 3

**NEC Engineering and Construction Short Contract**

The NEC3 Engineering and Construction Short Contract is an alternative to   
NEC3 Engineering and Construction Contract and is for use with contracts   
which do not require sophisticated management techniques, comprise   
straightforward work and impose only low risks on both the Employer   
and the Contractor

An NEC document

June 2005 (with amendments September 2011and April 2013)

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|  | OGC endorsement of NEC3 |
|  |  |
|  | OGC advises public sector procurers that the form of contract used has to be selected according to the objectives of the project, aiming to satisfy the  Achieving Excellence in Construction (AEC) principles. |
|  |  |
|  | This edition of the NEC (NEC3) complies fully with the AEC principles. OGC recommends the use of NEC3 by public sector construction procurers on their construction projects. |
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|  | OGC logo |
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|  | NEC is a division of Thomas Telford Ltd, which is a wholly owned subsidiary of the Institution of Civil Engineers (ICE), the owner and developer of the NEC. |
|  | The NEC is a family of standard contracts, each of which has these characteristics: |
|  | * Its use stimulates good management of the relationship between the two parties to the contract and, hence, of the work included in the contract. |
|  | * It can be used in a wide variety of commercial situations, for a wide variety of types of work and in any location. |
|  | * It is a clear and simple document -- using language and a structure which are straightforward and easily understood. |
|  | NEC3 Engineering and Construction Short Contract is one of the NEC family and is consistent with all other NEC3 documents. Also available are the Engineering and Construction Short Contract Guidance Notes and Flow Charts. |
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| NEC logo 3 | | | Engineering and Construction | | | |
| Short Contract | | | | | | |
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| **A contract between** |  | | | | | |
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|  | Conditions of Contract | | | | CC1 | |
|  | **Notes about this Contract are printed in boxes like this one.  They are not part of the contract.** | | | | |  |
|  |  | | | | | |

|  |  |  |  |
| --- | --- | --- | --- |
| Contract Data | | | |
|  | The *Employer* is | | |
| Name |  | | |
| Address |  | | |
| Telephone | Fax | | |
| E-mail address |  | | |
|  |  | | |
| The *works* are | …………………………………………………………………………... …………………………………………………………………………... | | |
| The *site* is | …………………………………………….… | | |
| The *starting date* is | ………………………………………………. | | |
| The *completion date* is | ………………………………………………. | | |
| The *period for reply* is |  | | weeks. |
| The *defects date* is | ………………………………………………. | | weeks after Completion. |
| The *defect correction period* is | ………………………………………………. | | weeks. |
| The *delay damages* are | ………………………………………………. | | per day. |
| The *assessment* *day* is the | ………………………………………………. | | of each month. |
| The *retention* is | ………………………………………………. | | %. |
| Does the United Kingdom Housing Grants, Construction and Regeneration Act (1996) as amended by the Local Democracy, Economic Development and Construction Act 2009apply? | | Yes / No (delete as appropriate) | |
|  | The *Adjudicator* is | | |
| Name |  | | |
| Address |  | | |
|  |  | | |
| Telephone | ……………………………………… Fax ..………………..………………………….. | | |
| E-mail address | ………………………………………………………………………….…………………. | | |
| **1** | | | |

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| Contract Data | | | | | | |
| The interest rate on late payment is …………………………………… % per complete week of delay. | | | | | | |
|  | | | **Insert a rate only if a rate less than 0.5% per week of delay has been agreed.** | | |  |
| The *Contractor* is not liable to the *Employer* for loss of or damage to the *Employer*’s | | | | | | |
| property in excess of | | ……………………………………………………….. for any one event. | | | | |
|  | | | | | | |
| The *Employer* provides this  insurance | | **Only enter details here if the *Employer* is to provide insurance.** | | | | |
|  | | ……………………………………………………………………………………………… …………………………………………………………………………… | | | | |
| The minimum amount of cover for the third insurance stated in the | | |  | | | |
| Insurance Table is | | ……………………………….……………………………………………………………. | | | | |
| The minimum amount of cover for the fourth insurance stated in the | | |  | | | |
| Insurance Table is | | ……………………………………….……………………………………………………... | | | | |
| The *Adjudicator nominating body* is | | ……………………………………….……………………………………………………... | | | | |
| The *tribunal* is | | ……………………………………………………………………………………………… | | | | |
| If the *tribunal* is arbitration, the arbitration procedure is | | ……………………………………………………………………………………………… | | | | |
| The *conditions of contract* are the NEC3 Engineering and Construction Short Contract (June 2005 with amendments September 2011) and the following additional conditions | | | | | | |
| **Only enter details here if additional conditions are required.** | | | | | | |
| ………………………………………………………………………………………………………………………………………………  Z clauses Z1 to Z17 inclusive | | | | | | |
| ………………………………………………………………………………………………… | | | | | | |
| ……………………………………………………………………………………………………………………………………………… | | | | | | |
| ……………………………………………………………………………………………………………………………………………… | | | | | | |
| ………………………………………………………………………………………………………………………………………………. | | | | | | |
| ………………………………………………………………………………………………………………………………………………. | | | | | | |
| ……………………………………………………………………………………………………………………………………………… | | | | | | |
| **2** | | | | | | |

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| --- | --- | --- | --- | --- | --- | --- |
| Contract Data | | | | | | |
| The *Contractor*’s Offer | | | | | | |
| The *Contractor* is | | | | | | |
| Name | |  | | | | |
| Address | |  | | | | |
|  | |  | | | | |
| Telephone | | ………………………………. Fax ………………………………………… | | | | |
| E-mail address | |  | | | | |
|  | | | | | | |
| The percentage for overheads and profit added to the Defined Cost for people is %.  The percentage for overheads and profit added to other Defined Cost is %. | | | | | | |
| 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 | |  | | | | |
|  | |  | | | | |
|  | **Enter the total of the Prices from the Price List.** | | |  | | |
| Signed on behalf of the *Contractor* | | |  | | | |
| Name | |  | | | | |
| Position | |  | | | | |
|  | | | | | | |
| Signature | |  | Date | | |
| The *Employer*’sAcceptance | | | | | | |
| The *Employer* accepts the *Contractor*’s Offer to Provide the Works  Signed on behalf of the *Employer* | | | | | | |
| Name | |  | | | |
| Position | |  | | | |
|  | | | | | | |
| Signature | |  | Date | | |
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| **3** | | | | | | |

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| Contract Data | | | | | | | | | | | | | | | | |
| 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.** | | | | | | | | | | | | | |  | |
|  | | | |  | | | | | | | | | | | | |
| **Item number** | | **Description** | | | | **Unit** | | | **Quantity** | **Rate** | | | **Price** | | | |
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|  | |  | | | | **The total of the Prices** | | | | | |  | | | |  |
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| **4** | | | |  | | | | | | | | | | | | |
| Contract Data | | | | | | | | | | | | | | | | |
| Works Information | | | | | | | | | | | | | | | | |
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|  | **The Works Information should be a complete and precise statement of the *Employer*’s requirements. If it is incomplete or imprecise there is a risk that the *Contractor* will interpret it differently from the *Employer*’s intention. Information provided by the *Contractor* should be listed in the Works Information only if the *Employer* is satisfied that it is required, is part of a complete statement of the *Employer*’s requirements and is consistent with the other parts of the Works Information.** | | | | | | | | | | | | | |  | |
|  | | | |  | | | | | | | | | | | | |
| **1 Description of the *works*** | | | | | | | | | | | | | | | | |
|  | **Give a detailed description of what the *Contractor* is required to do and of any work the *Contractor* is to design.** | | | | | | | | | | | | | |  | |
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| **2 Drawings** | | | | | | | | | | | | | | | | |
|  | **List the drawings that apply to this contract.** | | | | | | | | | | | | | |  | |
|  |  | | | | | | | | | | | | | |  | |
|  | **Drawing number** | | **Revision** | | **Title** | | | | | | | | | |  | |
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|  | | | | **5** | | | | | | | | | | | | |

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| Contract Data | | | | | |
| Works Information | | | | | |
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| **3 Specifications** | | | | | |
|  | **List the specifications which apply to this contract.** | | | |  |
|  | | | | | |
|  | **Title** | | **Date or revision** | **Tick if publicly available** |  |
|  | …………………………………………… | | ……………………….. | ……………………………… |  |
|  | …………………………………………… | | ……………………….. | ……………………………… |  |
|  | …………………………………………… | | ……………………….. | ……………………………… |  |
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|  | …………………………………………… | | ……………………….. | ……………………………… |  |
|  | | | | | |
| **4 Constraints on how the *Contractor* Provides the Works** | | | | | |
|  | **State any constraints on the sequence and timing of work and on the methods and conduct of work including the requirements for any work by the *Employer*.** | | | |  |
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| **6** | |  | | | |

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| Contract Data | | | | | | | | | | |
| Works Information | | | | | | | | | | |
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| **5 Requirements for the programme** | | | | | | | | | | |
|  | **State whether a programme is required and, if it is, state what form it is to be in, what information is to be shown on it, when it is to be submitted and when it is to be updated.**  **State what the use of the *works* is intended to be at their Completion as defined in Clause 11.2(1).** | | | | | | | |  | |
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| **6 Services and other things provided by the *Employer*** | | | | | | | | | | |
|  | **Describe what the *Employer* will provide, such as services (including water and electricity) and “free issue” Plant and Materials and equipment.** | | | | | | | |  | |
|  |  | | | | | | | |  | |
|  | **Item** | | | | | **Date by which it**  **will be provided** | | |  | |
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| Contract Data | | | |
| Site Information | | | |
|  | |  | |
|  | **Give information about the *site* such as the ground conditions and any other information which is likely to affect the *Contractor*’s work such as limitations on access and the position of adjacent structures.** | |  |
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| **8** | |  | |

 3 **Engineering and Construction Short Contract**

**CONDITIONS OF CONTRACT**

**1 General**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Actions** | | **10** | | |  | |
|  | | 10.1 | | | The *Employer* and the *Contractor* shall act as stated in this contract and in a spirit of mutual trust and co-operation. | |
| **Identified and defined** | | **11** | | |  | |
| **terms** | | 11.1 | | | In the *conditions of contract*, terms identified in the Contract Data are in italics and defined terms have capital initials. | |
|  | | 11.2 | | | (1) Centre for Civil Society means Centre for Civil Society Limited registered company in England (Company Number 07333734) whose registered office is at 136 Cavell Street, London, E1 2JA. | |
|  | |  | | | (2) Certified Ethical Labour provider means a labour provider who meets the qualifying requirements of a Certified Ethical Labour Scheme and who is verified, at or within six months (or such longer period as the *Employer* may agree, acting reasonably) of the *starting date* , by a competent and independent third party as meeting such qualifying requirements. | |
|  | |  | | | (3) Certified Ethical Labour Scheme means any of the following | |
|  | |  | | | * the BRE Ethical Labour Sourcing standard BES 6002 ("BRE Standard"). | |
|  | |  | | | * the Clearview Global Labour Provider Certification Scheme ("Clearview Scheme") | |
|  | |  | | | * an alternative standard or scheme, which in the reasonable opinion of the Employer, is an acceptable substitute to the BRE Standard or Clearview Scheme ("Alternative Labour Scheme"). | |
|  | |  | | | and references to the BRE Standard, Clearview Scheme and Alternative Labour Scheme are to such standard or schemes as updated from time to time. | |
|  | |  | | | (4) 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. | |
|  | |  | | | (5) The Completion Date is the completion date unless later changed in accordance with this contract. | |
|  | |  | | | (6) Connected Persons means all and any of the *Contractor's* employees, directors, contractors, agents, Subcontractors, suppliers, shareholders, professional advisors (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters. | |
|  | |  | | | (7) Data Controller has the meaning given to it in the Data Protection Legislation, noting that under the General Data Protection Legislation this would be using the definition of "Controller". | |
|  | |  | | | (8) Data Processor has the meaning given to it in the Data Protection Legislation, noting that under the General Data Protection Legislation this would be using the definition of "Processor". | |
|  | |  | | | (9) Data Protection Impact Assessment means a process used to identify and mitigate the privacy and data protection risks associated with an activity involving the Processing of Personal Data. | |
|  | |  | | | (10) Data Protection Legislation means:   * any legislation in force from time to time in the United Kingdom which implements the European Community's Directive 95/46/EC and Directive 2002/58/EC, including but not limited to the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003; * from 25 May 2018 only, the General Data Protection Regulations; * any other legislation in force from time to time in the United Kingdom relating to privacy and/or the Processing of Personal Data; and   any statutory codes of practice issued by the Information Commissioner in relation to such legislation. | |
|  | |  | | | (11) Data Protection Officer has the meaning set out in the Data Protection Legislation. | |
|  | |  | | | (12) Data Subject means has the meaning given to it in the Data Protection Legislation. | |
|  | |  | | | (13) A Defect is a part of the *works* which is not in accordance with the Works Information or is not in accordance with the applicable law or other requirements of this contract. | |
|  | |  | | | (14) 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. | |
|  | |  | | | (15) 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. | |
|  | |  | | | (16) Documentation means all documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and/or other material produced or supplied by or on behalf of the *Contractor* in the performance of the contract. | |
|  | |  | | | (17) [Employer Data means all data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any media (including without limitation electronic, magnetic, optical and tangible media) and which are supplied to the *Contractor* by or on behalf of the *Employer* and any IPR relating to the same which are vested in the *Employer.]* | |
|  | |  | | | (18) Employer Personal Data means Personal Data and/or Sensitive Personal Data Processed by the *Contractor* (including any Subcontractor and Indirect Subcontractor) on behalf of the *Employer*, pursuant to or in connection with the contract as set out in the Processing Statement. | |
|  | |  | | | (19) Equipment is items provided by the *Contractor*, used by him to Provide the Works and not included in the *works*. | |
|  | |  | | | (20) Fair Processing Notice means such information as the *Employer* deems reasonably necessary to comply with its legal obligations in terms of fair, lawful and transparent Processing under the Data Protection Legislation. | |
|  | |  | | | (21) FOI Legislation means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendments or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Department of Constitutional Affairs or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation. | |
|  | |  | | | (22) GLA Act means the Greater London Authority Act 1999. | |
|  | |  | | | (23) Indirect Subcontractor means any subcontractor or subconsultant of whatever tier beneath any Subcontractor appointed in relation to the *works.* | |
|  | |  | | | (24) Information means information recorded in any form held by or on behalf of the *Employer.* | |
|  | |  | | | (25) Information Request means a request for any Information under the FOI Legislation. | |
|  | |  | | | (26) IPR means intellectual property rights including patents, trade marks, service marks, trade names, design rights, copyright (including rights in computer software and databases), moral rights, rights in know-how, rights in domain names and other intellectual property rights (including any professional, manufacturer's or supplier's warranties and/or indemnities) in each case whether registered or unregistered and including, applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect anywhere in the world. | |
|  | |  | | | (27) London Living Wage means the London rate for the basic hourly wage as updated and published annually by the Living Wage Foundation (or any relevant replacement organisation) on its website (www.livingwage.org.uk), | |
|  | |  | | | (28) Mayor means the person from time to time holding the office of Mayor of London as established by the GLA Act. | |
|  | |  | | | (29) The Parties are the *Employer* and the *Contractor*. | |
|  | |  | | | (30) Personal Data has the meaning given to it in the Data Protection Legislation. | |
|  | |  | | | (31) Plant and Materials are items intended to be included in the *works*. | |
|  | |  | | | (32) 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. | |
|  | |  | | | (33) 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. | |
|  | |  | | | (34) Processing has the meaning given to it in the Data Protection Legislation. | |
|  | | |  | | | (35) Processing Statement is in the form set out in Schedule [ ] of this contract. |
|  | | |  | | | (36) 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. |
|  | | |  | | | (37) Responsible Procurement Principles means the seven principles of responsible procurement more particularly described in the GLA Group Responsible Procurement Policy dated March 2006, as updated in January 2008 and as may be further updated from time to time. |
|  | | |  | | | (38) Restricted Countries means any country outside the European Economic Area as may be constituted from time to time by the UK. |
|  | | |  | | | (39) Sensitive Personal Data means sensitive or special categories of Personal Data including criminal allegations, offences and outcomes data (as defined in the Data Protection Legislation) which is Processed pursuant to or in connection with this contract. |
|  | | |  | | | (40) Site Information is information which describes the *site* and its surroundings and is in the document called ‘Site Information’. |
|  | | |  | | | (41) Standards means the following standards listed in order of priority with a lower ranking standard only applicable where a higher ranking standard is not applicable |
|  | | |  | | | * First: European Standards, which means those standards ratified by the European Committee for Standardization (CEN) of Avenue Marnix 17, B-1000 Brussels, Belgium. |
|  | | |  | | | * Second: International Standards, which means those standards produced by the International Standards Organisation (IS) 1, ch. De la Voie-Creuse, CP 56, CH-1211 Geneva 20 Switzerland, and associated codes of practice. |
|  | | |  | | | (42) Statutory Undertaker means any governmental or local authority or statutory undertaker |
|  | | |  | | | * which has any jurisdiction with regard to the *works* including any jurisdiction to control development of the Site or any part of it |
|  | | |  | | | * with whose requirements the *Employer* is accustomed to comply; or |
|  | | |  | | | * with whose systems and/or utilities the *works* will be connected. |
|  | | |  | | | (43) A Subcontractor is a person or organisation who has a contract with or is appointed by the *Contractor* (including any contract which has been novated to the *Contractor*) to |
|  | | |  | | | * construct, design or install part of the *works* |
|  | | |  | | | * provide a service necessary to Provide the Works or |
|  | | |  | | | * supply Plant and Materials which the person or organisation has wholly or partly designed specifically for the *works.* |
|  | | |  | | | (44) Subject Access Request means a request made by a Data Subject to access his or her own Personal Data in accordance with rights granted in Data Protection Legislation. |
|  | | |  | | | (45) 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. |
|  | | |  | | | (46) CDM Regulations are the Construction (Design and Management) Regulations 2015 and any amendment, consolidation, revision and/or replacement thereto and related code of practice together with any requirements issued from time to time by the Health and Safety Executive. |
| **Law** | | | **12** | | |  |
|  | | | 12.1 | | | This contract is governed by the law of the country where the *site* is. |
|  | | | 12.2 | | | No change to this contract, unless provided for by the *conditions of contract*, has effect unless it has been agreed, confirmed in writing and signed by the Parties. |
|  | | | 12.3 | | | This contract is the entire agreement between the Parties. |
| **Communications** | | | **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. |
|  | | | 13.2 | | | If this contract requires the *Employer* or the *Contractor* to reply to a communication, unless otherwise stated in this contract, he replies within the *period* for reply. |
| **The *Employer*’s authority** | | | **14** | | |  |
| **and delegation** | | | 14.1 | | | The *Contractor* obeys an instruction which is in accordance with this contract and is given to him by the *Employer*. |
|  | | | 14.2 | | | The *Employer* may give an instruction to the *Contractor* which changes the Works Information. |
|  | | | 14.3 | | | The *Employer*’s acceptance of a communication from the *Contractor* or of his work does not change the *Contractor*’s responsibility to Provide the Works or his liability for his design. |
|  | | | 14.4 | | | The *Employer*, after notifying the *Contractor*, may delegate any of the *Employer*’s actions and may cancel any delegation. A reference to an action of the *Employer* in this contract includes an action by his delegate. |
| **Access to the *site* and** | | | **15** | | |  |
| **provision of services** | | | 15.1 | | | The *Employer* allows access to and use of the *site* to the *Contractor* as necessary for the work included in this contract. |
|  | | | 15.2 | | | The *Employer* provides services and other things as stated in the Works Information. |
| **Early warning** | | | **16** | | |  |
|  | | | 16.1 | | | The *Contractor* and the *Employer* 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 *works* in use. |
|  | | |  | | | The *Contractor* may give an early warning by notifying the *Employer* 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 *Contractor* and the *Employer* 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 *Contractor* Provides the Works in accordance with this contract and the Works Information. |
|  | 20.2 | The *Contractor* does not start work which the *Contractor* has designed until the *Employer* has accepted that the design complies with the Works Information. |
|  | 20.3 | The *Contractor* designs the parts of the works which the Works Information states he is to design in accordance with the requirements stated in this contract and the Works Information. |
|  | 20.4 | In designing those parts of the *works* for which it has design responsibility as detailed in the Works Information the *Contractor* shall use all the reasonable skill, care and diligence normally used by an appropriate and competent professional designer experienced in carrying out design works similar to those included in the *works* in connection with projects of a similar size, scope and complexity to the *works* to ensure that its design complies with the Works Information. |
|  | 20.5 | (1) Subject to the Works Information and any changes to it the *Contractor* warrants that to the extent the *Contractor* either is obliged to specify or approve products or materials for use in the works or does so specify or approve, the *Contractor* does not specify, approve or use any products or materials which are generally known within the construction industry to be deleterious at the time of use in the particular circumstances in which they are used, or those identified as potentially hazardous in or not in conformity with:  (a) the guidance published by the British Council for Offices and the British Property Federation current at the time of undertaking the *works* entitled “Good Practice in the Selection of Construction Materials”,  (b) relevant British or European Standards or Codes of Practice, or  (c) any publications of the Building Research Establishment related to the specification of products or materials.  (2) If in the performance of its duties under this contract, the *Contractor* becomes aware that he or any other person has specified or used, or authorised or approved the specification or use by others of, any such products or materials, the *Contractor* notifies the *Employer* in writing immediately. This clause does not create any additional duty for the *Contractor* to inspect or check the work of others which is not required by this contract. |
| **Subcontracting and** | **21** |  |
| **people** | 21.1 | If the *Contractor* subcontracts work, he is responsible for Providing the Works as if he had not subcontracted. |
|  | 21.2 | This contract applies as if a subcontractor’s employees and equipment were the *Contractor*’s. |
|  | 21.3  21.4 | 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.  The *Contractor* shall demonstrate to the satisfaction of the *Employer* that it has in place, and shall procure that its Subcontractors shall have in place, appropriate procedures for ensuring the welfare of their respective employees or other persons engaged in the *works*, including procedures for reporting and handling instances and perceived instances of fraudulent behaviour and procedures protecting whistleblowers. |
|  | 21.5 | On or before the *starting date*, the *Contractor* shall notify the Employer of the name, contact details and details of the legal representatives of each Subcontractor and Indirect Subcontractor, to the extent that such information has not already been provided by the *Contractor* to the *Employer* under this contract. |
|  | 21.6 | The *Contractor* shall promptly notify the *Employer* of any changes to the information notified under clause 21.5 and provides the name, contact details and details of the legal representatives of any Subcontractor who is engaged after the *starting date*. |
|  | 21.7 | The *Contractor* shall ensure that each subcontract with a Subcontractor or between a Subcontractor and an Indirect Subcontractor complies with Regulation 113 of the Public Contracts Regulations 2015. |
| **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. |
| **CDM Regulations** | **23** |  |
|  | 23.1 | The *Contractor* takes full responsibility for the adequacy, stability and safety of all site operations and methods of construction and complies fully with the requirements of the CDM Regulations, including without limitation those as:   * set out in the Works Information; * set out in guidance published by the Health and Safety Executive in relation to the CDM Regulations; * required of a “principal contractor” (where the *Contractor* is the Principal Contractor); * required of a “contractor” (where the *Contractor* is not the Principal Contractor); * required of a “principal designer” (where the *Contractor* is the Principal Designer); and * required where the *Contractor* is responsible for design, but is not the Principal Designer, a “designer”.   For the purpose of this clause 23.1, “principal contractor”, “principal designer”, “contractor” and “designer” are all as defined in the CDM Regulations. |

**3 Time**

|  |  |  |
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| **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** | **40** |  |
| **notifying Defects** | 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** |  |
|  | 42.1 | If the *Contractor* has not corrected a notified Defect within its *defect correction period*, 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** | **50** |  |
| **due** | 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 | The *Employer* pays 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**

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| --- | --- | --- |
| **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. |

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|  |  | | | (10) The *Contractor* is prevented by weather from carrying out all work on the *site* for *period*s 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 *Contractor* 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 *site* and | | |
|  |  | | | * other information which an experienced contractor could reasonably be expected to have or to obtain. | | |
| **Notifying compensation** | **61** | | |  | | |
| **events** | 61.1 | | | The *Contractor* notifies the *Employer* of an event which has happened or which he expects to happen as a compensation event if | | |
|  |  | | | * the *Contractor* believes that the event is a compensation event and | | |
|  |  | | | * the *Employer* has not notified the event to the *Contractor*. | | |
|  |  | | | If the *Contractor* 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 *Employer*. | | |
|  | 61.2 | | | If the *Employer* decides that an event notified by the *Contractor* | | |
|  |  | | | * arises from a fault of the *Contractor*, | | |
|  |  | | | * 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 *Contractor* of his decision that the Prices and the Completion Date are not to be changed. | | |
|  |  | | | If the *Employer* decides otherwise, he instructs the *Contractor* to submit a quotation for the event. The *Employer* notifies the decision to the *Contractor* or instructs the *Contractor* to submit a quotation within one week of the *Contractor*’s notification to the *Employer* of the event. | | |
|  | 61.3 | | | If the *Employer* decides that the *Contractor* did not give an early warning of the event which the *Contractor* could have given, the *Employer* notifies that decision to the *Contractor* when instructing the *Contractor* to submit a quotation. | | |
|  | | | 61.4 | | | If the *Employer* decides that the effects of a compensation event are too uncertain to be forecast reasonably, the *Employer* states assumptions about the event when instructing the *Contractor* 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 *Employer* notifies a correction. |
|  | | | 61.5 | | | A compensation event is not notified after the *defects date*. |
| **Quotations for** | | | **62** | | |  |
| **compensation events** | | | 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 *Contractor*. The *Contractor* submits details of his assessment with each quotation. The *Contractor* submits a quotation within two weeks of being instructed to do so by the *Employer* or, if no such instruction is received, within two weeks of the notification of a compensation event. |
|  | | | 62.2 | | | The *Employer* may instruct the *Contractor* to submit a quotation for a proposed instruction or a proposed changed decision. The *Contractor* does not put a proposed instruction or a proposed changed decision into effect. |
|  | | | 62.3 | | | The *Employer* replies within two weeks of the *Contractor*’s submission. |
|  | | |  | | | For a proposed instruction or proposed changed decision, the *Employer*’s 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 *Employer* does not agree with the quotation. |
|  | | |  | | | For other compensation events, the *Employer*’s reply is |
|  | | |  | | | * acceptance of the quotation or |
|  | | |  | | | * notification that the *Employer* does not agree with the quotation. |
|  | | | 62.4 | | | If the *Employer* does not agree with the quotation, the *Contractor* may submit a revised quotation within two weeks of the *Employer*’s reply. If the *Employer* does not agree with the revised quotation or if none is received, the *Employer* assesses the compensation event and notifies the assessment. |
|  | | | 62.5 | | | After discussing with the *Contractor* different ways of dealing with the compensation event which are practicable, the *Employer* may instruct the *Contractor* to submit alternative quotations for a compensation event. |
| **Assessing compensation** | | | **63** | | |  |
| **events** | | | 63.1 | | | 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. |
|  | | | 63.2 | | | 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 *Contractor* has incurred. Effects on Defined Cost are assessed separately for |
|  | | |  | | | * people employed by the *Contractor*, |
|  | | |  | | | * Plant and Materials, |
|  | | |  | | | * work subcontracted by the *Contractor* and |
|  | | |  | | | * Equipment. |
|  | | |  | | | The *Contractor* 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 *Contractor*’s 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 *Contractor* to insure and | |
|  | |  | | | * other costs paid to the *Contractor* 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 *Employer* has decided and notified the *Contractor* that the *Contractor* did not give an early warning of a compensation event which an experienced contractor could have given, the event is assessed as if the *Contractor* 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 *Contractor*’s risk under this contract. | |
|  | | 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 | | | 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**

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| **Objects and materials** | **70** |  |
| **within the *site*** | 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*. |
|  | **71** | [Not Used] |
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| Anti-Corruption | 72 |  |
|  | 72.1 | Unless defined elsewhere in this contract, the defined terms have the meaning set out below:  Anti-Bribery Laws means any and all statutes, statutory instruments, bye laws, orders, directives, treaties, decrees and laws (including any common law, judgement, demand, order or decision of any court, regulator or tribunal) which relates to anti-bribery and/or anti-corruption, including the Bribery Act 2010 as amended. |
|  | 72.2 | The *Contractor* shall, and shall procure that its officers, employees, agents and any other persons who perform the *works* for or on behalf of it in connection with this contract shall:   * comply with all applicable Anti-Bribery Laws; * not offer, promise, give, request, agree to receive, receive or accept a bribe or financial or other advantage or commit any corrupt act; * not do or omit to do any act or thing which constitutes or may constitute an offence under Anti-Bribery Laws; * not do or omit to do any act or thing which causes or may cause the *Contractor* to be in breach of and/or to commit an offence under any Anti-Bribery Laws; * the above, not do or omit to do any act or thing which causes or may cause the *Contractor* to be guilty of an offence under section 7 Bribery Act (or would or may do so if the *Contractor* was unable to prove that it had in place adequate procedures designed to prevent persons associated with it from undertaking such conduct); and * provide the *Employer*  with such reasonable assistance as it may require from time to time to enable it to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any Anti-Bribery Laws. |
|  | 72.3 | The *Contractor* shall:   * promptly report to the *Employer* any request or demand for any financial or other advantage of any kind received in connection with the performance of this contract by it or by its officers, employees, agents or any other person who performs the *works* for or on behalf of it in connection with this contract; and * upon request, certify to the *Employer* in writing signed by a director of the *Contractor* that the *Contractor* has complied with all of its obligations under this Clause 79 The *Contractor* shall provide such supporting evidence of compliance as the *Contractor* may request. |
|  | 72.4 | The *Contractor* shall immediately give written notice to the *Employer* upon a breach, or suspected breach, of any of its obligations at this Clause 72.4 occurring. |
|  | 72.5 | Without prejudice to Clause 72.4, the *Contractor* shall immediately give written notice to the *Employer* of any financial or other advantage, inducement or reward it has given or intends to give (whether directly or through any third party) to any person (including any employee of the *Employer* and/or theEmploye*r*) in connection with the awarding or continuation in force of this contract. |
|  | 72.6 | The *Contractor* shall keep, for a minimum of six years and at its normal place of business, detailed, accurate and up to date records and books of account showing all payments made and received and all other advantages given and received by the *Contractor* in connection with this contractand the steps taken by the *Contractor* to comply with Anti-Bribery Laws. The *Contractor* shall ensure that those records and books of account are sufficient to enable the E*mployer* to verify the *Contractor’s* compliance with this Clause 72.6. |
|  | 72.7 | The *Contractor* shall permit the *Employer* and any person nominated by it for this purpose, to have such access on demand to the *Contractor ‘s* premises, personnel, systems, books and records as the *Contractor* may require to verify the *Subcontractor’s* compliance with this Clause 72. |
|  | 72.8 | The *Employer* may terminate this contract immediately by givingwritten notice to that effect to the *Subcontractor* if the *Subcontractor* is in breach of any of its obligations under this Clause 72 or if the *Employer* has reasonable cause to believe that such a breach has occurred or may occur. |
|  | 72.9 | If the *Employer* terminates this contract in accordance with Clause 72.8, the *Contractor* shall not be entitled to claim compensation or any further remuneration from the *Employer*, regardless of any activities carried out or agreements with third parties entered into before termination. |
|  | 72.10 | The *Employer* shall be entitled, by giving written notice to that effect to the *Contractor* to require the *Contractor* to remove from the performance of this contract any of the *Contractor’s* officers, employees or agents in respect of whom the *Contractor* is in breach of any of its obligations or warranties under Clause 72***.*** |
|  | 72.11 | The *Contractor* shall indemnify, keep indemnified and hold harmless the *Employer* in full and on demand from and against all liabilities (including any tax liability), direct, indirect and consequential losses, damages, claims, proceedings and legal costs (on an indemnity basis), judgments and costs (including costs of enforcement) and expenses which the *Employer* incurs or suffers directly or indirectly in any way whatsoever as a result of any proceedings under section 7 Bribery Act being brought against the *Contractor* as a result of the conduct of the *Employer*or any of its officers, employees,agents or any other persons who perform the *works* for or on behalf of it in connection with this contract, where such proceedings do not result in a conviction against the *Employer,* including the costs of procuring the *Contract Works* from a person other than the *Contractor* (including the costs of interim service provision, the costs of any re-tender and the amount by which any new supplier’s prices exceed the Charges payable to the *Contractor* under this contract). |
|  | 72.12 | *The Contractor* shall procure that its sub-contractors comply with the provisions of clause 72. |
| Transparency | 73 |  |
|  | 73.1 | Unless defined elsewhere in this contract, the defined terms have the meaning set out below:  Contract Information (i) this contract is its entirety (including from time to time agreed changes to the contract) and (ii) data extracted from the invoices submitted pursuant to Clause 51 which shall consist of the *Contractor’s* name, the expenditure account code, the expenditure account code description, the clearing date and the invoice amount;  Transparency Commitment means the *Employer’s* commitment to public its contracts, tender documents and data from invoices received in accordance with the Local Government Transparency Code 2015 and the *Employer’s* own published transparency commitment. |
|  | 73.2 | The *Contractor* acknowledges that the *Employer* is subject to the Transparency Commitment. Accordingly, the *Contractor* hereby gives its consent for the *Employer* to publish the Contract Information to the general public. |
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**8 Indemnity, insurance and liability**

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| **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. |

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| **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 *works* | | The replacement cost | The *Employer*’s 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 *Contractor*’s liability for loss of or damage to property (except the *works*, Plant and Materials and Equipment) and for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor*’s 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 *Contractor* 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 |  |
|  |  |  | | | |
|  | 82.2 | The Contractor does not by any act or fault prejudice or forgot the parties' rights or the right of either of them to make or proceed with a claim against any insurer. | | | |
|  | 82.3 | The insurances provided pursuant to this contract do not relieve the *Contractor* from any of his obligations and liabilities under this contract. | | | |
|  | 82.4 | The Contractor submits to the Employer upon request evidence that the insurances which the Contractor is required to maintain pursuant to this contract are in force. | | | |

**9 Termination and dispute resolution**

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| **Termination and reasons** | **90** |  |
| **for termination** | 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) * Breached clause 71 and/or 72 (Reason 4A) * Following the occurrence of any of the circumstances described in Regulation 73 (1) of the Public Contracts Regulations 2015 (or any equivalent provisions in the regulations implementing the EU Utilities Directive 2014/25). (Reason 4B), |
|  |  | The *Employer* may terminate for any other reason (Reason 5). |
|  | 90.4 | The *Contractor* may terminate if |
|  |  | * the *Employer* has not made a payment within ten weeks of the *assessment day* which followed receipt of the *Contractor*’s application for it (Reason 6) or |
|  |  | * the *Employer* has instructed the *Contractor* to stop or not to start any substantial work or all work for a reason which is not the *Contractor*’s fault and an instruction allowing the work to re-start or start has not been given within eight weeks (Reason 7). |
|  | 90.5 | The *Employer* may terminate if an event which the Parties could not reasonably prevent has substantially affected the *Contractor*’s work for a continuous *period* of more than thirteen weeks (Reason 8). |
| **Procedures on** | **91** |  |
| **termination** | 91.1 | On termination, the *Employer* may complete the *works* himself or employ other people to do so. The *Contractor* leaves the *site* and removes the Equipment. |
| **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 *Contractor* which are on the *site* or of which the *Contractor* has to accept delivery and |
|  |  | * any amounts retained by the *Employer*. |
|  | 92.2 | If the *Employer* terminates for Reason 1, 2, 3, 4, 4A or 4B the amount due on termination also includes a deduction of the forecast additional cost to the *Employer* of completing the *works*. |
|  | 92.3 | If the *Contractor* terminates for Reason 1, 6 or 7 or if the *Employer* 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. |
| **Dispute resolution** | **93** |  |
|  | 93.1 | A dispute arising under or in connection with this contract is referred to and decided by the *Adjudicator*. |
| **The *Adjudicator*** | 93.2 | (1) The Parties appoint the *Adjudicator* under the NEC *Adjudicator*s Contract current at the *starting date*. The *Adjudicator* acts impartially and decides the dispute as an independent adjudicator and not as an arbitrator. |

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|  |  | (2) If the *Adjudicator* is not identified in the Contract Data or if the *Adjudicator* 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 *Adjudicator* nominating body to choose one. The *Adjudicator* nominating body chooses an adjudicator within four days of the request. The chosen adjudicator becomes the *Adjudicator*. |
|  |  | (3) The *Adjudicator*, 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. |

**Z clauses**

**The following additional conditions apply.**

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| **Marketing and Branding** | Z1.1 | Identified and defined terms:  **Act:** the Olympic Symbol etc (Protection) Act 1995, as amended;  **Ambush Marketing:** any activity, commercial or non-commercial, undertaken by any person or entity, whether public or private, that creates, implies or refers to a direct or indirect association of any kind (including any association in the minds of members of the public) with the London 2012 Olympic Games, the BOA or Team GB;  **BOA:** the British Olympic Association;  **Brand Manual:** the written guidelines prescribing the permitted form and manner in which the Park Name may be used as may be amended by the *Employer* in writing to the *Contractor* from time to time;  **IOC:** the International Olympic Committee;  **LOCOG:** The London Organising Committee of the Olympic Games and Paralympic Games Limited;  **London 2012 Games:** the Games of the XXX Olympiad held principally in and around London;  **Olympic IP:** all rights of the BOA and the IOC in relation to the Olympic Word and all other designations, words and logos relating to the Olympic Movement, including anything which is a ‘controlled representation’ or a ‘protected word’ for the purposes of the Act;  **Olympic Movement:** includes the IOC, the BOA, other National Olympic Committees, LOCOG and any other organising committee of the Olympic Games, any Olympic team and any other person or entity who is recognised by or required to comply with the Olympic Charter (as published by the IOC from time to time);  **Olympic Word:** the word “Olympic”;  **Park Name:** The Queen Elizabeth Olympic Park;  **Protected Marks:** any trade mark, trade names, logos or other intellectual property of the BOA and/or the IOC, including marks and designs relating to the London 2012 Games, the Olympic Symbol (i.e. the five interlocking rings of the International Olympic Committee), the Paralympic Symbol (i.e. the three agitos of the International Paralympic Committee), the words "Olympic", "Olympian", "Olympiad", "Paralympic", "Paralympian", "Paralympiad" (and their plurals) and/or any other word(s), motto, symbol or representation protected by the Olympic Symbol etc. (Protection) Act 1995, the London Olympic Games and Paralympic Games Act 2006 (whether as now in force or as amended replaced or substituted in the future) or by any other relevant legislation enacted (whether as now in force or as enacted amended replaced or substituted in the future) in relation to the London 2012 Games;  **Rights Owner(s):** the BOA, the IOC, any other owner of the Protected Marks, Her Majesty Queen Elizabeth II and the Royal Household;  **Site:** TheQueen Elizabeth Olympic Park, Stratford, London  **Territory:** the United Kingdom of Great Britain and Northern Ireland. |
|  | Z1.2 | Clauses Z1 to Z4 define the manner and circumstances in which the *Contractor* is entitled to make use of the Park Name. The *Contractor* does not use the Park Name, other than as set out in this clause without the prior written agreement of the *Employer.* |
|  | Z1.3 | The *Contractor* uses the Park Name on a non-exclusive and non-transferable basis for the purpose of identifying the location of the Site, subject to the terms and conditions of clauses Z1 to Z4. The rights granted under clauses Z1 to Z4shall continue for so long as the *Employer* is entitled to permit the *Contractor* to use the Park Name upon the terms set out in clauses Z1 to Z4. If the *Employer* ceases to be so entitled, it notifies the *Contractor* immediately in writing, explaining the basis on which it has ceased to be so entitled, whereupon all rights and licences granted pursuant to clauses Z1 to Z4 shall cease. The *Employer* warrants to the *Contractor* that the *Employer* is entitled to, as at the date of this contract, grant to the *Contractor* the rights granted hereunder. |
|  | Z1.4 | The *Contractor* does not   * use the Olympic Word other than as part of the Park Name, * use the Park Name in stylised or logo form, or giving any particular word or words therein prominence over any other word or words therein, * use the Park Name (or any part of it) as part of any trade name, corporate title or name, or domain name, * produce, market and sell (either itself or through authorised distributors and partners) merchandise to which the Park Name (or any part of it) is applied, * other than using the Park Name in accordance with the terms of clauses Z1 to Z4, use in its business any trade mark which is confusingly similar to the Park Name or Olympic Word or seek to incorporate any other Olympic IP into any name or logo, * sub-license all or any of the rights granted to it under clauses Z1 to Z4 to any third party,   without the prior written agreement of the *Employer*. |
|  | Z1.5 | The *Contractor* complies with the terms of the Brand Manual regarding its use of the Park Name. |
|  | Z1.6 | When referring to the Park Name, the *Contractor* refers to the Park Name in full. |
|  | Z1.7 | The *Contractor* acknowledges that the *Employer*’s rights in relation to the Park Name are limited to the Territory and that use of the Park Name outside the Territory may be regulated by laws of other countries and the rights of third parties. The *Contractor* is responsible for obtaining any licences and permissions required to use the Park Name outside the Territory and for paying any associated costs and fees. |
| **Advertising Materials and Goodwill** | Z2.1 | The *Contractor* ensures that written materials it uses to advertise, market and promote the *works* which make use of the Park Name (“**Advertising Materials**”) do not reduce or diminish the reputation, image and prestige of the Olympic Word or any Rights Owner or of products sold under or by reference to the Olympic Word. |
|  | Z2.2 | The *Contractor* ensures that all Advertising Materials meet the requirements of the Brand Manual and no approval is required where the Advertising Materials meet the Brand Manual. Where proposed Advertising Materials do not comply with the Brand Manual, the *Contractor* obtains the prior written approval of the *Employer* (the *Employer* does not unreasonably withhold or delay such approval) before any such Advertising Materials are used or distributed in any medium. |
|  | Z2.3 | The *Contractor* acknowledges that the BOA is the proprietor and rights owner of the Olympic Word in the Territory by virtue inter alia of the ‘Olympic association right’ under the Act and shall not dispute or challenge any rights to the Olympic Word. |
|  | Z2.4 | The *Contractor* ensures that all of its Advertising Materials and all other materials it intends to use which carry the Park Name be branded with such specific wording or statement as is set out in the Brand Manual or that is reasonably requested by the *Employer* in writing from time to time. |
|  | Z2.5 | The *Contractor* does not apply for, or obtain, registration of any trade or service mark or domain name in any country which consists of, or comprises, or is confusingly similar to, the Park Name (or any part of it). |
|  | Z2.6 | Any goodwill derived from the use by the *Contractor* of the Park Name belongs to the *Employer*. If the *Employer* requests, the *Contractor* enters into an assignment to confirm that such goodwill belongs to the *Employer*, provided that the assignment is on reasonable terms. |
|  | Z2.7 | The *Contractor* does not, directly or indirectly, assist any other person to   * use the Park Name except as authorised by clauses Z1 to Z4 and * do anything to diminish the rights of the *Employer* or any Rights Owner in the Park Name. |
|  | Z2.8 | The *Contractor* does not undertake any activity, commercial or non-commercial, which makes or implies a direct or indirect association of any kind (including an association in the minds of members of the public) between   * the Olympic Movement or any Rights Owner more generally and * its goods, services or its businesses generally, without the authorisation of the *Employer* and the relevant Rights Owner. |
|  | Z2.9 | The *Contractor* agrees that the exercise of any right granted to it under clauses Z1 to Z4 is subject to all applicable laws, enactments, regulations and other similar instruments in the world (“**Laws**”), and the *Contractor* agrees to be solely liable and responsible for acting in accordance with such Laws and for ensuring that third parties with whom it has a contractual relationship do the same. |
|  | Z2.10 | The *Contractor* does not do anything which will or is likely to weaken, damage or be detrimental to the Park Name or the reputation or goodwill associated with the Olympic Movement or any Rights Owner. |
|  | Z2.11 | The *Contractor* promptly provides the *Employer* with copies of all communications it receives from any regulatory, industry or other authority relating to the Park Name. |
| **Brand Protection** | Z3.1 | The *Contractor* promptly notifies the *Employer* in writing giving details of the following matters coming to its attention   * any actual, suspected or threatened infringement by a third party of the Olympic Word, * any use of the Park Name by any third party which has not been authorised by the *Employer* or * any other form of attack, charge or claim to which the intellectual property rights in the Olympic Word may be subject. |
|  | Z3.2 | In respect of any of the matters listed inclause Z3.1 above   * the *Employer* decides what action to take (if any), * the *Employer* has exclusive control over, and conduct of, all claims and proceedings and * the *Contractor* does not make any admissions other than to the *Employer* and provides the *Employer* with all assistance, at the *Employer’s* cost, that the *Employer* may reasonably require in the conduct of any claims or proceedings. |
| **No Marketing Obligations** | Z4.1 | The *Contractor* does not   * save to the extent permitted in clauses Z1 to Z3 use any trade marks, trade names, logos or other intellectual property of the BOA or the IOC (including the London 2012 logos) (including the Protected Marks) or to use any trade marks, trade names or logos so resembling the Protected Marks as to be likely to cause confusion with the Protected Marks, * represent, directly or indirectly, that it or its services are in any way associated with the London 2012 Games or any Rights Owner or that any services provided have been endorsed or approved by any Rights Owner, * undertake any form of Ambush Marketing, * cause or permit to be done, anything which might damage or endanger the validity or distinctiveness of, or the goodwill in, the Protected Marks or other intellectual property rights of any Rights Owner or * use its connection with the *Employer* or the Site (or any premises in the Site) in a manner that makes or implies a direct or indirect association of any kind (including an association in the minds of the public) with the Olympic Movement or any Rights Owner. |
|  | Z4.2 | The Contractor agrees   * to take reasonable steps to ensure that its sub-contractors or agents shall also abide by the provisions of this clause Z4 (as if references in this paragraph to the *Contractor* included references to such sub-contractors or agents), * that any Rights Owner shall have the right to enforce the terms of clauses Z1 to Z4 directly against the Contractor and * that this clause Z4 shall continue to apply after termination of this contract without limit of time. |
| **Indemnity** | Z5.1 | The *Contractor* indemnifies the *Employer* against any actions, claims, demands and proceedings taken or made against the *Employer* and all costs, damages, expenses, liabilities and losses incurred by the *Employer* arising from any breach of the *Contractor*’s obligations in clauses Z1 to Z4**.** |
| **Warranties and Undertakings** | Z6.1 | The *Contractor* warrants and undertakes to the *Employer* as a condition of this contract that: |
|  |  | * he has all the resources including financial, technical and human resources as are required to carry out and complete the *works* in accordance with the *conditions of contract*, * all design, workmanship, manufacture and fabrication will be in accordance with the Works Information and applicable law, * the *works* will be carried out using only materials and goods which are of sound and good quality and that he will only specify substances and materials for incorporation in the works and only incorporate substances and materials which are in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information, * the Plant and Materials will on Completion be capable of being used, operated and maintained in a safe, economic and efficient manner, free from any unreasonable risk to the health and well-being of persons using it and free from any unreasonable or avoidable risk of pollution, nuisance, interference or hazard, * [neither the functionality nor the performance of the *works*, or any computer product, application or system forming part of the *works*, or any Plant, Materials or Equipment is affected, made inoperable, difficult or suffers any abnormality by reason of any software defect,] * the Plant and Materials will at take-over operate safely and efficiently in combination with any plant, equipment or system to which it is connected, * [he will maintain a sufficient supply of the spare parts (including software) necessary for the operation and maintenance of the *works* as specified in the Works Information, and] * the proceeds of insurance taken out by the *Contractor* pursuant to clause 82 of the *conditions of contract* will be used solely for the purposes of the *works* and for no other purpose. |
| **Nuisance** | Z7.1 | The *Contractor* at all times prevents any public or private nuisance (including, without limitation, any such nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on the public highway) or other interference with the rights of any adjoining or neighbouring landowner, tenant or occupier or any Statutory Undertaker arising out of the carrying out of the *works* or of any obligation under clauses 40 to 43 and assists the *Employer* in defending any action or proceedings which may be instituted in relation to the same. The *Contractor* is responsible for and indemnifies the *Employer* from and against any and all expenses, liabilities, losses, claims and proceedings whatsoever resulting from any such nuisance or interference, except only where such nuisance or interference is the consequence of an instruction of the *Employer*. |
|  | Z7.2 | Without prejudice to the *Contractor's* obligations under clause Z7.1 if the carrying out of the *works* is likely to necessitate any interference (including the oversailing of tower crane jibs) with the rights of adjoining or neighbouring landowners, tenants or occupiers, the *Contractor* without cost to the *Employer* obtains the prior written agreement of such landowners, tenants or occupiers subject to the approval of the *Employer*. The *Contractor* complies (at his own cost) in every respect with the conditions contained in such agreements. |
| **Intellectual Property Rights** | Z8.1 | **Contractor’s IPR**  (a) All IPR in any Documentation created by the *Contractor* belongs to and remains vested in the *Contractor*, subject to the provisions of this contract.  (b) To the extent that (1) IPR in any Documentation are vested in the *Contractor* or (2) IPR in any Documentation are vested in the Subcontractors or any other third parties or (3) any licences from third parties are required in order to lawfully exploit any IPR (or to incorporate any material in the Documentation), the *Contractor* grants or procures the grant in the case of (2) or (3) to the *Employer* a worldwide, irrevocable, royalty-free, non-exclusive perpetual and irrevocable licence to use, exploit, modify and incorporate any material into the Documentation (and do any act restricted by copyright or otherwise restricted by law in respect of any IPR in the Documentation) in each case for any purpose.  (c) The *Contractor* procures from the third party provider of the IPR referred to above the grant of a licence to the *Employer*, or if the third party is itself a licensee of those rights, an authorised sub-licence, in each case to use, exploit, reproduce, maintain and make any modifications, adaptations or alterations to the material to which the IPR relates (and the works) and to combine and incorporate such material with any other material, in each case for any purpose and to do any act restricted by copyright or otherwise restricted by law in respect of any IPR and such licence or sub-licence is worldwide, royalty-free, non-exclusive perpetual and irrevocable. |
|  |  | (d) The licences granted pursuant to this clause Z8 includes the right to grant sub-licences, transfer, novate to or assign for the foregoing purposes on like terms to any person without further limitation and at no cost to the *Employer* or any such person.  (e) [To the extent that the materials licensed pursuant to clause Z8 include any computer software, the *Contracto*r continues to provide maintenance and support services in connection with such software in accordance with the terms of this contract for the duration of the *works* and until the *defects date* notwithstanding any termination of this contract. [The *Contractor* claims its costs of providing such maintenance and support in Providing the Works in accordance with this contract.]  (f) The licences granted pursuant to this clause Z8 enable the *Employer*  (and any sub-licensee, transferee, or assignee) to use and reproduce the Documentation for any extension of the *works* but do not include a licence to reproduce the IPR in the Documentation for any extension of the *works*.  (g) The *Contractor* waives and does not assert, and ensures that its Subcontractors and any relevant third parties waive and do not assert, any moral rights in respect of the works or the Documentation which it or they might be deemed to have under Chapter IV of the Copyright, Designs and Patents Act 1988 (and to the extent such waiver is legally possible, any equivalent rights anywhere in the world).  (h) The *Contractor* warrants to the *Employer* that   * the Documentation created by the *Contractor* is original, * the use of the Documentation by the *Employer* in accordance with this clause Z8 will not infringe upon the rights of any third party nor create any other liability for the Employer nor otherwise be unlawful and * [it shall not act in any way which prejudices or compromises the IPR in the Employer Data.]  1. The *Contractor* is not liable for any use of the Documentation by the *Employer* for any purpose other than that for which it was prepared.   (j) The provisions in this clause Z8 apply during the Provision of the Works and after Completion, expiry or termination of this contract and there is no end of liability date in respect of this clause Z8. |
|  | Z8.2 | The *Contractor* agrees to provide to the *Employer* or any person nominated by the *Employer* access as soon as reasonably practicable to all Documentation in whatever form requested by the *Employer* at any time but at the latest on termination or expiry of this contract. |
|  | Z8.3 | **IPR Claims**  (a) The *Contractor* promptly notifies the *Employer* upon becoming aware of an infringement, alleged infringement or potential infringement of any IPR (including any claims, demands or actions (collectively “**Claims**”) relating to the same) which affects or may affect the provision of the *works*  (b) Subject to the *Employer’s* proper observance of its obligations under this contract, the *Contractor* indemnifies the *Employer* against all Claims and losses that arise from or are incurred by reason of any infringement or alleged infringement of any IPR.    (c) The *Employer*, at the request of the *Contractor*, gives the *Contractor* all reasonable assistance for the purpose of contesting any such Claim. The *Contractor* reimburses the *Employer* for all losses incurred in doing so and/or the *Contractor* conducts any litigation and all negotiations at its own expense arising from such Claim. The *Contractor* consults with the *Employer* in respect of the conduct of any Claim and keeps the *Employer* regularly and fully informed as to the progress of such Claim. |
|  | [Z8.4 | ***Employer* Data**  All IPR in the Employer Data belongs to and remains vested in the *Employer*.  The *Employer* grants to the *Contractor* a licence to use and reproduce any Employer Data for the purpose of Providing the Works which is subject to the *Employer*'s IPR solely for the purpose and to the extent and for the duration necessary to Provide the Works in accordance with this contract and the Works Information. Such licence   * is non-exclusive and is subject to such restrictions as the *Employer* notifies from time to time and * includes the right for the *Contractor* to sublicense the material to Subcontractors to the extent and for the duration necessary to Provide the Works in accordance with this contract and the Works Information.   The *Employer* is not liable for any use of the Employer Data by the *Contractor* for any purpose other than that for which it was prepared.] |
| **[Escrow** | Z8A.1 | Identified and defined terms:  **Escrow** means the deposit with, and retention by, the Escrow Agent of, the Escrow Information.  **Escrow** **Agent** means [NCC Escrow International Limited] or any successor or replacement to all or any of its functions.  **Escrow Agreement** means an agreement in the form of the [NCC Group Single Licensee Software Escrow Agreement] between the *Contractor*, the *Employer* and the Escrow Agent.  **Escrow** **Information** means:   * with respect to any Software, all logic, logic diagrams, flow charts, orthographic representations, algorithms, routines, sub-routines, utilities, models, file structures, coding sheets, coding, source codes, listings, functional specifications and program specifications and all other materials and documents necessary to enable a reasonably skilled programmer to support, maintain, amend and enhance that Software without reference to any other person or document, all in human eye-readable or machine-readable form; and   • all information necessary to enable a reasonably skilled technician to operate, maintain, support, service, repair, overhaul and enhance the Hardware (including to manufacture parts), including details of its system architecture.  **Hardware** means hardware and IT system components comprised in, installed in, or used for the operation, maintenance, servicing, repairing or overhauling of, the works or any equipment to be used in conjunction with the *works* and supplied by the *Contractor* under this Contract.  **Software** means any computer programme installed in, or used for the operation, maintenance, servicing, repairing or overhauling of, the *works* or any equipment to be used in conjunction with the *works* and supplied by the *Contractor* under this Contract. |
|  | Z8A.2 | The *Employer* and the *Contractor* shall enter into the Escrow Agreement no later than the Completion Date. |
|  | Z8A.3 | The *Contractor* shall place the Escrow Information in Escrow with the Escrow Agent on the terms set out in the Escrow Agreement no later than Completion. The *Contractor* acknowledges that it shall be a condition of achieving Completion that all Escrow Information has been deposited in Escrow in accordance with this clause Z8. The *Contractor* and the *Project Manager* shall, each acting reasonably, agree from time to time the scope of the Escrow Information including arising from design development, changes to the Works Information or otherwise which are in the nature of Escrow Information and which shall be deposited in Escrow. In the event agreement cannot be reached prior to the dates on which deposit into Escrow is required by this clause the scope of the Escrow Information may be determined by the dispute resolution procedure set out at Clause 93. |
|  | Z8A.4 | The *Contractor* undertakes to ensure that the Escrow Information deposited in Escrow is up to date at all times (including as a minimum at Completion) up to and including the issue of the Defects Certificate and that the *Employer* has been notified of any updates. |
|  | Z8A.5 | The *Contractor* and the *Employer* mutually undertake to abide by the terms of the Escrow Agreement. |
|  | Z8A.6 | The *Contractor* shall pay all fees of the Escrow Agent in connection with the placement, storage and release of the Escrow Information. |
|  | Z8A.7 | The parties agree that, for the purposes of the Escrow Agreement, the [Release Events] are:  (a) a material breach by the *Contractor* in Providing the Works which (i) is not remedied within such reasonable period of time as the *Employer* may specify, having regard to the nature of the breach and its impact on the *works* or the use of the *works* and the Programme, of a written notice from the *Employer*  identifying the breach and requiring it to be remedied; and (ii) impairs the *Employer's* [and/or London Stadium 185 Limited's] ability to use, maintain, operate, develop or repair the *works* following Completion or takeover;  (b) a material failure by the *Contractor* to correct a Defect within the *defect correction period* in accordance with Clause 41 where such Defect impairs the *Employer's* and/or [London Stadium 185 Limited's] ability to use, maintain, operate, develop or repair the *works* following Completion or takeover;  (c) the *Contractor* is unwilling or unable to develop, enhance, supplement, modify and/or maintain the *works* in accordance with this Contract or otherwise on request by the *Employer* on reasonable terms;  (d) termination of this Contract by the *Employer* for reasons R1 (insolvency of the Contractor), R2 (substantial failure to comply with this Contract), R4 (substantially broken health and safety regulations) or under clause 72.8 (No Marketing Rights);  (e) termination by the Escrow Agent of the Escrow Agreement, if such termination is occasioned by any breach or default by the *Contractor* of its obligations under the Escrow Agreement and the *Contractor* fails to put an alternative and equivalent escrow arrangement in place within 14 days of the termination of the Escrow Agreement;  (f) the *Contractor* has done one of the actions listed in Clause 90.2 or its equivalent; or  (g) the *Contractor* assigns its IPR in any Escrow Information to a third party (“**Assignee**”) and the Assignee fails, within 60 days of such assignment, to continue escrow protection for the benefit of the *Employer* by failing to enter into either:  (i) a novation agreement with the Escrow Agent for the assumption of the *Contractor’s* rights and obligations under the Escrow Agreement in respect of the relevant Escrow Information by the Assignee; or  (ii) a new escrow agreement with the *Employer* for the relevant Escrow Information which offers the *Employer* substantially similar protection to that provided by the Escrow Agreement without significantly increasing the overall cost to the *Employer*. |
|  | Z8A.8 | The *Employer* may use any Escrow Information delivered to it in under the terms of the Escrow Agreement accordance with the terms of the licence granted under this Clause Z8A, save that the licence granted will also include a right to manufacture the Software and Hardware or any part of it. |
|  | Z8A.9 | The *Contractor* shall maintain a catalogue, in a format approved by the *Employer*, of all Escrow Information deposited in Escrow and update that catalogue whenever any such material is deposited in Escrow. The catalogue must identify all the Escrow Information deposited in Escrow, a brief description of its purpose or function, its owner and, where applicable, its version number and its configuration state (including where relevant the configuration baseline for the Software or Hardware with which such material interfaces). |
|  | Z8A.10 | The *Employer* may request the Escrow Agent to audit (at the *Employer*’*s* cost) the contents of the material deposited in Escrow against the catalogue established pursuant to Clause Z8A and if the audit reveals that any Escrow Information is incomplete, the *Contractor* shall deposit within ten (10) working days of completion of such audit the missing Escrow Information. |
|  | Z8A.11 | The provisions in this Clause Z8A apply during the Provision of the Works and after Completion and expiry or termination of this Contract and there is no end of liability date in respect of this Clause Z8A.] |
| **Assignment [and Novation]** | Z9.1 | The *Contractor* does not assign, transfer, novate, charge or otherwise deal with this contract (or any of his rights or obligations under it). |
|  | Z9.2 | The *Employer* may assign in whole or in part any benefit or right under this contract at any time to any person on two occasions only without the consent of the *Contractor*. Any further assignments shall be subject to the *Contractor's* consent (such consent not to be unreasonably withheld or delayed).  Without prejudice to the foregoing, the *Employer* may transfer, novate, charge or otherwise deal in whole or in part any benefit, right or obligation under this contract at any time to any person. [The *Contractor*, within 21 days of a request from the *Employer* identifying the relevant person to whom this contract will be novated, duly executes and delivers to the *Employer* a novation agreement in the form prescribed by the *Employer.]* |
| **Confidentiality** | Z10.1 | The *Contractor* treats, and ensures that his Subcontractors (and sub-subcontractors of any tier) treat all information obtained under, arising from or in connection with this contract and the *works* as confidential. Other than for the purpose of providing the *works* the *Contractor* does not disclose any information or documents concerning this contract to any other person. |
|  | Z10.2 | The *Contractor* and his Subcontractors (and sub-subcontractors of any tier) do not without the prior written consent of the *Employer* disclose any information obtained by the *Contractor* concerning the *Employer* or to any other person. |
|  |  | The *Employer* may require as a precondition to the granting of such consent, that any such third party provides a confidentiality undertaking to the consenting party in terms satisfactory to the consenting party. |
|  | Z10.3 | Clause Z10.1 does not apply to the disclosure of:   1. any information which is already in the public domain at the time of its disclosure other than by breach of these provisions, 2. any information disclosed by the *Contractor* to any Connected Persons provided that such recipients agree in writing to be bound by the terms of this confidentiality provision; 3. any information which is required to be disclosed by any applicable law, the regulations of any stock exchange, any taxation authorities or by an order of a court or other tribunal of competent jurisdiction or any relevant regulatory body. |
|  | Z10.4 | The *Contractor* procures that the Connected Persons comply with the provisions of this clause Z10 and is responsible to the *Employer* for any act or omission of any Connected Person in breach of such obligations. |
|  | Z10.5 | The *Contractor* notifies the *Employer* promptly if the *Contractor* becomes aware of any breach of confidence by a Connected Person and gives the *Employer* all assistance the *Employer* may reasonably require in connection with any proceedings the *Employer* may bring or other steps the *Employer* may take against that Connected Person or any other person for such breach of confidence. |
|  | Z10.6 | The *Contractor* acknowledges that damages would not be an adequate remedy for any breach of this Clause by the *Contractor* and that (without prejudice to all other remedies to which the *Employer* may be entitled to as a matter of law) the *Employer* is entitled to any form of equitable relief to enforce the provisions of this Clause. |
|  | Z10.7 | At the *Employer's* request and in any event upon the termination or expiry of the contract, the *Contractor* promptly delivers to the *Employer* or destroys as the *Employer* may direct all documents and other materials in the possession, custody or control of the *Contractor* (or the relevant parts of such materials) that bear or incorporate the whole or any part of the confidential information and if instructed by the *Employer* in writing, remove all electronically held confidential information, including the purging of all disk-based confidential information and the reformatting of all disks. |
|  | Z10.8 | The *Contractor* does not (and procures that the Connected Persons do not) without the prior written approval of the *Employer* at any time for any reason disclose to any person or publish or make any statement concerning this contract or the *works.* |
| **Modern Slavery Act** | Z11.1 | In performing his obligations under this contract, the *Contractor*   * complies with the Anti-Slavery Policy, which means a policy implemented by the *Contractor* which sets out the procedures the *Contractor* has put in place to comply with section 54 of the Modern Slavery Act 2015 and any guidance issued by the Secretary of State under section 54 of that Act; * complies, and procures that his Subcontractors and sub-subcontractors of any tier comply, with the Modern Slavery Act 2015, and * unless otherwise agreed in writing by the *Employer* (at the *Employer's* sole and absolute discretion), only procures, and ensures that his Subcontractors and sub-subcontractors of any tier only procure, labour from a Certified Ethical Labour Provider.   Where the *Contractor*, a Subcontractor or a sub-subcontractor of any tier is procuring labour from a Certified Ethical Labour Provider who prepares audit reports, such reports are made available to the *Employer* (at no additional cost) and, where possible, through the Sedex platform. |
|  | Z11.2 | On each 12 month anniversary of the *starting date*, until the Defects Certificate has been issued, the *Contractor* submits a report to the *Employer* which confirms that all labour used to Provide the Works has been procured from a Certified Ethical Labour Provider and includes such evidence as the *Employer* may reasonably require to evidence compliance. |
|  | Z11.3 | A failure by the *Contractor* to comply with his obligations under clauses Z11.1 to Z11.2 constitutes a substantial failure by the *Contractor* to comply with his obligations for the purpose of Clause 90.3 of this contract.  The *Employer* may refuse any labourer employed or engaged by the *Contractor*, a Subcontractor or sub-subcontractor of any tier entry onto any property that is owned, occupied or managed by the *Employer* if that labourer has not been procured from a Certified Ethical Labour Provider or if the *Employer* has reasonable grounds to suspect that such employee or agent has not been procured from a Certified Ethical Labour Provider. Any losses arising from such refusal of entry shall not constitute a compensation event. |
| **Responsible Procurement** | Z12.1 | The *Contractor* has regard to the Responsible Procurement Principles and complies at all times with the obligations with regard to the Responsible Procurement Principles set out in the Works Information. Compliance with such obligations does not constitute a compensation event unless the *Employer* issues an instruction and states in his instruction that it constitutes a compensation event. |
| **London Living Wage** | Z13.1 | The *Contractor* acknowledges and agrees that the Mayor, pursuant to section 155 of the GLA Act, has directed the *Employer* to ensure that the London Living Wage is paid to anyone engaged by the *Employer* who is required to discharge contractual obligations (whether as a direct contractor or a subcontractor (of any tier) of that direct contractor) on the *Employer’s* estate in the circumstances set out in sub-clause Z13.2(a). |
|  | Z13.2 | Without prejudice to any other provision of this contract, the *Contractor*: |
|  |  | 1. ensures that his employees and procures that the employees of his Subcontractors and sub-subcontractors (of any tier) engaged in the performance of the *works*:  * for two (2) or more hours of work in any given day in a week, for eight (8) or more consecutive weeks in a year and * on the *Employer’s* estate including (without limitation) the Site and premises and land owned or occupied by the *Employer*,   is paid an hourly wage (or equivalent of an hourly wage) equivalent to or greater than the London Living Wage, |
|  |  | 1. ensures that none of  * his employees nor * the employees of his Subcontractors or sub-subcontractors (of any tier),   engaged in the performance of the *works* is paid less than the amount to which they are entitled in their respective contracts of employment, |
|  |  | 1. provides to the *Employer* such information concerning the London Living Wage as the *Employer* or his nominees may reasonably require from time to time, including (without limitation):  * all information necessary for the *Employer* to confirm that the *Contractor* is complying with his obligations under this clause Z13 and * reasonable evidence that sub-clause Z13.2(a) is implemented, |
|  |  | 1. in connection with sub-clause Z13.2(c),  * acknowledges and agrees that the Centre for Civil Society (or any relevant replacement organisation notified to the *Contractor* from time to time) may contact and meet with any trade unions representing the *Contractor’s* employees and the employees of his Subcontractors and sub-subcontractors (of any tier) in order to establish that the obligations in sub-clause Z13.2(a) have been complied with and * liaises and cooperates with the *Employer* and the Centre for Civil Society (or any relevant replacement organisation notified to the *Contractor* from time to time) in order to establish that the obligations in sub-clause Z13.2(a) have been complied with, |
|  |  | 1. disseminates on behalf of the *Employer* to:  * his employees and * the employees of his Subcontractors and sub-subcontractors (of any tier),   engaged in the performance of the *works* such perception questionnaires as the *Employer* may reasonably require from time to time and promptly collates and returns to the *Employer* responses to such questionnaires, and |
|  |  | (f) co-operates and provides all reasonable assistance in monitoring the effect of the London Living Wage. |
|  | Z13.3 | For the avoidance of doubt the *Contractor*:   1. implements the annual increase in the rate of the London Living Wage and 2. procures that his Subcontractors and sub-subcontractors (of any tier) implement the annual increase in the rate of the London Living Wage,   on or before 1 April in the year following the publication of the increased rate of the London Living Wage. |
|  | Z13.4 | The *Employer* reserves the right to audit (acting by itself or its nominee(s)) the provision of the London Living Wage to the *Contractor’s* staff and the staff of his Subcontractors and sub-subcontractors (of any tier). |
|  | Z13.5 | Any breach by the *Contractor* of the provisions of this clause Z13 is treated as the *Contractor* having substantially failed to comply with his obligations for the purpose of Clause 90.3 of this contract. |
|  | Z14 | [Not Used] |
| **Data Protection** | Z15.1 | Each of the Parties complies at all times with its obligations under the Data Protection Legislation, and the Parties acknowledge that the *Employer* is a Data Controller solely responsible for determining the purposes and manner in which Personal Data is to be Processed and the *Contractor* is a Data Processor. |
|  | Z15.2 | Details of the Employer Personal Data to be Processed by the *Contractor* and the purposes of such Processing are as set out in the Processing Statement, which the Parties complete before any Processing takes place. |
|  | Z15.3 | The *Contractor:*   1. Processes the Employer Personal Data only in accordance with documented instructions from the *Employer* to perform its obligations under this Contract; 2. uses its reasonable endeavours to assist the *Employer* in complying with its obligations under Data Protection Legislation and does not perform its obligations under this Contract in such a way as to cause the *Employer* to breach any of its obligations under Data Protection Legislation to the extent the *Contractor* is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations; 3. notifies the *Employer* immediately if it determines or is notified that an instruction to Process Personal Data issued to it by the *Employer* is incompatible with any obligations under Data Protection Legislation to the extent the *Contractor* is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations;   (d) maintains, and makes available to the *Employer* on its request, documentation which describes the Processing operations for which it is responsible under this Contract including:  • the purposes for which Employer Personal Data is Processed,  • the types of Personal Data and categories of Data Subject involved,  • the source(s) of the Personal Data,  • any recipients of the Personal Data,  • the location(s) of any overseas Processing of Employer Personal Data,  • retention periods for different types of Employer Personal Data, and  • where possible a general description of the security measures in place to protect Employer Personal Data;   1. where requested to do so by the *Employer*, or where Processing Employer Personal Data presents a specific risk to privacy, carries out or assists the *Employer* to carry out a Data Protection Impact Assessment in accordance with guidance issued from time to time by the Information Commissioner (and any relevant requirements detailed in Data Protection Legislation) and makes the results of such an assessment available to the *Employer* and assists with consultations with regulators as required by the Data Protection Legislation; 2. without prejudice to any cyber security and/or payment card industry data security standard obligations in this Contract, takes appropriate technical and organisational security measures that are satisfactory to the *Employer* from time to time, against unauthorised or unlawful Processing of Employer Personal Data and against accidental loss, destruction of, or damage to such Employer Personal Data; 3. without prejudice to any cyber security and/or payment card industry data security standard obligations in this Contract, provides the *Employer* with such information as the *Employer* may from time to time require to satisfy itself of compliance by the *Contractor* (including any Subcontractor and Indirect Subcontractor) with clauses Z15.3(f) and Z15.3(h), including, protocols, procedures, guidance, training and manuals. For the avoidance of doubt, this includes a full report recording the results of any privacy or security audit carried out at the request of the *Contractor* itself or the *Employer;* 4. notifies the *Employer* without undue delay and in any event within 24 hours by written notice with all relevant details reasonably available of any actual or suspected breach of this clause Z15.1 to Z15.4 including the unauthorised or unlawful Processing of Employer Personal Data, or its accidental loss, destruction or damage;   (i) having notified the *Employer* of a breach in accordance with clause Z15.3(h), keeps the *Employer* properly and regularly informed in writing until the breach has been resolved to the satisfaction of the *Employer;*  (j) fully cooperates as the *Employer* requires with any investigation or audit in relation to Employer Personal Data and/or its Processing including allowing access to premises, computers and other information systems, records, documents and agreements as may be reasonably necessary (whether in relation to Processing pursuant to this Contract, in relation to compliance with Data Protection Legislation or in relation to any actual or suspected breach), whether by the *Employer* (or any agent acting on its behalf), any relevant regulatory body, including the Information Commissioner, the police and any other statutory law enforcement agency, and does so both during the Contract and after its termination or expiry (for so long as the *Contractor* retains and/or Processes Employer Personal Data);  (k) notifies the *Employer* within two (2) business days if the *Contractor* (including any Subcontractor or Indirect Subcontractor), receives:  • from a Data Subject (or third party on their behalf):  o a Subject Access Request (or purported Subject Access Request),  o a request to rectify, block or erase any Employer Personal Data or  o any other request, complaint or communication relating to the *Employer’s* obligations under Data Protection Legislation;  • any communication from the Information Commissioner or any other regulatory authority in connection with Employer Personal Data; or  • a request from any third party for disclosure of Employer Personal Data where compliance with such request is required or purported to be required by law;  (l) provides the *Employer* with full cooperation and assistance (within the timescales reasonably required by the *Employer)* in relation to any complaint, communication or request made as referred to in clause Z15.3(k), including by promptly providing:  • the *Employer* with full details and copies of the complaint, communication or request;  • where applicable, such assistance as is reasonably requested by the *Employer* to enable it to comply with the Subject Access Request within the relevant timescales set out in Data Protection Legislation; and  • where applicable, such assistance as is reasonably required by the Employer to enable it to comply with a request from a Data Subject to rectify, block or erase any Employer Personal Data.  (m) when notified in writing by the *Employer,* supplies a copy of, or information about, any Employer Personal Data. The *Contractor* supplies such information or data to the *Employer* within such time and in such form as specified in the request (such time to be reasonable) or if no period of time is specified in the request, then within two (2) business days from the date of the request;  (n) prepares and securely maintains a record of all categories of Processing activities carried out on behalf of the *Employer* in relation to the Employer Personal Data, as a minimum: (i) its name and contact details and details of a Data Protection Officer (if appointed) or other person with responsibility for data protection compliance; (ii) the categories of Processing it carries out on behalf of the *Employer*; (iii) transfers to Restricted Countries; (iv) a general description of the technical and organisational security measures referred to in these clauses Z15.1 to Z15.4 (inclusive); and (v) the same information in relation to any Subcontractor and Indirect Subcontractor, together with its name and contact details and when notified in writing by the *Employer*, complies with any agreement between the Employer and any Data Subject in relation to any Processing which causes or is likely to cause substantial and unwarranted damage or distress to such Data Subject, or any court order requiring the rectification, blocking, erasure or destruction of any Employer Personal Data;  (o) if required to do so by Data Protection Legislation, appoints a designated Data Protection Officer;  (p) provides all Connected Persons (and any other worker and/or visitor who may enter the Site on behalf of the *Contractor*) a copy of the Fair Processing Notice provided by the *Employer* prior to any Connected Person (or any other worker and/or visitor) entering the Site, and the *Contractor* acknowledges that, if a Connected Person (or any other worker and/or visitor of the Contractor) refuses or withdraws consent to use of any security system in place at the Site without proper and reasonable circumstance, they may be denied access at the *Employer’s* discretion, and  (q) makes available to the *Employer* all information necessary to demonstrate compliance with the obligations set out in clauses Z15.1 to Z15.4 (inclusive). |
|  | Z15.4 | The *Contractor* does not share Employer Personal Data with any Subcontractor or Indirect Subcontractor without prior written consent from the *Employer* and only where there is a written contract in place between the *Contractor* and the Subcontractor or Indirect Subcontractor (as applicable) which requires the Subcontractor or Indirect Subcontractor (as applicable) to:   1. only Process Employer Personal Data in accordance with the Employer’s documented instructions to the *Contractor* and 2. comply with the same obligations which the *Contractor* is required to comply with under these clauses Z15.1 to Z15.14 (inclusive) (and Clause Z17).   The *Contractor* remains responsible and liable to the *Employer* for all acts and omissions of any Subcontractor and Indirect Subcontractor as if they were its own. |
|  | Z15.5 | The *Contractor* itself, and procures that any Subcontractor and Indirect Subcontractor:   1. only Processes Employer Personal Data in accordance with the *Employer’s* documented instructions to the *Contractor* and as reasonably necessary to perform this Contract in accordance with its terms; 2. does not Process Employer Personal Data for any other purposes (in whole or part) and specifically, but without limitation, reproduce or refer to it in training materials, training courses, commercial discussions and negotiations with third parties or in relation to proposals or tenders with the *Employer;* 3. does not Process Employer Personal Data in such a way as to:   • place the *Employer* in breach of Data Protection Legislation,  • expose the *Employer* to the risk of actual or potential liability to the Information Commissioner or Data Subjects,  • expose the *Employer* to reputational damage including adverse publicity;   1. does not allow its personnel to access Employer Personal Data unless such access is necessary to Provide the Works; 2. takes all reasonable steps to ensure the reliability and integrity of the *Contractor's* employees, directors, contractors, agents, Subcontractors, Indirect Subcontractors, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters who can access Employer Personal Data; 3. ensures that all personnel who can access Employer Personal Data:   • are informed of its confidential nature,  • are made subject to an explicit duty of confidence,  • understand and comply with any relevant obligations created by either this Contract or Data Protection Legislation, and  • receive adequate training in relation to the use, care, protection and handling of Personal Data on an annual basis;   1. does not disclose or transfer Employer Personal Data to any third party without the *Contractor* having obtained the prior written consent of the *Employer* (save where such disclosure or transfer is specifically authorised under this Contract); 2. without prejudice to clause Z15.3, wherever the *Contracto*r uses any mobile or portable device for the transmission or storage of Employer Personal Data, ensures that each such device encrypts Employer Personal Data; and 3. complies during the course of this Contract with any written retention and/or deletion policy or schedule provided by the *Employer* to the *Contractor* from time to time. |
|  | Z15.6 | The *Contractor* does not, and procures that any Subcontractor or Indirect Subcontractor does not, Process or otherwise transfer any Employer Personal Data in or to any Restricted Countries without prior written consent from the *Employer* (which consent may be subject to additional conditions imposed by the *Employer*). |
|  | Z15.7 | If, after the Contract Date, the *Contractor* (including any Subcontractor and Indirect Subcontractor) wishes to Process and/or transfer any Employer Personal Data in or to any Restricted Countries, the following provisions apply:   1. the *Contractor* submits a written request to the *Employer* setting out details of the following:   • the Employer Personal Data which will be transferred to and/or Processed in any Restricted Countries,  • the Restricted Countries which the Employer Personal Data will be transferred to and/or Processed in,  • any Subcontractor or other third parties who will be Processing and/or receiving Employer Personal Data in Restricted Countries,  • how the *Contractor* ensures an adequate level of protection and adequate safeguards in respect of the Employer Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the *Employer’s* compliance with Data Protection Legislation,   1. in preparing and evaluating such a request, the Parties refer to and comply with applicable policies, procedures, guidance and codes of practice produced by the Parties and/or the Information Commissioner in connection with the Processing of Personal Data in (and/or transfer of Personal Data to) any Restricted Countries; 2. the *Contractor* complies with any instructions and carries out such actions as the *Employer* may notify in writing when providing its consent to such Processing or transfers, including:   • incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) into this Contract or a separate data processing agreement between the Parties and  • procuring that any Subcontractor and Indirect Subcontractor) or other third party who will be Processing and/or receiving or accessing the Employer Personal Data in any Restricted Countries enters into a data processing agreement with the Contractor on terms which are equivalent to those agreed between the *Employer* and the *Contractor* in connection with the Processing of Employer Personal Data in (and/or transfer of Employer Personal Data to) any Restricted Countries, and which may include the incorporation of the clauses referred to in the bullet point above. |
|  | Z15.8 | The *Contractor* and any Subcontractor and Indirect Subcontractor (if any), acknowledges:  (a) the importance to Data Subjects and the *Employer* of safeguarding Employer Personal Data and Processing it only in accordance with the *Employer’s* instructions and this Contract;  (b) the loss and damage the *Employer* is likely to suffer in the event of a breach of this Contract or negligence in relation to Employer Personal Data;  (c) any breach of any obligation in relation to Employer Personal Data and/or negligence in relation to performance or non-performance of such obligation is deemed a material breach of this Contract and a substantial failure by the *Contractor* to comply with his obligations;  (d) without limiting clause 90.3, if the *Contractor* has committed a material breach under paragraph Z15.8(c) on two or more separate occasions, the *Employer* may at its option withdraw authorisation for Processing by a specific Subcontractor by immediate written notice. |
|  | Z15.9 | Compliance by the *Contractor* with clause Z15.1 to Z15.8 (inclusive) is without additional charge to the *Employer* and compliance with this clause Z15 is not a compensation event. |
|  | Z15.10 | Following termination or expiry of this Contract or termination of the *Contractor’s* obligation to Provide the Works, in each case howsoever arising, the *Contractor*:     1. may Process the Employer Personal Data only for so long and to the extent as is necessary to properly comply with its non-contractual obligations arising under law (and will then comply with clause Z15.10(b); 2. subject to clause Z15.10(a)   • on written instructions from the *Employer* either securely destroys or securely and promptly returns to the *Employer* or a recipient nominated by the *Employer* (in such usable format as and to the extent the *Employer* may reasonably require) the Employer Personal Data or  • in the absence of instructions from the Employer after 12 months from the expiry or termination of this Contract or termination of the Contractor’s obligation to Provide the Works securely destroys the Employer Personal Data. |
|  | Z15.11 | Employer Personal Data may not be Processed following termination or expiry of this Contract or termination of the *Contractor’s* obligation to Provide the Works save as permitted by clause Z15.10. |
|  | Z15.12 | For the avoidance of doubt, and without prejudice to clause Z15.10, the obligations in clause Z15 apply following termination or expiry of this Contract or termination of the *Contractor’s* obligation to Provide the Works to the extent the Party concerned retains or Processes Employer Personal Data. |
|  | Z15.13 | [The C*ontractor* takes reasonable precautions to preserve the integrity of the Employer Data and to prevent any corruption or loss of the Employer Data.] |
|  | Z15.14 | The *Contractor* is responsible for and indemnifies the *Employer* and members of the *Employer's* group of companies from and against any and all fines, court awards, settlements, legal costs, expenses, liabilities, losses, claims and proceedings whatsoever resulting from any breach by the *Contracto*r or any Subcontractor or any Indirect Subcontractor of the Data Protection Legislation or clauses these clauses Z15.1 to Z15.14 (inclusive). Without prejudice to clause 80.1, the *Contractor’s* liability in respect of any breach of clauses these clauses Z15.1 to Z15.14 (inclusive) insofar as they relate to fines, court awards, settlements and legal costs is unlimited. |
| **Conflict of Interest** | Z16.1 | The *Contractor* acknowledges and agrees that he does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with Providing the Works, save to the extent fully disclosed to and approved in writing by the *Employer*. |
|  | Z16.2 | The *Contractor* undertakes ongoing and regular conflict of interest checks throughout the duration of the contract and in any event not less than once in every six months and notifies the *Employer* in writing immediately on becoming aware of any actual or potential conflict of interest with Providing the Works and works with the *Employer* to do whatever is necessary (including the separation of staff working and/or data relating to the *works* from the matter in question) to manage such conflict to the *Employer's* satisfaction and provided that, where the *Employer* is not so satisfied (in his absolute discretion), the *Employer* is entitled to terminate the contract. |
| **Freedom of Information** | Z17.1 | The *Contractor* acknowledges that the *Employer*: |
|  |  | * is subject to FOI Legislation and agrees to assist and co-operate with the *Employer* to enable the *Employer* to comply with his obligations under the FOI Legislation, and * may be obliged under the FOI Legislation to disclose Information without consulting and/or obtaining consent from the *Contractor*. |
|  | Z17.2 | Without prejudice to the generality of Clause Z17.1, the *Contractor* agrees and procures that his Subcontractors will agree to: |
|  |  | * transfer to the *Employer* or such other persons as may be notified by the *Employer* to the *Contractor* each Information Request relevant to this contract or the *works* that the *Contractor* or his Subcontractor (as the case may be) receive as soon as practicable and in any event within 3 days of receiving such Information Request; and * in relation to Information held by the *Contractor* on behalf of the *Employer*, provide the *Employer* with details about and/or copies of all such Information that the *Employer* requests and such details and/or copies are provided within 6 days of a request from the *Employer* (or such other period as the *Employer* may reasonably specify), and in such forms as the *Employer* may reasonably specify. |
|  | Z17.3 | The *Employer* is responsible for determining whether Information is exempt or excepted information under the FOI Legislation and for determining what Information (if any) will be disclosed in response to an Information Request in accordance with the FOI Legislation. The *Contractor* does not himself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so in writing by the *Employer*. |
|  | Z17.4 | The *Contractor* acknowledges that the *Employer* may be obliged under FOI Legislation to disclose Information without consulting or obtaining consent from the *Contractor*. |

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| **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.** |

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| 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 sub-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 notifiedsum 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 sub-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. |