

**Trafnidiaeth
Transport**

M4 Junction 28 Improvements

June 2014



**Llywodraeth Cymru
Welsh Government**

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**Professional Services Contract and Engineering and
Construction Contract**

For

Early Contractor Involvement Design and Build Contract

Volume 1

1a - Form of Tender

1b - Tender Confidentiality and Non Collusion Certificate

1c - Form of Agreement by Deed (Key Stage 3 and 4)

1d - Contract Data (Key Stage 3 and Key Stage 4)

1e - Form of Agreement by Deed (Key Stage 6)

1f - Contract Data (Key Stage 6)

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Professional Services Contract

For

Early Contractor Involvement Design and Build Contract

**Volume 1a – Form of Tender
Key Stage 3 and Key Stage 4**

**Relating to the provision of professional services for the preliminary design
and management of the statutory process**

FORM OF TENDER

The *services*:

M4 Junction 28 Improvements

TENDER To The Welsh Ministers
 Crown Buildings
 Cathays Park
 Cardiff CF10 3NQ

- 1 We offer to comply with the terms of the contract and to provide provisional services for the project management, design and advice through the statutory procedures, if required, in accordance with the NEC 3 Professional Services Contract June 2005 (including amendments June 2006, September 2011 and April 2013), Contract Data Part One and Part Two for the sums to be calculated in accordance with the Conditions.

- 2 We attach the following completed documents, which form part of our offer:

- 3 Envelope A**
- 3.1 The Quality Statement.
- 3.2 Statement confirming willingness to provide a Parent Company Guarantee, if required.
- 3.3 Certificates to provide the insurances required by the contract.
- 3.4 Statement confirming responsibility for dealing with insurance claims or parts of such claims within the excess amount.
- 3.5 Statement confirming willingness, if awarded the contract, to accept the appointment and duties of the CDM Co-ordinator.
- 3.6 Completed unpriced activity schedule covering Key Stage 3.
- 3.7 Completed unpriced Risk Register.
- 3.8 Completed Budget Assumptions Report (excluding financial information).
- 3.9 Completed Curricula Vitae of the Key Persons identified in Contract Data Part Two.
- 3.10 Programme for Key Stages 3 to 6.
- 3.11 Organograms for Key Stages 3 to 6.
- 3.12 A statement undertaking to provide a Health & Safety Questionnaire.

4 Envelope B

- 4.1 The completed Form of Tender incorporating the anti-collusion certificate and (if a joint venture) a copy of the joint venture agreement and a statement that the parties to the JV will be jointly and severally bound for performance for the contract.
 - 4.2 The completed Professional Services Contract Data Part Two.
 - 4.3 The *direct fee percentage* and the *subcontracted fee percentage* inserted in to the Engineering and Construction Contract Data Part Two.
 - 4.4 The Prices for Key Stage 3 (activity schedule).
 - 4.5 Completed Pricing Table for staff rates.
 - 4.6 Completed Budget estimate with assumptions.
 - 4.7 Statement confirming the budget estimate for Key Stage 6 and confirmation that this will be used as the Initial Target Cost (ITC) from the starting date Key Stage 3.
 - 4.8 Completed Inflation Weighting s for the Price Adjustment Formulae Indices (Civil Engineering) 1990 Series (Series 3) table.
 - 4.9 Completed priced Risk Register as required by Contract Data Part Two.
- 5 We will, when required, enter into a formal Contract Agreement with you in the form included with the tender documentation. Until a formal Contract Agreement is entered into, this tender and your acceptance of it will constitute a binding contract between us. We understand that you are not bound to accept the lowest or any tender received.
- 6 We certify that this tender is made in good faith and that we have not fixed or adjusted the prices contained in it by agreement with any other person. We further certify that we have not and will not:
- a) before the award of any contract, communicate to any person other than the Welsh Government or a person duly authorised on their behalf any pricing information contained in our tender or proposed tender, except where the disclosure (in confidence) of pricing information is necessary to obtain insurance premium quotations required for the preparation of our tender.
 - b) enter into any agreement with any person that he will refrain from tendering, or as to the amount of any tender to be submitted, or
 - c) pay or 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 causing to be done, in relation to any tender or proposed tender, any act of the sort described in paragraphs 6 (a) or 6 (b) above.
- 7 We also certify that the principles described in paragraph 6 above have been, or will be, brought to the attention of all sub-contractors and suppliers providing services or materials in connection with our tender and any contract which we enter into with such sub-contractors and suppliers will be made on the basis of compliance with the above principles by all parties.

8 Words and expressions used in this offer have the meanings assigned to them in the Conditions. The word “person” includes any body or association, corporate or unincorporated; and “any agreement” includes any formal or informal arrangement, whether legally binding or not.

This offer will remain open for acceptance for a period not exceeding 120 days.

Signed

Name

Position

Duly authorised to sign tenders for and on behalf of:

Registered Address

.....

Telephone Number

Fax Number

E-mail

Date

**Trafnidiaeth
Transport**

M4 Junction 28 Improvements

June 2014



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Professional Services Contract

For

Early Contractor Involvement Design and Build Contract

**Volume 1b - Tender Confidentiality and Non Collusion
Certificate**

Key Stage 3 and Key Stage 4

**Relating to the provision of professional services for the preliminary design and
management of the statutory process**

TENDER CONFIDENTIALITY AND NON-COLLUSION CERTIFICATE FOR THE M4 JUNCTION 28 IMPROVEMENTS

Tender Confidentiality

This tender must be treated as private and confidential. Tenderers should not disclose the fact that they have been invited to tender or release details of the tender documents, other than on an "in confidence" basis to those who have a legitimate need to know or whom they need to consult for the purpose of preparing the tender. Tenderers should not release information concerning the invitation to tender and/or the tender documents for publication in the press or on radio, television, screen or any other medium.

Tender documents must not be transferred to anyone (other than the firm named in the Invitation to Tender) without the prior specific approval of the *Employer* in writing.

The Intellectual Property in the Instructions and the Tender Documents belongs to the *Employer* and may only be used for the purpose of responding to this invitation to tender. The *Employer* may suffer damage for which compensation may be sought from a tenderer who discloses the material other than to employees or others having a legitimate need to know, who are involved in the tender preparation or uses the material other than the purposes of tendering.

The *Employer* is subject to the provisions of the Freedom of Information (FOI) Act 2000. If you consider that any information supplied to the *Employer* is either commercially sensitive or confidential in nature, this should be highlighted and the reasons for its sensitivity given. Where information provided by you is identified in this way, the *Employer* will consider your comments when deciding whether or not to release this in response to an FOI request. In making its decision, the *Employer* will consider all the relevant facts when determining whether the information under consideration falls within the areas listed as exempt under the FOI Act.

Prevention of Collusion and Corrupt or Illegal Practices

The essence of fair and competitive Tendering is that the *Employer* shall receive bona fide competitive tenders from all firms tendering. In recognition of this principle, Tenderers agree to provide a bona fide tender, intended to be competitive, and that the fees, rates and financial data entered in the tender have not been fixed or adjusted by or under or in accordance with any agreement or arrangements with any other person. Tenderers also agree that they have not done and will not undertake to do at any time before the returnable date for this Tender any of the following acts:

- Communicate to a person other than the person calling for these tenders the fees, rates and financial data herewith submitted.
- Enter into any agreement or arrangement with any other person that he shall refrain from Tendering or as to the fees, rates and financial data of any tender to be submitted by that person.
- Offer to pay give or agree to pay or give any sum of money or 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 for the said services any act or thing of the sort described above.

In this certificate, the word “Person” includes any persons and any body or association, whether or not a separate legal entity; and “any agreement or arrangement” includes any such transactions, formal or informal whether legally binding or not.

We [NAME OF TENDERER] agree to abide by the principles set out within this certificate:

Signed:

Name:

Date:

**Trafnidiaeth
Transport**

M4 Junction 28 Improvements

June 2014



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Professional Services Contract

for

Early Contractor Involvement Design and Build Contract

Volume 1c - Form of Agreement by Deed Key Stage 3 and Key Stage 4

**Relating to the provision of professional services for the preliminary design
and management of the statutory process**

THIS DEED is made theday of.....2014

BETWEEN

PARTIES:

1 **The Welsh Ministers whose principal place of business is at Crown Buildings, Cathay's Park, Cardiff CF10 3NQ** ("the *Employer*");

AND

2 [] a company incorporated in and in accordance with the laws of [] with registered number [] whose registered office is at [] ("the *Contractor*").

RECITALS

- A In response to the *Employer's* invitation to tender, the *Contractor* has submitted a tender to provide professional services for the preliminary design and management of the statutory process all in accordance with the Works Information.
- B The *Employer* has examined the *Contractor's* tender and now wishes to appoint the *Contractor* on the terms of this Agreement.

OPERATIVE PROVISIONS:

1 Definitions and interpretation

In this Agreement (including the Recitals) words and expressions have the meanings given to them in the Conditions referred to below.

2 Contract Documents

2.1 The following documents form part of this Agreement:

- 2.1.1 the NEC3 Professional Services Contract June 2005, including amendments June 2006, September 2011 and April 2013, incorporating **Option C for Key Stage 3** and **Option E for Key Stage 4**, dispute resolution **Option W2** and secondary options **X1, X2, X4, X9, X10, X11, X18, Y(UK)2** and **Y(UK)3** all as amended or supplemented by **Option Z** (of the *Employer* Amendments for M4 Junction 28 Improvements ("the Conditions")).

2.1.2 the Contract Data Parts One and Two and the documents referred to in it.

2.1.3 The several documents forming part of this Agreement are to be taken as mutually explanatory of one another.

3 Agreement

3.1 The *Contractor* agrees to carry out the *works* for the *Employer* in accordance with the provisions of this Agreement.

3.2 The *Employer* will pay to the *Contractor* the amounts due under and in accordance with the provisions of this Agreement.

4 Freedom of Information Act 2000

4.1 Both parties to this Agreement shall keep confidential all information of a confidential nature to the extent that the party providing the information has labelled or otherwise clearly stated that it is to be treated as confidential ("Confidential Information"). The parties shall use all reasonable endeavours to prevent their sub-contractors, employees and agents from making any disclosure to any person of any Confidential Information. The provisions of this Clause 4 are subject to the provisions of the Code of Practice on Public Access to Information published by the *Employer* ("the NAW Code"), the Freedom of Information Act 2000 ("the FOI Act") and the Environmental Information Regulations 2004 ("EIR"). The *Employer* shall not be in breach of this Agreement by reason of anything it does the purpose of which is to secure compliance with the NAW Code, the FOI Act or the EIR. Without prejudice to the *Employer's* statutory obligations to make disclosure in accordance with the FOI Act, the *Employer* provides the *Contractor* with reasonable prior written notice of any response to any enquiry pursuant to the FOI Act which relates to this Agreement so as to permit the *Contractor* to make any representations in respect thereof, but without any obligation upon the *Employer* to include in any FOI Act response the representations made by the *Contractor*.

4.2 This clause shall not prevent the disclosure of Confidential Information:

4.2.1 to the Parties' professional advisors;

4.2.2 reasonably required by, or to, persons engaged in the performance of either party's obligations under the Agreement for the performance of those obligations;

4.2.3 which the disclosing party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause;

- 4.2.4 which is required to enable a determination to be made under the dispute resolution mechanism;
- 4.2.5 which is required by any law (including any order of a court of competent jurisdiction or a decision of the Information Commission or Information Tribunal, or disclosure to any of them to allow such order or decision to be made) or the rules of any stock exchange or governmental or regulatory authority having the force of law;
- 4.2.6 which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and which is not subject to an obligation of confidentiality;
- 4.2.7 or any audit or examination of the economy, efficiency and effectiveness with which the *Employer* has used its resources; or
- 4.2.8 (without prejudice to the generality of Clause 4.2.5) where required for compliance with the Environmental Information Regulations 2004.

In witness whereof the parties hereto have caused their respective seals to be hereunto affixed the day and year first above written

“EXECUTED AS A DEED by applying the seal of the Welsh Ministers.

The application of the seal of the Welsh Ministers is AUTHENTICATED by _____ who is duly authorised for that purpose by the Director of Legal Services by authority of the Welsh Ministers under section 90(2) of the Government of Wales Act 2006.”

Signed:

EXECUTED AS A DEED BY [NAME OF CONTRACTOR]:

..... (signed)
..... (Name of Director)
..... (signed)
..... (Name of Director or Company Secretary)

* The above signatory requirements for the execution of a Deed assume that the *Contractor* is a Company. The signatory details will need to be changed if the *Contractor* is an Individual, a Partnership or a Limited Liability Partnership.

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June 2014



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Professional Services Contract

for

Early Contractor Involvement Design and Build Contract

**Volume 1d – Professional Services Contract - Contract Data
Key Stage 3 and Key Stage 4**

**Relating to the provision of professional services for the preliminary design and
management of the statutory process**

CONTRACT DATA

Part One - Data provided by the *Employer* for work undertaken in Key Stage 3 and Key Stage 4

Statements given in all contracts

- 1 General
- The conditions of contract are the core clauses and the clauses for main Option **C (Key Stage 3)**, main Option **E (Key Stage 4)**, dispute resolution Option **W2** and secondary Options **X1, X2, X4, X9, X10, X11, X18, Y(UK)2, Y(UK)3** and **Z (of the Employers)** of the NEC3 Professional Services Contract June 2005 (with amendments June 2006, September 2011 and April 2013).
 - The *Employer* is **THE WELSH MINISTERS of Crown Buildings, Cathay's Park, Cardiff CF10 3NQ**
 - The *Adjudicator* is **to be nominated by the Adjudicator nominating body.**
 - The *services* are
 1. Project management
 2. Preliminary design services
 3. Management and provision of provisional advice, preparation of the draft Orders, progression through Public Inquiry and other statutory processes
 - The Scope is in **Volume 2 Works Information**
 - 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 *period for retention* is **12 years.**
 - The *Adjudicator nominating body* is **the Institution of Civil Engineers.**
 - The *tribunal* is **Arbitration.**
 - The following matters will be included in the Risk Register

to be completed by the Contractor in accordance with the Instructions for Tenderers and included in Contract Data Part Two.
- 2 The Parties' main responsibilities
- The *Employer* provides access to the following persons, places and things
As required to allow Completion of the whole of the services in accordance with this Agreement.

- 3 Time
- The *starting date* is **from award of contract**
 - The *Contractor* submits revised programmes at **monthly intervals**.
- 4 Quality
- The quality policy statement and quality plan are provided within **four weeks** of the Contract Date.
 - The *defects date* is **52 weeks** after Completion of the whole of the *services*.
- 5 Payment
- The *assessment interval* is **one calendar month**.
 - The *currency of this contract* is **Pounds Sterling (£)**.
 - The *interest rate* is **2%** per annum above the **base rate in force from time to time of the Bank of England**.
 - The *Contractor* is only entitled to those expenses included in the target cost.
 -
 -

8 Indemnity, insurance and liability The amounts of insurance and the periods for which the *Contractor* maintains insurance are

Event	Cover	period following Completion of the whole of the <i>services</i> or earlier termination
failure of the <i>Contractor</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	£10,000,000 in respect of each event	12 Years
death of or bodily injury to a person (not an employee of the <i>Contractor</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Contractor</i>	£10,000,000 in respect of each event	12 Years

death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract	£10,000,000 in respect of each event	12 Years
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- **The *Employer* does not provide insurances**
- The *Contractor's* total liability to the *Employer* for all matters arising under or connection with this contract, other than the excluded matters, is **£10,000,000**

Optional Statements

- The *completion date* for the whole of the *services* is **108 weeks after starting date**
- The *Contractor* is to submit a first programme for acceptance within **four weeks** of the Contract Date.
- The *key dates and conditions* to be met are

<i>condition</i> to be met	<i>key date</i>
Submission of Preliminary Designs	44 weeks after starting date
Commencement of Detailed Design	46 weeks after starting date
Commencement of Construction	56 Weeks after starting date
Completion of Works	108 Weeks after starting date

Option W2

- The arbitration procedure is **the latest version of the Institution of Civil Engineers Arbitration Procedure.**
- The place where arbitration is to be held is **Cardiff**
- 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 Institution of Civil Engineers**

(for Option C – Key Stage 3)

- The *Contractor* prepares forecasts of the total Time Charge at intervals no longer than **one calendar month**

- The *Contractor's share percentages* and the *share ranges* are

<i>share range</i>	<i>Contractor's share percentage</i>
Less than 80%	70%
From 80% to 95%	50%
From 95% to 105%	20%
From 105% to 120%	40%
Greater than 120%	60%

**(for Option E –
Key Stage 4)**

- The *Contractor* prepares forecasts of the total Time Charge at intervals no longer than **one calendar month**

Option X1

- The *index* is **Monthly Digest of Statistics, Table 18.15, Column K5EC “Professional Scientific and Technical Sector”, as published by the Office of National Statistics.**
- The base date for indices is the **tender return date**

Option X2

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

Option X10

- The *Employer's Agent* is:

Parsons Brinckerhoff
29 Cathedral Road,
Cardiff
CF11 9HA

- The authority of the *Employer's Agents* is **contained in Works Information Volume 2 and 2A.**

Option X18

- The *Contractor's* liability to the *Employer* for indirect or consequential loss is **£25 million or the estimated value of Key Stage 6, which ever is the higher.**
- The *Contractor's* liability to the *Employer* for death or injury to third parties as a consequence of the *works* which is **unlimited.**
- The *Contractor's* liability for Defects that are not found until after the *defects date* is **£25 million or the estimated value of Key Stage 6, which ever is the higher.**
- The *end of liability date* is **12 years** after Completion.

Option Y(UK)2 **Dates for Payment**

- First sentence delete “seven” insert “fourteen”

Option Y(UK)3

- Term
None

person or organisation
none

Option Z **The amendments to core clauses are:**

Identified and defined terms

Z.1.1 – PSC Add at the **end of clause 11.2 (16)**

“plus the amount of the *expenses* properly spent by the *Contractor* in providing the *services*.”

Z.1.2 – PSC Add at the **end of clause 11.2 (18)**

“The Prices shall include the *expenses* stated in the Contract Data”.

Z.1.3 – PSC Add new sub-clauses to **clause 11.2** as follows:

- (26) Initial Target Cost is the Key Stage 6 budget submitted as part of the tender submission.
- (27) The Key Stage 6 Target Cost is the Initial Target Cost amended in accordance with the contract.
- (28) An Evaluation Event is a change to the Initial Target Cost.
- (29) The Initial Target Cost Build Up is the information provided by the *Contractor* to substantiate the content of the Budget Assumption Report.
- (30) A Mandatory Assumption is an assumption made by the *Employer* unless changed in accordance with the contract.
- (31) A Contractor’s Assumption is an assumption made by the Contractor to substantiate his Initial Target Cost.
- (32) The Budget Assumptions Report is a table listing the Mandatory Assumptions and Contractors Assumptions provided to substantiate the Initial Target Cost.

Early Warning

Z.2 - PSC Add additional bullet point to **clause 15.1**

“Increase or decrease in the forecast total of the prices for Key Stage 6.”

Subcontracting

Z.3 – PSC Replace **clause 24.2** with the following:

“The *Contractor* submits the name of each proposed Subconsultant to the

Employer for acceptance. A reason for not accepting the Subconsultant is that

- their appointment will not allow the Contractor to provide the Services.
- the *Employer* has reasonable grounds for concern in relation to the Subconsultant's experience, financial stability, insurance cover or status.
- A Subconsultant Warranty has been requested and not provided.

The *Contractor* does not appoint a proposed Subconsultant until the *Employer* has accepted him."

Correcting Defects

Z.4 - PSC

Add new clause 41.3

"Nothing in this clause 41 affects any other right or remedy under the contract or at law, including (without limitation) the *Employer's* right to claim damages for a Defect as a breach of contract".

Payment

Z.5.1 – PSC

Add as a new clause 50.5

"If the forecast of the total Time Charge and *expenses* exceed the Prices the *Employer* may withhold payment to the extent of any Price for Services Provided to Date in excess of the Prices (as last agreed or determined at the relevant time). In such circumstances the *Employer* includes as a payment to the *Contractor*, in the preliminary and final assessment following Completion in accordance with clauses 54.3 and 54.4, any unpaid element of any *Employer's* share."

Z.5.2 – PSC

Add new clause 51.6 as follows

"Where under this contract any sum of money is recoverable from or payable by the *Contractor* such sum may be deducted from or reduced by the amount of any sum or sums then due or which may at any time after may become due to the *Contractor* under this contract or any other contract with the *Employer* or any Department of Her Majesty's Government."

Compensation Events

Z.6.1 – PSC

Clause 60.1(12) add the words

"following an instruction of the *Employer* to do so, it having been agreed or determined that the *Contractor* was not responsible for the Defect."

Z.6.2 – PSC

Add new sub clause 60.1(13)

“The *Employer* instructs the *Contractor* to prepare a quotation for an Evaluation Event.”

Notifying Compensation Events

Z.7.1 - PSC

In **clause 63.1**

add the words “and *expenses* reasonably incurred” immediately after the words “Time Charge” in both bullet points.

Z.7.2 - PSC

In **clause 63.2**

add the words “and *expenses*” immediately after the words “Time Charge”.

Z.7.3 - PSC

In **clause 63.13**

add the words “and *expenses*” immediately after the words “Time Charge”.

Termination

Z.8.1 – PSC

Add new **Clause 90.5** as follows:

“The *Employer* may terminate immediately by way of written notice to the *Contractor* if the *Contractor* has been found to have engaged in the practise of “blacklisting” (as set out in the Employers Relations Act 1999 (Blacklists) Regulations 2010 and failed to disclose such practices during the tender period for the award of this Agreement or during this Agreement”.

Z.8.2 – PSC

At the end of **clause 92.2**

delete from and including “on termination” in the fourth line to the end and insert “shall be the amount in accordance with clause 92.1 less a deduction of the additional cost to the *Employer* of completing the *services*. After termination, the *Employer* shall not be obliged to make any further payment until that additional cost can be fully ascertained. In the event that such additional cost exceeds the amount in accordance with clause 92.1, without prejudice to any other right or remedy of the *Employer*, the *Employer* may recover such excess from the *Contractor* as a debt.”

Z.8.3 - PSC

In **clause 92.3**

add the words “and *expenses* reasonably incurred” immediately after the words “Time Charge”.

Z.8.4 – PSC

At the **end of the first paragraph of clause 92.3** add

“The assessment uses as the total of the Prices

- the lump sum price for each activity which has been completed and

- a proportion of the lump sum price for each incomplete activity which is the proportion of the work in the activity which has been completed.”

Z.8.5 – PSC

Add as a **new clause at clause 92.4**

“The *Contractor* is not entitled to the *Contractor’s* share if termination has taken place in accordance with clause 90.1 of this contract or if termination has taken place in accordance with the second ground specified in clause 90.3 of this contract”.

Responsibility for Statutory Bodies

Z9.1 – PSC

The Contractor on behalf of the Employer:

- Identifies those measures which need to be taken as a consequence of or in order to facilitate the works with any Statutory Body
- Settles a specification for the measures which need to be taken and determines by whom those measures are to be taken with the Statutory Body
- Co-ordinates the taking of those measures and the carrying out of the works with the Statutory body.
- Compiles and issues to the Employer a draft copy of the Statutory Authorities Works Report one week prior to the end of Key Stage 3.

And the Employer as Contractor’s principal pays the Statutory Body’s allowable costs in respect of these measures. The Contractor incorporates adequate time within the programme of works for Key Stage 6 Construction to reflect the measures required to by the Statutory Authorities including any notice periods, lead in periods, and diversionary works required.

Z10 to Z20 – PSC **Not used**

Option Z

The additional conditions of contract are:

Terminology

Z.21 – PSC

Reference to *Consultant* in this NEC3 Professional Services Contract shall be replaced with *Contractor*.

Reference to Scope in these NEC conditions shall be replaced with Works Information.

Reference to *Employer’s Agent* in these NEC Conditions of Contract shall be replaced with *Key Stage Consultant*.

Payments

Z.22 – PSC Expenses will be reimbursed in accordance with current Welsh Government guidelines.

Collateral Warranties

Z.23 – PSC If the *Employer* requires collateral warranties from a subconsultant he may ask the *Contractor* to procure and deliver Deeds of Warranty in the form set out at Volume 2A to this Agreement in favour of the *Employer* from the Subconsultant within 14 days of request by the *Employer*. The *Contractor* is also able to provide to the *Employer* certified subcontracts at the same time as the executed warranties.

Assignment

Z.24 – PSC The *Employer* may assign the benefit of this contract to any successor body exercising its functions. The *Contractor* may not assign the benefit of this contract without the consent of the *Employer*.

Confidentiality

Z.25 – PSC Both parties to this contract keeps confidential all information of a confidential nature to the extent that the party providing the information has labelled or otherwise clearly stated that it is to be treated as confidential (“Confidential Information”). The parties use all reasonable endeavours to prevent their Subcontractors, employees and agents from making any disclosure to any person of any Confidential Information. The provisions of this clause Z.24 are subject to the provisions of the Code of Practice on Public Access to Information published by the *Employer* (“the NAW Code”), the Freedom of Information Act 2000 (“the FOI Act”) and the Environmental Information Regulations 2004 (“EIR”). The *Employer* is not in breach of this contract by reason of anything he does in securing compliance with the NAW Code, the FOI Act and the EIR. This clause does not prevent the disclosure of Confidential Information:

- to the Parties’ professional advisors,
- reasonably required by, or to, persons engaged in the performance of either party’s obligations under the contract,
- which the disclosing party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause,
- which is required by any law or the rules of any stock exchange or governmental or regulatory authority having the force of law,
- which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and which is not subject to an

obligation of confidentiality,

- for any audit or examination of the economy, efficiency and effectiveness with which the *Employer* has used its resources.

Collaboration

Z.26.1 – PSC

The *Contractor* shall collaborate and confer with any other consultants who may be appointed by the *Employer* to undertake duties relating to or affecting the Project or which may affect the Project. Should any disagreement arise between the *Contractor* and such other consultants, the same shall be referred to the *Employer* whose decision shall be final and binding.

Z.26.2 – PSC

The *Contractor* assists and advises the *Employer* with regard to any matter or thing which may be the subject of arbitration, inquiry or litigation or any other form of dispute resolution arising out of or in connection with the Project and, if the *Employer* requires, the *Contractor* attends and gives evidence and otherwise assists and advises the *Employer* in any arbitration or before any court or inquiry held in relation to the Project.

Environment

Z.27 – PSC

In the interests of conservation, the *Contractor* shall be required to produce all printed work in connection with the contract on recycled paper containing at least 80% consumer waste and printed on both sides of the paper where practical.

Termination

Z.28 – PSC

In the event of the services being terminated the *Contractor* shall submit to the *Employer* all existing material and information as they have obtained or prepared prior to the termination in connection with the services provided.

Equality and Diversity

Z.29 – PSC

The *Employer* is committed to the active promotion of equality and to valuing diversity in all its work. It is committed to honouring the duties and rights enshrined in legislation and where possible, shall go further than the requirements of law. The *Employer* believes that promoting diversity and equality of opportunity among its work force and more widely, shall assist in meeting the needs and aspirations of the people of Wales. The *Employer* therefore seeks to contract with companies with similar aspirations and this is reflected in the consideration of the Quality submissions made by tendering companies.

Throughout the duration of this contract the *Contractor* shall, and in addition shall ensure that its subconsultants shall: discharge their obligations under this contract and perform the Services in accordance with their responsibilities under the provisions of the Sex Discrimination Act 1975, Race Relations Act 1976 (Amended 2000) and the Disability

Discrimination Act 1995, 2004 and 2005, Anti-discrimination in employment legislation 2003, covering religion, beliefs, sexual orientation and age, Codes of Practice issued by the European Commission for Combating Discrimination, Equal Opportunities Commission, and the Commission for Racial Equality, and the Disability Rights Commission, and shall in addition discharge its obligations under this contract and provide the services in a manner consistent with the *Employers* policies on equal opportunities.

Official Secrets and Confidentiality

Z.30.1 – PSC The Official Secrets Act 1989 and, where appropriate, the provisions of section 11 of the Atomic Energy Act 1946 apply to this contract from the *starting date* until the date of correction of any Defect notified before the *defects date*, or until a termination certificate has been issued.

Z.30.2 – PSC The *Contractor* notifies his employees and his Subcontractors of their duties under these Acts.

Z.30.3 – PSC The *Contractor* does not use or disclose information concerning the contract obtained either by the *Contractor* or by any person employed by him except for the purposes of the contract.

Photographs

Z.31.1 – PSC The *Contractor* does not take photographs of work carried out in connection with the *works* unless he has obtained the acceptance of the *Employer*.

Z.31.2 – PSC The *Contractor* takes the measures needed to prevent his and his Subcontractors' people taking, publishing or otherwise circulating such photographs.

Tender Quality Statement

Z.32.1 – PSC The quality statement submitted by the *Contractor* as part of the tender submission becomes part of the Scope of Services at the *starting date*.

Z.32.2 – PSC The quality statement sets out the *Contractor's* proposals for the management and resourcing of the *works*.

Z.32.3 – PSC The *Contractor* warrants:

- that the representations contained in the quality statement are accurate in every respect and may be fully relied upon by the *Employer* where the standards represented exceed the minimum originally specified by the *Employer*.
- that the quality statement does not constitute a qualification to his tender. Should any discrepancy arise between the quality statement and other contractual documents, the Works Information takes precedence.

Corrupt Practices

Z.33 – PSC

The *Contractor* does not:

- offer to 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 this contract or any other contract with the *Employer* or for showing favour or disfavour to any person in relation to this contract or any other contract with the *Employer*, or
- enter into this contract or any other contract with the *Employer* if, in connection with this contract or any such other 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.

Welsh Language Scheme

Z.34 – PSC

The *Contractor*:

- implements and adheres to the terms of the Welsh Language Scheme, monitors its operation and reports to the *Employer* (at its request) thereon; and
- imposes a contractual obligation on each of its Subcontractors in terms substantially similar to those set out above and monitors compliance with and takes all reasonable steps to enforce the same.

Initial Target Cost and Key Stage 6 Target Cost

Z.35.1 – PSC

Within two weeks of the starting date the *Contractor* shall submit to the *Employer* the Initial Target Cost for Key Stage 6, which shall be the same as that submitted with the tender Envelope B submission.

Z.35.2-PSC

The *Contractor* shall provide the *Employer* with unfettered access to all information, quotations, assumptions and documents prepared by the *Contractor* during the tender period and after award of the contract used to establish the ITC for Key Stage 6.

Z.35.23 – PSC

The *Contractor* shall comply with the procedure for amendments to the Initial Target Cost contained in the Works Information and Contract Data Part One.

Z.35.43 – PSC

The Initial Target Cost at the end of Key Stage 4 shall become the Key Stage 6 Target Cost.

Z.36

Not used

Evaluation Events

Z.37 – PSC

The following are Evaluation Events.

- The *Employer* gives an instruction changing a Mandatory Assumption in the Budget Assumption Report.
- The *Employer* gives an instruction changing the Works Information for works to be undertaken in Key Stage 6 except
 - A change to the Works Information provided by the Contractor for his design which is made at his request.
- The *Employer* notifies a correction to an assumption which he has stated about an Evaluation Event.
- An Event which is an *Employer's* Risk occurs during Key Stage 3 or Key Stage 4

Notifying Evaluation Events

Z.38.1 – PSC

For Evaluation Events which arise from the *Employer* giving an instruction, the *Employer* notifies the *Contractor* of the Evaluation Event at the time of giving the instruction. He also instructs the *Contractor* to submit a quotation. The *Contractor* puts the instruction into effect.

Z.38.2 – PSC

The *Employer* may instruct the *Contractor* to submit quotations for a proposed instruction.

Z.38.3 – PSC

The *Contractor* notifies the *Employer* of an event which has happened or which he expects to happen as an Evaluation Event if

- The *Contractor* believes the event is an Evaluation Event and
- The *Employer* has not notified the event to the *Contractor*.

If the *Contractor* does not notify an Evaluation Event within four weeks of becoming aware of the event, he is not entitled to a change to the Initial Target Cost.

Z.38.4 – PSC

If the *Employer* decides that an event notified by the *Contractor* is not an Evaluation Event he notifies the *Contractor* of his decision, giving reasons why the Initial Target Cost is not to be adjusted.

If the *Employer* decides that the event is an Evaluation Event he notifies the *Contractor* and instructs him to submit quotations.

Z.38.5 – PSC

If the *Employer* decides that the effects of an Evaluation Event are too uncertain to be evaluated reasonably, he states assumptions about the event in his instruction to submit a quotation.

Quotations for Evaluation Events

Z.39.1 – PSC The *Contractor* submits quotations within three weeks of being instructed to do so by the *Employer*. The *Employer* replies within two weeks of the submission. Their reply is:

- an instruction to submit a revised quotation,
- an acceptance of a quotation,
- a notification that a proposed instruction will not be given or
- a notification that he will be making his own assessment.

Z.39.2 – PSC The *Employer* instructs the *Contractor* to submit a revised quotation only after explaining his reasons for doing so to the *Contractor*. The *Contractor* submits the revised quotation within three weeks of being instructed to do so.

Z.39.3 – PSC The *Employer* extends the time allowed for

- the *Contractor* to submit quotations for an Evaluation Event and
- the *Employer* to reply to a quotation.

Assessing Evaluation Events

Z.40 – PSC The changes to the Initial Target Cost are assessed as changes to the quantities or rates included in the Initial Target Cost Build Up, or new items to be included in the Initial Target Cost Build Up.

If the effect of an Evaluation Event is to reduce the Initial Target Cost and the event is

- a change to the Works Information, other than a change to the Works Information provided by the *Employer* which the *Contractor* proposed and the *Employer* has accepted, provided such *Contractor* proposed change is not a deletion or reduction to the conceptual design in the Works Information.

the initial Target Cost is reduced.

Employer's Assessments

Z.41.1 - PSC The *Employer* assesses an Evaluation Event

- if the *Contractor* has not submitted the required quotation within the time allowed or
- if the *Employer* decides that the *Contractor* has not assessed the Evaluation Event correctly and does not instruct the *Contractor* to submit a revised quotation.

Z.41.2 – PSC The *Employer* notifies the *Contractor* of his assessment of an Evaluation Event and gives him details of it within three weeks. The period starts when the need for an *Employer's* assessment becomes apparent.

Implementation of Evaluation Events

Z.42 – PSC An Evaluation Event is implemented when

- the *Employer* notifies his acceptance of the *Contractor's* quotation,
- the *Employer* notifies the *Contractor* of his own assessment.

Budget Assumptions Report

Z.43.1-PSC The assumptions contained in the Budget Assumptions Report are either Mandatory assumptions or Contractor's assumptions.

Z.43.2-PSC A Mandatory assumption cannot be changed by a Contractor's assumption.

Z.43.3-PSC A Contractor's assumptions shall comply with the Works Information.

Z.43.4-PSC A Contractor's assumption cannot change Site Information.

CONTRACT DATA

Part Two - Data provided by the Contractor for work undertaken in Key Stage 3 and Key Stage 4

- Statements given in all contracts**
- The *Contractor* is **[detail to be inserted by tenderer]**
 - Name
 - Address
 - The *key persons* are **[detail to be inserted by tenderer]**
 - (1) Name
 - Responsibilities
 - Qualifications
 - Experience
 - (2) Name
 - Responsibilities
 - Qualifications
 - Experience
 - The *staff rates* are (for Key Stage 3 and Key Stage 4)

name / designation

[detail to be inserted by tenderer]

Rate

[detail to be inserted by tenderer]

- The following matters will be included in the Risk Register
[detail to be inserted by tenderer]

**Optional
Statements**

for Key Stage 3

- The activity schedule is ***[detail to be inserted by tenderer]***
- The tendered total of the Prices is ***[detail to be inserted by tenderer]***

**Trafnidiaeth
Transport**

M4 Junction 28 Improvements

June 2014



**Llywodraeth Cymru
Welsh Government**

www.cymru.gov.uk

Engineering and Construction Contract

For

Early Contractor Involvement Design and Build Contract

**Volume 1e - Form of Agreement by Deed
Key Stage 6**

Relating to the provision of detailed design and construction

THIS DEED is made theday of.....2014

BETWEEN

PARTIES:

1 **The Welsh Ministers whose principal place of business is at Crown Buildings, Cathay's Park, Cardiff CF10 3NQ** ("the *Employer*");

AND

2 [] a company incorporated in and in accordance with the laws of [] with registered number [] whose registered office is at [] ("the *Contractor*").

RECITALS

A In response to the *Employer's* invitation, the *Contractor* has submitted the following documents during Key Stage 4 for the provision of the detailed design, construction and correction of defects:

- Key Stage 6 Contract Data Part One;
- Key Stage 6 Contract Data Part Two;
- Works Information for Key Stage 6;
- Site Information for Key Stage 6;
- Priced Activity Schedule for Key Stage 6;
- Written undertaking that all information relevant to activities undertaken by the Contractor or his agents during Key Stage 3 and Key Stage 4 have been included in the Works Information.

B The *Employer* has examined the *Contractor's* submitted documents and now wishes to appoint the *Contractor* on the terms of this Agreement.

OPERATIVE PROVISIONS:

1 Definitions and interpretation

In this Agreement (including the Recitals) words and expressions have the meanings given to them in the Conditions referred to below.

2 Contract Documents

2.1 The following documents form part of this Agreement:

2.1.1 the NEC3 Engineering Construction Contract June 2005 including amendments June 2006, September 2011 and April 2013, incorporating **Option C for Key Stage 6**, dispute resolution Option **W2** and secondary options **X2, X4, X5, X7, X15, X16, X18, Y(UK)2** and **Y(UK)3** all as amended or supplemented by **Option Z** (of the *Employers Amendments* for M4 Junction 28 Improvements (“the Conditions”));

2.1.2 The completed Contract Data Parts one and two as annexed to this agreement and the documents referred to in it.

2.1.3 The Works Information

2.1.4 the several documents forming part of this Agreement are to be taken as mutually explanatory of one another. If there is any conflict in or between the documents comprising this contract which cannot be resolved by reference to other documents comprising this contract, the priority of the contract documents is in accordance with the following sequence:

- (a) this Agreement;
- (b) the completed Contract Data;
- (c) the additional conditions of contract incorporated in the completed Contract Data;
- (d) the other Conditions;
- (e) The Works Information Volume 2a
- (f) The Works Information Volume 3; and
- (g) any other document forming part of the contract.

3 Agreement

- 3.1 The *Contractor* agrees to carry out the *works* for the *Employer* in accordance with the provisions of this Agreement.
- 3.2 The *Employer* will pay to the *Contractor* the amounts due under and in accordance with the provisions of this Agreement.

4 Freedom of Information Act 2000

- 4.1 Both parties to this Agreement shall keep confidential all information of a confidential nature to the extent that the party providing the information has labelled or otherwise clearly stated that it is to be treated as confidential (“Confidential Information”). The parties shall use all reasonable endeavours to prevent their sub-contractors, employees and agents from making any disclosure to any person of any Confidential Information. The provisions of this Clause 4 are subject to the provisions of the Code of Practice on Public Access to Information published by the *Employer* (“the NAW Code”), the Freedom of Information Act 2000 (“the FOI Act”) and the Environmental Information Regulations 2004 (“EIR”). The *Employer* shall not be in breach of this Agreement by reason of anything it does the purpose of which is to secure compliance with the NAW Code, the FOI Act or the EIR. Without prejudice to the *Employer’s* statutory obligations to make disclosure in accordance with the FOI Act, the *Employer* provides the *Contractor* with reasonable prior written notice of any response to any enquiry pursuant to the FOI Act which relates to this Agreement so as to permit the *Contractor* to make any representations in respect thereof, but without any obligation upon the *Employer* to include in any FOI Act response the representations made by the *Contractor*.

- 4.2 This clause shall not prevent the disclosure of Confidential Information:

- 4.2.1 to the Parties’ professional advisors;
- 4.2.2 reasonably required by, or to, persons engaged in the performance of either party’s obligations under the Agreement for the performance of those obligations;
- 4.2.3 which the disclosing party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause;
- 4.2.4 which is required to enable a determination to be made under the dispute resolution mechanism;
- 4.2.5 which is required by any law (including any order of a court of competent jurisdiction or a decision of the Information Commission or Information Tribunal, or

- disclosure to any of them to allow such order or decision to be made) or the rules of any stock exchange or governmental or regulatory authority having the force of law;
- 4.2.6 which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and which is not subject to an obligation of confidentiality;
- 4.2.7 or any audit or examination of the economy, efficiency and effectiveness with which the *Employer* has used its resources; or
- 4.2.8 (without prejudice to the generality of Clause 4.2.5) where required for compliance with the Environmental Information Regulations 2004.

In witness whereof the parties hereto have caused their respective seals to be hereunto affixed the day and year first above written

“EXECUTED AS A DEED by applying the seal of the Welsh Ministers.

The application of the seal of the Welsh Ministers is AUTHENTICATED bywho is duly authorised for that purpose by the Director of Legal Services by authority of the Welsh Ministers under section 90(2) of the Government of Wales Act 2006.”

Signed:

EXECUTED AS A DEED BY [NAME OF CONTRACTOR]:

..... (signed)

..... (Name of Director)

..... (signed)

..... (Name of Director or Company Secretary)

* The above signatory requirements for the execution of a Deed assume that the *Contractor* is a Company. The signatory details will need to be changed if the *Contractor* is an Individual, a Partnership or a Limited Liability Partnership.

**Trafnidiaeth
Transport**

M4 Junction 28 Improvements

June 2014



**Llywodraeth Cymru
Welsh Government**

www.cymru.gov.uk

Engineering and Construction Contract

For

Early Contractor Involvement Design and Build Contract

**Volume 1f – Engineering and Construction Contract - Contract
Data
Key Stage 6**

Relating to the provision of detailed design and construction

CONTRACT DATA

Part One - Data provided by the *Employer* for work undertaken in Key Stage 6

Statements given in all contracts

1. General
 - The conditions of contract are the core clauses and the clauses for main **Option C**, dispute resolution Option **W2** and secondary Options **X2, X4, X5, X7, X15, X16, X18, Y (UK)2, Y(UK)3** and **Z (of the Employer)** of the NEC3 Engineering and Construction Contract June 2005 (with amendments June 2006, September 2011 and April 2013).
 - The *works* are **the M4 Junction 28 Improvements**
 - The *Employer* is **THE WELSH MINISTERS** whose principal place of business is at **Crown Buildings, Cathays Park, Cardiff CF10 3NQ**
 - The *Project Manager* is **to be advised before agreement of the Key Stage 6 Target Cost.**
 - The *Supervisor* is **to be advised before agreement of the Key Stage 6 Target Cost.**
 - The *Adjudicator* is **the Institution of Civil Engineers.**
 - The *statutory authorities* are:
 - BT Openreach**
PP 103m Telephone Exchange
Factory Road
Newport
NP20 5FA
 - Wales & West Utilities**
Spooner Close
Celtic Springs
Coedkernew
Newport
NP10 8FZ
 - Western Power Distribution**
Phoenix Way
Llansalmlet
Swansea
SA7 9HW
 - Dwr Cymru**
PO Box 3146
Linea
Fortran Road
St Mellons
CF30 0EH

Virgin Media

1 Dove Wynd
Strathclyde Business Park
Bellshill
ML4 3AL

- The Works Information is **to be advised before agreement of the Key Stage 6 Target Cost.**
- The Site Information is **in to be advised before agreement of the Key Stage 6 Target Cost.**
- The *boundaries of the site* are **to be advised before agreement of the Key Stage 6 Target Cost.**
- The *language of this contract* is **English.**
- The *law of the contract* is **the law 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 following matters will be included in the Risk Register - **the Risk Register will be developed during Key Stage 3 and Key Stage 4 and agreed and valued before agreement of the Key Stage 6 Target Cost.**

3. Time

- The *starting date* is **to be advised before agreement of the Key Stage 6 Target Cost.**
- The *access dates* are **to be advised before agreement of the Key Stage 6 Target Cost.**
- The *Contractor* submits revised programmes at intervals no longer than **one calendar month.**
- The *Contractor* is to submit a first programme **for acceptance as part of the agreement of the Target Cost.**

4. Testing and Defects

- The *defects date* is **one year** after Completion of Key Stage 6 *works.*
- The *defect correction period* is **four weeks**

5. Payment

- The currency of this contract is **Pounds Sterling (£)**
- The assessment interval is **one calendar month**
- The interest rate is **2% per annum** above the **base rate in force from time to time of the Bank of England.**
-

6. Compensation Not used

Events

8. Risks and insurance

- The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) caused by activity in connection with this contract for any one event is **£20,000,000**.
- The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with this contract for any one event is **£20,000,000**

Option W2

- The arbitration procedure is **the latest version of the Institution of Civil Engineers Arbitration Procedure**
- The place where arbitration is to be held is **Cardiff**
- 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 Institution of Civil Engineers**

Optional Statements

- The *completion date* for the whole of the *works* is **November 2016**
- The *Employer* is not willing to take over the *works* before the Completion Date
- The *Contractor* provides these additional insurances

Insurance against **failure of the Contractor to use the skill and care normally used by professionals providing design services.**
- Cover/indemnity is **£20,000,000 for any one event.**

Option C

- The *Contractor's share percentages* and the *share ranges* are

<i>Share range</i>	<i>Contractor's share percentage</i>
Less than 80%	10%
From 80% to 90%	25%
From 90% to 110%	50%
From 110% to 120%	55%
From 120% to 130%	60%
Greater than 130%	65%
- The *Contractor* prepares forecasts of Defined Cost for the *works* at intervals no longer than **one calendar month.**

- The *exchange rates* are those published in **the Financial Times** on the **first working day of the month within which the relevant transaction occurs.**

Option X5

- The *completion date* for each *section* of the *works* is

<i>Section</i>	<i>Description</i>	<i>completion date</i>
4	Completion of preliminary design (end of Key Stage 3)	August 2015
<u>12</u>	Completion of Key Stage 6 construction (scheme opening)	November 2016
<u>23</u>	Completion of Defects Correction Period	November 2017

Option X5 & X7

- Delay damages for each section of the *works* are

<i>Section</i>	<i>Description</i>	<i>amount per day</i>
4	Completion of works	£410 per day
<u>12</u>	Completion of Key Stage 6 works	£410 per day
<u>23</u>	Completion of Key Stage 6 Defect Correction Works	£nil per day

Option X16

- The *retention free amount* is **15% of the total of the Prices**
- The *retention percentage* is **3%**

Option X18

- The *Contractor's liability* to the *Employer* for indirect or consequential loss is **The Prices agreed at the commencement of Key Stage 6.**
- The *Contractor's liability* to the *Employer* for death or injury to third parties as a consequence of the *works* which is **unlimited.**"
- For any one event, the *Contractor's liability* to the *Employer* for loss of or damage to the *Employer's* property is **The Prices agreed at the commencement of Key Stage 6.**
- The *Contractor's liability* for Defects due to design which are not listed on the Defects Certificate is **The Prices agreed at the commencement of Key Stage 6.**
- The *Contractor's total liability* to the *Employer* for all matters arising under or in connection with this contract, other than excluded matters is **The Prices agreed at the commencement of Key Stage 6.**
- The end of *liability date* is **12 years** after Completion of the whole of the *works*.

Option Y(UK)2

Dates for Payment

First sentence delete “seven” insert “fourteen”

Option Y(UK)3

- Term person or organisation
None **none**

Amendments to Core Clauses

Identified and defined terms

Z.1.1 - ECC

Delete **Clause 11.2 (10)** and replace with

“Others are people or organisations who are not the *Employer*, the *Project Manager*, the *Supervisor*, the *Adjudicator*, a Statutory Authority, the *Contractor* or any employee, Subcontractor or supplier of the *Contractor*.”

Z.1.2 - ECC

In **Clause 11.2(25)** add the following

“Between the 4th and 5th bullet points include a further bullet point as follows:

- comply with a procedure set out in the Quality Plan or
- Between 7th and 8th bullet point add four further bullet points as follows:
- correcting Defects caused by the *Contractor's* failure to comply with a procedure set out in the Quality Plan
 - correcting Defects caused by the *Contractor's* failure to exercise reasonable skill and care in the design of the *works*.”
 - correcting defects which the Contractor has previously corrected
 - standard or proprietary products manufactured outside the Working Areas which are not in accordance with the Works Information.

After the last bullet point add the following:

- The Required Insurances
- Anything included in the fee percentage
- ~~Anything included in the working areas overhead charge~~
- Training costs both direct and indirect
- Mobile phones and call charges unless for use by the Employer
- Company car costs including fuel
- Car hire costs including fuel
- Charitable donations made by the Contractor
- Technical books and periodicals
- Gifts
- Head Office costs and staff
- Any staff not based within the works areas
- Insurance excess premia
- Repair of damage to 3rd parties
- Any pain/gain payment outside the main contract agreement. (Design & sub-contract pain/gain to be paid from contractor main share)
- IT equipment unless it is requested that the Employer retains this equipment
- IT software unless it is requested that the Employer retains this software
- Promotional items and advertising
- Entertaining/Social events
- Car repair costs
- Tolls
- Correcting defects that have already been corrected previously
- Settlement of disputes

- Time spent agreeing final account after completion of the works
- Professional fees
- Company registration to trade organisation

- Z.1.3 – ECC** Delete **Clause 11.2(29)** and replace with
- “the Price for Work Done to Date is the total Defined Cost attributable to *works* carried out in accordance with the contract up to the assessment date, which the *Contractor* has paid at the time of the assessment date or is committed to pay before the next assessment date (under contracts the *Contractor* has entered into to Provide the Works) plus the Fee applicable to that total Defined Cost.”
- Z.1.4 – ECC** Delete **Clause 11.2 (30)** and replace with
- “The Prices are the lump sum prices for each of the activities on the Key Stage 6 Target Cost agreed by the *Employer* during Key Stage 4 unless later changed in accordance with this contract.”
- Z.1.5 - ECC** Add new Clause 11.2 (34)
- “A Statutory Authority is an organisation providing services to the *Employer* in connection with the *works*. The Statutory Authorities are the *statutory authorities* stated in the Contract Data.”
- Z.2 - ECC** Interpretation and the Law
- Delete existing **Clause 12.1** and replace with:
- In this contract, except where the context shows otherwise
- Words in the singular also mean in the plural and the other way round
 - Words in the masculine also mean in the feminine and neuter and the other way round
 - Reference to a document include any revision made to it in accordance with this contract
 - Reference to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practise made under it and
 - Reference to a standard include any current relevant standard that replaces it.
- Early Warning**
- Z.3 – ECC** Add additional bullet point to **Clause 16.1**
- change the Accepted Programme.
- Prevention**
- Z.4 – ECC** Delete **Clause 19.1**

Z.5 – ECC

Providing the Works

Insert new clauses 20.2 and 20.5 as follows:

20.2 The Contractor Provides the Works:

- in a proper and workman like manner, and
- in compliance with
- all statutes, statutory instruments, regulations, rules and orders made under any statute or directive having the force of law which affects the works or performance of any obligations under this contract, and
- any regulation, bye-law, permission or approval of any local authority Statutory Authority, or statutory undertaker having jurisdiction in relation to the works or with whose systems the works are, or are to be, connected

20.5 The project that comprises or includes the works is notifiable for the purpose of the Construction (Design and Management) Regulations 2007 (the “CDM Regulations”). The Contractor is the principal contractor under the CDM Regulations in respect of the works and performs all the functions and obligations required to be performed by the principle contractor under the CDM Regulations.

The Contractor’s Design

Z.6 – ECC

Amend **Clause 21.2** as follows:

Delete final sentence in first paragraph and replace with

“Reasons for not accepting the Contractor’s design are:

- that it does not comply with either the Works Information
- it will not allow the Contractor to Provide the Works free from Defects or
- it does not apply with the applicable law.”

Z.7 – ECC

Insert a new clause 28 as follows:

28 Assignment

The Contractor does not assign his interest in or any rights arising under the contract without the consent of the *Employer*.

Defects

Z.8 – ECC

Add new **Clause 46.1**

“Nothing in either Clauses 44-45 affects any other right or remedy under the contract or at law, including (without limitation) the *Employer’s* right to claim damages for a Defect as a breach of contract.”

Assessing the amount due

Z.9 – ECC

Add fourth bullet point to **Clause 50.2** as follows

- less the *Project Manager’s* interim assessment of the *Contractor’s* share if such interim assessment falls within a *share range* of greater than 100%.

Payment

Z.10 – ECC

Add new **Sub-clause 51.5** as follows:

“Where under this contract any sum of money is recoverable from or payable by the *Contractor* such sum may be deducted from or reduced by the amount of any sum or sums then due or which may at any time after may become due to the *Contractor* under this contract or any other contract with the *Employer* or any Department of Her Majesty’s Government.”

The Contractor’s share

Z.11.1 – ECC

Add new Core **Clause 53.2A** as follows:

“The *Project Manager* makes interim assessments of the *Contractor’s* share on each assessment date using his forecast of the final Price for Work Done to Date and his forecast of the final total of the Prices. The *Project Manager* informs the *Contractor* of his interim assessment of the *Contractor’s* share.”

Z.11.2 – ECC

Amend **Clause 53.3** as follows:

Delete ‘at Completion of the whole of the *works*’ and substitute ‘at Completion of Section 1 of the *works*’, in lines 1 and 2 and line 4.

Compensation Events

Z.12.1 – ECC

Delete the following from **Core Clause 60.1**

- 60.1 (12)
- 60.1 (13)
- 60.1 (19)

Z.12.2 – ECC

Delete Clause 60.2 and 60.3.

Z.13 – ECC

Delete clause 70 and replace with the following:

70 Employer's title to Plant and Materials

70.1 The value of Plant and Materials outside the Working Areas is excluded from the Price for Work Done to Date unless

- The Plant and materials is within the United Kingdom,
- The *Contractor* demonstrates to the satisfaction of the *Project Manager* that the *Contractor* has unencumbered title to the Plant and Materials,
- The Plant and Materials is stored separately and is clearly and visibly marked for the *Employer* and this contract,
- The Plant and Materials is adequately protected against water, theft, vandalism and other casualties,
- The Plant and Materials is insured against loss or damage while stored or in transit to the Working Areas for its full reinstatement value under a policy of insurance protecting the interests of the Parties in respect of the usual insured risks for the period until it is brought within the Working Areas and
- The Contractor has provided an offsite materials bond for the value of the Plant and Materials

70.2 The offsite materials bond is issued by a bank or insurer which the *Project Manager* has accepted. A reason for not accepting the proposed bank or insurer is that its commercial position is not strong enough to carry the bond.

70.3 Where the value of Plant and Materials outside the Working Area is included in the Price for Works Done to Date

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

70.4 The value of Plant and Materials within the Working Areas is excluded from the Price for Work Done to Date unless

- Title in the Plant and Materials has already passed to the *Employer* under clause 70.3 or
- The *Contractor* demonstrates to the satisfaction of the *Project Manager* that the *Contractor* has unencumbered title in the Plant Materials

70.5 The *Contractor's* title in Plant and Materials passes to the Employer when it is brought within the Working Areas, but (subject to Clause 80.1) the risk of loss or damage to the Plant and Materials remains with the *Contractor*

70.6 The *Contractor* does not remove Plant and Materials within the Working Areas from where it is stored except for use on the Works or with the *Project Manager's* permission

70.7 The title to Plant and Materials passes back to the *Contractor* if it is removed from the Working Areas with the *Project Manager's* permission

Z.14.1 – ECC

Payment on Termination

Delete the Termination Table from **Clause 90.2** and replace with:

Terminating Party	Reason	Procedure	Amount Due
The <i>Employer</i>	A reason other than R1-R22	P1 and P2	A1, A2 and A4
	R1 – R15, R18 or R22	P1, P2 and P3	A1 and A3
	R17 or R20	P1 and P3	A1 and A2
	R21	P1 and P4	A1 and A2
The <i>Contractor</i>	R1 – R10, R16 or R19	P1 and P4	A1, A2 and A4
	R17 or R20	P1 and P4	A1 and A2

Z.14.2 - ECC

Add new **Clause 91.8** as follows:

“The *Employer* may terminate immediately by way of written notice to the *Contractor* if the *Contractor* has been found to have engaged in the practise of “blacklisting” (as set out in the Employment Regulations Act 1999 (Blacklists) Regulations 2010 and failed to disclose such practises during the tender period for the award of this Agreement or during this Agreement”.

Z.14.3– ECC

Add new **Clause 93.3**

“The *Contractor* is not entitled to the *Contractor’s* share if termination has taken place in accordance with clause 91.1 of this Agreement or if termination has taken place in accordance with clause 91.2, 91.3 and 91.6 (first bullet point) of this Agreement.”

Secondary Option X16

Z.15 - ECC

X16.2 add a third bullet point

- or in the assessment made at Completion of any section of the *works* in proportion to the Price for the Work Done to Date for that section of the *works*

Z.16 – ECC

Secondary Option X18

X18.4 add a fifth and sixth bullet point:

- liability resulting from fraud, fraudulent misrepresentation or deliberate damage
- liability in respect of which sums have been recovered (or would have been recovered but for an act or omission by or on the part of the Contractor) under any insurance policies required to be taken out by the Contractor under this contract.

Schedule of Cost Components

Z.17.1 - ECC

Delete the following from **People 1**

- 12 (f) severance related to work in this contract.**

- 13 (c) relocation**
 - (d) medical examinations**
 - (e) passports and visas**
 - (f) travel insurance**
 - (g) items (a) to (f) for dependants**
 - (h) protective clothing**
 - (o) safety training**

Z.17.2 - ECC

Amend **Charges 4, paragraph 44** as follows:

Delete entire **paragraph 44** and its points **a to j** and replace with:

44 Payments for

- (a) catering**
- (b) medical facilities and first aid**
- (c) recreation**
- (d) sanitation**
- (e) security**
- (f) copying**
- (g) telephone, telex, fax, radio, and CCTV**
- (h) surveying and setting out**
- (i) computing**
- (j) hand tools not powered by compressed air.**

Responsibility for Statutory Authorities~~Bodies~~

Z.18.1.1 - ECC

~~The Contractor:~~

- ~~• Is responsible (at no cost to the Employer) for ensuring the Statutory Body's compliance with any arrangement or arrangement entered into under Clause Z9.1-PSC~~
- ~~• Indemnifies and keeps indemnified the Employer against:~~
 - ~~• Compliance with any agreement or arrangement entered into under Clause Z9.1-PSC~~
 - ~~• Indemnifies and keeps indemnified the Employer against:~~
 - ~~• Claims, demands, actions and proceedings~~
 - ~~• Costs, charges and expenses arising there from~~
 - ~~• Loss of or damage to any property~~
 - ~~• Increase cost of working or~~
 - ~~• Business Interruptions~~

~~Which may be brought or made by the Statutory Body in connection with such an agreement or arrangement including but not limited to the negligence or default of the Contractor.~~

~~All Statutory Authorities' works necessary to accommodate the works including plant protection and diversions shall be identified by the Contractor in the Statutory Authorities Works Report. Where early ordering of materials or diversions is required, in order to meet the Contractor's Programme, these works should be identified early by the Contractor so the Employer can place the Order.~~

Z.18.21.2-ECC

~~All works to be carried out by the Statutory Authorities will be ordered by the Employer and paid for in advance (where payments in advance attracts a discount or if required by the Undertakers) by the Employer under the New Road and Street Works Act 1991. The Contractor shall provide all information required by the Employer to enable the Employer to place the official Order to the Statutory Authorities for the works required by the Contractor. This shall include copies of relevant correspondence and estimates provided by the Authority, in accordance with the New Roads and Street Works Act (NRSWA) 1991 and the Code of Practise. The Contractor shall allow four weeks after the receipt of the Contractor's request in writing for the Employer to place an order with the Statutory Authority. The Contractor allows in his Accepted Programme any notice period required by a Statutory Body in relation to any matters and measures under Clause Z9.1-PSC.~~

Z.18.1.3-ECC

~~The Contractor shall co-operate fully with any necessary audits of the Statutory Authorities' invoices required by the Employer.~~

Z.18.1.4-ECC

~~The Contractor shall take account of all environmental aspects and subsequent highway maintenance in developing his detailed proposals for necessary diversion works.~~

- Z.18.1.5-ECC** The Contractor shall co-ordinate and programme the Statutory Authorities' work. The Contractor shall be responsible for determining the commencing levels required for the diversion, site clearance requirements, setting out requirements and access requirements.
- Z.18.1.6-ECC** The Contractor shall be responsible for co-ordinating, paying for and supervising the provision of services and supplies for the construction and subsequent operation and maintenance of the works. These works do not form part of diversion works and do not fall within the New Roads and Street Works Act 1991.
- Z.18.2.1-ECC** The Contractor incorporates adequate time within the programme of the works for Key Stage 6 Construction to reflect the measures required to by the Statutory Authorities including any notice periods, lead in periods and diversionary works required.
- Z.18.2.2-ECC** The Contractor updates the programme of the works for Key Stage 6 to reflect progress of the Statutory Authorities works, and modifies his planned activities or construction sequences in order to mitigate or minimise any delays to the Statutory Authorities works at no costs.
- Z.19 to Z.20 –
ECC** **Not Used**

Option Z The additional conditions of contract:

Intellectual Property Rights

Z.21 - ECC The *Contractor* assigns to the *Employer* all present and future intellectual property rights in any material created by or on behalf of the *Contractor* in Providing the Works.

Corrupt Practices

Z.22 – ECC The *Contractor* does not:

- offer to 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 this contract or any other contract with the *Employer* or for showing favour or disfavour to any person in relation to this contract or any other contract with the *Employer*, or
- enter into this contract or any other contract with the *Employer* if, in connection with this contract or any such other 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.

Welsh Language Scheme

Z.23 – ECC The *Contractor*:

- implements and adheres to the terms of the Welsh Language Scheme, monitors its operation and reports to the *Employer* (at its request) thereon; and
- imposes a contractual obligation on each of its Subcontractors in terms substantially similar to those set out above and monitors compliance with and takes all reasonable steps to enforce the same.

Equality and Diversity

Z.24 – ECC

- The *Employer* is committed to the active promotion of equality and to valuing diversity in all its work. It is committed to honouring the duties and rights enshrined in legislation and where possible, will go further than the requirements of law. The *Employer* believes that promoting diversity and equality of opportunity among its work force and more widely, will assist in meeting the needs and aspirations of the people of Wales. The *Employer* therefore seeks to contract with companies with similar aspirations and this is reflected in the consideration of the Quality submissions made by tendering companies

Without prejudice to the generality of the foregoing:

Z24.1 The *Contractor* does not discriminate directly or indirectly or by way of

victimisation or harassment against any person contrary to the Race Relations Act 1976, the Sex Discrimination Act 1975, the Disability Discrimination Acts 1995 and 2005 or the Equality Act 2010 (the “**Discrimination Acts**”).

Z24.2 Where possible in Providing the Works, the *Contractor* 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.

Z24.3 Where an employee or Subcontractor employed by the *Contractor* is required to carry out any activity alongside the *Employer’s* employees in any premises, the *Contractor* ensures that each such employee or Subcontractor complies with the *Employer’s* employment policies and codes of practise relating to discrimination and equal opportunities.

Z24.4 The *Contractor* notifies the *Project Manager* in writing as soon as he becomes aware of any investigation or proceedings brought against the *Contractor* under the Discrimination Acts in connection with this 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.

Z24.5 The *Contractor* 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 *Contractor*.

Z24.6 The *Contractor* includes in the conditions of contract for each Subcontractor obligations substantially similar to those set out above.

Collateral Warranty

Z.25 – ECC

The *Contractor*

- shall provide the *Employer* with a collateral warranty from any Subcontractor with a material design responsibility, which shall be substantially in the form set out in the Works Information in favour of the *Employer* from the Subcontractors, (including without limitation any consultants) undertaking any important elements of work identified by the *Project Manager*.
- may in good faith propose to the *Employer* amendments to the form of the collateral warranty where necessary due to the extent or requirements of the relevant Subcontractor's insurance. Such requests shall be supported by appropriate evidence from the relevant Subcontractor's insurers. The *Employer* shall act reasonably in considering such amendments.
- Shall provide the *Project Manager* certified subcontracts at the same time as the executed warranties.

Waste to Landfill

Z.26 – ECC

The *Contractor* and his supply chain shall carry out and complete the works in compliance with the *Employer's* Waste to Landfill objectives.

Official Secrets and Confidentiality

Z.27.1 – ECC

The Official Secrets Act 1990 and, where appropriate, the provisions of section 11 of the Atomic Energy Act 1946 apply to this contract from the *starting date* until the Defects Certificate or a termination certificate has been issued.

Z.27.2 – ECC

The *Contractor* notifies his employees and his Subcontractors of their duties under these Acts.

Z.27.3 – ECC

The *Contractor* does not use or disclose information concerning the contract obtained either by the *Contractor* or by any person employed by him except for the purposes of the contract.

Security

Site admittance

Z.28.1 – ECC

The *Contractor* submits to the *Project Manager* details of people who are to be employed by him and his Subcontractors in connection with the *works*. The details include a list of names and addresses, the capacities in which they are employed, and other information required by the *Project Manager*.

Z.28.2 – ECC

The *Project Manager* may instruct the *Contractor* to take measures to prevent unauthorised persons being admitted on to the Site. The instruction is a compensation event if the measures are additional to those

required by the Works Information.

Passes

Z.28.3 – ECC Employees of the *Contractor* and his Subcontractors are to carry an *Employer's* pass whilst they are on the parts of the Site stated in the Contract Data.

Z.28.4 – ECC The *Contractor* submits to the *Project Manager* for acceptance a list of the names of the people for whom passes are required. The *Project Manager* issues the passes to the *Contractor*. Each pass is returned to the *Project Manager* when the employee no longer requires access to that part of the Site or after the *Project Manager* has given notice that the employee is not to be admitted to the Site.

Photographs

Z.28.5 – ECC The *Contractor* does not take photographs of the Site or the *works* or any part of them unless he has obtained the acceptance of the *Project Manager*.

Z.28.6 – ECC The *Contractor* takes the measures needed to prevent his and his Subcontractors' people taking, publishing or otherwise circulating such photographs.

Environment

Z.29 – ECC In the interests of conservation, the successful tenderer shall be required to produce all printed work in connection with the contract on recycled paper containing at least 80% consumer waste and printed on both sides of the paper where practical.

CONTRACT DATA

Part Two - Data provided by the *Contractor* for work undertaken in Key Stage 6

- Statements given in all contracts
- The Contractor is ***[details to be inserted]***
 - The direct fee percentage is ***[percentage to be inserted]***
 - The subcontracted fee percentage is ***[percentage to be inserted]***
 - The working areas – **will be agreed before the agreement of the Key Stage 6 Target Cost**

- The key people are

Name ***[details to be inserted]***

Job

Responsibilities

Qualifications

Experience

Name ***[details to be inserted]***

Job

Responsibilities

Qualifications

Experience

Tenderer to extend as necessary

The following matters will be included in the Risk Register - **the Risk Register will be developed during Key Stage 3 and Key Stage 4 and agreed and valued before agreement of the Key Stage 6 Target Cost.**

- **The *activity schedule* will be agreed before the agreement of the Key Stage 6 Target Cost.**
- **The tendered total of the Prices will be agreed before the agreement of the Key Stage 6 Target Cost.**

Data for
Schedule of Cost
Components

- The listed items of Equipment purchased for work on this contract with an on cost charge **will be agreed before the agreement of the Key Stage 6 Target Cost.**
- The rates for special Equipment are **will be agreed before the agreement of the Key Stage 6 Target Cost.**
- The percentage for Working Areas overheads is **not used.**
- The hourly rates for Defined Cost of manufacture and fabrication outside the Working Areas are **to be agreed before the agreement of the Key Stage 6 Target Cost.**
- The percentage for manufacture and fabrication overheads **will be agreed before the agreement of the Key Stage 6 Target Cost.**

Data for the
Shorter Schedule
of Cost
Components

Not used