

Short Contract

Bravo Contract ecm_59463 (project ref 30930)

A contract between The Department for Environment, Food and Rural Affairs
and Interserve (Facilities Management) Ltd
for Tow Law FMD Site, Bishop Auckland, County Durham,
DL13 – Tank Replacement

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Contract Data

The *Employer* is

Name Department for Environment, Food and Rural Affairs

Address Nobel House, 17 Smith Square, London, SW1P 3JR

The *works* are The Replacement of Tanks at Tow Law (as fully described in the Works Information)

The *site* is Tow Law, Bishop Auckland, County Durham, DL13

The *starting date* is 04/01/21

The *completion date* is 31/3/21

The *period for reply* is 1 week

The *defects date* is 52 weeks after Completion

The *defect correction period* is 1 week

The *delay damages* are £0 (Nil) per day.

The *assessment day* is the 20th of each month

The *retention* is 0 (Nil)%

Does the United Kingdom Housing Grants, Construction and
Regeneration Act (1996) apply?

Yes

The *Adjudicator* is

Name The Royal Institution of Chartered Surveyors

The interest rate on late payment is 0.5% per complete week of delay.

The *conditions of contract* are the NEC3 Engineering and Construction Short Contract April 2013 and the following additional conditions:

Option X7: Delay damages

Delay damages for Completion of the whole of the works are (£0) Nil.

Option X15: Limitation of the Contractor's liability for his design to reasonable skill and care

Applies

Option X16: Retention

The retention fee amount is 0%. The retention percentage is 0%

Option X18: Limitation of liability

X18.1 The *Contractor's* liability to the *Employer* for indirect or consequential loss is limited to (£0) Nil.

X18.2 For any one event, the *Contractor's* liability to the *Employer* for loss of or damage to the *Employer's* property, loss of damage to the Works, Plan and Materials and Equipment or liability for bodily injury or death for a person (not an employee of the Contractor) is limited to £1,000,000.

X18.3 The *Contractor's* liability for Defects due to his/her design which are not listed on the Defects Certificate is limited to £1,000,000.

X18.4 The *Contractor's* {Subcontractors} total employer liability, other than excluded matters detailed in Schedule 16 - Insurance, is limited to £10,000,000 in respect of each claim.

X18.5 The end of liability date is 6 years after the Completion of the whole of the works.

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

The period for payment is 30 days from the date of valuation.

Option Z

Option Z: Additional conditions of the Contract

The *additional conditions of contract* are described below. Each Option Z provision will apply as set out below.

Option Z1

Option Z1: Amending the Interpretation Provisions

Option Z1.1

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,
- 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."

Option Z2

Option Z2: Confidentiality

Option Z2.1

For the purpose of this contract, **Personal Data** is information collected by the Contractor on behalf of the *Employer* in relation to this contract, which relates to living individuals who can be identified:

- from that information

Option Z2.2	- from that information combined with other details in (or likely to come into) the possession of the <i>Employer</i>. The <i>Contractor</i> keeps (and ensures that its employees and Subcontractors keep) confidential and does not disclose to any person, including, without limitation, Others: - the terms of this contract and - any confidential or proprietary information (including Personal Data) provided to or acquired by the <i>Contractor</i> in the course of Providing the Works except that the <i>Contractor</i> may disclose information - to its legal or other professional advisers, - to its employees and Subcontractors as needed to enable the <i>Contractor</i> to Provide the Works, - where required to do so by law or by any professional or regulatory obligation or by order of any court or government agency, provided that (unless the <i>Contractor</i> is prohibited by law from doing so) prior to disclosure the <i>Contractor</i> consults the <i>Project Manager</i> and takes full account of the <i>Employer's</i> views about whether (and if so to what extent) the information should be disclosed, - which it receives from a third party who lawfully acquired it and who is under no obligation restricting its disclosure, - which is in the public domain at the time of disclosure other than due to the fault of the <i>Contractor</i> or with the consent of the <i>Project Manager</i>.
Option Z2.3	The <i>Contractor</i> does not (and ensures that its employees and Subcontractors do not) use any confidential or proprietary information provided to or acquired by it for any purpose other than to Provide the Works.
Option Z3	Option Z3: Security
Option Z3.1	Without limiting this clause Z3, the <i>Contractor</i> fully complies with all security requirements stated in the Works Information.
Option Z3.1	Site admittance The <i>Contractor</i> submits to the <i>Project Manager</i> details of people who are to be employed by it and its 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 <i>Project Manager</i>.
Option Z3.2	The <i>Project Manager</i> may instruct the <i>Contractor</i> 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.

Option Z3.3	Passes Employees of the <i>Contractor</i> and its Subcontractors are to carry an <i>Employer's</i> pass whilst they are on the parts of the Site stated in the Contract Data.
Option Z3.4	The <i>Contractor</i> submits to the <i>Project Manager</i> for acceptance a list of the names of the people for whom passes are required.
Option Z3.5	Photographs The <i>Contractor</i> does not take photographs of the Site or the works or any part of them unless he has obtained the acceptance of the <i>Project Manager</i>.
Option Z3.6	The <i>Contractor</i> takes the measures needed to prevent its Subcontractors' people taking, publishing or otherwise circulating such photographs.
Option Z4	Option Z4: Data Protection
Option Z4.1	The Data Protection Acts are the Data Protection Act 1998 and any other laws or regulations relating to privacy or personal data.
Option Z4.2	For the purposes of this contract and the Data Protection Acts - the <i>Employer</i> is the Data Controller and - the <i>Contractor</i> is the Data Processor.
Option Z4.4	The <i>Contractor</i> processes the Personal Data in accordance with (and so as not to put the <i>Employer</i> in breach of) the Data Protection Acts and only to the extent necessary for the purpose of performing its obligations under this contract.
Option Z4.5	The <i>Contractor</i> has in place and maintains until the <i>defects date</i> - appropriate technical and organisational measures (having regard to the nature of the Personal Data) to protect the Personal Data against accidental, unauthorised or unlawful processing, destruction, loss, damage, alteration or disclosure and - adequate security programmes and procedures to ensure that unauthorised persons do not have access to the Personal Data or to any equipment used to process Personal Data.

Contract Data

Option Z4.6	The <i>Contractor</i> immediately notifies the <i>Project Manager</i> if it receives • a request from any person whose Personal Data it holds to access his Personal Data or • a complaint or request relating to the <i>Employer's</i> obligations under the Data Protection Acts.
Option Z4.7	The <i>Contractor</i> assists and co-operates with the <i>Project Manager</i> in relation to any complaint or request received, including • providing full details of the complaint or request, • complying with the request within the time limits set out in the Data Protection Acts and in accordance with the instructions of the <i>Project Manager</i> and • promptly providing the <i>Project Manager</i> with any Personal Data and other information requested by him.
Option Z4.8	The <i>Contractor</i> allows the <i>Employer</i> to conduct periodic audits of the <i>Contractor's</i> compliance with the Data Protection Acts. The <i>Contractor</i> complies with the instructions of the <i>Project Manager</i> to enable such audits to be carried out.
Option Z4.9	The <i>Contractor</i> complies with the requirements of the <i>Employer</i> in relation to the storage, dispatch and disposal of the Personal Data in any form or medium.
Option Z4.10	The <i>Contractor</i> immediately notifies the <i>Project Manager</i> on becoming aware of any breach of this clause or of the Data Protection Acts by the <i>Contractor</i> or any Subcontractor.
Option Z4.11	The <i>Contractor</i> does not process the Personal Data outside the European Economic Area without the agreement of the <i>Project Manager</i>. Where the <i>Project Manager</i> agrees, the <i>Contractor</i> complies with the instructions of the <i>Project Manager</i> and provides an adequate level of protection to any Personal Data in accordance with the eighth data protection principle set out in Schedule 1 to the Data Protection Act 1998.
Option Z5	Option Z5: Disclosure of Information
Option Z5.1	A Disclosure Request is a request for information relating to this contract received by the <i>Employer</i> pursuant to the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or otherwise.

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Option Z5.2	The <i>Contractor</i> acknowledges that the <i>Employer</i> may receive Disclosure Requests and that the <i>Employer</i> may be obliged (subject to the application of any relevant exemption and, where applicable, the public interest test) to disclose information (including commercially sensitive information) pursuant to a Disclosure Request. Where practicable, the <i>Employer</i> consults with the <i>Contractor</i> before doing so in accordance with the relevant Code of Practice. The <i>Contractor</i> uses its best endeavours to respond to any such consultation promptly and within any deadline set by the <i>Project Manager</i> and acknowledges that it is for the <i>Employer</i> to determine whether or not such information should be disclosed.
Option Z5.3	When requested to do so by the <i>Project Manager</i> , the <i>Contractor</i> promptly provides information in its possession relating to this contract and assists and co-operates with the <i>Project Manager</i> to enable the <i>Employer</i> to respond to a Disclosure Request within the time limit set out in the relevant legislation.
Option Z5.4	The <i>Contractor</i> promptly passes any Disclosure Request which it receives to the <i>Project Manager</i> . The <i>Contractor</i> does not respond directly to a Disclosure Request unless instructed to do so by the <i>Project Manager</i> .
Option Z6	Option Z6: Copyright
Option Z6.1	Material means all materials prepared by or on behalf of the <i>Contractor</i> for the <i>works</i> and all updates, additions and revisions to them and any designs or inventions incorporated in them.
Option Z6.2	Permitted Uses means the design, construction, completion, reconstruction, modification, extension, refurbishment, maintenance, funding, disposal, letting, fitting-out, advertisement, demolition, reinstatement, building information, modelling and repair of the <i>works</i> .
Option Z6.3	The <i>Contractor</i> grants to the <i>Employer</i> , with immediate effect, an irrevocable, non-exclusive, royalty-free licence to copy and make full use of the <i>Material</i> for any purpose, including without limitation any of the <i>Permitted Uses</i> .
Option Z6.4	The <i>Employer's</i> licence carries the right to grant sub-licences and is transferable to third parties without the consent of the <i>Contractor</i> and survives termination (for any reason) of the <i>Contractor's</i> employment under this contract.

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Option Z6.5	The <i>Contractor</i> is not liable for use of the Material for any purpose other than that for which it was prepared or provided.
Option Z7	Option Z7: Discrimination
Option Z7.1	The <i>Contractor</i> 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 ").
Option Z7.2	Where possible in Providing the Works, the <i>Contractor</i> co-operates with and assists the <i>Employer</i> 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.
Option Z7.3	Where an employee or Subcontractor employed by the <i>Contractor</i> is required to carry out any activity alongside the <i>Employer's</i> employees in any premises, the <i>Contractor</i> ensures that each such employee or Subcontractor complies with the <i>Employer's</i> employment policies and codes of practice relating to discrimination and equal opportunities.
Option Z7.4	The <i>Contractor</i> notifies the <i>Project Manager</i> in writing as soon as he becomes aware of any investigation or proceedings brought against the <i>Contractor</i> 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 <i>Employer</i> 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.
Option Z7.5	The <i>Contractor</i> indemnifies the <i>Employer</i> against all costs, charges, expenses (including legal and administrative expenses) and payments made by the <i>Employer</i> arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the <i>Contractor</i> .
Option Z7.6	The <i>Contractor</i> includes in the conditions of contract for each Subcontractor obligations substantially similar to those set out above.

Option Z8	Option Z8: Quality Management and Audit
Option Z8.1	The <i>Contractor</i> operates a quality management system for Providing the Works which • complies with the relevant parts of ISO 9001:2008 and ISO 9001:2008/Cor 1:2009, • incorporates an environmental management system consistent with ISO 14001:2004, • includes processes for delivering continual improvement following the guidance in ISO 9004:2009, • has third party certification from a UKAS approved accreditation body (or its equivalent) or is operating in preparation for accreditation within 12 months of the Contract Date • complies with good industry practice and • otherwise fully complies, and is consistent with the requirements set out in the Works Information.
Option Z8.2	The <i>Contractor</i> provides to the <i>Project Manager</i>, within one week of the Contract Date, a quality policy statement and a quality plan for acceptance. The quality policy statement and quality plan comply with the requirements stated in the Works Information and are sufficiently detailed to demonstrate how the <i>Contractor</i> will Provide the Works in accordance with this contract.
Option Z8.3	The <i>Contractor</i> keeps a controlled copy of the quality plan available for inspection by the <i>Project Manager</i> at all times.
Option Z8.4	The <i>Contractor</i> complies with an instruction from the <i>Project Manager</i> to • change the quality plan so that it complies with the requirements of this contract or • correct a failure of the <i>Contractor</i> to comply with the quality plan.
Option Z8.5	The <i>Project Manager</i> and other persons authorised by him may carry out periodic audits of the <i>Contractor's</i> quality management system as specified in the Works Information. The <i>Contractor</i> allows access to the Working Areas and other premises used by the <i>Contractor</i> to Provide the Works and provides all facilities and assistance necessary to enable such audits to be carried out.
Option Z9	

	Option Z9: Compliance with Legislation The <i>Contractor</i> Provides the <i>works</i>: • 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 <i>works</i> or performance of any obligations under this contract, and ○ any regulation, bye-law, permission or approval of any local authority or statutory undertaker having jurisdiction in relation to the <i>works</i> or with whose systems the <i>works</i> are, or are to be, connected. Option Z9.2 The <i>Contractor</i> is the principal contractor under the Construction (Design and Management) Regulations 2015 (the "CDM Regulations") in respect of the <i>works</i> and performs all the functions and obligations required to be performed by the principal contractor under the CDM Regulations. Option Z10 Option Z10: Fair Payment Option Z10.1 The <i>Contractor</i> assesses the amount due to a Subcontractor without taking into account the amount certified by the <i>Project Manager</i>. Option Z10.2 The <i>Contractor</i> includes in the contract with each Subcontractor • a period for payment of the amount due to the Subcontractor not greater than 19 days after the 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 subsubcontract the same requirement, except that the period for payment is to be not greater than 23 days after the due date in this contract and • a provision requiring the Subcontractor to assess the amount due to a subsubcontractor without taking into account the amount paid by the <i>Contractor</i>.
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Option Z10.3	The due date in this contract is the date on which the <i>Project Manager</i> certifies payment.
Option Z10.4	The <i>Contractor</i> notifies non-compliance with the timescales for payment through the Efficiency and Reform Group Supplier Feedback Service. The <i>Contractor</i> includes this provision in each subcontract, and requires Subcontractors to include the same provision in each subsubcontract.
Option Z11	Option Z11: Assignment
Option Z11.1	The <i>Contractor</i> does not assign its interest in or any rights arising under this contract without the consent of the <i>Employer</i> .
Option Z11.2	The <i>Employer</i> may assign, charge or transfer its interest in this contract or any rights arising under it at any time without the consent of the <i>Contractor</i> . The <i>Employer</i> notifies the <i>Contractor</i> of any such assignment, charge or transfer.
Option Z11.3	The <i>Contractor</i> does not (and ensures that its employees and Subcontractors do not) use any confidential or proprietary information provided to or acquired by it for any purpose other than to Provide the Works.
Option Z12	Option Z12: Contractor's Design Submission Procedure
Option Z12.1	Insert a new definition in clause 11.2: "<i>Contractor's Design Documents</i> are drawings, design details and specifications of work, Plant and Materials (unless otherwise provided by the <i>Employer</i>) for the <i>works</i>".
Option Z12.2	Delete clauses 21.2 and 21.3 and replace with the following: "21.2 The <i>Contractor</i> submits the <i>Contractor's Documents</i> to the <i>Supervisor</i> for acceptance at the times and in the manner and format stated in the Works Information. 21.3 The <i>Supervisor</i> returns each <i>Contractor's Document</i> to the <i>Contractor</i> marked either 'A' (accepted), 'B' (accepted with comments) or 'C' (rejected). If the <i>Supervisor</i> marks a <i>Contractor's Document</i> 'B' or 'C', he will state his reasons. A reason for not accepting a <i>Contractor's Document</i> is that it does not comply with: • the Works Information, • any previous <i>Contractor's Document</i> which: - the <i>Supervisor</i> has returned marked 'A', or

Option Z14	- the <i>Supervisor</i> has returned marked 'B' and the <i>Contractor</i> has amended to incorporate the <i>Supervisor's</i> comments, • the applicable law or • any other provision of this contract. 21.4 If the <i>Supervisor</i> does not return a <i>Contractor's</i> Document within the <i>period for reply</i>, it is treated as having been returned marked 'A'. 21.5 Where a <i>Contractor's</i> Document is returned marked 'A', the <i>Contractor</i> proceeds with the relevant work in accordance with the <i>Contractor's</i> Design Document. 21.6 Where a <i>Contractor's</i> Document is returned marked 'B', the <i>Contractor</i> • amends the <i>Contractor's</i> Document to incorporate the <i>Supervisor's</i> comments, • submits the <i>Contractor's</i> Document as so amended to the <i>Supervisor</i> and • proceeds with the relevant work in accordance the <i>Contractor's</i> Document as so amended. 21.7 Where a <i>Contractor's</i> Design Document is returned marked 'C', the <i>Contractor</i> • amends the <i>Contractor's</i> Document to incorporate the <i>Supervisor's</i> comments, • re-submits it to the <i>Supervisor</i> for acceptance and • does not proceed with the relevant work until the <i>Supervisor</i> has returned it marked 'A' or 'B' and, where it is marked 'B', it has complied with clause 21.6 21.8 If the <i>Contractor</i> disagrees with the comment of the <i>Supervisor</i> on a <i>Contractor's</i> Document marked 'B' or 'C', he notifies the <i>Supervisor</i> within one week of receipt stating his reasons and that in his opinion compliance with the comment will give rise to a change in the Works Information. The <i>Supervisor</i> replies within one week of receipt of the <i>Contractor's</i> notice either confirming or withdrawing his comment. A confirmation or withdrawal by the <i>Supervisor</i> is not an acceptance of the <i>Contractor's</i> opinion. 21.9 If the <i>Contractor</i> does not notify the <i>Supervisor</i> within one week that he disagrees with a comment of the <i>Supervisor</i>, compliance with the comment does not give rise to a change in the Works Information." Option Z14: New Clause 60.1 (20) 60.1 (20) Provisional Sums referred to in the Price List will be dealt with as a Compensation Event.
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The Contractor's Offer

The Contractor is

Name Interserve (Facilities Management) Ltd

Address Capital Tower, Waterloo Road, London

The price for professional fees added to the Defined Cost is at a fixed rate (as per the ECC fees referenced in Schedule 31B of the Defra/Interserve Contract).

The percentage for overheads and profit added to other Defined Cost is at a fixed rate (as per the ECC fees referenced in Schedule 31B of the Defra/Interserve Contract).

The Contractor offers to Provide the Works in accordance with the *conditions of contract* for an amount to be determined in accordance with the *conditions of contract*.

The offered total of the Prices is:

Phase 0: Surveys, Full Design and Tendering: **£24,961.89** (excluding VAT).

Phase 1: Manufacture of New Tanks - **£37,193.10** (excluding VAT).

Phase 2: Civil, Mechanical & Controls works for the installation of the new Tank **£ 168,127.04** (excluding VAT).

Phase 0: surveys, design, tendering	
ITEM	COST
Cost Plan Excluding Fees & VAT	£20,810.00
Interserve Gross Margin REDACTED	REDACTED
Other Project Management Fees including Mark-Up	£REDACTED
Total Cost of Phase 0 works ex-VAT	£24,961.89
Phase 1: manufacture of tanks	
ITEM	COST
Cost Plan Excluding Fees & VAT	£ 33,957.00
Interserve Gross Margin REDACTED	£REDACTED
Other Project Management Fees including Mark-Up	£REDACTED
Total Cost of Phase 1 works ex-VAT	£37,193.10

Contract Data

Phase 2: civils, mechanical, installation	
ITEM	COST
Cost Plan Excluding Fees & VAT	£143,827.71
Interserve Gross Margin REDACTED	£REDACTED
Other Project Management Fees including Mark-Up	£REDACTED
Total of Phase 2 Civils & Mech Installation	£168,127.04
Total of all Phases	
Cost Plan Excluding Fees & VAT	£198,594.71
Interserve Gross Margin	REDACTED
Other Project Management Fees including Mark-Up	£REDACTED
Grand Total	£230,282.02

Execution of this Contract is carried out in accordance with the 1999 EU Directive 99/93(Communication Framework for Electronic Signatures) and the UK Electronic Communications Act 2000. This Contract is formed on the date on which both the Authority and the Contractor have communicated acceptance of its terms on the Authority's e-tendering system ('Bravo').

The Employer's Acceptance

Execution of this Contract is carried out in accordance with the 1999 EU Directive 99/93(Communication Framework for Electronic Signatures) and the UK Electronic Communications Act 2000. This Contract is formed on the date on which both the Authority and the Contractor have communicated acceptance of its terms on the Authority's e-tendering system ('Bravo').

Price List

Entries in the first four columns in this Price List are made either by the *Employer* or the tenderer.

If the *Contractor* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tenderer enters the amount in the Price column only; the Unit, Quantity and Rate columns being left blank.

If the *Contractor* is to be paid an amount for the item of work which is the rate for the work multiplied by the quantity completed, the tenderer enters the rate which is then multiplied by the expected quantity to produce the Price, which is also entered.

Interserve will deliver this project by using P & I as their main sub-contractor, who will be providing a Design and Build package of works. all as described below;

TOTAL Cost broken down as follows:

Design of the Tank, Civil Work, Mechanical Systems and Controls. Including Commercial Support in tendering	£24,961.88
Manufacture of Tanks	£37,193.10
Civils Excavations, Piling, Cranage/Lifting, Concrete slab and Shell, Mechanical Re-routing and Connections, Electrics, Controls, Above Ground Works, Storage Containers, Commissioning & O&M pack.	£168,127.04
TOTAL	£230,282.02

Works Information

1 Description of the works

Interserve shall carry out works as detailed within the BCP B868064 (Phase 0 – design), B891839 (Phase 1 – tank manufacture) as well as (Phase 2 – Tank Installation) and the works information will be agreed prior to start with 'Employer' PM.

Works include:

The replacement of tanks with like for like. All works include access systems and plant / lifting equipment and supervision on site.

Warranty:

Labour: 12months Defect Period

Parts: 12 months Defect Period

The Contractor provides the following to the Employer:

Item	Date by which it will be supplied
- Construction Phase Plan of the works; - Detailed programme of works;	At pre start meeting, prior to commencement of the works.
The <i>Contractor</i> allows for undertaking the works within normal working hours (Monday to Friday 08.00 to 17.30), other times require prior agreement from the <i>Employer</i> .	At pre start meeting, prior to commencement of the works.
The above times may vary to suit the working hours of surrounding tenants. The <i>Contractor</i> liaises with the tenants to programme /stage the works to minimise disturbance.	Note
The <i>Contractor</i> provides the works in such a way as to cause the least inconvenience possible to the <i>Employer</i> adjoining owners and the general public.	Prior to and during the works.
The <i>Contractor</i> provides protection and security for the site for the duration of the works.	Prior to and during the works.
The <i>Contractor</i> undertakes the works in a manner to limit the amount of superficial damage to the access and egress surrounding and common areas. The common areas must be protected from damage. The <i>Contractor</i> is responsible for reinstating damaged surfaces prior to Completion of the works. The <i>Contractor</i> undertakes a schedule of condition prior to commencement of the works. The schedule of condition should cover the following areas: - All areas where installation and related works are being carried out; - All storage areas; - All access routes; - Other areas as agreed with the <i>Employer</i>.	Prior to and during the works.
The <i>Contractor</i> complies with the designs within the Works Information.	Prior to and during the works.
The <i>Contractor</i> complies with the <i>Employers</i> Safety is Paramount Information, Constructing a better environment document, including, but not limited to the following requirements:	Prior to and during the works.
The project will be registered with the Considerate Constructors Scheme (CCS). The <i>Contractor</i> complies with the requirements of the scheme. The <i>Contractor</i> displays CCS posters on all public site information boards and additional banners erected where they are clearly visible to the public.	Prior to and during the works
All the <i>Contractors</i> people, subcontractors, designers and routinely visiting the <i>Employers</i> site shall be CSCS or affiliated scheme registered.	Prior to and during the works
In addition to the CSCS, CPCS, and CBH requirements detailed above, the <i>Contractor</i> ensures anyone acting as: - Site Manager and/or - Site General Foreman, - Area Operations team members supervising the works, - ECC Site Supervisors and ECC Project Managers ,	At pre start meeting, prior to commencement of the works.

Must hold as a minimum a current CITB or IOSH Site Management Safety Training Scheme qualification.	
Everyone acting in the roles described above, must have attended CIRIA's 'Environmental Good Practice on Site' training or CITB 'Site Environmental Awareness Training Scheme within the last 5 years. Contractors may wish to provide comparable in-house environmental training. This must be approved by the <i>Employers Construction Safety, Health & Environment Manager</i> .	At pre start meeting, prior to commencement of the <i>works</i> .
The Principal Contractor is entirely responsible for safety and environmental management on site during construction. Risk assessments, method statements and permits must be produced in a style, language and level of detail suitable for the employees who will be working to them.	At pre start meeting, prior to commencement of the <i>works</i> .
The <i>Contractor</i> provides a schedule of risk assessments and method statements for significant activities during construction in or with their project Health and Safety Plans. The schedules must be updated when changes occur on site or new hazards/activities come to light. Revised schedules must be forwarded to the ECC Project Manager, and the Site Supervisor.	At pre start meeting, prior to commencement of the <i>works</i>
Site activities must be undertaken in accordance with the essential pollution prevention requirements and further best practices identified in PPG 6 Construction and demolition sites.	Prior to and during the <i>works</i>
The <i>Contractor</i> ensures that all their people, subcontractors and operatives are to wear the following PPE as a minimum on <i>site</i> : • Long trousers of a suitable kind • Safety boots with steel toe cap and mid sole • Safety helmet • High visibility vest or jacket • Suitable gloves • Suitable glasses when carrying out any activity unless the RA removes the requirement. A sufficient quantity and variety of PPE such as gloves, glasses, high visibility clothing and so on must be provided to allow for the immediate replacement of damaged or lost items, and to supply occasional visitors attending <i>site</i> .	Prior to and during the <i>works</i>
Construction teams must ensure adequate segregation between plant, vehicles and pedestrians. Adequate arrangements must be in place to prevent persons being put at risk from operated plant. Hoardings must be erected on landing areas, with two means of fall protection.	Prior to and during the <i>works</i>
The <i>Contractor</i> must include within inductions, information regarding the SHE Code of Practice, and what this means in respect of individual health, safety and environmental performance and behaviour. Inductions should be appropriate to the level of risk, the activities on the <i>site</i> and will include <i>site</i> specific SHE risks associated with the <i>works</i> . In particular the key	Prior to and during the <i>works</i>

items from the Environmental Action Plan (EAP) where relevant, will be shared during the induction.	
Projects lasting for 30 days or more must be inspected by the <i>Contractor's</i> own competent HS&E Advisor normally at two week intervals with at least one visit being for the purposes of an inspection which will be recorded. Following each recorded inspection, and within four working days of the visit, the HS&E Advisor's report will be provided to the following as appropriate: • <i>Employers</i> Project Manager • Project Manager Site Supervisor	Prior to and during the works
Clearing away of existing equipment on the <i>site</i> will be undertaken by the <i>Contractor</i> prior to commencement of <i>works</i> , unless otherwise agreed with the <i>Employer</i> .	Prior to and during the works

2 Drawings

List the drawings that apply to this contract.

Please see the below table

Drawing title	Format
Tank Drawing 11251 No1	
Note: All other drawings are listed / shown with document 19063RT001	

Works Information

3 Specifications

The following specifications apply to this contract.

Title	Date or revision	Tick if publicly available
BCP B868064 for Phase 0	BCP%20B868064%20Tow%20law%20Tar	
BCP B891839 for Phase 1 & 2	BCP B891839 Tow law Tank replacemer	
P&I Basis of Design Doc No 19063RT001	27/07/2020	

4 Constraints on how the *Contractor* Provides the Works

1. The *Contractor* ensures the works do not restrict the operations of the *Employer* on site or neighbouring buildings.
2. The *Contractor* ensures that all necessary measures are implemented to protect building users from the hazards of the works.
3. All CDM 2015 Regulations apply.
4. All waste is the property of the *Contractor* and must be legally disposed of away from the site by the *Contractor*.
5. The *Contractor* allows to complete the works in a phased manner as agreed with the *Employer*.
6. Hoardings must be kept locked shut at all times, with secondary fall protecting kept in place.
7. All workmanship is to be in strict accordance with manufacturers' recommendations, British Standards, and all applicable codes of practice.
8. Contractor is permitted to sub-contract the works, provided the sub-contractor works off a back-to-back contract with this one, and whose appointment has been approved by the Employer.
9. Contractor must ensure that all design and deliverables complies with all relevant standards and guidance (such as ISO or BS standards for design, construction and commissioning)
- 10 Contractor shall be required to submit a weekly progress report. The Contractor shall be required to attend a progress meeting with the Employer, at least weekly, and discuss progress against the Programme and any issues and risks that may prevent completion.

11. While on the Site, the Contractor complies with any Health and Safety measures implemented by the Employer in respect of Contractor's Personnel and other persons working on the Site. This includes health screening and all relevant SOPs.

12. While on site, the Contractor will promptly notify the Employer of any Health and Safety hazards which may arise in connection with the performance of the Contract

Access

The *Contractor* ensures throughout the period of this Contract that the occupants of neighbouring or adjoining premises have unimpeded access to their respective premises.

Where the *works* require some temporary revision to the access arrangements, the *Contractor* is to be responsible for agreeing all such arrangements and the payment of any costs or any effect on the works.

The *Contractor* allows for additional investigations that it deems necessary for successful completion of the works, as detailed in this Works information.

Working times

The *Contractor* will be permitted to work between 8.00am and 5.30pm on weekdays (Monday to Friday)

Works Information

5 Requirements for the programme

The *Contractor* submits his programme to the *Employer* for acceptance. The *Contractor* shows on each programme which he submits for acceptance (in the form of Gantt chart) showing the critical path, proposed order and timing to undertake the works and proposed plant and labour resources) the following:

- (a) Period required for mobilisation/ planning & post contract award;
- (b) The *starting date*;
- (c) Each of the activities /items listed within the Price List;
- (d) Key third party interfaces: lead in periods for materials and sub-Contractors; time required to obtain consents/waste permits; stated constraints; Contractors risks; and
- (e) Completion date

The agreed project programme for this work is as agreed in (NEC 3) Project Programme:

6 Services and other things provided by the *Employer*

The following items will be provided by the *Employer* to the *Contractor*:

Item	Date by which it will be provided
Water	the <i>starting date</i>
Electricity	the <i>starting date</i>
Welfare facilities	the <i>starting date</i>

Works programme

**Project Programme:
19063PRJ001C**

19063PRJ001C -
Project Programme.p

Site Information

Contents

Section	Site information
1	Site information
2	Pre-construction Information

1 Site information

Any sub-contractors (if appointed) will need to comply with the Employer's access requirement's in order to be allowed on site to work. Interserve (the Contractor) will be responsible for ensuring the compliance of the sub-contractor with the Employer's access regulations.

2 Pre-construction information

The following documents contain the pre-construction information for the works:

Document	Revision	Date
Refer to the Basis of Design that includes Survey Information		

CONDITIONS OF CONTRACT

1 General

Actions	10	
	10.1	The <i>Employer</i> and the <i>Contractor</i> shall act as stated in this contract and in a spirit of mutual trust and co-operation.
Identified and defined terms	11	
	11.1	In the <i>conditions of contract</i> , terms identified in the Contract Data are in italics and defined terms have capital initials.
	11.2	(1) Completion is when the Contractor has completed the works in accordance with the Works Information except for correcting notified Defects which do not prevent the Employer from using the works and others from doing their work. (2) The Completion Date is the completion date unless later changed in accordance with this contract. (3) A Defect is a part of the works which is not in accordance with the Works Information. (4) The Defects Certificate is either a list of notified Defects which the Contractor has not corrected by the defects date or a statement that there are no such Defects. (5) Defined Cost is the amount paid by the Contractor in Providing the Works (excluding any tax which the Contractor can recover) for • people employed by the Contractor, • Plant and Materials, • work subcontracted by the Contractor and • Equipment The amount for Equipment includes amounts paid for hired Equipment and an amount for the use of Equipment owned by the Contractor which is the amount the Contractor would have paid if the Equipment had been hired. (6) Equipment is items provided by the Contractor, used by him to Provide the Works and not included in the works. (7) The Parties are the Employer and the Contractor. (8) Plant and Materials are items intended to be included in the works. (9) The Price for Work Done to Date is the total of • the Price for each lump sum item in the Price List which the Contractor has completed and • where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the Contractor has completed by the rate. (10) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate. (11) To Provide the Works means to do the work necessary to complete the works in accordance with this contract and all incidental work, services and actions which this contract requires. (12) Site Information is information which describes the site and its surroundings and is in the document called 'Site Information'. (13) Works Information is information which either • specifies and describes the works or • states any constraints on how the Contractor Provides the Works and is either in the document called 'Works Information' or in an instruction given in accordance with this contract.

Law	12	
	12.1	In this contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round and words in the masculine also mean in the feminine and neuter.
	12.2	This contract is governed by the law of the country where the <i>site</i> is.
	12.3	No change to this contract, unless provided for by the <i>conditions of contract</i> , has effect unless it has been agreed, confirmed in writing and signed by the Parties.
Communications	12.4	This contract is the entire agreement between the Parties.
	13	
	13.1	Each communication which this contract requires has effect when it is received in writing at the last address notified by the recipient for receiving communications.
The Employer's authority and delegation	13.2	If this contract requires the <i>Employer</i> or the <i>Contractor</i> to reply to a communication, unless otherwise stated in this contract, he replies within the <i>period for reply</i> .
	14	
	14.1	The <i>Contractor</i> obeys an instruction which is in accordance with this contract and is given to him by the <i>Employer</i> .
	14.2	The <i>Employer</i> may give an instruction to the <i>Contractor</i> which changes the Works Information.
	14.3	The <i>Employer's</i> acceptance of a communication from the <i>Contractor</i> or of his work does not change the <i>Contractor's</i> responsibility to Provide the Works or his liability for his design.
Access to the <i>site</i> and provision of services	14.4	The <i>Employer</i> , after notifying the <i>Contractor</i> , may delegate any of the <i>Employer's</i> actions and may cancel any delegation. A reference to an action of the <i>Employer</i> in this contract includes an action by his delegate.
	15	
	15.1	The <i>Employer</i> allows access to and use of the <i>site</i> to the <i>Contractor</i> as necessary for the work included in this contract.
Early warning	15.2	The <i>Employer</i> provides services and other things as stated in the Works Information.
	16	
	16.1	The <i>Contractor</i> and the <i>Employer</i> give an early warning by notifying the other as soon as either becomes aware of any matter which could • increase the total of the Prices, • delay Completion or • impair the performance of the <i>works</i> in use. The <i>Contractor</i> may give an early warning by notifying the <i>Employer</i> of any other matter which could increase his total cost. Early warning of a matter for which a compensation event has previously been notified is not required.
	16.2	The <i>Contractor</i> and the <i>Employer</i> co-operate in making and considering proposals for how the effect of each matter which has been notified as an early warning can be avoided or reduced and deciding and recording actions to be taken.

2 The *Contractor's* main responsibilities

Providing the Works	20	
	20.1	The <i>Contractor</i> Provides the Works in accordance with the Works Information.
	20.2	The <i>Contractor</i> does not start work which the <i>Contractor</i> has designed until the <i>Employer</i> has accepted that the design complies with the Works Information.

Subcontracting and people 21

- 21.1 If the *Contractor* subcontracts work, he is responsible for Providing the Works as if he had not subcontracted.
- 21.2 contract applies as if a subcontractor's employees and equipment were the *Contractor's*.
- 21.3 The *Employer* may, having stated reasons, instruct the *Contractor* to remove an employee. The *Contractor* then arranges that, after one day, the employee has no further connection with the work included in this contract.

Access for the Employer 22

- 22.1 The *Contractor* provides access for the *Employer* and others notified by the *Employer* to work being done for this contract and to stored Plant and Materials

3 Time

Starting and Completion 30

- 30.1 The *Contractor* does not start work until the *starting date* and does the work so that Completion is on or before the Completion Date.
- 30.2 The *Contractor* submits a forecast of the date of Completion to the *Employer* each week from the *starting date* until Completion.
- 30.3 The *Employer* decides the date of Completion and certifies it to the *Contractor* within one week of the date.
- 30.4 The *Employer* may instruct the *Contractor* to stop or not to start any work and may later instruct him to re-start or start it.

The programme 31

- 31.1 The *Contractor* submits programmes to the *Employer* as stated in the Works Information.

4 Defects

Searching for and notifying Defects 40

- 40.1 Until the *defects date*, the *Employer* may instruct the *Contractor* to search for a Defect.
- 40.2 The *Employer* may notify a Defect to the *Contractor* at any time before the *defects date*.

Correcting Defects 41

- 41.1 The *Contractor* corrects a Defect whether or not the *Employer* notifies him of it.
- 41.2 Before Completion, the *Contractor* corrects a notified Defect before it would prevent the *Employer* or others from doing their work.
- 41.3 After Completion, the *Contractor* corrects a notified Defect before the end of the *defect correction period*. This period begins at the later of Completion and when the Defect is notified.
- 41.4 The *Employer* issues the Defects Certificate to the *Contractor* at the later of the *defects date* and the end of the last *defect correction period*.

Uncorrected Defects 42

- 42 If the *Contractor* has not corrected a notified Defect within its *defect correction period*,
- 42.1 the *Employer* assesses the cost of having the Defect corrected by other people and the *Contractor* pays this amount.

Repairs 43

- 43.1 Until the Defects Certificate has been issued and unless otherwise instructed by the *Employer*, the *Contractor* promptly replaces loss of and repairs damage to the *works*, Plant and Materials.

5 Payment

Assessing the amount due 50

- 50.1 The *Contractor* assesses the amount due and, by each *assessment day*, applies to the *Employer* for payment. There is an *assessment day* in each month from the *starting date*

until the month after the Defects Certificate has been issued.

50.2 The *Contractor's* application for payment includes details of how the amount has been assessed. The first application for payment is for the amount due. Other applications are for the change in the amount due since the previous payment

50.3 The amount due is

- the Price for Work Done to Date
- plus other amounts to be paid to the *Contractor* (including any tax which the law requires the *Employer* to pay to the *Contractor*)
- less amounts to be paid by or retained from the *Contractor*.

50.4 The *Employer* corrects any wrongly assessed amount due and notifies the *Contractor* of the correction before paying the *Contractor*.

50.5 The *Contractor* pays *delay damages* for each day from the Completion Date until Completion.

50.6 An amount is retained from the *Contractor* in the assessment of each amount due until Completion. This amount is the *retention* applied to the Price for Work Done to Date.

The amount retained is halved in the first assessment made after Completion and remains at this amount until the *assessment day* after the Defects Certificate is issued.

No amount is retained in the assessment made after the Defects Certificate has been issued.

50.7 If the *Employer* requires a programme to be submitted, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the *Contractor* has submitted a first programme to the *Employer* showing the information which the Works Information requires.

Payment 51

51.1 Each payment is made within three weeks after the next *assessment day* which follows receipt of an application for payment by the *Contractor*.

51.2 Interest is paid if a payment is late or includes a correction of an earlier payment. Interest is assessed from the date by which the correct payment should have been made until the date when it is paid. Interest is calculated at the rate stated in the Contract Data or, if none is stated, at 0.5% of the delayed amount per complete week of delay.

6 Compensation events

Compensation events

60

60.1

The following are compensation events.

- (1) The *Employer* gives an instruction changing the Works Information unless the change is in order to make a Defect acceptable.
- (2) The *Employer* does not allow access to and use of the *site* to the *Contractor* as necessary for the work included in this contract.
- (3) The *Employer* does not provide something which he is to provide by the date for providing it stated in this contract.
- (4) The *Employer* gives an instruction to stop or not to start any work.
- (5) The *Employer* does not work within the conditions stated in the Works Information.
- (6) The *Employer* does not reply to a communication from the *Contractor* within the period required by this contract.
- (7) The *Employer* changes a decision which he has previously communicated to the *Contractor*.
- (8) The *Employer* instructs the *Contractor* to search for a Defect and no Defect is found.
- (9) The *Contractor* encounters physical conditions which
 - are within the *site*,
 - are not weather conditions and
 - an experienced contractor would have judged, at the date of the *Contractor's* Offer, to have such a small chance of occurring that it would have been unreasonable to have allowed for them.

Only the difference between the physical conditions encountered and those for which it would have been reasonable to have allowed is taken into account in assessing a compensation event.
- (10) The *Contractor* is prevented by weather from carrying out all work on the *site* for periods of time, each at least one full working day, which are in total more than one seventh of the total number of days between the *starting date* and the Completion Date. In assessing this event, only the working days which exceed this limit and on which work is prevented by no other cause are taken into account.
- (11) The *Employer* notifies a correction to an assumption which he has stated about a compensation event.
- (12) An event which
 - stops the *Contractor* completing the *works* or
 - stops the *Contractor* completing the *works* by the Completion Date and which
 - neither Party could prevent,
 - an experienced contractor would have judged at the date of the *Contractor's* Offer to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it and
 - is not one of the other compensation events stated in this contract.
- (13) A difference between the final total quantity of work done and the quantity stated for an item in the Price List.
- (14) A loss of or damage to the *works*, Plant and Materials which
 - is not the fault or responsibility of the *Contractor* or
 - could not have been prevented by any reasonable action of the *Contractor*.

	60.2	In judging the physical conditions for the purposes of assessing any compensation event, the <i>Contractor</i> is assumed to have taken into account • the Site Information, • publicly available information referred to in the Site Information, • information obtainable from a visual inspection of the <i>site</i> and • other information which an experienced contractor could reasonably be expected to have or to obtain.
Notifying compensation events	61	The <i>Contractor</i> notifies the <i>Employer</i> of an event which has happened or which he expects to happen as a compensation event if
	61.1	□ the <i>Contractor</i> believes that the event is a compensation event and □ the <i>Employer</i> has not notified the event to the <i>Contractor</i>. If the <i>Contractor</i> does not notify a compensation event within eight weeks of becoming aware of the event he is not entitled to a change in the Prices or Completion Date unless the event arises from an instruction of the <i>Employer</i>.
	61.2	If the <i>Employer</i> decides that an event notified by the <i>Contractor</i> • arises from a fault of the <i>Contractor</i>, • has not happened and is not expected to happen, • has no effect upon the Defined Cost or upon Completion or • is not one of the compensation events stated in this contract, he notifies the <i>Contractor</i> of his decision that the Prices and the Completion Date are not to be changed. If the <i>Employer</i> decides otherwise, he instructs the <i>Contractor</i> to submit a quotation for the event. The <i>Employer</i> notifies the decision to the <i>Contractor</i> or instructs the <i>Contractor</i> to submit a quotation within one week of the <i>Contractor</i>'s notification to the <i>Employer</i> of the event.
	61.3	If the <i>Employer</i> decides that the <i>Contractor</i> did not give an early warning of the event which the <i>Contractor</i> could have given, the <i>Employer</i> notifies that decision to the <i>Contractor</i> when instructing the <i>Contractor</i> to submit a quotation.
	61.4	If the <i>Employer</i> decides that the effects of a compensation event are too uncertain to be forecast reasonably, the <i>Employer</i> states assumptions about the event when instructing the <i>Contractor</i> to submit a quotation. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the <i>Employer</i> notifies a correction.
	61.5	A compensation event is not notified after the <i>defects date</i> .
Quotations for compensation events	62	
	62.1	A quotation for a compensation event comprises proposed changes to the Prices or rates and any delay to the Completion Date assessed by the <i>Contractor</i> . The <i>Contractor</i> submits details of his assessment with each quotation. The <i>Contractor</i> submits a quotation within two weeks of being instructed to do so by the <i>Employer</i> or, if no such instruction is received, within two weeks of the notification of a compensation event.
	62.2	The <i>Employer</i> may instruct the <i>Contractor</i> to submit a quotation for a proposed instruction or a proposed changed decision. The <i>Contractor</i> does not put a proposed instruction or a proposed changed decision into effect.
	62.3	If the <i>Contractor</i> does not provide a quotation for a compensation event within the time allowed, the <i>Employer</i> assesses the compensation event and notifies the <i>Contractor</i> of his assessment.

Assessing compensation events	62.4	The <i>Employer</i> replies within two weeks of the <i>Contractor's</i> submission. For a proposed instruction or proposed changed decision, the <i>Employer's</i> reply is • notification that the proposed instruction will not be given or the proposed changed decision will not be made, • notification of the instruction or changed decision as a compensation event and acceptance of the quotation or • notification of the instruction or changed decision as a compensation event and notification that the <i>Employer</i> does not agree with the quotation. For other compensation events, the <i>Employer's</i> reply is • acceptance of the quotation or • notification that the <i>Employer</i> does not agree with the quotation.
	62.5	If the <i>Employer</i> does not agree with the quotation, the <i>Contractor</i> may submit a revised quotation within two weeks of the <i>Employer's</i> reply. If the <i>Employer</i> does not agree with the revised quotation or if none is received, the <i>Employer</i> assesses the compensation event and notifies the assessment.
	62.6	After discussing with the <i>Contractor</i> different ways of dealing with the compensation event which are practicable, the <i>Employer</i> may instruct the <i>Contractor</i> to submit alternative quotations for a compensation event.
	63	For a compensation event which only affects the quantities of work shown in the Price List, the change to the Prices is assessed by multiplying the changed quantities of work by the appropriate rates in the Price List.
	63.1	
	63.2	For other compensation events, the changes to the Prices are assessed by forecasting the effect of a compensation event upon the Defined Cost or, if the compensation event has already occurred, the assessment is based upon the Defined Cost due to the event which the <i>Contractor</i> has incurred. Effects on Defined Cost are assessed separately for • people employed by the <i>Contractor</i>, • Plant and Materials, • work subcontracted by the <i>Contractor</i> and □ Equipment. The <i>Contractor</i> shows how each of these effects is built up in each quotation for a compensation event. The percentages for overheads and profit stated in the <i>Contractor's</i> Offer are applied to the assessed effect of the event on the Defined Cost.
	63.3	The effects of compensation events upon the Defined Cost are assessed at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered. The following are deducted from the Defined Cost for the assessment of compensation events • the cost of events for which this contract requires the <i>Contractor</i> to insure and • other costs paid to the <i>Contractor</i> by insurers.
	63.4	A delay to the Completion Date is assessed as the length of time that, due to the compensation event, Completion is forecast to be delayed.
	63.5	If the <i>Employer</i> has decided and notified the <i>Contractor</i> that the <i>Contractor</i> did not give an early warning of a compensation event which an experienced contractor could have
		given, the event is assessed as if the <i>Contractor</i> had given early warning
	63.6	Assessment of the effect of a compensation event includes risk allowances for cost and time for matters which are at the <i>Contractor's</i> risk under this contract. The cost of preparing quotations for compensation events is not included in the assessment of compensation events.

- 63.7 Assessments are based on the assumptions that the *Contractor* reacts competently and promptly to the compensation event and that any additional cost and time due to the event are reasonably incurred.
- 63.8 A compensation event which is an instruction to change the Works Information in order to resolve an ambiguity or inconsistency is assessed as if the Prices and the Completion Date were for the interpretation most favourable to the Party which did not provide the Works Information.
- 63.9 Assessments for changed Prices for compensation events are in the form of changes to the Price List.
- 63.10 The assessment of a compensation event is not revised if a forecast upon which it is based is shown by later recorded information to have been wrong.

7 Title

- Objects and materials within the site**
- 70
- 70.1 The *Contractor* has no title to an object of value or of historical or other interest within the *site*. The *Contractor* does not move such an object unless instructed to do so by the *Employer*.
- 70.2 The *Contractor* has title to materials from excavation and demolition only as stated in the Works Information.

8 Indemnity, insurance and liability

- Limitation of liability** 80
- 80.1 For any one event, the liability of the *Contractor* to the *Employer* for loss of or damage to the *Employer's* property is limited to the amount stated in the Contract Data. The *Contractor* is not liable to the *Employer* for the *Employer's* indirect or consequential loss except as provided for in the *conditions of contract*. Exclusion or limitation of liability applies in contract, tort or delict and otherwise and to the maximum extent permitted in law.
- Indemnities** 81
- 81.1 The *Employer* indemnifies the *Contractor* against claims, proceedings, compensation and costs payable which are the unavoidable result of the *works* or of Providing the Works or which arise from
- fault,
 - negligence,
 - breach of statutory duty,
 - infringement of an intellectual property or
 - interference with a legal right
- by the *Employer* or by a person employed by or contracted to the *Employer* except the *Contractor*.
- 81.2 The *Contractor* indemnifies the *Employer* against other
- losses and claims in respect of
 - death of or injury to a person and
 - loss of and damage to property (other than the *works*, Plant and Materials) and
 - claims, proceedings, compensation and costs payable arising from or in connection with the *Contractor's* Providing the Works.

81.3 The liability of one Party to indemnify the other is reduced to the extent that events which are the other Party's responsibility contributed to the losses, claims, proceedings, compensation and costs.

Insurance cover 82

82.1 The *Contractor* provides, in the joint names of the Parties and from the *starting date*, the insurances stated in the Insurance Table. The *Contractor* does not provide an insurance which the *Employer* is to provide as stated in the Contract Data.

INSURANCE TABLE

Insurance against	Minimum amount of cover or minimum limit of indemnity	Cover provided until
Loss of or damage to the <i>works</i>	The replacement cost	The <i>Employer's</i> certificate of Completion has been issued
Loss of or damage to Equipment, Plant and Materials	The replacement cost	The Defects Certificate has been issued
The <i>Contractor's</i> liability for loss of or damage to property (except the <i>works</i> , Plant and Materials and Equipment) and for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) arising from or in connection with the <i>Contractor's</i> Providing the Works	The amount stated in the Contract Data for any one event with cross liability so that the insurance applies to the Parties separately	
Liability for 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	The greater of the amount required by the applicable law and the amount stated in the Contract Data for any one event	

9 Termination and dispute resolution

Termination and reasons for termination 90

90.1 If either Party wishes to terminate the *Contractor's* obligation to Provide the Works, he notifies the other Party giving details of his reason for terminating. The *Employer* issues a termination certificate promptly if the reason complies with this contract. After a termination certificate has been issued, the *Contractor* does no further work necessary to Provide the Works.

90.2 Either Party may terminate if the other Party has become insolvent or its equivalent (Reason 1).

90.3 The *Employer* may terminate if the *Employer* has notified the *Contractor* that the *Contractor* has defaulted in one of the following ways and the *Contractor* has not stopped defaulting within two weeks of the notification.

- Substantially failed to comply with this contract (Reason 2).
- Substantially hindered the *Employer* (Reason 3).
- Substantially broken a health or safety regulation (Reason 4).

The *Employer* may terminate for any other reason (Reason 5).

	90.4	The <i>Contractor</i> may terminate if - the <i>Employer</i> has not paid an amount due under the contract within ten weeks of the <i>assessment day</i> which followed receipt of the <i>Contractor's</i> application for it (Reason 6) or - the <i>Employer</i> has instructed the <i>Contractor</i> to stop or not to start any substantial work or all work for a reason which is not the <i>Contractor's</i> fault and an instruction allowing the work to re-start or start has not been given within eight weeks (Reason 7).
	90.5	The <i>Employer</i> may terminate if an event which the Parties could not reasonably prevent has substantially affected the <i>Contractor's</i> work for a continuous period of more than thirteen weeks (Reason 8).
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Payment on termination	92	
	92.1	The amount due on termination includes - an amount due assessed as for normal payments, - the cost of Plant and Materials provided by the <i>Contractor</i> which are on the <i>site</i> or of which the <i>Contractor</i> has to accept delivery and □ any amounts retained by the <i>Employer</i>.
	92.2	If the <i>Employer</i> terminates for Reason 1, 2, 3 or 4, the amount due on termination also includes a deduction of the forecast additional cost to the <i>Employer</i> of completing the <i>works</i> .
	92.3	If the <i>Contractor</i> terminates for Reason 1, 6 or 7 or if the <i>Employer</i> terminates for Reason 5, the amount due on termination also includes 5% of any excess of a forecast of the amount due at Completion had there been no termination over the amount due on termination assessed as for normal payments.
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	93.1	A dispute arising under or in connection with this contract is referred to and decided by the <i>Adjudicator</i> .
The <i>Adjudicator</i>	93.2	(1) The Parties appoint the <i>Adjudicator</i> under the NEC <i>Adjudicator's</i> Contract current at the <i>starting date</i>. The <i>Adjudicator</i> acts impartially and decides the dispute as an independent adjudicator and not as an arbitrator. (2) If the <i>Adjudicator</i> is not identified in the Contract Data or if the <i>Adjudicator</i> resigns or is unable to act, the Parties choose a new adjudicator jointly. If the Parties have not chosen an adjudicator, either Party may ask the <i>Adjudicator nominating body</i> to choose one. The <i>Adjudicator nominating body</i> chooses an adjudicator within four days of the request. The chosen adjudicator becomes the <i>Adjudicator</i>. (3) The <i>Adjudicator</i>, his employees and agents are not liable to the Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.

- The adjudication** 93.3 (1) A Party may refer a dispute to the *Adjudicator* if
- the Party notified the other Party of the dispute within four weeks of becoming aware of it and
 - between two and four further weeks have passed since the notification.
- If a disputed matter is not notified and referred within the times set out in this contract, neither Party may subsequently refer it to the *Adjudicator* or the *tribunal*.
- (2) The Party referring the dispute to the *Adjudicator* includes with his referral information to be considered by the *Adjudicator*. Any more information is provided within two weeks of the referral. This period may be extended if the *Adjudicator* and the Parties agree.
- (3) The *Adjudicator* may take the initiative in ascertaining the facts and the law related to the dispute. He may instruct a Party to take any other action which he considers necessary to reach his decision and to do so within a stated time.
- (4) A communication between a Party and the *Adjudicator* is communicated to the other Party at the same time.
- (5) If the *Adjudicator's* decision includes assessment of additional cost or delay caused to the *Contractor*, he makes his assessment in the same way as a compensation event is assessed.
- (6) The *Adjudicator* decides the dispute and notifies the Parties of his decision and his reasons within four weeks of the referral. This period may be extended by up to two weeks with the consent of the referring Party, or by any period agreed by the Parties. If the *Adjudicator* does not notify his decision within the time allowed, either Party may act as if the *Adjudicator* has resigned.
- (7) Unless and until the *Adjudicator* has notified the Parties of his decision, the Parties proceed as if the matter disputed was not disputed.
- (8) The *Adjudicator's* decision is binding on the Parties unless and until revised by the *tribunal* and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The *Adjudicator's* decision is final and binding if neither Party has notified the other within the times required by this contract that he intends to refer the matter to the *tribunal*.
- Review by the *tribunal*** 93.4 A Party may refer a dispute to the *tribunal* if
- the Party is dissatisfied with the *Adjudicator's* decision or
 - the *Adjudicator* did not notify a decision within the time allowed and a new adjudicator has not been chosen,
- except that neither Party may refer a dispute to the *tribunal* unless they have notified the other Party of their intention to do so not more than four weeks after the end of the time allowed for the *Adjudicator's* decision.

If the United Kingdom Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 (the Act) applies to this contract, the following additional conditions apply.

- Definitions** 1.1 (1) The payment due date for an application for payment by the *Contractor* is the *assessment* day which follows receipt of that application.
- (2) The final date for payment is three weeks after the payment due date.
- Assessing the amount due** 1.2 The *Contractor's* application for payment is the notice of payment specifying the sum that the *Contractor* considers to be due at the payment due date (the notified sum). The *Contractor's* application states the basis on which the amount is calculated and includes details of the calculation.
- 1.3 The following replaces clause 50.4

If the *Employer* intends to pay less than the notified sum, he notifies the *Contractor* of the amount which the *Employer* considers to be due not later than seven days (the prescribed period) before the final date for payment. The *Employer's* notification states the basis on which the amount is calculated and includes details of the calculation. A Party pays the notified sum unless he has notified his intention to pay less than the notified sum.

Compensation event 1.4 If the *Contractor* exercises his right under the Act to suspend performance, it is a compensation event.

The adjudication 1.5 The following replaces clause 93.3(1)
A Party may issue to the other Party a notice of his intention to refer a dispute to adjudication at any time. He refers the dispute to the *Adjudicator* within one week of the notice.

1.6 The *Adjudicator* may in his decision allocate his fees and expenses between the Parties.
1.7 The *Adjudicator* may, within five days of giving his decision to the Parties, correct the decision to remove a clerical or typographical error arising by accident or omission.
1.8 If the *Adjudicator's* decision changes an amount notified as due, payment of the sum decided by the *Adjudicator* is due not later than seven days from the date of the decision or the final date for payment of the notified amount, whichever is the later.

NEC3 ENGINEERING AND CONSTRUCTION SHORT CONTRACT

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APPENDIX 1

GENERAL DATA PROTECTION REGULATION (GDPR) REQUIREMENTS

ADDITIONAL DEFINITIONS

Agreement: this contract;

Contractor Personnel: means all directors, officers, employees, agents, Contractors and Contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement;

Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR.

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

Data Subject Access Request: 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.

DPA 2018: Data Protection Act 2018

GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679)

LED: Law Enforcement Directive (Directive (EU) 2016/680)

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.



Sub-processor: any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement.

DATA PROTECTION REQUIREMENTS

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Employer is the Controller and the Contractor is the Processor. The Contractor processes data only as authorised in Appendix 2 (Schedule of Processing, Personal Data and Data Subjects) by the Employer and may not be determined by the Contractor.
- 1.2 The Contractor notifies the Project Manager immediately if it considers that any of requirement of the documents forming part of this contract infringe the Data Protection Legislation.
- 1.3 The Contractor provides all reasonable assistance to the Employer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Employer, include: (a) a systematic description of the envisaged processing operations and the purpose of the processing; (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services; (c) an assessment of the risks to the rights and freedoms of Data Subjects; and (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 In relation to any Personal Data processed in connection with its obligations under the documents forming part of this contract the Contractor:
 - (a) processes that Personal Data only in accordance with Appendix 2 (Schedule of Processing, Personal Data and Data Subjects), unless otherwise required by Law. If it is so required the Contractor shall promptly notify the Employer before processing the Personal Data unless prohibited by Law; (b) ensures that it has in place Protective Measures, which have been reviewed and approved by the Employer as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;(c) ensures that:
 - (i) the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule X); (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;



(C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Employer or as otherwise permitted by this Agreement; and

(D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) do not transfer Personal Data outside of the EU unless the prior written consent of the Employer has been obtained and the following conditions are fulfilled:

(i) the Employer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Employer; (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 (or, if it is not so bound, uses its best endeavours to assist the Employer in meeting its obligations); and (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Employer with respect to the processing of the Personal Data;

(e) at the written direction of the Employer, delete or return Personal Data (and any copies of it) to the Employer on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.

1.5 Subject to clause 1.6, the Contractor shall notify the Project Manager immediately if it:

(a) receives a Data Subject Access Request (or purported Data Subject Access Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

(e) 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

(f) becomes aware of a Data Loss Event.

1.6 The Contractor's obligation to notify under clause 1.5 shall include the provision of further information to the Employer in phases, as details become available.

1.7 Taking into account the nature of the processing, the Contractor shall provide the Employer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Employer) including by promptly providing:



- (a) the Employer with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Employer to enable the Employer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Employer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Employer following any Data Loss Event;
 - (e) assistance as requested by the Employer with respect to any request from the Information Commissioner's Office, or any consultation by the Employer with the Information Commissioner's Office.
- 1.6 The Contractor's obligation to notify under clause 1.5 shall include the provision of further information to the Employer in phases, as details become available.
- 1.7 Taking into account the nature of the processing, the Contractor shall provide the Employer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Employer) including by promptly providing:
 - (a) the Employer with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Employer to enable the Employer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Employer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Employer following any Data Loss Event;
 - (e) assistance as requested by the Employer with respect to any request from the Information Commissioner's Office, or any consultation by the Employer with the Information Commissioner's Office.
- 1.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
 - (a) the Employer determines that the processing is not occasional;
 - (b) the Employer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Employer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Contractor shall allow for audits of its Data Processing activity by the Employer or the Employer's designated auditor.



- 1.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- (a) notify the Employer in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Employer;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause [X] such that they apply to the Sub-processor; and
 - (d) provide the Employer with such information regarding the Sub-processor as the Employer may reasonably require.
- 1.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 1.13 The Employer may, at any time on not less than 30 Working Days' notice, revise this clause 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 incorporated by attachment to this Agreement).
- 1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Employer may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.