

**APPENDIX 1: CONTRACT DATA PART ONE – DATA PROVIDED BY THE CLIENT**

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

This Contract Data Part one will apply to Contracts awarded under main Options A (Priced contract with activity schedule) of the NEC 4 Engineering and Construction Contract (June 2017) (incorporating October 2020 amendments)

Statements given in all contracts**1 General**

The *conditions of contract* are the core clauses for main Options A, dispute resolution Option W2 and secondary Options X2, X7, X15, X16, Y(UK)2, and Z of the NEC4 Engineering and Construction Contract (June 2017 incorporating October 2020 amendments)

Main Option Option for resolving and avoiding disputes

Secondary Options X2, X7, X15, X16, Y(UK)2, and Z of the NEC4 Engineering and Construction Contract (June 2017 incorporating October 2020 amendments)

The *works* are **Design and stability works to Bridgnorth Retaining Wall**

The <i>Client</i> is Name Address for communications Address for electronic communications	Bridgnorth Town Council
	Roslyn Williams
	College House, 4 St Leonard's Cl, Bridgnorth WV16 4EJ
The <i>Project Manager</i> is Name Address for communications Address for electronic communications	roslyn.williams@bridgnorthtowncouncil.gov.uk
	Hefyn Rosser
The <i>Supervisor</i> is Name Address for communications Address for electronic communications	The Studios, 3 Burt Street, Cardiff, CF10 5FZ
	hrosser@volos.co.uk
	TBC

The Scope is in

Appendix 2



The Site Information is in	Appendix 6.	
The <i>boundaries of the site</i> are	2024_2990_001_Bridgnorth Slope_Site Location Plan	
The <i>language of the contract</i> is	English	
The <i>law of the contract</i> is the law of	England and Wales	
The period for reply is	2 weeks	except that
• The period for reply for		is
• The period for reply for		is
The following matters will be included in the Early Warning Register		
Early warning meetings are to be held at intervals no longer than	4 weeks	
The <i>statutory authorities</i> are		
•		

2 The Contractor's main responsibilities

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

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

	<i>condition to be met</i>	<i>key date</i>
(1)		
(2)		
(3)		

3 Time

The *starting date* is 4th August 2025

The *access dates* are 1st September 2025

~~part of the Site~~

(1)		
(2)		
(3)		

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

4 weeks



If the ~~Client~~ has decided ~~the completion date for the whole of the works~~ The ~~completion date for the whole of the works is~~

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

If no programme is identified in part two of the Contract Data The period after the Contract Date within which the *Contractor* is to submit a first programme for acceptance is

2 weeks

4 Quality Management

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

2 weeks

The period between Completion of the whole of the *works* And the *defects date* is

52 weeks

The *defect correction period* is

4 weeks

- The *defect correction period* for

A defect which affects the safe use of the highway

except that
24 Hours

- ~~The *defect correction period* for~~

is

5 Payment

The currency of the contract is the
The assessment interval is
The interest rate is

pounds sterling (£).

a calendar month.

2% per annum (not less than 2) above the

base rate of the

Bank of England

If the period in which payments are made is not three weeks and Y(UK)2 is not used

The period within which payments are made is

21 days

6 Compensation events

~~The place where weather is to be recorded is~~

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

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

hours GMT

~~and these measurements:~~



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The weather measurements are supplied by

--

The ~~weather data~~ are the records of past measurements for each calendar month which were recorded at

--

And which are available from

Where ~~no~~ recorded data are available

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

--

If Option A or B is used

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

50 %

If Option ~~B~~ or D is used

The method of measurement is

--

If there are additional Compensation events

~~These are additional compensation events~~

--

8 Liabilities and insurance

If there are additional *Client's* liabilities

~~These are additional *Client's* liabilities~~

(1)

--

(2)

--

(3)

--

The minimum amount of cover for insurance against 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*) arising from or in connection with the *Contractor* Providing the Works for

£10,000,000

(each and every occurrence)

The minimum amount of cover for insurance against death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with the contract for any one event is

£10,000,000

The minimum amount of cover the *Contractor* is required to maintain for its failure to use the Required Standard is £5m in respect of each claim without limit to the number of claims for 12 years following completion of the whole of the *works* or Termination

~~The insurance against loss of or damage to the *works*, Plant and Materials is to include~~



If the ~~Client~~ is to provide Plant and Materials cover for Plant and Materials provided by the ~~Client~~ for an amount of

~~[If additional insurances are required]~~

The Contractor provides these additional insurances

Adjacent Property Insurance:

Existing building insurance

If the amount is to provide any of the insurances stated in the insurance Table

The ~~Client~~ provides these insurances from the Insurance Table

(1) Insurance against

~~Not Applicable (No Client insurances provided)~~

Minimum amount of cover is

The deductibles are

(2) Insurance against

~~Not Applicable (No Client insurances provided)~~

Minimum amount of cover is

The deductibles are

(3) Insurance against

~~Not Applicable (No Client insurances provided)~~

Minimum amount of cover is

The deductibles are

If additional insurances are to be provided

The ~~Client~~ provides these additional insurances

(1) Insurance against

~~Not Applicable (No Client insurances provided)~~

Minimum amount of cover is

The deductibles are

(2) Insurance against

~~Not Applicable (No Client insurances provided)~~

Minimum amount of cover is

The deductibles are

(3) Insurance against

~~Not Applicable (No Client insurances provided)~~

Minimum amount of cover is

The deductibles are

The Contractor provides these additional insurances

(1) Insurance against

~~Not Applicable (No Client insurances provided)~~

Minimum amount of cover is



The deductibles are
(2) Insurance against
Minimum amount of
cover is
The deductibles are
(3) Insurance against
Minimum amount of
cover is
The deductibles are

Not Applicable (No <i>Client</i> insurances provided)
Not Applicable (No <i>Client</i> insurances provided)

Resolving and avoiding disputes

The *tribunal* is **Arbitration**

If the *tribunal* is
arbitration

The *arbitration*
procedure is

**The latest version of the Institution of Civil Engineers
Arbitration Procedure or any amendment or
modification to it in force when the arbitrator is
appointed**

The place where
arbitration is to be
held is

To be confirmed

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

The Institution of Civil Engineers

If Option W1 or W2 is used The *Senior Representatives* of the *Client* are

Name (1)
Address for
communications

**Steve Thorpe
College House, 4 St Leonard's Cl, Bridgnorth
WV16 4EJ**

Address for electronic
communications

Steve.Thorpe@bridgnorthtowncouncil.gov.uk

Name (2)
Address for
communications

TBC

TBC

Address for electronic
communications

TBC

The *Adjudicator* is
Name

**To be appointed by the Adjudicator
nominating body**

Address for
communications

To be advised

Address for electronic
communications

To be advised

The *Adjudicator nominating*
body is

The Institution of Civil Engineers

If Option W3 is
used

The number of members of the Dispute Avoidance Board is **one**



If ~~Option W3~~ is used ~~and the~~ number ~~of~~ members ~~of the~~ ~~Dispute Avoidance Board~~ is three

The ~~Clients'~~ nomination for the ~~Dispute Avoidance Board~~ is

Name	Not Applicable/
Address for electronic communications	Not Applicable/

The ~~Dispute Avoidance Board~~ visit the Site at intervals months no longer than

The ~~Dispute Avoidance Board~~ nominating body is

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SUMMARY TABLE OF X CLAUSES

Clause No.	Included in Contract	Description	Notes
X2	Yes	Changes in the Law	
X7	Yes	Delay Damages	
X15	Yes (optional)	The <i>Contractor's</i> Design	
X16	Yes (optional)	Retention	
Y[UK]2	Yes	Housing Grants, Construction and Regeneration Act 1996	

**X1: Price adjustment for inflation (used only with Options A, B, C, and D) —**

If Option X1 is used

The proportion used to calculate the Price Adjustment Factor are

0.	Not Applicable	linked to the index for	Not Applicable
0.			
0.			
0.			
0.			
0.			
0.			
1.00		— non-adjustable	

The ~~base date~~ for indices is**Not Applicable**

The indices are

Not Applicable**X3: Multiple currencies (used only with Options A and B)**

If Option X3 is used

The ~~Client~~ will pay for the items or activities listed below in the currencies stated

Items and activities	Other currencies	Total maximum payment in the currency

X5: Sectional Completion —

If Option X5 is used

The ~~completion date~~ for each ~~section~~ of the ~~works~~ is

section	description	completion date
(1)		
(2)		
(3)		
(4)		

X6: Bonus for early Completion —

If Option X6 is used without Option X5

The bonus for the whole of the ~~works~~ is

Not Applicable	per day
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If Option X6 is used with Option X5

The bonus for each ~~section~~ of the ~~works~~ is

section	description	amount per day
(1)	Not Applicable	Not Applicable
(2)		
(3)		
(4)		
The bonus for the remainder of the works is		Not Applicable

**X7: Delay damages To be calculated on an individual project basis**

If Option X7 is used without Option X5 Delay damages for Completion of the whole of the *works* are

£1,150.00

 per day

~~If Option X7 is used with Option X5 Delay damages for each section of the *works* are~~

<i>section</i>	<i>description</i>	<i>amount per day</i>
(1)		
(2)		
(3)		
(4)		
The delay damages for the remainder of the <i>works</i> are		

X8: Undertakings to the ~~Client~~ or Others

If Option X8 is used The ~~undertakings to Others~~ are
Provided to

~~The Subcontractor undertaking to Others~~
are
works

provided to

~~The Subcontractor undertaking to the Client~~ are
works

X10: Information modelling

If Option X10 is used

~~If no information execution plan is identified in part two of the Contract Data~~

~~The period after the Contract Date within which the Contractor is to submit a first information Execution Plan for acceptance is~~

~~The minimum amount of insurance cover for claims made against the Contractor arising out of its failure to use the skill and care normally used by professionals providing information similar to the Project Information is, in respect of each claim~~

~~The period following Completion of the whole of the *works* or earlier termination for which the Contractor maintains insurance for claims made against it arising out of its failure to use the skill and care is~~

--

X12: Multiparty collaboration (not used with Option X20)

If Option X12 is used The *Promoter* is

--



The ~~Schedule of Partners~~ is in

The ~~Promoter's~~ objective is

The ~~Partnering~~ Information is in

X13: Performance bond

If Option X13 is used The amount of the performance bond is

X14: Advanced payment to the Contractor

If Option X14 is used The amount of the advanced payment is

The period after the Contract from which the
Contractor repays the instalments in assessments
is

The instalments are

(either an amount or a percentage of the payment otherwise due)

Advanced payment
bond

An advanced payment bond is/is not required. (Delete as applicable)

X15: The Contractor's design

If Option 15 is used The period for retention following Completion of the whole of the works or earlier termination is

12 years

The minimum amount of insurance cover for claims made against the Contractor arising out of its failure to use the Required Standard in respect of each claim

£5,000,000

The period following Completion of the whole of the works or earlier termination for which the Contractor maintains insurance for claims made against it arising out of its

failure to use the skill and care is

12 years

X16: Retention (not used with Option F)

If Option X16 is used The retention free amount is
The retention percentage is

NIL

4

%

Retention bond

The Contractor may not give the Client a retention bond.

**X17: Low performance**

If Option X17 is used

The amounts for low performance damages are
amount performance level

Not Applicable	for	Not Applicable
	for	
	for	
	for	

X18: Limitation of liability

If Option X18 is used

The ~~Contractor's~~ liability to the ~~Client~~ for indirect or
consequential loss is limited toFor any one event, the ~~Contractor's~~ liability to the ~~Client~~
for loss of or damage to the ~~Client's~~ property is limited toThe ~~Contractor's~~ liability for Defects due to its design
which are not listed on the Defects Certificate is limited
toThe ~~Contractor's~~ total liability to the ~~Client~~ for all matters arising under or in
connection with the contract, other

Than excluded matters, is limited to

The ~~end of liability~~
~~date~~ isyears after the Completion of the whole of the
works**X20: Key Performance Indicators (not used with Option X12)**

If Option X20 is used

The ~~incentive schedule~~ for Key Performance Indicators
is inA report of performance against each Key Performance
Indicator is provided at intervals of month
s**X22: Early Contractor involvement**

If Option X22 is used

The Budget is
item

description

amount

(1)

(2)

(3)

(4)

Total

The ~~Contractor~~ prepares forecasts of the total Defined
Cost of the work to be done in Stage One at intervals no
longer thanThe ~~Contractor~~ prepares forecasts of the total Project Cost
at intervals no longer thanIf there are additional
events which could
change the Budget

These are additional events which could change the Budget

(1)

(2)

(3)

The ~~budget incentive~~
is

% of the saving

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

~~Charges made and interest paid by the project bank~~ The ~~Contractor~~ is/is not to pay any charges made and to be paid any interest paid by the ~~project bank~~ (Delete as applicable)

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

If Option Y(UK)2 is used and the final date for payment is not fourteen Days after the date on which payment becomes due

The period for payment is

21

 days after the date on which payment becomes due

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

If Option Y(UK)3 is used

term	beneficiary

If Y(UK) is used with Y(UK)1 the following Entry is added to the Table for Y(UK)3

term	beneficiary
The provisions of Option Y(UK)1	Named Suppliers



If Option Z is Used: **The *additional conditions of contract* are**

PART A: **Clauses which amend the standard core clauses and Options A and B of the Conditions of Contract**

PART B: **Z Clauses: Supplementary Conditions of Contract**

**PART A: Amendments to Core Clauses
Identified and defined terms**

Clause 11.2(2) **Delete clause 11.2(2) and replace as follows:**

"11.2(2) Completion is when

- the *Contractor* has done all the work in accordance with this contract which the *Scope* states it is to do by the Completion Date. If the work which the *Contractor* is to do by the Completion Date is not stated in the *Scope*, Completion is when the *Contractor* has done all the work necessary for the *Client* to use the *works* and for Others to do their work
- the *Contractor* has corrected all Defects which have been notified prior to Completion, except for those Defects which the *Project Manager* has agreed may be corrected after Completion
- all the conditions of any Consents relating to the *works* have been complied with and satisfied (save in respect of any matters which will not prevent occupation and use of the *works*) which the *Project Manager* has agreed may be satisfied after Completion
- any specific requirements or tests on Completion as stated in the *Scope* have been met or passed and the *Contractor* has submitted all relevant testing and commissioning certificates to the *Project Manager*
- all workmen employed in connection with the carrying out and completion of the *works* (save in respect of any Defects which the *Project Manager* has agreed may be corrected after Completion) have vacated the Site and all plant, tools and appliances used in connection with the *works* and all surplus materials and rubbish have been removed from the Site
- the *Contractor* has provided to the *Project Manager* copies of all statutory approvals, operating and maintenance manuals, relevant photographic and video surveys, condition schedules, relevant manufacturers' literature and guarantees and warranties for products and materials used in the *works*
- the *Contractor* has provided the *Client* with all collateral warranties which it is obliged to provide and/or procure in accordance with this contract
- all information to enable the Principal Designer to issue the Health and Safety File has been provided and where and to the extent that the *Contractor* is responsible for providing the Health and Safety File, it is issued prior to Completion and
- any other pre-conditions to Completion stated in the *Scope* have been satisfied."

Clause 11.2(4) **Delete Clause 11.2 (4) and insert:**

"The Contract Date is the date of this Agreement or (if earlier) the date when the *Contractor* first begins to Provide the Works"



Clause 11.2 (6)	<p>Delete clause 11.2(6) and replace as follows:</p> <p>"11.2(6) A Defect is</p> <ul style="list-style-type: none">· a part of the <i>works</i> (which term, as used in this contract, includes any design of the <i>works</i> by the <i>Contractor</i> or for which the <i>Contractor</i> is required to assume responsibility under this contract) which is not in accordance with the Scope or· a part of the <i>works</i> designed by the <i>Contractor</i> which is not in accordance with the Applicable Law or the <i>Contractor's</i> design which the <i>Project Manager</i> has accepted."
Clause 11.2 (10)	<p>Add the following before the full stop at the end of clause 11.2 (10) (definition of "Fee"):</p> <p>“, in each case excluding the Defined Cost of</p> <ul style="list-style-type: none">• correcting Defects (where the cost is not a Disallowed Cost) and• design and work undertaken in order to correct a failure of the design to meet the functional and performance requirements specified in the Scope”.
Clause 11.2 (12)	<p>Delete clause 11.2 (12) and insert</p> <p>“Others are people or organisations who are not the <i>Client</i>, the <i>Project Manager</i>, the <i>Supervisor</i>, the Adjudicator, a <i>Statutory Authority</i>, the <i>Contractor</i> or any employee, Subcontractor or supplier of the <i>Contractor</i>.”</p>
Clause 11.2 (29)	<p>OPTION A ONLY Delete from the end of this clause the words “the correction of which will delay the following work”</p>
Clause 11.2 (36)	<p>Add new Clause 11.2 (36)</p> <p>“A Statutory Authority is an organisation providing services to the <i>Client</i> in connection with the <i>works</i>. The Statutory Authority is one of the <i>statutory authorities</i> stated in the Contract Data.”</p>
Clause 11.2 (37)	<p>Add new Clause 11.2 (37)</p> <p>“Intellectual Property Rights means collectively any inventions, patents, registered designs, trade marks (whether registered or unregistered), applications for any of the foregoing and the right to apply therefore in any country of the world, copyrights, rights in the nature of copyrights, moral rights, design rights and database rights, know-how, trade secrets and any other proprietary rights or forms of intellectual property rights (protectable by registration or not”.</p>
Clause 11.2(38)	<p>Add new Clause 11.2(38)</p> <p>“Documents means all documents, plans, drawings, programs, specifications, bills of quantities, calculations and any other documents of any other form of record which have been or are hereafter created, originated, conceived, designed, developed or otherwise prepared or brought into being by the <i>Contractor</i>, received or provided by or on behalf of the <i>Contractor</i> in the course of performing its obligations under this contract (including all copies thereof and extracts therefrom)”.</p>
Clause 11.2(39)	<p>Add new Clause 11.2(39)</p>



"Materials means any technology, concepts, ideas, data, programs or software (including source and object codes), drawings, schedules, minutes, schemes, formulae, programmes, designs, systems, processes, logos, marks, literature, styles, documents, manuals, reports, drawings, designs, artwork, models, prototypes, photographs, films, sound recordings or any other works or materials (in whatever form and on whatever media held) which are created, originated, conceived, designed, developed or otherwise, prepared, provided or produced by or on behalf of the *Contractor* for the purpose of the project or otherwise in connection with the project or the *works* (whether before or after the date of this contract), including any and all copies thereof and extracts therefrom".

New Clause 11.2(40)

Add new Clause 11.2.(40)

"Prevention Event means one of the exceptional events or circumstances listed below provided always that such event or circumstance (a) occurs within the United Kingdom; (b) is beyond the affected Party's control; (c) could not reasonably have been provided against, avoided or overcome by the affected Party; and (d) is not substantially attributable to the affected Party:

- war, invasion, act of foreign enemies
- rebellion, terrorism, revolution, insurrection, military or usurped power or civil war
- radiation or radioactivity
- natural catastrophe such as earthquake, hurricane, typhoon or volcanic activity
- strikes, riots and civil commotion not confined to the employees, servants or agents of the *Contractor* and/or any Subcontractor
- pandemic or epidemic excluding coronavirus (Covid-19) (and other variants of the same pandemic).

New Clause 11.2(41)

Add new Clause 11.2 (41)

"Required Standard is the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected of a skilled and experienced contractor engaged in the design and/or specification of works of a similar nature, scope, value and complexity to the *works* and under the same or similar circumstances, where such contractor is seeking to comply with its contractual obligations and all Applicable Laws."

New Clause 11.2 (44)

Add new Clause 11.2 (44)

"Novated Consultant is a consultant notified by the *Client* to the *Contractor* in accordance with clause Z21.1."

New Clause 11.2 (45)

Add new Clause 11.2 (45)

"Business Day means a day of the week other than Saturday, Sunday or a Bank Holiday."



New Clause 11.2 (46) **Add** new Clause 11.2 (46)

"Applicable Law is any statute, statutory instrument, regulation, directive, rule, judgement, order, decision, recommendation or statutory guidance made under any statute or directive having the force of law which affects the *works* or the performance of any obligation under this contract and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to the *works* or the project to which the *works* relates, including without limitation any statutory provisions and any decision, notice, direction, instruction, permission or award of a Competent Authority."

New Clause 11.2 (47) **Add** new Clause 11.2 (47)

"Competent Authority is any legal person, regulator, statutory authority (including the *statutory authorities*) or statutory undertaker, and/or any court of law or tribunal in each case having authority under Applicable Law"

New Clause 11.2 (48) **Add** new Clause 11.2 (48)

"Consents are any and all consents, licences, authorisations, permits, permissions, registrations, filings, exemptions, approvals and the like required from Competent Authorities or Others in order for the *Contractor* to Provide the Works in accordance with this contract and a "Consent" is any one of them."

Interpretation and the Law

Clause 12.1 At the end of Clause 12.1 **add** the following bullet points

- references to a document include any revision made to it in accordance with this contract
- references to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practice made under it and
- references to a standard include any current relevant standard that replaces it.

The *Project Manager* and the *Supervisor*

Clause 14.1 **Delete** clause 14.1 and insert replace as follows:

"14.1 The *Project Manager's* or the *Supervisor's*

- acceptance of a communication from the *Contractor* or
- acceptance of the *Contractor's* design or
- acceptance of the *works*

and/or the carrying out of any inspection or test does not change the *Contractor's* responsibility to Provide the Works, its liability for Defects or its liability for its design."

Early Warning

Clause 15.1 **Add** as a new bullet point:



- require a change to the Accepted Programme

Contractor's proposals

Clause 16.3 Delete the second sentence in clause 16.3 and replace with:

"A reason for not accepting is that:

- the proposed area is not necessary to Provide the Works or
- the proposed area is used for work not in this contract or
- adding to the Working Areas in the way proposed will interfere with the *Client's* activities or use of property or cause it to suffer or incur additional loss or costs or
- the *Client* is not entitled to allow the additional area to be used."

Requirements for instructions

Clause 17.1 Add at the end of the first sentence: "or between the documents which form part of this contract and Consents required for the *works* or applicable law".

Prevention

Clause 19 Delete Clause 19 and insert;

"19.1 If a Prevention Event occurs which

- stops the *Contractor* completing the whole of the *works* or
- stops the *Contractor* completing the whole of the *works* by the date for planned Completion shown on the Accepted Programme,

the *Project Manager* gives an instruction to the *Contractor* stating how the event is to be dealt with."

Providing the Works

Clauses 20.5 & 20.6 **Insert** new clauses 20.5 and 20.6 as follows:

20.5 The *Contractor* Provides the Works:

- in a proper and workmanlike 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 affect 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

20.6 Save to the extent obliged to do otherwise under or pursuant to the contract, the *Contractor* will not specify for use and shall use reasonable skill and care to ensure that Subcontractors (including but not limited to the *Contractor's* personnel) do not specify for use in the *works* and/or the project any materials or substances which at the time of specification are not approved or not recommended or are identified as being deleterious, in the particular circumstances in which they are specified for use in



accordance with the provisions of the guide entitled "Good Practice in the Selection of Construction Materials" published by the British Council for Offices 2011 and current at the time of specification. If the *Contractor* becomes aware that any such materials are being used or specified in relation to the *works* the *Contractor* will notify the *Client* in writing as soon as practicable.

The *Contractor's* Design

Clause 21.1 Delete clause 21.1 and replace as follows

"21.1 The *Contractor* designs the whole of the *works*. The *Contractor* accepts sole and exclusive responsibility for:

- the selection and standards of all materials, goods and workmanship forming part of the *works* and
- the design of the *works* including (without limitation)
- all and any design and other work undertaken in relation to the *works* before the Contract Date whether such work was undertaken by or on behalf of the *Contractor* or by or on behalf of the *Client*; and
- all and any design and other work undertaken in relation to the *works* after the Contract Date by or on behalf of the *Contractor*,

and all such design and other work shall be treated for all the purposes of this contract as undertaken by the *Contractor*.

The *Contractor's* obligation in connection with its design is to use the Required Standard.

The *Contractor* accepts sole and exclusive responsibility for its design and for any mistake, inaccuracy, discrepancy or omission in or from its design.

The *Contractor* warrants that its design is not impossible or illegal."

Clause 21.2 **Delete** clause 21.2 and replace as follows

"21.2 The *Contractor* submits the particulars of its design to the *Project Manager* for acceptance at the times and in the manner and format stated in the Scope. A reason for not accepting the *Contractor's* design is that

- it will not allow the *Contractor* to Provide the Works free from Defects
- it does not comply with the Scope
- it does not comply with any previous design submitted by the *Contractor* which the *Project Manager* has accepted
- it does not comply with Consents
- it does not comply with Applicable Law or
- it does not comply with any other provision of this contract.

The *Contractor* does not proceed with the relevant work until the *Project Manager* has accepted its design."



Subcontracting

Clause 26.2

Delete Clause 26.2 and replace with the following:

"The *Contractor* submits the name of each proposed Subcontractor to the *Project Manager* for acceptance. A reason for not accepting the Subcontractor is that this appointment will not allow the *Contractor* to Provide the Works, the *Client* is concerned (on reasonable grounds) with the financial standing or expertise or experience or insurance cover of the proposed Subcontractor or the *Client* requires a collateral warranty and the Subcontractor is unable to provide a collateral warranty to the *Client* in a form which is acceptable to the *Client*. The *Contractor* does not appoint a proposed Subcontractor until the *Project Manager* has

- accepted the Subcontractor and, to the extent these *conditions of contract* require
- accepted the subcontract documents

Clause 26.3

The following bullet points are added following the last bullet point in Clause 26.3

- they do not represent best value or open market or competitively tendered prices or
- they are inconsistent with the requirements of this contract and the policies of the Government or
- they limit rights under any collateral warranty agreement to be provided by the Subcontractor to a greater extent than the rights under this contract in relation to the relevant Subcontract works.

Access to and use of the Site

Clause 31.2

Amend **Clause 31.2 as follows:**

Fourth bullet point. After "*Client*" insert ", *Statutory Authorities*"

Fifth bullet point. After "*Client*" insert ", *Statutory Authorities*"

Clause 31.3

Add as a new bullet point:

- "it is more onerous on the *Client*, *Statutory Authorities* or Others"

Correcting Defects

Clause 44.2

Delete clause 44.2 and replace as follows:

"44.2 The *Contractor* corrects a notified Defect before the end of the *defect correction period*, in accordance with clause 44.2A. The *defect correction period begins* at Completion for Defects notified before Completion which the *Project Manager* has agreed may be corrected after Completion and when the Defect is notified for other Defects."

Insert a new clause 44.2A as follows:

"44.2A In correcting any Defect, the *Contractor*, the Subcontractors and their personnel:

- cause the minimum amount of interference and disruption as is reasonably possible to the carrying out of other works at the Site and the use and/or occupation of the Site;



- comply with any reasonable directions and security precautions for the Site;
- comply with any Site access protocols,
- shall be accompanied if the *Client* so requires;
- make good as soon as reasonably practicable and in any event within any period stipulated by the *Client* to the reasonable satisfaction of the *Client* any loss, damage or injury thereby caused to the Site or any part or parts thereof or to the property of any occupiers and/or visitors at the Site; and
- at the end of each day ensure that the Site is left in a good and clean condition cleared of all unused materials, plant, goods and equipment."

Liability for Defects

Clause 47 Add new clause 47 as follows

"Nothing in clauses 41 to 46 affects any other right or remedy under the contract or at law, including without limitation the *Client's* right to claim damages for a Defect as a breach of contract."

Payment

Clause 51.5 Insert the following at the start of the sentence

Clause 51.6 "Save where the reverse charge applies as set out in clause 51.8, "
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 *Client* or any Department of Her Majesty's Government."

Clause 51.7 **Insert** new Clause 51.7

"References to the "reverse charge applying" (or similar) mean any case where the recipient of a supply for VAT purposes, or a member of a VAT group of which the recipient of the supply is a member, is required to account to the relevant tax authority for the VAT chargeable in respect of the supply."

Clause 51.8 **Insert** new Clause 51.8

"The Prices are exclusive of VAT and, in relation to each payment to the *Contractor* for any supply made under this contract:

51.8.1 the *Contractor* shall within two Business Days following the issue by the *Project Manager* of a payment certificate, issue to the *Project Manager* an appropriate VAT invoice in respect of such supply, indicating whether or not the reverse charge applies to the supply; and

51.8.2 subject to the *Contractor* complying with clause 51.8.1 and unless the reverse charge applies, the *Client* shall in addition pay to the *Contractor* the amount of any VAT properly chargeable in respect of such supply."

Clause 51.9 **Insert** new Clause 51.9



"The *Contractor* shall include within each application for payment a request for the *Client* to confirm in writing whether the reverse charge applies to the supply to which the application for payment relates. The *Client* shall provide such confirmation with, or not later than the issue by the *Project Manager* of a payment certificate relating to such supply."

Clause 51.10

Insert new Clause 51.10

"If the paying party for the final payment under clause 53 is the *Client*, the *Contractor* shall not later than the due date for the final payment request the *Client* to confirm in writing whether the reverse charge applies to the supply to which the final payment relates. The *Client* shall provide such confirmation with, or not later than the *Project Manager's* assessment of the final amount due in accordance with clause 53.1. "

Clause 51.11

Insert new Clause 51.11

"The *Client* is registered for VAT in the United Kingdom under registration number [insert registration number]."

Compensation Events

Clause 60.1(1)

Add the following bullet points to Clause 60.1 (1) after the words "changing the Scope except

- "a change to the Scope arising as a result of site conditions save in circumstances where the change to the Scope results in a reduction to the Prices" If Clause 60.1(12) is deleted
- a change to the Scope to resolve any error, ambiguity or discrepancy
- in or between any documents forming part of the Scope for which the *Contractor* is responsible or assumes responsibility under this contract or
- between any documents forming part of the Scope for which the *Contractor* is responsible or assumes responsibility under this contract."

Clause 60.1 (12)

Delete

Clause 60.1 (13)

Delete

Clause 60.1 (19)

Delete

Delete clause 60.1(19) and replace as follows:

"60.1(19) A Prevention Event occurs which

- stops the *Contractor* completing the whole of the *works* or
- stops the *Contractor* completing the whole of the *works* by the date for planned Completion shown on the Accepted Programme

Clause 60.1(22)

New Clause 60.1(22)

"the pandemic known as coronavirus (Covid-19) (and other variants of the same pandemic) which stops the *Contractor* completing the *works* or stops the *Contractor* completing the *works* by the date shown on the Accepted Programme"

Clause 60.2

Delete



Clause 60.3 Delete

Notifying Compensation Events

Clause 61.8 New Clause 61.8

"If the *Contractor* believes that the issue of any instruction or information (including any confirmation of a decision made at an early warning meeting) by the *Project Manager* (not expressed to be a change to the Scope) constitutes or will give rise to a compensation event, the *Contractor* must, (save in circumstances of emergency) as soon as reasonably practicable and in any case before acting on the instruction or other information, notify the *Project Manager* of the *Contractor's* belief and allow the *Project Manager* time to consider the impact of the instruction or other information in relation to the *Contractor's* notice."

Assessing compensation events

Clause 63.18 New clause 63.18

"The compensation event at clause 60.1(22) shall be the *Contractor's* sole remedy for events arising from or in connection with the pandemic known as coronavirus (Covid-19). Where the *Contractor* notifies a compensation event that arises from or in connection with such pandemic under any other clause of this contract, the *Project Manager* may assess the compensation event as though it had been notified under clause 60.1(22) provided that the compensation event or its effects are not attributable to the *Client's* fault. "Fault" for this purpose includes any failure on the part of the *Client* or Others to take any reasonable action to prevent or mitigate the compensation event or its effect."

Clause 63.19 New clause 63.19

"Where a compensation event or its effect is in part attributable to the *Contractor's* fault, the Prices, Completion Date or Key Dates are not changed to the extent attributable to the *Contractor's* fault"

Clause 63.1A New Clause 63.1A

"Notwithstanding clauses 63.1, 63.2, 63.3, 63.4 and 63.6, the Prices are not adjusted for any compensation event referred to in clauses 60.1(13) and/or 60.1(19) and/or 60.1(22). The right of the *Contractor* to a change to the Completion Date and/or the Key Dates (assessed in accordance with clause 63.5) is the *Contractor's* only right in respect of a compensation event referred to in clauses 60.1(13) and/or 60.1(19) and/or or 60.1(22)."

The *Client's* title to Plant and Materials

Clause 70 Delete Clause 70 and replace with the following:

70 *Client'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 as for the *Client* 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. The bond is in the form set out in the Scope.
- 70.3 Where the value of Plant and Materials outside the Working Areas is included in the Price for Work Done to Date
- the *Contractor's* title in the Plant and Materials passes to the *Client*,
 - 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 *Client* under clause 70.3 or
 - the *Contractor* demonstrates to the satisfaction of the *Project Manager* that the *Contractor* has unencumbered title in the Plant and Materials.
- 70.5 The *Contractor's* title in Plant and Materials passes to the *Client* 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 the Plant and Materials passes back to the *Contractor* if it is removed from the Working Areas with the *Project Manager's* permission."

Liabilities and Insurance

Clause 80.1 In clause 80.1, delete the following bullet point:

"A fault in the design contained in the Scope provided by the *Client* or"

And place a bullet point before the following words;

"An instruction from the *Project Manager* changing the Scope."

Termination



Clause 90.2

Clause 90.2 **Termination Table** – Delete the table and replace with:

Terminating Party	Reason	Procedure	Amount Due
The <i>Client</i>	A reason other than R1-R24	P1 and P2	A1, A2 and A4
	R1 - R15, R18, R22 - R24	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

Reasons for Termination

Clause 91.7

Delete clause 91.7 and replace as follows

"91.7 The *Client* may terminate if a Prevention Event occurs which

- stops the *Contractor* completing the whole of the *works* or
- stops the *Contractor* completing the whole of the *works* by the date for planned Completion shown on the Accepted Programme and is forecast to delay Completion of the whole of the *works* by more than thirteen weeks (R21)"

Clause 91.9

New clause 91.9

Add the following:

"The *Client* may terminate immediately by way of written notice to the *Contractor* if the *Contractor* has been found to have engaged in the practice of "blacklisting" (as set out in The Employment 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" (R23).

Clause 91.10

New clause 91.10 add the following:

"The *Client* may terminate immediately by way of written notice to the *Contractor* if the *Contractor* is in breach of clause Z18 (R24)".

Payment on termination

Clause 92.3

New clause 92.3

"Upon termination for whatever reason, the *Contractor* hands over to the *Project Manager* all hard copy and electronic data for the *Contractor's* design (including material prepared by a Subcontractor, the Scope for the *Contractor's* design and site information) obtained or prepared at termination. At such termination the *Client* has the right to use such material for completion of the *works*."

Clause 93.2

Replace A3 with:-

"A deduction of any loss or costs incurred by the *Client* as a result of such termination including the additional cost to the *Client* of completing the whole of



the *works* (and after termination the *Client* shall not be obliged to make any further payment until the full extent of loss or costs can be fully ascertained and in the event that such loss or cost exceeds the amount otherwise payable to the *Contractor* in accordance with this contract, without prejudice to any other right or remedy of the *Client*, the *Client* may recover such excess from the *Contractor* as a debt)."

Option W2

Option W2

W2.1 (1) At the start of the first sentence delete "If the Parties agree"

W2.4 (2) Delete second sentence and replace with:

"The dispute may not be referred to the tribunal unless this notification is given within eight weeks of the notification of the Adjudicator's decision"

Secondary Option X15

Option X15

Delete clause X15.1 and replace as follows:

"X15.1 The *Contractor* is not liable for a Defect which arose from its design unless it failed to carry out that design using the Required Standard."

Delete clause X15.2 and replace as follows:

"X15.2 If the *Contractor* corrects a Defect for which it is not liable under the contract following an instruction of the *Project Manager* to do so, it having been agreed or determined that the *Contractor* was not responsible for the Defect, it is a compensation event."

Delete clause X15.5 and replace as follows:

"X15.5 The *Contractor* provides insurance for claims made against it arising out of its failure to use the Required Standard. The minimum amount of this insurance is as stated in the Contract Data. This insurance provides cover from the starting date until the end of the period stated in the Contract Data."

Secondary Option X16

Option X16

Delete X16.2 and replace with:

X16.2 The amount retained is halved

- In the assessment made at Completion of the whole of the *works* or
- In the next assessment after the *Client* taken over the whole of the *works* if this is before Completion of the whole of the *works*
- 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*.

provided that all the documentation required at Completion (as stated in the Scope) has been provided to the *Client*.

The amount retained remains at this amount until the Defects Certificate is issued. No amount is retained in the assessments made after the Defects Certificate has been issued.



Secondary Option X18

Option X18

X18.5 add a fifth, sixth and seventh bullet point:

- death or injury to third parties as a consequence of the *works*
- 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.

**PART B: Z Clauses: Additional conditions of contract****PART B SUPPLEMENTARY CONDITIONS OF CONTRACT: Z CLAUSES**

Z Clause No.	Title
Z1	Confidentiality and Freedom of Information Act
Z2	Data Protection
Z3	Copyright
Z4	Site Information
Z5	Community Benefits Measurement Tool
Z6	Special Requirements of statutory bodies
Z7	Notices by <i>Contractor</i> to <i>Client</i>
Z8	Third Party Agreements
Z9	Fair Payment
Z10	Intellectual Property Rights
Z11	Equality and Diversity
Z12	Collateral Warranty
Z13	The Public Contracts Regulations 2015
Z14	Audit and Inspection
Z15	Modern Slavery Act
Z16	Design Review Process
Z17	Environment
Z18	Corrupt, practices, collusion etc.
Z19	Dispute Resolution Procedure
Z20	Publicity

The additional conditions of contract are

Z1**Confidentiality and Freedom of Information Act**

In this clause references to the “Authority” are references to the *Client*.

"Confidential Information" means information, data and material of any nature which either Party may receive or obtain in connection with the operation of the contract and:

- (i) which comprises Personal Data or Sensitive Personal Data (as both terms are defined in the General Data Protection Regulations); or
- (ii) the release of which is likely to prejudice the commercial interests of the Authority or the Contractor respectively; or
- (iii) which is a trade secret.

"FOIA" means the Freedom of Information Act 2000 including all secondary legislation made under that Act, any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department, and any relevant rulings of the Information Commissioner or of the Courts of England and Wales relating to the FOIA.

"EIR" means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations and any relevant rulings of the Information Commissioner or of the Courts of England and Wales relating to the EIR.



Confidentiality

Z.1.1 Confidentiality

- 1.1.1. Except to the extent set out in this Clause Z1, or where disclosure is expressly permitted elsewhere in this contract, each Party shall (subject always to the Authority's obligations under the FOIA and the EIR):
 - 1.1.1.1. treat the other Party's Confidential Information as confidential; and
 - 1.1.1.2. not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 1.1.2. Clause Z1.1.1 shall not apply to the extent that:
 - 1.1.2.1. such information was in the possession of the Party making the disclosure, without obligation of confidentiality, prior to its disclosure; or
 - 1.1.2.2. such information was obtained from a third party without obligation of confidentiality; or
 - 1.1.2.3. such information was already in the public domain at the time of disclosure otherwise than through a breach of this contract; or
 - 1.1.2.4. such information was independently developed without access to the other Party's Confidential Information.
- 1.1.3. The *Contractor* may only disclose the Authority's Confidential Information to the Contractor Parties (which may include the *Contractor's* auditors and legal, insurance and other professional advisers) who are directly involved in the provision of *works* and services under this contract and who need to know the information. The *Contractor* shall ensure that such Contractor Parties are aware of, and comply with, these confidentiality obligations.
- 1.1.4. The *Contractor* shall not, and shall procure that Contractor Parties do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this contract.
- 1.1.5. The *Contractor* undertakes (except as may be required by Law or in order to instruct professional advisers in connection with this contract) not to:
 - 1.1.5.1. disclose or permit disclosure of any details of this contract to the news media or any third party other than Contractor Parties; or
 - 1.1.5.2. use the Authority's name or brand in any promotion or marketing or announcement without the prior written consent of the Authority.
- 1.1.6. At the written request of the Authority, the *Contractor* shall procure that any Contractor Party or member of a Contractor Party identified in the Authority's request signs a confidentiality undertaking prior to commencing any work in connection with this contract (provided that "Contractor Party" for the purposes of this



Clause Z1.1.6 does not include an individual employee of the *Contractor* or of a Subcontractor).

- 1.1.7. Nothing in this Clause Z1.1 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of its intellectual property rights.
- 1.1.8. Provisions and obligations set out in this Clause Z1.1 shall survive and remain in force upon and following the termination of this contract.
- 1.1.9. The *Contractor* shall not make use of this contract or any information issued or provided by or on behalf of the Authority in connection with this contract otherwise than for the purpose of this contract, except with the written consent of the Authority.
- 1.1.10. Where the *Contractor*, in carrying out its obligations under this contract, is provided with information from or by a third party, the *Contractor* shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the *Contractor* has sought the prior written consent of that third party, and has obtained the prior written consent of the Authority.
- 1.1.11. On or before the expiry or termination of this contract, the *Contractor* shall ensure that all documents or records (in whatever media or format they are created or stored) as are requested by the Authority and are in the *Contractor's* possession, custody or control, which contain information relating to third parties including any documents in the possession, custody or control of a sub-contractor, are delivered up to the Authority. All electronic media so delivered should be in a format agreed between the Parties that is compatible with the Authority's systems.
- 1.1.12. The Parties acknowledge that the National Audit Office have the right to publish details of this contract (including Commercially Sensitive Information) in its relevant reports to the Authority or Parliament as the case may be.

Z1.2 FREEDOM OF INFORMATION

- 1.2.1 The *Contractor* acknowledges that the Authority, Potential Employers and Employers are subject to the requirements of the FOIA and the EIR and shall facilitate the Subject Bodies' compliance with their Information disclosure requirements pursuant to the same and as provided for in this Clause Z1.2.
- 1.2.2 Where a Subject Body receives a Request for Information in relation to Information that the *Contractor* via the Subject Body or otherwise is holding and which the Subject Body not hold itself, the Subject Body may refer such Request for Information to the *Contractor* in which case the *Contractor* shall:
 - 1.2.2.1 provide the Subject Body with a copy of all such Information (to the extent only that such Information is held or required to be held by the *Contractor* in order to fulfil any obligation under this contract) in the form that



the Subject Body reasonably requires as soon as practicable and in any event within five (5) Working Days (or such other period as the Subject Body acting reasonably may specify) of the Subject Body's request; and

- 1.2.2.2 provide all necessary assistance as reasonably requested by the Subject Body in connection with any such Information, to enable the Subject Body to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the EIR.
- 1.2.3 Following notification under Clause Z1.2.2. above, and up until such time as the *Contractor* has provided the Subject Body with all the Information specified in Clause 1Z.2.2, the *Contractor* may make representations to the Subject Body as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the Information requested, provided always that the Subject Body shall be responsible for determining at its absolute discretion:
 - 1.2.3.1 whether Information is exempt from disclosure under the FOIA and the EIR;
 - 1.2.3.2 whether Information is to be disclosed in response to a Request for Information; and
 - 1.2.3.3 in no event shall the *Contractor* respond directly, or allow any Contractor Party to respond directly, to a Request for Information unless expressly authorised to do so by the Subject Body.
- 1.2.4 The *Contractor* shall transfer to the Subject Body's Representative any Request for Information received by it as soon as practicable and in any event within two (2) Working Days of receiving it and shall immediately thereafter notify the Subject Body of the date on which any such Request for Information was received by the *Contractor* and the date on which it was transferred to the Subject Body.
- 1.2.5 In the event of a request from a Subject Body pursuant to Clause Z1.2.2 above, the *Contractor* shall as soon as practicable, and in any event within three (3) Working Days of receipt of such request, inform the Subject Body of the *Contractor's* estimated costs of complying with the request to the extent these would be recoverable if incurred by the Subject Body under Section 9 and/or 13(1) of the FOIA and the Fees Regulations. The Subject Body shall reimburse the *Contractor* for such costs as the *Contractor* reasonably incurs in complying with the request to the extent they are themselves entitled to reimbursement of such costs as set out in this Clause Z1.2.6.
- 1.2.6 The *Contractor* acknowledges that (notwithstanding the provisions of Clause Z1.1 (*Confidentiality*) and this Clause Z1.2 (*Freedom of Information*) a Subject Body may, acting in accordance with the Code, be obliged under the FOIA, or the EIR to disclose Information concerning the *Contractor* or any Construction Project:



1.2.6.1 in certain circumstances without consulting with the *Contractor*; or

1.2.6.2 following consultation with the *Contractor* and having taken its views into account,

provided always that where Clause Z1.2.7.1 applies, the Subject Body shall, where reasonably practicable, draw this to the attention of the *Contractor* prior to any disclosure in accordance with the recommendations of the Code.

Z2

Data Protection

Z2.1 For the purpose of this clause Z.2, the following definitions apply:

Data Loss Event means any event that results, or may result, in unauthorised access to Personal Data held by the *Contractor* under this contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data breach.

Data Protection Legislation means the General Data Protection Regulations (GDPR).

Data Subject Access Request means a request made by, or on behalf of, a data subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

Personal Data means personal data as defined in the Data Protection Legislation.

Z2.2 Both Parties shall comply with all applicable requirements of the Data Protection Legislation. This clause Z.2 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.

Z2.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, the *Client* is the data controller and the *Contractor* is the data processor (where data controller and data processor have the meanings as defined in the Data Protection Legislation). The *Contractor* may process Personal Data in order to perform the *works* for the duration of this contract. Clauses Z.2.9 – Z.2.11 set out the types of Personal Data and categories of data subject that the *Contractor* may process under this Agreement.

Z2.4 Without prejudice to the generality of clause Z.2.2, the *Client* will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the *Contractor* for the duration and purposes of this Agreement.

Z2.5 Without prejudice to the generality of clause Z.2.2, the *Contractor* shall, in relation to any Personal Data processed in connection with the performance of its obligations under this Agreement:

- (a) process that Personal Data only on the written instructions of the *Client* unless the *Contractor* is required by the Applicable Laws to process Personal Data. Where the *Contractor* is relying on the Applicable Laws as the basis for processing Personal Data, the *Contractor* shall promptly notify the *Contractor* of this before performing the processing required by the Applicable Laws



unless those Applicable Laws prohibit the *Contractor* from so notifying the *Client*

- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the *Client*, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it)
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and do not process Personal Data except in accordance with this contract
- (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the *Client* has been obtained and the following conditions are fulfilled
 - i. the *Client* or the *Contractor* have provided appropriate safeguards in relation to the transfer
 - ii. the data subject has enforceable rights and effective legal remedies
 - iii. the *Contractor* complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred and
 - iv. the *Contractor* complies with reasonable instructions notified to it in advance by the *Client* with respect to the processing of the Personal Data
- (e) assist the *Client* in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators
- (f) notify the *Client* without undue delay on becoming aware of a Personal Data breach
- (g) at the written direction of the *Client*, delete or return Personal Data and copies thereof to the *Client* on termination of the contract unless required by the Applicable Laws to store the Personal Data
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause Z.2 and allow for audits by the *Client* or the *Client's* designated auditor



- (i) notify the *Client* immediately if it
 - i. receives a Data Subject Access Request (or purported Data Subject Access Request)
 - ii. receives a request to rectify, block or erase any Personal Data
 - iii. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation
 - iv. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this contract
 - v. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or
 - vi. becomes aware of a Data Loss Event.

The *Contractor* obligation to notify under clause Z2.5(i) shall include the provision of further information to the *Client* in phases, as details become available.

Z2.6 Before allowing any sub-processor to process any Personal Data related to this Agreement, the *Contractor* must

- (a) notify the *Client* in writing of the intended sub-processor and processing
- (b) obtain the written consent of the *Client*
- (c) enter into a written agreement with the sub-processor which gives effect to the terms set out in this clause Z.2 such that they apply to the sub-processor and

provide the *Client* with such information regarding the sub-processor as the *Client* may reasonably require

Z2.7 The *Client* may, at any time on not less than 30 days' notice, revise this clause Z.2 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this contract) or amending it to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Z2.8 The provisions of this clause shall apply during the contract and indefinitely after its expiry or termination.

Z2.9 The *Contractor* may process Personal Data of the following types

- (a) name and
- (b) contact details.

Z2.10 The *Contractor* may process sensitive Personal Data of the following Types



- (a) physical or mental health details.

Z2.11 The *Contractor* may process Personal Data relating to the *Client's*

- (a) employees and
- (b) customers and clients.

Z3

Copyright

- Z3.1 The copyright in all documents prepared by the *Client* is and remains the property of the *Client*.
- Z3.2 The *Contractor* grants to the *Client* and all persons authorised by it an irrevocable right (without payment of any licence, royalty or other fee) to reproduce and use the documents prepared by or on behalf of the *Contractor* for all purposes connected with the project including the construction, maintenance, repair, renewal and reinstatement of all parts of the *works* or the site.
- Z3.3 The *Contractor* indemnifies the *Client* in respect of all costs, claims, damages, proceedings and expenses arising out of any breach of any such copyright by any of the *Contractor*, its assignees or Sub-contractors appointed in relation to the *works*. The *Contractor* shall not be liable for any use of the documents other than for the purposes that they were prepared.

Z4

Site information

- Z4.1 The *Contractor* acknowledges that the *Client* does not warrant or give any representation on the accuracy or completeness of any data or information provided to the *Contractor* by the *Client* including any relating to the site or things on or under the site or in the vicinity of the site including the location, size, nature or condition of services. The *Contractor* must rely on its own enquiries and carry out such further investigation or surveys as it considers appropriate.

Z5

Community Benefits Measurement Tool

- Z5.1 If the *Client* requests, the *Contractor* shall, populate the Community Benefits Measurement Tool in advance of each and every monthly progress meeting with the *Client*.
- Z5.2 The *Contractor*, on or before the issue of the Defects Certificate, shall every quarter without further charge provide to the *Client* the completed Community Benefits Measurement Tool.

S6

Special Requirements of statutory bodies

The *Contractor*

- complies at its own cost with all special requirements of statutory bodies



- takes these special requirements into account in order to Provide the Works.

Z7

Notices by *Contractor* to *Client*

The *Contractor* shall in relation to any part of the *works* (other than emergency works) give not less than 21 days' notice in writing to the *Client* before:-

- (a) commencing any part of the *works* in a Street (as defined by Section 48(1) of the New Roads and Street Works Act 1991); or
- (b) commencing any part of the *works* in controlled land or in a prospectively maintainable highway (as defined by Sections 103 and 87 of the New Roads and Streets Act 1991); or
- (c) commencing in a street or controlled land or in a prospectively maintainable highway any part of the *works* which is likely to affect the apparatus of any owning undertaker (within the meaning of Section 48(4) and (5) of the New Roads and Street Works Act 1991).

Such notice shall state the date on which and the place at which the *Contractor* intends to commence the execution of the work referred to therein.

Z8

Third Party Agreements

Z8.1 Copies of the whole or parts of the following agreements:

(excluding matters related to price and payment) have been or will be provided to the *Contractor* and such agreements or parts are referred to in this **clause** "the Third Party Agreements".

Z8.2 The *Contractor* shall design, carry out and complete the construction of the Works in conformity with the *Client's* obligations under the Third Party Agreements including, without limitation, those relating to provision of information and the giving of notice and permitting inspections before the Completion of the *works* may be certified.

Z8.3 The *Contractor* undertakes to the *Client* that he has performed and shall continue to perform its obligations under this Contract in such manner and at such times so that no act, omission or default of the *Contractor* or any of the *Contractor's* Persons (including the Novating Consultants if any) shall constitute, cause or contribute to any breach by the *Client* of any of its obligations under the Third Party Agreements.

Z9

Fair payment

Z9.1 The *Contractor* assesses the amount due to a Subcontractor without taking into account the amount certified by the *Project Manager*.

Z9.2 The *Contractor* includes in the contract with each Subcontractor.

- a period for payment of the amount due to the Subcontractor not greater than 26 days after the due date in 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 sub-subcontract the same requirement, except that the period for payment is to be not greater than 30 days after the date due in this contract and
- a provision requiring the Subcontractor to assess the amount due to a sub-subcontractor without taking into account the amount paid by the *Contractor*

Z9.3 The due date in this contract is the date on which the *Project Manager* certifies payment.

Z9.4 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 sub-subcontract.



Z10

Intellectual Property Rights

- Z10.1 The *Contractor* assigns to the *Client* all present and future Intellectual Property Rights in any Material and Documents created by or on behalf of the *Contractor* in Providing the Works.
- Z10.2 The Intellectual Property Rights in all Documents and Material prepared by the *Client* is and remains the property of the *Client*.
- Z10.3 The *Contractor* indemnifies the *Client* in respect of all costs, claims, damages, proceedings and expenses arising out of any breach of any Intellectual Property Rights by any of the *Contractor*, its assignees or subcontractors appointed in relation to the works

Z11

Equality and Diversity

- Z11.1 The *Client* 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 *Client* 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 England. The *Client* therefore seeks to contract with companies with similar aspirations and this is reflected in the consideration of the quality submissions made by tendering companies.
- Z11.2 The *Contractor* does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Disability Discrimination Acts 1995 and 2005 or the Equality Act 2010 (the "Discrimination Acts").
- Z11.3 Where possible in Providing the Works, the *Contractor* co-operates with and assists the *Client* 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.
- Z11.4 Where an employee or Subcontractor employed by the *Contractor* is required to carry out any activity alongside the *Client's* employees in any premises, the *Contractor* ensures that each such employee or Subcontractor complies with the *Client's* employment policies and codes of practice relating to discrimination and equal opportunities.
- Z11.5 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 *Client* 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.



Z11.6 The *Contractor* indemnifies the *Client* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Client* arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the *Contractor*.

Z12

Collateral Warranty

The *Contractor*

- shall provide the *Client* with a collateral warranty from any Subcontractor with a design responsibility, which shall be substantially in the form in favour of the *Client* from the Subcontractors, (including without limitation any consultants) undertaking any important elements of work identified by the *Project Manager* within 14 days of request by the *Project Manager*;
- may in good faith propose to the *Client* 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 *Client* shall act reasonably in considering such amendments;
- shall provide the *Project Manager* certified subcontracts at the same time as the executed warranties; and
- The *Client* shall be entitled to withhold fifteen percent (15%) of the sum stated in the Payment Notice if the *Contractor* has not executed and delivered any and all warranties previously requested by the *Client*.

Z13

The Public Contracts Regulations 2015

- Z13.1 The *Client* may terminate the *Contractor's* obligation to Provide the Works if any of the provisions of paragraph 73(1) of The Public Contracts Regulations 2015 apply.
- Z13.2 If the *Client* terminates under the provisions of paragraph 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed by the *Contractor* at the Contract Date, the procedures and amounts due on termination are the same as if the *Contractor* has substantially failed to comply with its obligations.
- Z13.3 If the *Client* otherwise terminates under the provisions of paragraph 73(1) of the Public Contracts Regulations, the procedures and amounts due on termination are the same as if the Parties had been released under the law from further performance of the whole of this Agreement.
- Z13.4 The *Contractor* does not appoint a Subcontractor or supplier if there are compulsory grounds for excluding the Subcontractor or supplier under regulation 57 of the Public Contracts Regulations 2015.

Z14

Audit and Inspection

- Z14.1 The *Contractor* provides all facilities and allows the *Client*, its auditors, any third party providing funding or anyone with a statutory or other legal right to inspect or audit the *Client*, full access to conduct any audit investigation of the Agreement. This includes access to:
- all premises owned or occupied by the *Contractor*;



- all documents in the possession, custody or control of the *Contractor* used in providing the *works* and valuation of compensation events;
- all technology, resources, systems and procedures used or to be used in providing the *works*;

and

- the *Contractor's* employees, the Subcontractor's employees and key persons who are providing the *works*.

Z14.2 The *Client* reserves the right to undertake audits as they may deem appropriate including but not limited to:

- *works* content and establishment of the Prices;
- Valuation of compensation events;
- Health and Safety;
- Details of data input to corporate systems regarding customer service

Z14.3 The *Contractor* is required to provide all reasonable assistance to the *Client* in undertaking the audits, in a timely manner, such information and data as may be necessary effectively to complete them.

Z14.4 Where the findings from the *Client's* audit confirms concerns in respect of any of the above issues detailed in clause Z17.2, requiring the *Client* having to undertake further audits and incurring additional costs, the *Contractor* shall be liable for all such additional costs and such costs shall be deducted from any payments due through the payment process.

Z15

Modern Slavery Act

In performing its obligations under this Agreement, the *Contractor* shall and shall ensure that each of its Subcontractors shall comply with the Modern Slavery Act 2015.

Z16

Design Review Process

"**Reviewable Design Data**" means the particulars of the *Contractors* design which the Scope requires to be submitted for acceptance in accordance with Clause 21.

Z16.1 The *Contractor* shall work closely with the *Client* and the *Project Manager* to develop a workable process for the supply of Reviewable Design Data for comment. The *Contractor* shall submit to the *Project Manager* the Reviewable Design Data, as and when requested by the *Project Manager* in triplicate.

Z16.2 The operation of this Reviewable Design data process shall not give rise to any right on the part of the *Contractor* to a compensation event.

Z16.3 No approval or comment by the *Project Manager* shall in any way be deemed to be an agreement that the Reviewable Design data satisfies the requirement of this Agreement.

Z16.4 The *Contractor* shall provide to the *Project Manager* any other information, data or document that the *Project Manager* reasonably requires.



Z16.5 The *Project Manager* may raise comment in relation to any relevant, Reviewable Design Data on the sole grounds that the relevant Reviewable Design Data would (on balance of probabilities):

Z16.5.1 – breach any law;

Z16.5.2 – breach any approvals;

Z16.5.3 – is not in accordance with the Scope;

Z16.5.4 – prevent the *works* from satisfying the Third Party Documents;
or

Z16.5.5 – materially and adversely affect the ability to let the *works*.

Z17

Environment

“Environmental Law” is any rule of common law, statute, code of practice, circular, guidance note, by-law or regulation having the force of law or any consent, license, permit, order notice, recording, registration or judgement whose breach can give rise, whether immediately or not, to criminal, civil or administrative, damages, sanctions or penalties for the failure to meet obligations relating to the presence, release, spillage, treatment, handling, deposit, escape or other mode of existence of any substance, the carrying out of any activity, or the existence of any condition or any phenomenon which has or could have a detrimental impact on the Environment and which in any such case has its primary purpose or effect the protection of the Environment generally or in any particular locality.

“Environment” is any and all living organisms (including man), ecosystems, property and the media of air (including air in buildings, natural or manmade structures, below or above ground), water (including drains and sewers), land (including under any water as described above or below the surface)

Z17.1 The *Contractor* hereby warrants and undertakes that with respect to the carrying out of the *works*, there shall be no breach of Environmental Law.

Z17.2 The *Contractor* further warrants that it shall not introduce or cause to be introduced any substances, debris or materials onto any land (including but not limited to land on the *site*, or land adjacent to or near the *site*) or into any stream, river, lake or other body of water which may pollute or contaminate the same or constitute a hazard to the Environment.

Z17.3 In the event of any breach by the *Contractor* of this clause Z27, the *Contractor* shall forthwith at its own expense, alter, repair or replace the land, *works*, *site* or any part thereof, or otherwise remedy the breach and indemnify the *Client* from any and all losses caused by such breach.

Z18

Corrupt practices, collusion etc

Z18.1 The *Contractor* warrants that he has not and will not:

- offer or give to any person in the service of the *Client* 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 *Client* or for showing favour or disfavour to any person in relation to this contract or any other contract with the *Client*, or

- enter into this contract or any other contract with the *Client* 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.

Z18.2 The *Contractor* warrants that in entering into this contract he has not:

- communicated to any person other than the *Client*, or a person duly authorised by the *Client*, the amount or approximate amount of the tender or submission, or proposed tender or submission, leading to this contract except where the disclosure, in confidence, of the approximate amount of the tender or submission was necessary to obtain insurance premium quotations required for the preparation of the tender or submission; or
- entered into any agreement or arrangement with any person, or requested of any person, that they shall refrain from tendering or competing, that they shall withdraw any tender or submission once offered or that he or they will vary the amount of any tender or submission to be submitted.

Z18.3 In the event of any breach by the *Contractor* of clause Z28.1 or Z28.2, the *Client* may terminate this contract by notice having immediate effect and such termination shall be treated in the same way as if termination had been in accordance with clause 90.1 of the *conditions of contract*.

Z19

Dispute Resolution Procedure

Z19.1 The *Contractor* and the *Client* will endeavour to notify each other of any anticipated dispute under this contract so that it can be avoided by negotiation between them.

Z19.2 The *Client* and the *Contractor* will endeavour to resolve any dispute under this contract which does arise by direct negotiation in good faith between senior executives. Each of them will give serious consideration to any request by the other to refer the dispute to Mediation if it cannot be resolved by direct negotiation.

Z20

Publicity

Z20.1 The *Contractor* shall not make any press announcement or publicise anything in connection with this contract or project except:

Z20.1.1 with the prior consent of the *Client*;

Z20.2 If the *Client* agrees with the *Contractor* pursuant to Clause Z32.1 above, any text to be used by the *Contractor* in marketing its products and/or services, such agreement may be withdrawn if the text becomes incorrect, incomplete or misleading, in which case the *Contractor* shall forthwith cease using such text.

Z20.3 The provisions of this Clause Z32 shall apply during the continuance of this contract and indefinitely after their expiry or termination.

