying the *Consultant*.

Clause Z53 Insurances

Z53.1 The insurances provided by the *Consultant* comply with the additional requirements stated in the Scope.

Clause Z54 The *Consultant's* share

[*Clause Z54 must be used if clause Z22 is used.*]

Z54.6 In this clause Z54 and in clause Z22 (if used) {DoV1}

- Other Costs are costs incurred in relation to the heads of cost listed in the *schedule of other costs*,
- Performance Adjustment Schedule is the schedule identified in the Contract Data setting out aspects of performance by the

Consultant (and, where this contract forms part of a Programme, any other contractors and consultants engaged to perform work or services in relation to the Programme), target performance levels and the adjustments to be made to the *Consultant's* share by reference to actual performance against the target levels,

- Scheme Budget is the *scheme budget* or any later change to it notified by the *Employer* to the *Consultant* and
- Scheme Outturn Cost is the total of the final Price for Services Provided to Date and the final Other Costs.

Z54.7 Clause 54 of the *conditions of contract* is deleted and the following inserted

“54.1 The *Employer* assesses the *Consultant's* share of the difference between the Scheme Budget and the Scheme Outturn Cost. The difference is divided into increments falling within each of the *share ranges*. The limits of a *share range* are the Scheme Outturn Cost divided by the Scheme Budget expressed as a percentage. The *Consultant's* share equals the sum of the products of the increment within each *share range* and the corresponding *Consultant's share percentage*.

54.2 If the Scheme Outturn Cost is less than the Scheme Budget, the *Consultant* (subject to clause 54.3) is paid his share of the saving. If the Scheme Outturn Cost is greater than the Scheme Budget, the *Consultant* (subject to clause 54.4) pays his share of the excess.

54.3 The share paid to the *Consultant* is adjusted in accordance with the Performance Adjustment Schedule.

54.4 The share paid by the *Consultant* does not exceed 102% of the amount calculated by multiplying the Price for Services Provided to Date by the *staff profit percentage*.

54.5 If, prior to Completion of the whole of the *services*, the Scheme Outturn Cost already incurred exceeds the Scheme Budget, the *Employer* makes an assessment of the *Consultant's* share of the difference between the Scheme Budget and the Scheme Outturn Cost already incurred at each assessment date. The Scheme Budget includes the *Employer's* interim assessment of the changes to the Scheme Budget for a compensation event which has not been implemented at the assessment date. This share is included in the amount due to the *Consultant*.

54.6 The *Employer* assesses the *Consultant's* share when the final Scheme Outturn Cost has been assessed. His assessment uses the Scheme Outturn Cost, the final Scheme Budget and any adjustments to be made in accordance with the Performance Adjustment Schedule. This share is included in the final amount due.

54.10 In this clause Z54

- **Contractor** is the contractor appointed by the *Employer* under the Construction Contract,
- **Construction Contract** is the contract entered into between the *Employer* and the Contractor for the development and delivery of the works to which the *services* relate and
- **Notice to Proceed to Construction** is the notice issued by the *Employer* to the Contractor under the Construction Contract to proceed with the delivery of the works to which the *services* relate.

Z54.11 The *Employer*

- agrees with the *Consultant* the forecast Time Charge for the whole of the *services* (and any later changes to that forecast),
- notifies the *Consultant* of the total of the Prices under the Construction Contract (and any later changes to those Prices) within one week of the total or any changes being agreed or determined under the Construction Contract and
- agrees with the *Consultant* and the Contractor the forecast of Other Costs (excluding the total of the Prices under the Construction Contract) to be included in the Scheme Budget (and any later changes to that forecast).

The total of the amounts so agreed or notified is the Scheme Budget.

Z54.12 The *Employer* sends a copy of the Notice to Proceed to Construction to the *Consultant* within one week after it is issued.

Z54.13 If the Scheme Budget reduces during the period prior to the issue of the Notice to Proceed to Construction, the *Employer* assesses the *Consultant's* share of the reduction within four weeks after the Notice to Proceed to Construction is issued. The *Consultant's* share equals the product of the reduction and the *Consultant's Phase 1 share percentage*, subject to adjustment in accordance with the Performance Adjustment Schedule. The *Consultant's* share is paid to the *Consultant* after the Notice to Proceed to Construction is issued.

Z54.14 If the Scheme Budget increases during the period prior to the issue of the Notice to Proceed to Construction, no share is paid by the *Consultant*.{DoV1}

Clause Z55 Package Contract Performance Fund

[Clause Z55 must not be used other than in conjunction with the Option X20 incentive mechanism or a Performance Level Incentive Schedule.]{DoV1}

Z55.1 An amount equal to the Price for Services Provided to Date multiplied by the *percentage* is retained from the *Consultant* in each amount due.

Clause Z56 Base performance {DoV1}

[Clause Z56 applies only to Package Orders to which the CDF Incentivisation Model applies. Clauses Z55 and Z56 are alternatives and should not be used together.]

Z56.1 In this clause Z56 **Base Performance Schedule** is the schedule identified in the Contract Data specifying baseline performance levels and setting out how the amount due to the *Consultant* is to be reduced if the *Consultant* fails to meet these performance levels.

Z56.2 Within one week of the end of each quarter commencing on the *starting date*, the *Employer* assesses the *Consultant's* performance in that quarter by reference to the baseline performance levels specified in the Base Performance Schedule.

Z56.3 If the *Consultant* fails to achieve the baseline performance levels, the *Consultant* pays to the *Employer* an amount assessed in accordance with the Base Performance Schedule, but the Price for Services Provided to Date is not reduced.

Clause Z58 Programme Level Incentive Fund (Consultant) {DoV1}[clause Z22 not used]

[Clause Z58 applies only to Package Orders within a Programme to which the CDF Incentivisation Model applies.]

Z58.1 In this clause Z58

Contractors are the contractors appointed by the *Employer* under the Other Contracts.

Other Contracts are the Package Contracts entered into by the *Employer* for the development and delivery of the works comprised in the Programme. The Other Contracts include provisions similar to this clause Z58.

Programme is the programme of works and services to which the *Employer* has decided that the Programme Level Incentive Fund will apply, as briefly described in the Contract Data and comprising the *services* and the works and services to be provided under the Other Contracts.

Programme Budget is the sum of the scheme budgets under the Other Contracts¹ as later changed in accordance with this contract or the Other Contracts.

Programme Level Incentive Fund is the amount (whether positive or negative) calculated by subtracting the Programme Outturn Cost from the Programme Budget.

Programme Outturn Cost is the sum of the scheme outturn costs under the Other Contracts.²

- Z58.2 Other terms used in this clause Z58 are defined in clause Z54.
- Z58.3 Clause Z54.7 does not apply and clauses Z58.4 to Z58.14 apply in its place.
- Z58.4 Clause 54 of the *conditions of contract* (and the equivalent clause in each of the Other Contracts) is deleted.
- Z58.5 The *Employer*
- agrees with the *Consultant* the forecast Time Charge for the whole of the *services* (and any later changes to that forecast),
 - notifies the *Consultant* of the total of the Prices under the Other Contracts (and any later changes to the Prices under those contracts) within one week of the total or any changes being agreed or determined under those contracts and
 - agrees with the *Consultant* and the Contractors the forecast of Other Costs to be included in the Programme Budget (and any later changes to that forecast).
- The total of the amounts so agreed or notified is the Programme Budget.
- Z58.6 The *Employer* assesses the difference between the Programme Outturn Cost and the Programme Budget when the Programme Outturn Cost has been determined. The *Employer* notifies the amounts to the *Consultant* and confirms the final amount in the Programme Level Incentive Fund.
- Z58.7 If the Programme Level Incentive Fund is positive, clauses Z58.8 to Z58.10 apply. If the Programme Level Incentive Fund is negative, clauses Z58.11 to Z58.13 apply.
- Z58.8 The *Employer* assesses the *Consultant's* share of the amount by which the Programme Level Incentive Fund is positive when the Programme Outturn Cost has been determined. The *Consultant's* share is assessed as the product of the *programme gainshare percentage* and the amount by which the Programme Level

¹ Note that the scheme budgets under the Other Contracts will include the forecast Time Charge payable to the Consultant, since (for the purpose of calculating how the PLIF is split between the Contractors) the Consultant's fee will be allocated between the Other Contracts according to the services provided.

² See footnote 1 above.

- Incentive Fund is positive.
- Z58.9 The *Consultant's* share is adjusted in accordance with the high Performance Adjustment Schedule.
- Z58.10 The *Consultant's* adjusted share is included in the final amount due.
- Z58.11 The *Employer* assesses the *Consultant's* share of the amount by which the Programme Level Incentive Fund is negative when the Programme Outturn Cost has been determined. This amount is divided into increments falling within each of the *programme share ranges*. The limits of a *share range* are the Programme Outturn Cost divided by the Programme Budget expressed as a percentage.
- Z58.12 The *Consultant's* share is assessed as the sum of the products of
- the increment within each *programme share range* and
 - the corresponding *programme share percentage*.
- Z58.13 The *Consultant's* share is included as a deduction in the final amount due, provided that the share paid by the *Consultant* does not exceed 102% of the amount calculated by multiplying the Price for Services Provided to Date by the *staff profit percentage*.
- Z58.14 The *Employer* may (in its sole discretion) decide to make a payment to the *Consultant* on account of the *Consultant's* share of the Programme Level Incentive Fund before the Programme Outturn Cost has been determined. Any payment is made is not taken into account when assessing the *Consultant's* share, but is deducted from the final amount due.
- Z58.15 If the *Employer* decides to withdraw this contract or any of the Other Contracts from the Programme for any reason, clause Z58 no longer applies.

Clause Z59 Performance measurement {DoV1}

- Z59.1 In this clause Z59 **CPF** is the current version of the *Employer's* Collaborative Performance Framework.
- Z59.2 The *Employer* measures the *Consultant's* performance at quarterly intervals commencing on the *starting date*. The measurement is carried out in accordance with the CPF.
- Z59.3 Within one month of carrying out each measurement, the *Employer* assesses
- the *Consultant's* score for each theme in the CPF and
 - the *Consultant's* rolling average score over a 12 month period for
 - each theme and

- all themes combined (each theme being equally weighted).
- Z59.4 The *Employer* notifies the *Consultant* of the scores assessed by him. If the *Consultant* is a joint venture, the scores apply to each Consortium Member separately as well as to the *Consultant*.
- Z59.5 The first bullet of clause Z51.12 is replaced by the following
- “the *Consultant*’s (or, if the *Consultant* is a joint venture, any Consortium Member’s) current rolling average score for all themes combined or for any *critical theme* under this contract or any other Package Contract is below the *failure level* or”.
- Z59.6 If the *Employer* assesses the *Consultant*’s rolling average score for all themes combined or any *critical theme* under this contract as being below the *failure level*
- the *Consultant* prepares a remediation plan within two weeks and submits it to the *Employer* for acceptance and
 - the *Employer* may exclude the *Consultant* (or, if the *Consultant* is a joint venture, any Consortium Member) from selection for any future Package Contract until the *Employer* has accepted the *Consultant*’s remediation plan and it has been implemented.
- Z59.7 If the *Employer* assesses the *Consultant*’s rolling average score for all themes combined as being below or equal to 5, the *Consultant* (or, if the *Consultant* is a joint venture, any Consortium Member) is excluded from selection for any future Package Contract until the *Employer* has accepted the *Consultant*’s remediation plan and it has been implemented.

Clause Z60 Exclusion from future contracts {DoV1}

[Note: Clause Z60 applies only to Package Orders let in relation to the Smart Motorways programme.]

- Z60.1 In this clause Z60 Smart Motorways Programme is the programme of works defined as such from time to time by the *Employer* and notified to the *Consultant*.
- Z60.2 An additional bullet is included in clause Z59.6 as follows
- “the *Employer* excludes the *Consultant* (or, if the *Consultant* is a joint venture, any Consortium Member) from selection for any future Package Contract forming part of the Smart Motorways Programme for which the *Employer* requests submissions within six months.”

Appendix C

Professional Services Short Contract – additional Z clauses

[Clauses Z1 to Z21 apply to every Time Charge Order and Z22 applies to a Time Charge Order if stated in the additional Contract Data for the Time Charge Order. In addition, those of the following additional Z clauses listed in the additional Contract Data will apply to each Time Charge Order. No further Z clauses or other changes to the conditions of contract should be included unless agreed by the contract policy owner]

Clause Z23 Project Bank Account

Z23.1 Option Y(UK)1 of the NEC3 Professional Services Contract (April 2013) applies (with appropriate amendments) to this contract.

Z23.2 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 *Consultant* accepts the proposal if the addition of the Supplier to the Named Suppliers is practicable.”

Z23.3 The *Client* may notify the *Consultant* that payments under this 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 *Consultant* notifies the Named Suppliers that the Project Bank Account is no longer to be used and proposes an alternative method to ensure that the Named Suppliers receive payments in accordance with their contracts.

Clause Z24 Changes to Prices

Z24.2 The Parties may at any time agree a reduction to the rates and prices stated in the Price List.

Z24.3 The reduced rates and prices apply to any *services* performed after the reduction is agreed.

Z24.4 If the *Consultant* does not agree a reduction requested by the *Client*, the *Client* may terminate the *Consultant's* obligation to Provide the Services by notifying the *Consultant*.

Clause Z27 Parent Company Guarantee

Z27.2 If required by the *Client*, the *Consultant* gives to the *Client* a parent company guarantee of the *Consultant's* performance in the form set out in the Scope. If the guarantee was not given by the contract date, it is given to the *Client* within four weeks of the contract date. Guarantees are provided for

- a standalone company – from its parent company,
- an unincorporated JV (“more than one party”) – from the

parent company of each Consortium Member or

- an incorporated JV – from the parent company of each Consortium Member.

In all cases it is for the *Client* to decide (in its discretion) whether it will accept a guarantee from a company other than the ultimate holding company.”

Clause Z42 Joint ventures

Z42.2 Clause 90.1 of the *conditions of contract* is amended by inserting after “the other Party” in the second place where it appears the words “(or, in the case of the *Consultant*, any Consortium Member)”.

Clause Z48 Adjudication

Z48.1 Option W2 of the NEC3 Professional Services Contract (April 2013) applies (with appropriate amendments) to this contract.

Clause Z51 Termination and omission of work

Z51.9 If the *Client* instructs a change to the Scope which involves the omission of part of the *services*, the *Client* may engage other people to carry out the part omitted. The instruction is assessed as a compensation event, except that if the instruction is given for insolvency or a default by the *Consultant*, the assessment includes a deduction of the forecast additional cost to the *Client* of completing the *services*.

Z51.11 The following is added at the end of clause 91.1 of the *conditions of contract*:

“unless instructed otherwise by the *Client*”.

Z51.12 The following are treated as a substantial failure by the *Consultant* to comply with his obligations

- the *Consultant's* performance as measured in accordance with the current edition of the Highways Agency's Motivating Success Toolkit (or any replacement for it) is below the *failure level* or
- a key resource needed by the *Consultant* to Provide the Services is no longer available and the *Consultant* does not propose an alternative resource acceptable to the *Client*.

Z51.14 The *Client* may terminate the *Consultant's* obligation to Provide the Services by notifying the *Consultant* if the *Consultant's* financial capacity statement for this contract (as referred to in Annex 4 of the Framework Information) is inaccurate. The procedures followed and amounts due on termination are in accordance with clauses 91.1, 91.2, 92.1 and 92.2

Clause Z53 Insurances

Z53.1 The insurances provided by the *Consultant* comply with the additional requirements stated in the Scope.

Appendix D

Engineering and Construction Contract – additional Z clauses

[Clauses Z1 to Z21 apply to every Package Order and Z22 applies to a Package Order if stated in the additional Contract Data for the Package Order. In addition, those of the following additional Z clauses listed in the additional Contract Data will apply to each Package Order. No further Z clauses or other changes to the conditions of contract should be included unless agreed by the contract policy owner.]

Clause Z54 applies only to Package Orders to which the CDF Incentivisation Model applies.]

Clause Z23 Project Bank Account

Z23.5 Clause Y1.6 is amended by inserting the following after the second sentence:

“The *Employer* 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.”

Z23.6 The *Employer* may notify the *Contractor* that payments under this contract will no longer be made using the Project Bank Account. This notice is a compensation event. Within one week of the *Employer's* notice, the *Contractor* notifies the Named Suppliers that the Project Bank Account is no longer to be used and proposes an alternative method to ensure that the Named Suppliers receive payments in accordance with their contracts.

Clause Z24 Changes to Prices

Z24.5 The Parties may at any time agree a reduction to the Prices.

Z24.6 The reduced Prices apply to any work carried out after the reduction is agreed.

Z24.7 If the *Contractor* does not agree a reduction requested by the *Employer*, the *Employer* may terminate the *Contractor's* obligation to Provide the Works by notifying the *Contractor*.

Clause Z25 Fair payment

Z25.4 The *Contractor* assesses the amount due to a Subcontractor without taking into account the amount assessed under this contract.

Z25.5 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 this contract. The amount due includes, but is not limited to, payment for work which the Subcontractor has completed from the previous assessment date up to the current assessment date in this 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 this contract and

- a provision requiring the Subcontractor to assess the amount due to a subsubcontractor without taking into account the amount paid by the *Contractor*.

Z25.6 The *Contractor* notifies non-compliance with the timescales for payment 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.

Clause Z26 Records (SME Reporting)

Z26.2 The *Contractor* keeps these records

- accounts of payments of Defined Cost,
- proof that payments have been made,
- communications about the assessments of compensation events for Subcontractors and subcontractors to a Subcontractor and
- other records stated in the Works Information.

[Applies to Package Orders let under Options A and B only]

Clause Z27 Parent Company Guarantee

[This replaces secondary option X4, which must not be used]

Z27.1 If required by the *Employer*, the *Contractor* gives to the *Employer* a parent company guarantee of the *Contractor's* performance in the form set out in the Works Information. If the guarantee was not given by the Contract Date, it is given to the *Employer* within four weeks of the Contract Date. Guarantees are provided for

- a standalone company – from its parent company,
- an unincorporated JV (“more than one party”) – from the parent company of each Consortium Member or
- an incorporated JV – from the parent company of each Consortium Member.

In all cases it is for the *Employer* to decide (in its discretion) whether it will accept a guarantee from a company other than the ultimate holding company.

Clause Z28 Construction Industry Scheme

Z28.1 In this clause Z28 (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).

Z28.2 This contract falls within the scope of the Construction Industry

Scheme provided for by Chapter 3, Part 3 of the Act.

Z28.3 The *Contractor* provides the information required by the Regulations to enable the *Employer* 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.

Z28.4 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 *Employer* deducts the relevant percentage from the payment in accordance with the Act and the Regulations.

Clause Z29 *Extended liability period for Plant*

Z29.1 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*.

Z29.2 The *Contractor* carries the risk of loss or damage caused by or resulting from his work in correcting a Defect after the *defects date*.

Clause Z30 *Network Rail Possessions{DoV1}*

Z30.1a The *Contractor* pays the *Employer* the relevant *Network Rail possession charge* for each additional possession required over and above the number of *Network Rail possessions* stated in the Contract Data. The number of *Network Rail possessions* is adjusted if additional possessions are required as a result of a compensation event.

[or]

Z30.1b The total of the Prices is reduced by the relevant *Network Rail possession charge* for each additional possession required over and above the number of *Network Rail possessions* stated in the Contract Data. The number of *Network Rail possessions* is adjusted if additional possessions are required as a result of a compensation event.

[For either option]

Z30.2 In clause 25.3 of the *conditions of contract* insert an additional bullet before the first bullet

- by paying fines or charges to Others,

Clause Z31 Category Management

Z31.1 In this clause Z31

- Category Purchase Agreement is a framework agreement between the *Employer* and a Category Supplier for the bulk purchase of materials, works or services for use across the *Employer's* business, under which the *Contractor* (and other contractors) may enter into contracts with the Category Supplier and
- Category Supplier is a supplier who enters into a Category Purchase Agreement with the *Employer*.

Z31.2 When instructed by the *Employer*, the *Contractor* enters into a contract with a Category Supplier pursuant to a Category Purchase Agreement for the purchase of materials, works or services needed to Provide the Works as identified in the *Employer's* instruction. The conditions of contract between the *Contractor* and a Category Supplier are those set out in the Category Purchase Agreement and the *Contractor* does not change them unless the *Employer* agrees.

Z31.3 The *Contractor* remains responsible for Providing the Works and for the quality of any materials, works or services supplied by a Category Supplier as if he had supplied them himself.

Z31.4 The *Contractor* makes available to the *Employer* on request copies of all records and communications with Category Suppliers.

Z31.5 The *Contractor* co-operates with the *Employer* and any other contractors who enter into contracts with a Category Supplier in forecasting demand for materials, works or services to which a Category Purchase Agreement relates.

Z31.6 Prior to entering into a contract with a Category Supplier, the *Contractor* may request the *Employer's* agreement to use an alternative supplier if the *Contractor* considers that it will offer a saving to the *Employer*. The *Contractor* provides details of the alternative supplier and the expected saving with the request. The *Employer* (in his absolute discretion) decides whether to agree the request and notifies the *Contractor* of his decision.

Z31.7 This clause Z31 does not apply where the *Employer* is not a "contracting authority" (as that term is defined in the Public Contracts Regulations 2006 (as amended)).

Clause Z32 Payment of the *Contractor's* share

Z32.2 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*.

Z32.3 The following sentence is added at the end of clause 53.2 of the *conditions of contract*:

“The *Contractor* is not paid his share of any saving if there has been a fatality resulting from how the *Contractor* Provides the Works.”

Z32.4 Clause 53.3 of the *conditions of contract* is deleted and replaced with the following.

The *Project Manager* makes a preliminary assessment of the *Contractor's* share at Completion of the *sections* of the *works* listed in the Contract Data using his forecasts of the final Price for Work Done to Date and the final total of the Prices. This share is included in the amount due following Completion of the *sections* of the *works* listed in the Contract Data.

[Applies to Package Orders let under Options C and D only. Z32.4 will apply only if Option X5 is used and the contract provides for (e.g.) extended landscaping aftercare. In that event the additional Contract Data for the Package Order should identify all sections that are to be completed before the share calculation is made. Z32 must not be used if Z54 is selected {DOV1}]

Clause Z33 Indemnified claims

Z33.1 The *Employer* notifies the *Contractor* as soon as practicable of any notice or demand which it receives in respect of a claim made by a third party against the *Employer* in respect of a matter which is at the *Contractor's* risk under this contract (an Indemnified Claim).

Z33.2 The *Contractor* may elect to conduct the defence of any Indemnified Claim (including any settlement negotiations) in the name of the *Employer*. The *Employer* co-operates with and gives reasonable assistance to the *Contractor* in defending the Indemnified Claim.

Z33.3 The *Contractor* keeps the *Employer* fully informed and consults with the *Employer* as appropriate in relation to the conduct of any Indemnified Claim.

Z33.4 Where the *Contractor* is diligently conducting the defence of an Indemnified Claim, the *Employer* does not settle nor agree to make a payment in respect of the Indemnified Claim without the prior consent of the *Contractor*.

Z33.5 The *Contractor* bears the costs which he incurs in defending an Indemnified Claim. The *Contractor* indemnifies the *Employer* against any costs incurred by the *Employer* arising out of the *Contractor's* defence of the Indemnified Claim.

Z33.6 The *Employer* may give the *Contractor* notice that he is taking over

the conduct of an Indemnified Claim. On receipt of the *Employer's* notice the *Contractor*

- takes all the steps necessary to transfer the conduct of the Indemnified Claim to the *Employer* and
- co-operates with and gives reasonable assistance to the *Employer* in defending the Indemnified Claim.

Where the reason for the *Employer'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 *Employer* in respect of it.

Clause Z34 Value engineering

Z34.1 The *Contractor* may submit to the *Project Manager* for acceptance written proposals to change the Works Information which if implemented would

- enhance the quality or durability of the *works*,
- improve the efficiency of carrying out the *works* or
- reduce the cost to the *Employer* of maintaining the *works*.

Z34.2 The *Contractor* submits with his proposal a quotation for the proposed change setting out details of

- how any cost savings resulting from the implementation of the change are to be shared,
- how any risks associated with the implementation of the change are to be allocated,
- how any costs associated with the development of the change are to be funded and
- any consequential changes to the remainder of the Works Information.

Z34.3 If the *Contractor's* proposal and quotation are accepted, the *Project Manager* instructs the change to the Works Information. This instruction is not a compensation event.

Clause Z35 Cost verification

Z35.1 The *Contractor* allows the *Employer* (or a forensic cost verification consultant engaged by the *Employer*) to remove data relating to the assessment of Defined Cost (including Personal Data) from the Working Areas for the purpose of verifying the Defined Cost incurred.

Z35.2 The *Employer* ensures that data removed from the Working Areas for verification is adequately protected against the risk of accidental, unauthorised or unlawful processing, destruction, loss, damage, alteration or disclosure.

Z35.3 The *Contractor* obtains agreement from the data subject for the

removal of Personal Data from the Working Areas for verification.

Clause Z36 Subcontracting to Associated Companies

- Z36.1 In this clause Z36 Associated Company is a Consortium Member or any company, corporation, partnership, joint venture or other entity which directly or indirectly controls, is controlled by or is under common control with the *Contractor* or a Consortium Member. The word “control” in this context means the ability or entitlement to exercise, directly or indirectly, at least 25 per cent of the voting rights attributable to the shares or other interest in the controlled company, corporation, partnership, joint venture or other entity and the words “control” and “controlled” are construed accordingly.
- Z36.2 If the *Contractor* subcontracts work to an Associated Company, the Defined Cost of the work subcontracted is assessed in accordance with the Schedule of Cost Components as if the work had not been subcontracted unless otherwise agreed by the *Project Manager*.

Clause Z37 Schedule of Cost Components

- Z37.1 In this clause Z37 Staff are any people involved in the planning, design, management, supervision or administration of the *works* who would not be covered by the Construction Industry Joint Council (CIJC) Working Rule Agreement.
- Z37.2 The following components of cost in the Schedule of Cost Components are deleted
- 12(a) bonuses and incentives
 - 12(f) severance related to work on this contract
- Z37.3 A new paragraph 15 is inserted in the Schedule of Cost Components as follows
- “The references to people in paragraphs 11 to 14 exclude Staff. The cost of Staff is calculated by multiplying the time spent by each member of Staff by the appropriate staff rate specified in the staff rate card.”
- Z37.4 The Shorter Schedule of Cost Components is amended as follows
- In paragraph 1, line 1, after “cost” insert “(excluding payments for severance and bonus)”.
- In paragraph 11, line 1, after “Contractor” insert “for people (other than Staff)”.
- Insert a new paragraph 12 as follows
- “Amounts for Staff calculated by multiplying the time spent by each member of Staff by the appropriate staff rate specified in the staff rate card.”
- In paragraph 41, lines 1 and 2, delete “A charge calculated by applying the percentage for people overheads stated in the Contract Data to people item 11” and insert “The lump sum for people

including Staff overheads stated in the Contract Data”.

[Z37.5, Z37.6 and Z37.7 are to be used where the Working Areas overhead is to be treated as a lump sum. All three Z clauses must be used in this case and cannot be used separately] {DoV1}

Z37.5 The first sentence of paragraph 44 in the Schedule of Cost Components is deleted and the following inserted:

“The lump sum stated in the Contract Data for overhead costs incurred within the Working Areas.”

Z37.6 If one of the compensation events numbered (1), (2), (4), (14), (15), (17), (18) or (19) in clause 60.1 of the *conditions of contract* occurs

- the lump sum for Working Areas overheads is adjusted by applying the percentage for Working Areas overheads stated in the framework Contract Data (or the lower percentage agreed for use on this contract) to the change to the estimated total cost of people including Staff (assessed in accordance with items 11 to 15 of the Schedule of Cost Components) included within the assessment of the compensation event. The product of this calculation is added to or deducted from the lump sum for Working Areas overheads, and
- the lump sum for people overheads is adjusted by applying the percentage for people overheads stated in the framework Contract Data (or the lower percentage agreed for use on this contract) to the change to the estimated total cost of people including Staff (assessed in accordance with items 11 and 12 of the Shorter Schedule of Cost Components) included within the assessment of the compensation event. The product of this calculation is added to or deducted from the lump sum for people overheads.

Z37.7 The Price for Work Done to Date at each assessment date includes a proportion of the lump sum for Working Areas overheads which is the same as the proportion of work assessed by the *Project Manager* to have been completed using the *Employer's* earned value measurement (EVM) mechanism described in the Works Information.

[Note that Z37.8 is mandatory] {DoV1}

Z37.8 Component 44 of the Schedule of Cost Components is amended as follows :

Item (c) after “recreation” insert “/ welfare”

Item (d) after “sanitation” insert “(including the provision of hygienic conditions and removal of waste products, the connection to appropriate sewerage, septic tanks and water supplies and all cleaning activities).”

Item (g) after “CCTV” insert “(excluding Plant). The charge is to be completely comprehensive of all costs required to facilitate provision

of these services including all contract and call charges related to mobile phones.”

Item (i) after “computing” insert “The charge is to be completely comprehensive of all costs required to facilitate provision of these services.”

After item(j), insert three new paragraphs as follows; “The charge includes for the cost of establishment and removal of facilities and equipment (excluding accommodation) and all maintenance and running costs of the equipment and services.

Supplies includes the costs of all consumables associated with the use of equipment and provision of the services.

The provision of services shall include for people involved in the provision of the services for:

- (a) Catering
- (b) Medical facilities and first aid
- (c) Recreation / Welfare
- (d) Sanitation
- (e) Security
- (f) Copying
- (g) Telephone, telex, fax, radio and CCTV (excluding Plant)
- (h) Computing

Clause Z38 Single point design responsibility

Z38.1 The *Contractor* accepts sole responsibility for the design of the whole of the *works*, whether carried out before or after the Contract Date and including any design carried out by or on behalf of the *Employer*, and for any mistake, inaccuracy or discrepancy in or omission from such design and all such design is treated for the purposes of this contract as having been designed by the *Contractor*.

Z38.2 The second bullet in clause 60.1(1) of the *conditions of contract* is deleted and replaced with the following.

a change to the Works Information provided by the *Contractor* or for which the *Contractor* is responsible under clause Z38.1 which is made either at his request or to comply with other Works Information provided by the *Employer* or to rectify a Defect in the design of the *works*.

Z38.3 The third sub-bullet of the first bullet in clause 80.1 of the *conditions of contract* is deleted and replaced with the following.

a fault of the *Employer* (excluding a fault in any design for which the *Contractor* has responsibility under this contract).

Z38.4 Clause X15.1 is deleted and replaced with the following.

The *Contractor* is not liable for Defects in the design of the *works* so far as he proves that he used reasonable skill and care to ensure that the design complies with the Works Information.

[Z38.4 applies only if Option X15 is used]

Clause Z39 Adjustment of fee percentages

Z39.1 In this clause Z39 Fee Schedule is the schedule setting out the breakdown of each *fee percentage* into their component elements, supported by data showing how each element of each *fee percentage* has been calculated. The Fee Schedule is in the document which the Contract Data states it is in.

Z39.2 The *Contractor* notifies the *Project Manager* in advance of any proposal to change its methods of Providing the Works from those stated in the Fee Schedule or the data supporting it. The *Project Manager* may notify the *Contractor* if he becomes aware of any change or proposed change to the *Contractor's* methods of Providing the Works which the *Contractor* has not notified.

Z39.3 If any proposed change in the *Contractor's* methods of Providing the Works alters the basis on which any of the *fee percentages* is calculated, the *Contractor* assesses and submits to the *Project Manager* for approval by the *Employer* its proposed adjustments to the Fee Schedule and to the relevant *fee percentages*. The adjustments to the relevant *fee percentages* are assessed using the data contained in the Fee Schedule and the data supporting it. The *Contractor* does not implement a change in its methods of Providing the Works until the proposed adjustments are approved by the *Employer*.

Z39.4 An adjustment to any of the *fee percentages* applies from the date when the *Contractor* changes its methods of Providing the Works.

[Note: Z39 does not apply if Z40 is used.]

Clause Z40 Lump sum Fee

Z40.1 The Fee is the lump sum calculated by applying the relevant *fee percentage* to the lump sum price for each of the activities in the *activity schedule*. Where clause Z44 applies, the calculation relates to Phase 2 only and is done when the total of the Prices is agreed. The calculation applies the *Phase 2 fee percentage* to the lump sum prices for each of the activities in the Activity Schedule.

Z40.2 If one of the compensation events numbered (1), (2), (4), (14), (15), (17), (18) or (19) in clause 60.1 of the *conditions of contract* occurs, the lump sum Fee is adjusted by applying the relevant *fee percentage* to the changes to the Prices assessed for the event

pursuant to clause 63 or clause 64. The product of this calculation is added to or deducted from the lump sum Fee.

Z40.3 For the purpose of calculating the *Contractor's* share, the Prices and the Price for Work Done to Date exclude the lump sum Fee.

[Z40.3 applies to Package Orders let under Options C or D only]

Z40.4 The Price for Work Done to Date at each assessment date includes a proportion of the lump sum Fee which is the same as the proportion of work assessed by the *Project Manager* to have been completed using the *Employer's* earned value measurement (EVM) mechanism described in the Works Information.

Clause Z41 Time share bonus

Z41.1 The *Contractor* is paid the *Contractor's time share* if

- Completion of the whole of the *works* occurs earlier than the *Contractor's time share date* and
- the *Contractor* achieves an average score of 6 or more against each of the PPIs for "Health and Safety" and "Quality" over the period from the Contract Date until Completion of the whole of the *works*.

Z41.2 The *Project Manager* assesses the *Contractor's time share* at Completion of the whole of the *works*. The *Contractor's time share* is assessed at the rate stated in the Contract Data for each day that Completion occurs earlier than the *Contractor's time share date*. Three quarters of this share is included in the amount due following Completion of the whole of the *works*. The remainder of this share is included in the final amount due, provided the *Contractor* achieves an average score of 6 or more against each of the PPIs for "Health and Safety" and "Quality" over the period from Completion of the whole of the *works* until final amount due is assessed.

Z41.3 The *Contractor* is not paid the *Contractor's time share* if there is a termination.

*[Clause Z41 should be included only if X7 is also used. If included, X6 should **not** be used. Note that Z41 will not be appropriate for schemes or programmes to which the Option X20 programme incentive mechanism is to apply]*

Clause Z42 Joint ventures

Z42.3 Clause 91.1 of the *conditions of contract* is amended by inserting after "the other Party" wherever it appears (three places) the words "(or, in the case of the *Contractor*, any Consortium Member)".

[Clauses Z43 to Z45 are only applicable to Package Orders covering both the development and delivery stages of a project]

Clause Z43 Control of costs in Phase 1

Z43.1 In this clause Z43 and elsewhere in this contract

- Notice to Proceed to Construction is an instruction given by the *Project Manager* for the *Contractor* to proceed with Phase 2 and
- Phase 1 and Phase 2 have the meaning given to them in the Works Information.

Z43.2 The *Contractor* prepares detailed forecasts of the total Defined Cost for Phase 1 in consultation with the *Project Manager* and submits them to the *Project Manager* for acceptance. The first forecast is the proposed resources and costs for Phase 1 stated in the *Phase 1 resource cost schedule*. Subsequent forecasts are prepared at the intervals stated in the Contract Data from the *starting date* until the issue of a Notice to Proceed to Construction. An explanation of the changes made since the previous forecast is submitted with each forecast.

Z43.3 Within one week of the *Contractor* submitting a forecast to him for acceptance, the *Project Manager* either accepts the forecast or notifies the *Contractor* of his reasons for not accepting it. A reason for not accepting the forecast is that

- it does not properly reflect the forecast Defined Cost of the work remaining for the *Contractor*,
- it includes work during Phase 1 which is not necessary and which has not been instructed by the *Project Manager*,
- the resources are not in accordance with the *Phase 1 methodology* and the change does not result from a change to the assumptions stated in the Works Information,
- the cost of a resource is greater than the cost included in the *Phase 1 resource cost schedule* after allowing for inflationary changes or
- it does not comply with the Works Information.

Z43.4 Any cost which is not included in the accepted forecast of the total Defined Cost for Phase 1 is treated as a Disallowed Cost.

Z43.5 The *Project Manager* may give an instruction to the *Contractor* which requires him to carry out additional work in Phase 1, including activities originally intended to be carried out in Phase 2.

Clause Z44 Setting the Prices and issue of Notice to Proceed to Construction

Z44.1 The *Contractor* submits his assessment of the total of the Prices to the *Project Manager* for acceptance in accordance with the Works Information. The *Contractor's* assessment is the forecast Defined Cost of activities, including risk allowances for matters which have a significant chance of occurring and are at the *Contractor's* risk under this contract, plus an amount calculated by applying the *direct fee*

percentage to each element of the forecast Defined Cost. Forecasts are prepared in accordance with Highways Agency procedures for cost control.

Z44.2 If the *Contractor* and the *Project Manager* are unable to agree the total of the Prices, either may instruct the other to attend a meeting with a conciliator to help them reach agreement.

Z44.3 Once the *Contractor* and the *Project Manager* have agreed the total of the Prices, the *Project Manager* notifies the Prices to the *Contractor* and may (but is not obliged to) issue a Notice to Proceed to Construction. The *Contractor* does not proceed with any activities in Phase 2 before the issue of a Notice to Proceed to Construction unless the *Project Manager* instructs him to do so.

Z44.4 If the *Project Manager* does not issue a Notice to Proceed because

- the *works* or any part of them, if implemented, will not meet the *Employer's* objectives,
- the *Project Manager* and the *Contractor* are unable to agree the total of the Prices or
- the *Contractor* fails to co-operate with the *Project Manager* in providing information required to demonstrate how the *Contractor* assesses the forecast Defined Cost and the Prices
 - the *Employer* may engage Others to Provide the Works.

Z44.5 The *Contractor* prepares and submits to the *Project Manager* drawings and specifications in sufficient detail and in a form that, if the *Project Manager* does not issue a Notice to Proceed to the *Contractor*, the *Employer* is able to use the information to obtain competitive tenders for Others to Provide the Works. The *Contractor* provides the information within the time instructed by the *Project Manager*.

Clause Z45 Key people

Z45.1 Clause 24.1 of the *conditions of contract* is amended by deleting "Contract Data" in the second line and inserting "*key people schedule*".

Z45.2 The *Contractor* does not replace any person identified in the *key people schedule* during Phase 1 unless

- he is instructed by the *Project Manager* to do so or
- it becomes impossible for the person to continue to act in connection with this contract.

Z45.3 During Phase 1 the *Contractor* submits the names, relevant qualifications and experience of the people he intends to use in Phase 2 to the *Project Manager* for acceptance. A reason for not accepting a proposed person is that their qualifications and experience will not allow the *Contractor* to Provide the Works in

accordance with the Quality Statement. After the *Project Manager* accepts a proposed person, the *Contractor* enters his details on the *key people schedule*.

Clause Z51 Termination and omission of work

- Z51.1 If the *Project Manager* instructs a change to the Works Information which involves the omission of part of the *works*, the *Employer* may engage Others to carry out the part omitted. The instruction is assessed as a compensation event, except that if the instruction is given for one of the reasons R1-R15 or R18 in clause 91 of the *conditions of contract*, the assessment includes the amount A3 in clause 93.2 of the *conditions of contract*.
- Z51.2 The following is added at the end of clause 90.5 of the *conditions of contract*:
- “unless instructed otherwise by the *Project Manager*”.
- Z51.3 Item A4 in clause 93.2 of the *conditions of contract* is deleted and replaced with the following:
- “Substantiated tender costs up to a maximum of £50,000.”
- Z51.4 The following are treated as a substantial failure by the *Contractor* to comply with his obligations
- the *Contractor’s* performance as measured in accordance with the current edition of the Highways Agency’s Motivating Success Toolkit (or any replacement for it) is below the *failure level* or
 - a key resource needed by the *Contractor* to Provide the Works is no longer available and the *Contractor* does not propose an alternative resource acceptable to the *Project Manager*.
- Z51.15 The *Employer* may terminate the *Contractor’s* obligation to Provide the Works by notifying the *Contractor* if the *Contractor’s* financial capacity statement for this contract (as referred to in Annex 4 of the Framework Information) is inaccurate. The procedures followed and the amounts due on termination are P1, P2, P3, A1 and A3.

Clause Z53 Insurances

- Z53.2 The insurances provided by the *Contractor* comply with the additional requirements stated in the Works Information.

Clause Z54 The *Contractor’s* share

[Clause Z54 must be used if clause Z22 is used]

- Z54.1 In this clause Z54 and in clause Z22 (if used) {DoV1}
- Other Costs are costs incurred in relation to the heads of cost listed in the *schedule of other costs*,
 - Performance Adjustment Schedule is the schedule identified in

the Contract Data setting out aspects of performance by the *Contractor* (and, where this contract forms part of a Programme, any other contractors and consultants engaged to perform work or services in relation to the Programme), target performance levels and the adjustments to be made to the *Contractor's* share by reference to actual performance against the target levels,

- Scheme Budget is the *scheme budget* unless later changed in accordance with this contract and
- Scheme Outturn Cost is the total of the final Price for Work Done to Date and the final Other Costs.

Z54.2 Clause 53 of the *conditions of contract* is deleted and the following inserted

“53.1 The *Project Manager* assesses the *Contractor's* share of the difference between the Scheme Budget and the Scheme Outturn Cost. The difference is divided into increments falling within each of the *share ranges*. The limits of a *share range* are the Scheme Outturn Cost divided by the Scheme Budget expressed as a percentage. The *Contractor's* share equals the sum of the products of the increment within each *share range* and the corresponding *Contractor's share percentage*.

53.2 If the Scheme Outturn Cost is less than the Scheme Budget, the *Contractor* (subject to clause 53.3) is paid his share of the saving. If the Scheme Outturn Cost is greater than the Scheme Budget, the *Contractor* (subject to clause 53.4) pays his share of the excess.

53.3 The share paid to the *Contractor* is adjusted in accordance with the Performance Adjustment Schedule.

53.4 The share paid by the *Contractor* does not exceed the Fee.

53.5 If, prior to Completion of the whole of the *works*, the Scheme Outturn Cost already incurred exceeds the Scheme Budget, the *Project Manager* makes an assessment of the *Contractor's* share of the difference between the Scheme Budget and the Scheme Outturn Cost already incurred at each assessment date. The Scheme Budget includes the *Project Manager's* interim assessment of the changes to the Scheme Budget for a compensation event which has not been implemented at the assessment date. This share is included in the amount due to the *Contractor*.

53.6 The *Project Manager* assesses the *Contractor's* share when the final Scheme Outturn Cost has been assessed. His assessment uses the Scheme Outturn Cost, the final Scheme Budget and any adjustments to be made in accordance with the Performance Adjustment Schedule. This share is included in the final amount due.”

Z54.3 If one of the compensation events numbered (1), (2), (4), (14), (15),

(17), (18) or (19) in clause 60.1 of the *conditions of contract* occurs, the *Contractor* and the *Project Manager* jointly assess the effect of the event on the forecast Scheme Outturn Cost and what consequential change should be made to the Scheme Budget. The assessment of the effect of the event takes into account

- any changes to the Prices assessed under clauses 63 and 64 of the *conditions of contract* and
- any changes to the Other Costs actually incurred or forecast to be incurred.

The *Employer* decides on the change to the Scheme Budget (taking into account the *Contractor's* and the *Project Manager's* joint assessment) and notifies the *Contractor* of his decision. The Scheme Budget is changed in accordance with the *Employer's* decision. The Scheme Budget is not changed for other compensation events.

Z54.4 The *Contractor* prepares forecasts of the Scheme Outturn Cost in consultation with the *Project Manager* and submits them to the *Project Manager*. Forecasts are prepared at the intervals stated in the Contract Data from the *starting date* until Completion of the whole of the *works*. An explanation of the changes made since the previous forecast and reconciliation against the Scheme Budget is submitted with each forecast.

Z54.5 If this contract covers both the development and delivery stages of the *works*, the Scheme Budget is changed to reflect the total of the Prices and the forecast of Other Costs agreed between the *Contractor* and the *Project Manager* at the time when the *Project Manager* issues a Notice to Proceed to Construction.

Z54.8 Within four weeks after the issue of the Notice to Proceed to Construction, the *Project Manager* assesses the *Contractor's* share of any reduction in the Scheme Budget achieved during the period prior to the issue of the Notice to Proceed to Construction. The *Contractor's* share equals the product of the reduction and the *Contractor's Phase 1 share percentage* subject to adjustment in accordance with the Performance Adjustment Schedule. The *Contractor's* share is paid to the *Contractor* after the Notice to Proceed to Construction is issued.

Z54.9 If the Scheme Budget increases during the period prior to the issue of the Notice to Proceed to Construction, no share is paid by the *Contractor*. {DoV1}

Clause Z55 Package Contract Performance Fund

[Clause Z55 must not be used other than in conjunction with the Option X20 incentive mechanism or a Performance Level Incentive Schedule.] {DoV1}

Z55.2 An amount equal to the Price for Work Done to Date multiplied by the *percentage* is retained from the *Contractor* in each amount due.

Clause Z56 Base performance {DoV1}

*[Clause Z56 applies only to Package Orders to which the CDF Incentivisation Model applies. Clauses Z55 and Z56 are alternatives and should **not** be used together.]*

- Z56.1 In this clause Z56 **Base Performance Schedule** is the schedule identified in the Contract Data specifying baseline performance levels and setting out how the amount due to the *Contractor* is to be reduced if the *Contractor* fails to meet these performance levels.
- Z56.2 Within one week of the end of each quarter commencing on the *starting date*, the *Project Manager* assesses the *Contractor's* performance in that quarter by reference to the baseline performance levels specified in the Base Performance Schedule.
- Z56.3 If the *Contractor* fails to achieve the baseline performance levels, the *Contractor* pays to the *Employer* an amount assessed in accordance with the Base Performance Schedule, but the Price for Work Done to Date is not reduced.

Clause Z57 Programme Level Incentive Fund *[clause Z22 not used]*

[Clause Z57 applies only to Package Orders within a Programme to which the CDF Incentivisation Model applies.]

- Z57.1 In this clause Z57
- **Other Contracts** are the Package Contracts (other than this contract) entered into by the *Employer* for the development and delivery of the works comprised in the Programme. The Other Contracts include provisions similar to this clause Z57.
 - **Programme** is the programme of works and services to which the *Employer* has decided that the Programme Level Incentive Fund will apply, as briefly described in the additional Contract Data and comprising
 - the works and services to be provided under this contract and the Other Contracts and
 - any professional services to be provided under any associated Package Contracts.
 - **Programme Budget** is the sum of the *scheme budget* and the equivalent budgets under the Other Contracts, as later changed to reflect
 - any changes to the Scheme Budget agreed between the *Contractor* and the *Project Manager* under clause Z57.5,
 - any changes to the equivalent budgets under the Other Contracts agreed under the corresponding clauses of the Other Contracts and

- any changes decided by the *Employer* to
 - the Scheme Budget under clause Z54.3 and
 - the equivalent budgets under the corresponding clauses of the Other Contracts.
 - **Programme Level Incentive Fund** is the amount (whether positive or negative) calculated by subtracting the Programme Outturn Cost from the Programme Budget.
 - **Programme Outturn Cost** is the sum of the Scheme Outturn Cost and the equivalent outturn costs under the Other Contracts.
- Z57.2 Other terms used in this clause Z57 are defined in clause Z54.
- Z57.3 Clauses Z54.2 and Z54.5 do not apply and clauses Z57.4 to Z57.16 apply in their place.
- Z57.4 Clause 53 of the *conditions of contract* (and the equivalent clause in each of the Other Contracts) is deleted.
- Z57.5 The Parties acknowledge that the *scheme budget* does not include a forecast of all the Other Costs. The Parties endeavour to agree a forecast of the Other Costs that were excluded from the *scheme budget* as soon as possible after the Contract Date and in any event before the end of Phase 1. The Scheme Budget is changed to include the agreed forecast of those Other Costs agreed between the *Contractor* and the *Project Manager* at the time when the *Project Manager* issues a Notice to Proceed to Construction.
- Z57.6 If the Parties cannot agree a forecast of the Other Costs under clause Z57.5, either Party may instruct the other to attend a meeting with a conciliator to help them reach agreement.
- Z57.7 The *Project Manager* notifies the *Contractor* of any changes to the scheme budgets under the Other Contracts as they are agreed or decided in accordance with those contracts.
- Z57.8 The *Project Manager* assesses the difference between the Programme Outturn Cost and the Programme Budget when the Programme Outturn Cost has been determined. The *Project Manager* notifies the amounts to the *Contractor* and confirms the final amount in the Programme Level Incentive Fund.
- Z57.9 If the Programme Level Incentive Fund is positive, clauses Z57.10 to Z57.12 apply. If the Programme Level Incentive Fund is negative, clauses Z57.13 to Z57.15 apply.
- Z57.10 The *Project Manager* assesses the *Contractor's* share of the amount by which the Programme Level Incentive Fund is positive when the Programme Outturn Cost has been determined. The *Contractor's* share equals the product of
 - the *programme gainshare percentage*
 - the amount by which the Programme Level Incentive Fund is

positive and

- the proportion that the Scheme Outturn Cost bears to the Programme Outturn Cost.
- Z57.11 The *Contractor's* share is adjusted in accordance with the high Performance Adjustment Schedule.
- Z57.12 The *Contractor's* adjusted share is included in the final amount due.
- Z57.13 The *Project Manager* assesses the *Contractor's* share of the amount by which the Programme Level Incentive Fund is negative when the Programme Outturn Cost has been determined. This amount is divided into increments falling within each of the *programme share ranges*. The limits of a *programme share range* are the Programme Outturn Cost divided by the Programme Budget expressed as a percentage.
- Z57.14 The *Contractor's* share equals the sum of the products of
- the increment within each *programme share range*
 - the corresponding *programme painshare percentage* and
 - the proportion that the Scheme Outturn Cost bears to the Programme Outturn Cost.
- Z57.15 The *Contractor's* share is included as a deduction in the final amount due, provided that the share paid by the *Contractor* does not exceed the Fee.
- Z57.16 The *Employer* may (in its sole discretion) decide to make a payment to the *Contractor* on account of the *Contractor's* share of the Programme Level Incentive Fund before the Programme Outturn Cost has been determined. Any payment made is not taken into account when assessing the *Contractor's* share, but is deducted from the final amount due.
- Z57.17 If the *Employer* decides to withdraw this contract or any of the Other Contracts from the Programme for any reason, clause Z57 no longer applies.

Clause Z59 Performance measurement

- Z59.1 In this clause Z59 **CPF** is the current version of the *Employer's* Collaborative Performance Framework.
- Z59.2 The *Employer* measures the *Contractor's* performance at quarterly intervals commencing on the *starting date*. The measurement is carried out in accordance with the CPF.
- Z59.3 Within one month of carrying out each measurement, the *Employer* assesses
the *Contractor's* score for each theme in the CPF and

- the *Contractor's* rolling average score over a 12 month period for
- each theme and
 - all themes combined (each theme being equally weighted).
- Z59.4 The *Employer* notifies the *Contractor* of the scores assessed by him. If the *Contractor* is a joint venture, the scores apply to each Consortium Member separately as well as to the *Contractor*.
- Z59.5 The first bullet of clause Z51.4 is replaced by the following
- “the *Contractor's* (or, if the *Contractor* is a joint venture, any Consortium Member's) current rolling average score for all themes combined or for any *critical theme* under this contract or any other Package Contract is below the *failure level* or”.
- Z59.6 If the *Employer* assesses the *Contractor's* rolling average score for all themes combined or any *critical theme* under this contract as being below the *failure level*
- the *Contractor* prepares a remediation plan within two weeks and submits it to the *Employer* for acceptance and
 - the *Employer* may exclude the *Contractor* (or, if the *Contractor* is a joint venture, any Consortium Member) from selection for any future Package Contract until the *Employer* has accepted the *Contractor's* remediation plan and it has been implemented.
- Z59.7 If the *Employer* assesses the *Contractor's* rolling average score for all themes combined as being below or equal to 5, the *Contractor* (or, if the *Contractor* is a joint venture, any Consortium Member) is excluded from selection for any future Package Contract until the *Employer* has accepted the *Contractor's* remediation plan and it has been implemented.

Clause Z60 Exclusion from future contracts

[Note: Clause Z60 applies only to Package Orders let in relation to the Smart Motorways programme.]

- Z60.1 In this clause Z60 Smart Motorways Programme is the programme of works defined as such from time to time by the *Employer* and notified to the *Contractor*.
- Z60.2 An additional bullet is included in clause Z59.6 as follows
- “the *Employer* excludes the *Contractor* (or, if the *Contractor* is a joint venture, any Consortium Member) from selection for any future Package Contract forming part of the Smart Motorways Programme for which the *Employer* requests submissions within six months.”

Clause Z61 Lane occupancy bonus

- Z61.1 In this clause Z61
- **Actual Lane Occupancy** is the actual lane occupancy associated with Providing the Works, assessed using the method specified in the Works Information as the number of days (measured as each day of the week, including weekends and bank holidays) during which each lane (including the hard shoulder) is subject to Traffic Management at the times stated in the Works Information and expressed in lane kilometre days.
 - **Target Lane Occupancy** is the lower of the *Employer's target lane occupancy* and the *Contractor's target lane occupancy* unless later changed in accordance with this contract.
 - **Traffic Management** is the imposition of traffic management with speed restrictions as described in the Works Information.
- Z61.2 Other terms used in this clause Z61 are defined in clause Z54.
- Z61.3 The *Project Manager* assesses the Actual Lane Occupancy on a monthly basis during the *works* and when all Traffic Management has been removed. The *Project Manager* notifies the Actual Lane Occupancy to the *Contractor*.
- Z61.4 If the Actual Lane Occupancy (ALO) is less than 95% of the Target Lane Occupancy (TLO), the *Contractor* is paid a bonus calculated as
- $$((TLO \times 95\%) - ALO) \times B \times PAS \times 50\%$$
- where B is the *lane occupancy bonus rate* and PAS is the adjustment calculated in accordance with the Performance Adjustment Schedule.
- Z61.5 The maximum bonus payable to the *Contractor* is $(TLO \times 10\% \times B \times PAS)$.
- Z61.6 The *Contractor* does not pay any amount if the Actual Lane Occupancy is more than 95% of the Target Lane Occupancy.
- Z61.7 The *Project Manager* assesses the bonus payable to the *Contractor* within one month after all Traffic Management has been removed from the *works*. Any bonus payable is included in the amount due after Completion of the whole of the *works*.
- Z61.8 If one of the compensation events listed in clause Z54.3 occurs, the *Project Manager* may at his discretion change the Target Lane Occupancy, taking into account the actual or forecast impact of the event on the Actual Lane Occupancy.

Clause Z62 Programme Level Incentive Fund – supplementary provision

- Z62.1 In the definition of "Programme Level Incentive Fund" in clause Z22.1, insert an additional bullet before the first bullet as follows:
- "a sum equivalent to any amount actually paid to the *Supplier*

under clause Z61.7,”.

Appendix E

Engineering and Construction Short Contract – additional Z clauses

[Clauses Z1 to Z21 apply to every Package Order and Z22 applies to a Package Order if stated in the additional Contract Data for the Package Order. In addition, those of the following additional Z clauses listed in the additional Contract Data will apply to each Package Order. No further Z clauses or other changes to the conditions of contract should be included unless agreed by the contract policy owner]

Clause Z23 Project Bank Account

Z23.4 Option Y(UK)1 of the NEC3 Engineering and Construction Contract (April 2013) applies (with appropriate amendments) to this contract.

Z23.5 Clause Y1.6 is amended by inserting the following after the second sentence:

“The *Employer* 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.”

Z23.6 The *Employer* may notify the *Contractor* that payments under this contract will no longer be made using the Project Bank Account. This notice is a compensation event. Within one week of the *Employer's* notice, the *Contractor* notifies the Named Suppliers that the Project Bank Account is no longer to be used and proposes an alternative method to ensure that the Named Suppliers receive payments in accordance with their contracts.

Clause Z24 Changes to Prices

Z24.2 The Parties may at any time agree a reduction to the rates and prices stated in the Price List.

Z24.6 The reduced rates and prices apply to any work performed after the reduction is agreed.

Z24.7 If the *Contractor* does not agree a reduction requested by the *Employer*, the *Employer* may terminate the *Contractor's* obligation to Provide the Works by notifying the *Contractor*.

Clause Z25 Fair payment

Z25.4 The *Contractor* assesses the amount due to a Subcontractor without taking into account the amount assessed under this contract.

Z25.5 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 this contract. The amount due includes, but is not limited to, payment for work which the Subcontractor has

completed from the previous assessment date up to the current assessment date in this 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 this contract and
- a provision requiring the Subcontractor to assess the amount due to a subsubcontractor without taking into account the amount paid by the *Contractor*.

Z25.6 The *Contractor* notifies non-compliance with the timescales for payment 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.

Clause Z26 Records (SME Reporting)

Z26.2 The *Contractor* keeps these records

- accounts of payments of Defined Cost,
- proof that payments have been made,
- communications about the assessments of compensation events for Subcontractors and subcontractors to a Subcontractor and
- other records stated in the Works Information.

Clause Z27 Parent Company Guarantee

Z27.1 If required by the *Employer*, the *Contractor* gives to the *Employer* a parent company guarantee of the *Contractor's* performance in the form set out in the Works Information. If the guarantee was not given by the Contract Date, it is given to the *Employer* within four weeks of the Contract Date. Guarantees are provided for

- a standalone company – from its parent company,
- an unincorporated JV (“more than one party”) – from the parent company of each Consortium Member or
- an incorporated JV – from the parent company of each Consortium Member.

In all cases it is for the *Employer* to decide (in its discretion) whether it will accept a guarantee from a company other than the ultimate holding company.

Clause Z28 Construction Industry Scheme

Z28.1 In this clause (but not otherwise)

- “**Act**” means the Finance Act 2004 and
- “**Regulations**” means the Income Tax (Construction Industry

Scheme) Regulations 2005 (SI 2005/2045).

Z28.2 This contract falls within the scope of the Construction Industry Scheme provided for by Chapter 3, Part 3 of the Act.

Z28.3 The *Contractor* provides the information required by the Regulations to enable the *Employer* 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.

Z28.4 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 *Employer* deducts the relevant percentage from the payment in accordance with the Act and the Regulations.

Clause Z29 *Extended liability period for Plant*

Z29.1 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*.

Z29.2 The *Contractor* carries the risk of loss or damage caused by or resulting from his work in correcting a Defect after the *defects date*.

Clause Z30 *Network Rail Possessions{DoV1}*

Z30.1a The *Contractor* pays the *Employer* the relevant *Network Rail possession charge* for each additional possession required over and above the number of *Network Rail possessions* stated in the Contract Data. The number of *Network Rail possessions* is adjusted if additional possessions are required as a result of a compensation event.

[or]

Z30.1b The total of the Prices is reduced by the relevant *Network Rail possession charge* for each additional possession required over and above the number of *Network Rail possessions* stated in the Contract Data. The number of *Network Rail possessions* is adjusted if additional possessions are required as a result of a compensation event.

Clause Z31 Category Management

Z31.1 In this clause Z31

- Category Purchase Agreement is a framework agreement between the *Employer* and a Category Supplier for the bulk purchase of materials, works or services for use across the *Employer's* business, under which the *Contractor* (and other contractors) may enter into contracts with the Category Supplier and
- Category Supplier is a supplier who enters into a Category Purchase Agreement with the *Employer*.

Z31.2 When instructed by the *Employer*, the *Contractor* enters into a contract with a Category Supplier pursuant to a Category Purchase Agreement for the purchase of materials, works or services needed to Provide the Works as identified in the *Employer's* instruction. The conditions of contract between the *Contractor* and a Category Supplier are those set out in the Category Purchase Agreement and the *Contractor* does not change them unless the *Employer* agrees.

Z31.3 The *Contractor* remains responsible for Providing the Works and for the quality of any materials, works or services supplied by a Category Supplier as if he had supplied them himself.

Z31.4 The *Contractor* makes available to the *Employer* on request copies of all records and communications with Category Suppliers.

Z31.5 The *Contractor* co-operates with the *Employer* and any other contractors who enter into contracts with a Category Supplier in forecasting demand for materials, works or services to which a Category Purchase Agreement relates.

Z31.6 Prior to entering into a contract with a Category Supplier, the *Contractor* may request the *Employer's* agreement to use an alternative supplier if the *Contractor* considers that it will offer a saving to the *Employer*. The *Contractor* provides details of the alternative supplier and the expected saving with the request. The *Employer* (in his absolute discretion) decides whether to agree the request and notifies the *Contractor* of his decision.

Z31.7 This clause Z31 does not apply where the *Employer* is not a "contracting authority" (as that term is defined in the Public Contracts Regulations 2006 (as amended)).

Clause Z42 Joint ventures

Z42.4 Clause 90.2 of the *conditions of contract* is amended by inserting after "the other Party" the words "(or, in the case of the *Contractor*, any Consortium Member)".

Clause Z49 Payment

Z49.1 In paragraph 1.1(2) of Page CC 12 of 12 delete "three weeks" and

insert "fourteen days".

Z49.2 Payments are in the *currency of this contract* unless otherwise stated in this contract.

Clause Z50 Subcontracting

Z50.1 The *Contractor* submits the name of each proposed subcontractor to the *Employer* for acceptance. A reason for not accepting the subcontractor is that his appointment will not allow the *Contractor* to Provide the Works. The *Contractor* does not appoint a proposed subcontractor until the *Employer* has accepted him.

Z50.2 The *Contractor* submits the proposed conditions of contract for each subcontract to the *Employer* for acceptance unless the *Employer* has agreed that no submission is required.

Z50.3 The *Contractor* does not appoint a subcontractor on the proposed subcontract conditions submitted until the *Employer* has accepted them. A reason for not accepting them is that

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

Z50.4 The conditions of contract for each subcontract are to include

- obligations substantially similar to those in clause Z2 and
- a term requiring (at the *Employer's* option) the novation of the subcontract to the *Employer* or a replacement supplier following the termination of this contract.

Clause Z51 Termination and omission of work

Z51.5 If the *Employer* instructs a change to the Works Information which involves the omission of part of the *works*, the *Employer* may engage other people to carry out the part omitted. The instruction is assessed as a compensation event, except that if the instruction is given for Reason 1, 2, 3 or 4 in clause 90 of the *conditions of contract*, the assessment includes a deduction of the forecast additional cost to the *Employer* of completing the *works*.

Z51.6 The following is added at the end of clause 90.1 of the *conditions of contract*:

“unless instructed otherwise by the *Employer*”.

Z51.7 Clause 92.3 of the *conditions of contract* is amended by deleting “5% of any excess of a forecast ... normal payments” and inserting “substantiated tender costs up to a maximum of £50,000”.

Z51.8 The following are treated as a substantial failure by the *Contractor* to comply with this contract

- the *Contractor's* performance as measured in accordance with the current edition of the Highways Agency's Motivating Success

Toolkit (or any replacement for it) is below the *failure level* or

- a key resource needed by the *Contractor* to Provide the Works is no longer available and the *Contractor* does not propose an alternative resource acceptable to the *Employer*.

Z51.16 The *Employer* may terminate the *Contractor's* obligation to Provide the Works by notifying the *Contractor* if the *Contractor's* financial capacity statement for this contract (as referred to in Annex 4 of the Framework Information) is inaccurate. The procedures followed and the amounts due on termination are in accordance with clauses 91.1, 92.1 and 92.2.

Clause Z53 Insurances

Z53.2 The insurances provided by the *Contractor* comply with the additional requirements stated in the Works Information.

Part two – Data provided by the *Supplier*

The Data which will apply to all work under the Framework Contract is

The *Supplier* is

Name

Address

The *key people* are the people listed in the *key people schedule*.

The *key people schedule* is in

The Quality Statement is in

The *quotation information* is in

The *project bank* is

The Data which will apply to all Time Charge Orders let under the NEC Professional Services Contract is

General The *Consultant* is the *Supplier*.

The Data which will apply to all Time Charge Orders let under the NEC Professional Services Short Contract is

The *Consultant* is the *Supplier*.

The Data which will apply to all Package Orders let under the NEC Engineering and Construction Contract is

General The *Contractor* is the *Supplier*.

Payment The *direct fee percentage* is % or the lower percentage stated in the additional Contract Data for a Package Contract.

The *Associated Company fee percentage* is the same as the *direct fee percentage*.

The *subcontracted fee percentage* is the same as the *direct fee percentage*.

The Fee Schedule is in

Data for the Shorter Schedule of Cost Components The percentage for people overheads is%.

The published list of Equipment is the last edition 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	size or capacity	rate
.....
.....
.....

**Data for
Schedule of
Cost
Components**

If the Package Order is let under main Option C, D or E, the listed items of Equipment purchased for work on this contract, with an on cost charge, are

Equipment	time related charge	time period
.....	per
.....	per
.....	per

The rates for special Equipment are

Equipment	size or capacity	rate
.....
.....
.....

The hourly rates for Defined Cost of manufacture and fabrication outside the Working Areas are

category of employee	hourly rate
.....
.....

The percentage for manufacture and fabrication overheads is
..... %

**Data for both
schedules of
cost
components**

The hourly rates for Defined Cost of design outside the Working Areas are

category of employee	hourly rate
.....
.....

The percentage for design overheads is%

If the Package Order is let under main Option A or B, the categories of design employees whose travelling expenses to and from the Working Areas are included in Defined Cost are

.....
.....
.....

If the Package Order is let under main Option C, D or E, the categories of design employees whose travelling expenses to and from the Working Areas are included as a cost of design of the *works* and Equipment done outside of the Working Areas are

.....
.....
.....

The Data which will apply to all Package Orders let under the NEC Engineering and Construction Short Contract is

The *Contractor* is the *Supplier*.

The percentage for overheads and profit added to the Defined Cost for people is the same as the *direct fee percentage* stated in the Contract Data for the NEC Engineering and Construction Contract.

The percentage for overheads and profit added to other Defined Cost is the same as the *direct fee percentage* stated in the Contract Data for the NEC Engineering and Construction Contract.

The Data which will apply to all Package Orders let under the NEC Professional Services Contract is

General The *Consultant* is the *Supplier*.

Clause Z54 The *staff profit percentage* is%.

**Highways England
Consultancy Contract**

Schedule of Cost Components

March 2014

Highways England

Consultancy Contract

Schedule of Cost Components

Contents amendment sheet

Amend . No.	Issue Date	Amendments	Initials	Date
0	June 2009	Issue 1 revision 0 draft		
1	January 2011	Issue 2 revision 0		
2	February 2013	Issue 3 revision 0		
3	February 2014	Specific version updated for CDF Framework		
4	March 2014	Specific version updated for CDF Framework Revised	AB	10 March 2014
		Added to over time	AB	14 March 2014
5	May 2015	Change to Highways England	KA	13 May 2015

Schedule of Cost Components

This schedule applies to people employed by the *Consultant* and Subconsultants.

The *staff rate* for each person who is expected to work on this contract is calculated in accordance with this Schedule. The calculation is carried out

- within 4 weeks of the Contract Date,
- on each anniversary of the Contract Date,
- when national insurance costs change -- changes to employer's national insurance contributions due to change in the law and
- when additional staff are identified to work on a task.

Each calculation is to make allowance for the most likely costs for each individual, and is to be substantiated by a combination of current and historic costs.

Allowances for newly recruited staff should be based on historic cost calculations for similar staff. The salary used in the calculation for the staff rate for the newly recruited staff does not exceed the salary of equivalent staff in the framework's *quotation information*.

The *Consultant* is to demonstrate, through benchmarking or other methods, that the costs of people and the cost calculated for each person is in line with the market for such a person. The salary of staff used in the Cost of people does not exceed the salary of staff in the framework's *quotation information*.

The *Consultant* maintains a record of the staff rate calculations and a list of the rates for each person. The *Consultant* provides a copy of the list to the *Employer* within four weeks of the Contract Date, whenever an entry is added or changed and on the anniversary of the Contract Date.

Section A: Staff Rates for work during staff's contracted hours

The *Consultant* identifies the costs incurred under the following headings.

1. Cost of people (where a staff member's wages or salary does not exceed the component for wages or salary in the framework quotation information for that member of staff)
2. Local office overheads (which does not exceed the Local office overhead value in the framework's *quotation information*)
3. Business overheads (which does not exceed the Business overhead value in the framework's *quotation information*) and
4. Profit (which does not exceed the percentage value in the framework's *contract data*)

The coverage of the payment under each of these categories, and the method of assessing the payments, is set out below.

1. Cost of people

Under this component, the *Consultant* identifies

- Costs paid to people. Wages or salary but excluding any
 - form of bonus
 - benefits in kind
 - expenses
- Costs incurred in relation to people. Employer's regular pension contributions (excluding any additional payment to reduce pension fund deficit) and national insurance payments, personal insurance, medical costs and other costs noted in the staff rates table.

For contract staff and self-employed people, the hourly rate for a person is the amount paid by the *Consultant* for the services of that person.

The following calculation is carried out to establish the cost of people employed by the *Consultant*.

	Post				
	Name				
Cost of people					
cost paid to people £					
cost incurred in relation to people £					
annual cost of people £	-	-	-	-	-
Total annual hours per annum (hrs)					
Total annual hours available (hrs)					
Hourly cost of people £	-	-	-	-	-

where

- The total hours per annum is the number of hours the *Consultant's* staff member is contracted to work (including contracted annual leave entitlements and public holidays)
- The annual hours available is the *Consultant's* staff member total hours per annum minus any contracted annual leave entitlements and public holidays

and is fixed for the duration of this contract unless there is a change in the law related to employer's national insurance contributions and then only that cost element will be changed.

2. Local office overheads

The cost of the local office facility is recovered by adding a fixed £ per hour uplift to the cost of people working in that office. This overhead amount covers the cost within the local office of office costs – rent, service charge or maintenance costs, furniture and fittings, utilities, office equipment, consumables, security, cleaning.

Each office from which staff will be working on the task will have its own overhead amount calculated as follows;

Location					
Local office overhead					
costs of Local office £ per annum					
Total Local office billable hours per annum					
Local office overhead £ rate per hour					

and

- does not exceed the local office overhead value for that office in the framework's *quotation information*; and
- is fixed for the duration of this contract.

If a Local office overhead for an office that will be used in the delivery of tasks is not included in the framework's *quotation information* the Local office overhead for that office is calculated using the method above. The maximum value for that office's Local office overhead that can be used for any future contract/Package Contract is calculated using the same assumptions used for calculation of the Local office overhead for other offices in the *quotation information* making an allowance for the passage of time since the award date of the framework. Once agreed by the *Employer*, that maximum value is added to the framework's *quotation information*.

A fixed £'s amount per hour is added to the hourly Costs of people working within that local office, including those making visits away from the office or working on a short-term basis elsewhere.

Where staff are working within a facility provided by Highways England for a period in excess of two weeks, no Local office overhead is added to the cost of those people.

Where people are co-located in a *Consultant* or a Subconsultant's office, the overhead for that office is used.

3. Business overheads

A fixed £'s amount per hour is added to the hourly cost of people working in all offices to include allowances for all expenses not recovered through the contract, together with other overheads. The *Consultant* demonstrates the costs are substantiated by a combination of current and historic costs, but does not exceed the value in the framework's *quotation information*. The amount for Business overheads is fixed for the duration of the contract.

4. Profit

A percentage for profit is applied to the hourly Cost of people plus Local office and Business overheads. The percentage is fixed at the Contract Date.

The percentage addition for profit is to be the same for each member of staff; the allowance, therefore is required to provide a profit contribution for the *Consultant* and Subcontractors.

Costs are identified under the following elements.

Location				
Office overhead				
costs of office £				
Total billable hours of people employed in the office £				
Local office overhead £ rate per hour				
Business overhead				
	£/hr			
non-recoverable project costs				
accounting, HR and other support services				
R&D, training & marketing				
insurance				
finance and interest				
parent company contribution				
legal and other professional costs				
staff bonuses and expenses				
other non recoverable costs and expenses				
Adjustment for non-recoverable hours				
Total £ rate per hour				

Staff rates

The *staff rate* for each person is calculated as follows:

Post Name					
Cost of people					
cost paid to people £					
cost incurred in relation to people £					
annual cost of people £	-	-	-	-	-
total annual hours per annum (hrs)					
Total annual hours available (hrs)					
Hourly cost of people £	-	-	-	-	-
Office location					
People working in Consultant's office					
Hourly cost of people £	-	-	-	-	-
Local office overhead £					
Business overhead £					
Profit %					
Total hourly rate local office £	-	-	-	-	-
People working in HA/Other Offices					
Hourly cost of people £	-	-	-	-	-
Local office overhead £					
Business overhead £					
Adjustment for working in HA/Other offices					
Profit %					
Total hourly rate HA office £	-	-	-	-	-

Unless, if any of the *Consultant's* staff works (whether for the *Employer* or any other client) in excess of their equivalent weekly contracted hours (minus any hours they are engaged on or undertake non chargeable/billable activities to clients) then the *staff rate* for that such staff for those hours worked (whether for the *Employer* or other client) in excess of their equivalent weekly contracted hours (minus any hours they are engaged on or undertake non chargeable/billable activities to clients) is;

- where a member of staff is contracted to work additional hours at no additional recompense the *staff rate* shall be £0.00
- where the member of staff is recompensed then the *staff rate* is calculated as Hourly Cost of people + profit percentage only

where the equivalent weekly contracted hours is calculated as the total hours per annum divided by the number of weeks per year the *Consultant's* staff member is contracted to work including annual leave entitlements and public holidays

Section B: Staff Rates for work outside contracted hours

If the Scope specifies work to be undertaken outside the *Consultant's* staff contracted hours of working (including any flexible working arrangements) and above the normal equivalent weekly contracted working hours then

The *Consultant* identifies the costs incurred under the following headings.

1. Cost of people (where a staff member's wages or salary does not exceed the component for wages or salary in the framework quotation information for that member of staff)
2. Profit (which does not exceed the percentage value in the framework's *contract data*)

The coverage of the payment under each of these categories, and the method of assessing the payments, is set out below.

1. Cost of people

Under this component, the *Consultant* identifies

- Costs paid to people. Wages or salary excluding any
 - form of bonus
 - benefits in kind
 - expenses
- Costs incurred in relation to people. Employer's regular pension contributions (excluding any additional payment to reduce pension fund deficit) and national insurance payments, personal insurance, medical costs and other costs noted in the staff rates table.

For contract staff and self-employed people, the hourly rate for a person is the amount paid by the *Consultant* for the services of that person.

2. Profit

A percentage for profit is applied to the hourly Cost of people. The percentage is fixed at the Contract Date.

The percentage addition for profit is to be the same for each member of staff; the allowance, therefore is required to provide a profit contribution for the *Consultant* and Subcontractors.

The following calculation is carried out to establish the cost of people employed by the *Consultant*.

If the staff are paid overtime then the *Consultant staff rate* for those additional hours worked (whether for the *Employer* or any other client) in excess of the equivalent weekly contracted hours (minus any hours they are engaged on or undertake non chargeable/billable activities to clients) is calculated as follows

Post					
Name					
Cost of people					
cost paid to people £					
cost incurred in relation to people £					
annual cost of people £	-	-	-	-	-
total annual hours per annum (hrs)					
Contracted hourly multiplier for overtime					
Hourly cost of people £	-	-	-	-	-
Profit %					
Total hourly rate	-	-	-	-	-

The Contracted hourly multiplier is multiplier for overtime stated within the member of staffs written employment contract.

where

- The total hours per annum is the number of hours the *Consultant's* staff member is contracted to work (including contracted annual leave entitlements and public holidays)
- the equivalent weekly contracted hours is calculated as the total hours per annum divided by the number of weeks the *Consultant's* staff member is contracted to work including annual leave entitlements and public holidays

and is fixed for the duration of this contract unless there is a change in the law related to employer's national insurance contributions and then only that cost element will be changed

If the *Consultant's* staff member is not paid over time then the *staff rate* is £0.00 for those additional hours worked in excess of the equivalent weekly contracted hours (minus any hours they are engaged on or undertake non chargeable/billable activities to clients).