



DOCKLANDS LIGHT RAILWAY LIMITED

Reference Number: TfL-01352

ROLLING STOCK REPLACEMENT PROGRAMME BECKTON DEPOT NORTHERN SIDINGS CONTRACT

Between
Docklands Light Railway Limited
and
Buckingham Group Contracting Limited

Issued: 25th January 2021



**DLR Rolling Stock Replacement Programme; Beckton
Depot Northern Sidings; NEC3 ECC Option C**

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**DLR Rolling Stock Replacement Programme; Beckton
Depot Northern Sidings; NEC3 ECC Option C**

Section 1

Contract Terms and Conditions

1.000



**DLR Rolling Stock Replacement Programme; Beckton
Depot Northern Sidings; NEC3 ECC Option C**

Section 1.01

Form of Agreement

1.010

Beckton Depot North Sidings Contract

Docklands Light Railway Limited

and

The Contractor

THIS AGREEMENT is made the 29th day of January 2021

BETWEEN:

- (1) Docklands Light Railway Limited (Company No. 02052677) whose registered office is at 5 Endeavour Square, London, United Kingdom, E20 1JN ("the *Employer*", which expression shall include its successors in title, permitted assigns and any statutory successor); and
- (2) Buckingham Group Contracting Limited (Company No. 02181671) whose registered office is at Blackpit Farm, Stowe, Buckingham, MK18 5LJ ("the *Contractor*", which expression shall include its successors in title and permitted assigns).

WHEREAS:

- (A) The *Employer* wishes to have provided an upgrade to its North Sidings at its DLR depot at Beckton as more particularly described in the Works Information.
- (B) The *Employer* has accepted a tender by the *Contractor* for the design and construction of the works and correction of Defects therein in accordance with the *conditions of contract*.

NOW IT IS AGREED THAT:

1. Terms and expressions defined in the *conditions of contract* have the same meanings herein.
2. The *Contractor* Provides the Works in accordance with the *conditions of contract*.
3. The *Employer* pays the *Contractor* the amount due in accordance with the *conditions of contract*.
4. The Contract Documents forming the contract are:
 - (a) this Form of Agreement;
 - (b) the *conditions of contract* which are the NEC Engineering and Construction Contract conditions of contract Third Edition April 2013, comprising:
 - the core clauses;
 - the main Option C clauses;
 - the additional Z1 and Z2 clauses,
 - the secondary Option X2, X4, X7, X13, X15, X16, X18, X20, X22, X23 and X25 clauses;
 - the Option Y(UK)2 clause; and

- the Schedule of Cost Components,

all as set out in the consolidated conditions of contract included in Section 1 of this contract;

- (c) the following Schedules to the *conditions of contract* included in Section 1 of this contract;

Schedule 1:	Additonal Definitions
Schedule 2:	Performance Bond
Schedule 3:	Parent Company Guarantee
Schedule 4:	Contractor Collateral Warranty
Schedule 5:	Subcontractor Collateral Warranty
Schedule 6:	Subconsultant Collateral Warranty
Schedule 7:	Corporate IPR
Schedule 8:	Dispute Resolution Procedure
Schedule 9:	Disruption Damages
Schedule 10:	Deed of Novation
Schedule 11:	Escrow Agreement
Schedule 12:	Legal Opinion
Schedule 13:	Processing Statement

- (d) the completed Contract Data Part 1 included in Section 1 of this contract;

- (e) the completed Contract Data Part 2 included in Section 1 of this contract;

- (f) the Works Information; and

- (g) the Site Information.

5. Where there is any discrepancy or conflict within or between the Contract Documents the order of priority shall be as follows:

First	:	This Form of Agreement;
Second	:	The consolidated <i>conditions of contract</i> appended to this Form of Agreement;
Third	:	Schedules 1 to 13 inclusive attached to the <i>conditions of contract</i> ;
Fourth	:	Contract Data Part 1 (including any other documents or information referred to therein);
Fifth	:	The Works Information;
Sixth	:	Contract Data Part 2 (including any other documents or information referred to therein); and
Seventh	:	The Site Information.

IN WITNESS whereof this Agreement has been executed and unconditionally delivered as a deed the day and year first above written.

EXECUTED AND DELIVERED AS A DEED

by affixing the Common Seal of
Docklands Light Railway Limited
In the presence of:



Authorised Signatory

Authorised Signatory _____

EXECUTED AND DELIVERED AS A DEED by **BUCKINGHAM GROUP CONTRACTING LIMITED**
acting by:

Signature of Director

.....

Print name of Director

.....

Signature of Director/Secretary

.....

Print name of Director/Secretary

.....

IN WITNESS whereof this Agreement has been executed and unconditionally delivered as a deed the day and year first above written.

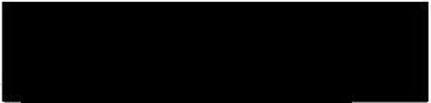
EXECUTED AND DELIVERED AS A DEED

by affixing the Common Seal of
Docklands Light Railway Limited
In the presence of:

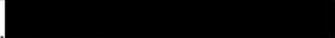
Authorised Signatory

**EXECUTED AND DELIVERED AS A
DEED by BUCKINGHAM GROUP
CONTRACTING LIMITED**
acting by:

Signature of Director

.....


Print name of Director

.....


Signature of Director/Secretary

.....

Print name of Director/Secretary

.....

IN WITNESS whereof this Agreement has been executed and unconditionally delivered as a deed the day and year first above written.

EXECUTED AND DELIVERED AS A DEED

by affixing the Common Seal of
Docklands Light Railway Limited
In the presence of:

Authorised Signatory

**EXECUTED AND DELIVERED AS A
DEED by BUCKINGHAM GROUP
CONTRACTING LIMITED**
acting by:

[Redacted Signature]
.....
[Redacted Name]
.....

Signature of Director

Print name of Director

Signature of Director/Secretary

.....

Print name of Director/Secretary

.....



**DLR Rolling Stock Replacement Programme; Beckton
Depot Northern Sidings; NEC3 ECC Option C**

Section 1.02

Consolidated NEC3 Option C Conditions of Contract

1.020

DLR BECKTON DEPOT EXTENSION

NORTH SIDINGS CONTRACT

CONSOLIDATED CONDITIONS OF CONTRACT FOR MAIN OPTION C

This amended contract is based on the NEC family of contracts (2013 edition), the copyright of which belongs to the Institution of Civil Engineers.

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CORE CLAUSES

1 General

	Actions	10	
		10.1	The <i>Employer</i> , the <i>Contractor</i> , the <i>Project Manager</i> and the <i>Supervisor</i> shall act as stated in this contract and in a spirit of mutual trust and co-operation.
	Identified and defined Terms	11	
Z1.1		11.1	In these conditions of contract, terms identified in the Contract Data are in italics and defined terms have capital initials.
		11.2	(1) The Accepted Programme is the programme identified in the Contract Data or is the latest programme accepted by the <i>Project Manager</i> . The latest programme accepted by the <i>Project Manager</i> supersedes previous Accepted Programmes. (2) Completion is when the <i>Contractor</i> has <ul style="list-style-type: none">done all the work which the Works Information states he is to do by the Completion Date andcorrected notified Defects which would have prevented the <i>Employer</i> from using the <i>works</i> and Others from doing their work. If the work which the <i>Contractor</i> is to do by the Completion Date is not stated in the Works Information, Completion is when the <i>Contractor</i> has done all the work necessary for the <i>Employer</i> to use the <i>works</i> and for Others to do their work. (3) The Completion Date is the <i>completion date</i> unless later changed in accordance with this contract.
Z1.1.1			(4)The Contract Date is the date when this contract came into existence of this contract.
Z1.1.1A			
Z1.1.2			(5) A Defect is <ul style="list-style-type: none">a part of the <i>works</i> which is not in accordance with the Works Information or the requirements of this contract, ora part of the <i>works</i> designed by the <i>Contractor</i> which is not in accordance with the applicable law or the <i>Contractor's</i> design which the <i>Project Manager</i> has accepted.
Z1.1.3			(6) The Defects Certificate is either a list of Defects that the <i>Supervisor</i> or the Contractor has notified before the <i>defects date</i> which the <i>Contractor</i> has not corrected or, if there are no such Defects, a statement that there are none. (7) Equipment is items provided by the <i>Contractor</i> and used by him to Provide the Works and which the Works Information does not require him to include in the <i>works</i> . (8) The Fee is the sum of the amounts calculated by applying the <i>subcontracted fee percentage</i> to the Defined Cost of subcontracted work and the <i>direct fee percentage</i> to the Defined Cost of other work provided that, if the Price for Work Done to Date is more than the total of the Prices, no Fee is payable on the amount by which the Defined Cost exceeds the total of the Prices excluding the Fee element of the Prices.
			(9) A Key Date is the date by which work is to meet the Condition stated. The Key Date is the <i>key date</i> stated in the Contract Data and the Condition is the <i>condition</i> stated in the Contract Data unless later changed in accordance with this contract.
Z1.1.4			(10) Others are people or organisations who are not the <i>Employer</i> , the <i>Project Manager</i> , the <i>Supervisor</i> , the Adjudicator , the Adjudicator the

Z1.1.5

Contractor or any employee, Subcontractor or supplier of the *Contractor*.

(11) The Parties are the *Employer* (which expression includes his successors in title, assigns and statutory successors) and the *Contractor* (which expression includes his successors in title, assigns and statutory successors).

(12) Plant and Materials are items intended to be included in the *works*.

(13) 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.

(14) The Risk Register is a register of the risks which are listed in the Contract Data and the risks which the *Project Manager* or the *Contractor* has notified as an early warning matter. It includes a description of the risk and a description of the actions which are to be taken to avoid or reduce the risk.

(15) The Site is the area within the *boundaries of the site* and the volumes above and below it which are affected by work included in this contract.

(16) Site Information is information which

- describes the Site and its surroundings and
- is in the documents which the Contract Data states it is in.

(17) A Subcontractor is a person or organisation who has a contract with the *Contractor* to

- construct or install part of the *works*,
- provide a service necessary to Provide the Works (including the provision of labour) or
- supply Plant and Materials which the person or organisation has wholly or partly designed specifically for the *works*.

(18) The Working Areas are those parts of the *working areas* which are

- necessary for Providing the Works and
- used only for work in this contract

unless later changed in accordance with this contract.

(19) 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 documents which the Contract Data states it is in or
- in an instruction given in accordance with this contract.

(20) The Activity Schedule is the *activity schedule* unless later changed in accordance with this contract.

(23) Defined Cost is

- **the amount of payments due to Subcontractors for work which is subcontracted without taking account of amounts deducted for retention,**
- **payment to the *Employer* as a result of the Subcontractor failing to meet a Key Date,**
- **the correction of Defects after Completion,**
- **payments to Others and**
- **the supply of equipment, supplies and services included in the charge for overhead cost within the Working Areas in this contract**

and

- **the cost of components in the Schedule of Cost Components for other work**

less Disallowed Cost.

(25) Disallowed Cost is cost which the *Project Manager* decides

- is not justified by the Contractor's accounts and records **or has not been reasonably incurred,**
 - should not have been paid to a Subcontractor or supplier in accordance with his contract,
 - was incurred only because the *Contractor* did not
 - follow an acceptance or procurement procedure stated in the Works Information or
 - give an early warning which this contract required him to give
- and the cost of
- correcting Defects after Completion,
 - correcting Defects caused by the Contractor not complying with a constraint on how he is to Provide the Works stated in the Works Information,
 - Plant and Materials not used to Provide the Works (after allowing for reasonable wastage) unless resulting from a change to the Works Information,
 - resources not used to Provide the Works (after allowing for reasonable availability and utilization) or not taken away from the Working Areas when the *Project Manager* requested and
 - **a key person not appointed in accordance with this contract,**
 - preparation for and conduct of an adjudication or proceedings of the tribunal **and**
 - **finest, charges, penalties and fees imposed on or accepted by the Contractor as a result of any unsafe, unlawful or criminal conduct or any infringement or disregard of any Statutory Requirement.**

(29) The Price for Work Done to Date is the total Defined Cost which the *Project Manager* forecasts will have been paid by the *Contractor* before the next assessment date plus the Fee.

(30) The Prices are the lump sum prices for each of the activities on the Activity Schedule unless later changed in accordance with this contract.

Z1.2	11.3	Additional defined terms are included in Schedule 1.
Interpretation and the law	12	
Z1.3		
	12.1	In this contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round and words in the masculine also mean in the feminine and neuter.
Z1.3.1	12.1A	References to "this contract" mean the contract between the <i>Employer</i> and the <i>Contractor</i> including the documents listed as forming the contract in the Form of Agreement.
Z1.3.2	12.1B	In this contract, unless the context otherwise requires, references to: (a) "including" means "including without limitation", and (b) "fault" of the <i>Employer</i> or the <i>Contractor</i> include the breach, unlawful act, negligence, omission, default or failure to comply with any provision of this contract of the <i>Employer</i> or the <i>Contractor</i> (as the case may be).
Z1.3.3	12.2	This contract is governed by and is construed in accordance with the <i>law of the contract</i> and, without prejudice to the Dispute Resolution Procedure, the Parties submit to the exclusive jurisdiction of the courts of England and Wales.
	12.3	No change to this contract, unless provided for by the <i>conditions of contract</i> , has effect unless it has been agreed, confirmed in writing and signed by the

Parties.

- Z1.3.4 12.3A Words denoting persons or parties includes individuals, partnerships, firms and corporations and any organisation having legal capacity.
- Z1.3.5 12.4 This contract ~~is the entire agreement between the Parties~~ supersedes any previous agreement, arrangement or understanding between the *Employer* and the *Contractor* in relation to the matters dealt with in this contract and represents the entire understanding and agreement between the *Employer* and the *Contractor* in relation to such matters. The *Employer* and *Contractor* acknowledge and agree that each of them has not relied upon any prior representation by the other in entering into this contract.
- Z1.3.6 12.5 The headings to the sections, clauses and sub-clauses of the conditions of this contract are for convenience only and do not affect the construction or interpretation of the *conditions of contract*.
- Y2.1(2) 12.6 A period of time stated in days is a period calculated in accordance with Section 116 of the Act.
- Z1.3.7 12.7 References in this contract to “applicable law” are deemed to include Statutory Requirements and include:
- that law as from time to time amended, re-enacted or substituted and
 - any orders, rules, regulations, schemes, warrants, bye-laws, directives or codes of practice raised under any such law.
- The *Contractor* complies with the applicable law. Laws are regarded as applicable to the *Contractor* where they impose duties, obligations or restrictions on the *Employer* or TFL in relation to the DLR Network and/or its operation, and the *Contractor* (in Providing the Works) performs his obligations under this contract in compliance with such duties, obligations and restrictions as if such laws imposed such duties, obligations and restrictions on the *Contractor*.
- Z1.3.8 12.8 Failure by the *Employer* to exercise his rights under this contract does not constitute waiver of those rights nor any of them nor does any such failure relieve the *Contractor* from any of his obligations under this contract. The waiver in one instance of any right, condition or requirement does not constitute a continuing or general waiver of that or any other right, condition or requirement.
- Z1.3.9 12.9 If any provision of this contract is held by any court or competent authority to be void or unenforceable in whole or in part, the other provisions of this contract and the remainder of the affected provisions shall continue to be valid.
- Z1.3.10 12.10 If the *Contractor* is a joint venture of two or more entities, all such entities are jointly and severally bound to the *Employer* for the purposes of this contract and, except where the context shows otherwise, a reference to the *Contractor* is a reference to each entity comprising the *Contractor* as specified in the Form of Agreement individually and to all of them jointly. Each such entity designates one of them to act as a partner in charge with authority to bind the joint venture. The composition or the constitution of the joint venture is accepted by the *Employer* and is not altered without the prior acceptance of the *Employer*.

Communications 13

- Z1.4
- Z1.4.1 13.1 The *Employer*, the *Contractor*, the *Project Manager* and the *Supervisor* comply with the communications requirements in the Works Information. Each instruction, certificate, submission, proposal, record, acceptance, notification, reply and other communication which this contract requires is communicated in a form which can be read, copied and recorded. Writing is in the *language of this contract*.
- 13.2 A communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data.
- 13.3 If this contract requires the *Project Manager*, the *Supervisor* or the *Contractor* to reply to a communication, unless otherwise stated in this

contract, he replies within the *period for reply*.

- 13.4 The *Project Manager* replies to a communication submitted or resubmitted to him by the *Contractor* for acceptance. If his reply is not acceptance, the *Project Manager* states his reasons and the *Contractor* resubmits the communication within the *period for reply* taking account of these reasons. A reason for withholding acceptance is that more information is needed in order to assess the *Contractor's* submission fully.
- 13.5 The *Project Manager* may extend the *period for reply* to a communication if the *Project Manager* and the *Contractor* agree to the extension before the reply is due. The *Project Manager* notifies the *Contractor* of the extension which has been agreed.
- 13.6 The *Project Manager* issues his certificates to the *Employer* and the *Contractor*. The *Supervisor* issues his certificates to the *Project Manager* and the *Contractor*.
- 13.7 A notification which this contract requires is communicated separately from other communications.
- 13.8 The *Project Manager* may withhold acceptance of a submission by the *Contractor*. Withholding acceptance for a reason stated in this contract is not a compensation event.

The *Project Manager* and the *Supervisor* 14

Z1.5

- 14.1 The *Project Manager's* or the *Supervisor'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.
- 14.2 The *Project Manager* and the *Supervisor*, after notifying the *Contractor*, may delegate any of their actions and may cancel any delegation. A reference to an action of the *Project Manager* or the *Supervisor* in this contract includes an action by his delegate.
- 14.3 The *Project Manager* may give an instruction to the *Contractor* which changes the Works Information or a Key Date **or any of the *access dates***.
- 14.4 The *Employer* may replace the *Project Manager* or the *Supervisor* after he has notified the *Contractor* of the name of the replacement.

Y2.1/Z1.5.1

- 14.5 **The *Project Manager* is for relevant purposes the "specified person" as defined in section 110A(6) of the Act.**

Adding to the Working 15

Areas

- 15.1 The *Contractor* may submit a proposal for adding an area to the Working Areas to the *Project Manager* for acceptance. A reason for not accepting is that the proposed area is either not necessary for Providing the Works or used for work not in this contract.

Early warning 16

Z1.7

Z1.7.1

- 16.1 The *Contractor* and the *Project Manager* 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,
 - delay meeting a Key Date, ~~or~~
 - impair the performance of the *works* in use,
 - **adversely affect the work of Others, or**
 - **adversely affect the *Employer* (including by increasing the monies payable by the *Employer* to Others engaged on the Project) and/or cause any disruption to the operation of the DLR Network.**

In the notification the *Contractor* and the *Project Manager* state whether the early warning must be dealt with immediately or can wait until the next scheduled risk reduction meeting.

The *Contractor* may give an early warning by notifying the *Project Manager*

of any other matter which could increase his total cost. The *Project Manager* enters early warning matters in the Risk Register. Early warning of a matter for which a compensation event has previously been notified is not required.

16.2 Either the *Project Manager* or the *Contractor* may instruct the other to attend a risk reduction meeting. Each may instruct other people to attend if the other agrees.

16.3 At a risk reduction meeting, those who attend co-operate in

- making and considering proposals for how the effect of the registered risks can be avoided or reduced,
- seeking solutions that will bring advantage to all those who will be affected,
- deciding on the actions which will be taken and who, in accordance with this contract, will take them and
- deciding which risks have now been avoided or have passed and can be removed from the Risk Register.

16.4 The *Project Manager* revises the Risk Register to record the decisions made at each risk reduction meeting and issues the revised Risk Register to the *Contractor*. If a decision needs a change to the Works Information, the *Project Manager* instructs the change at the same time as he issues the revised Risk Register.

Ambiguities and 17

Inconsistencies

17.1 The *Project Manager* or the *Contractor* notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of this contract. The *Project Manager* gives an instruction resolving the ambiguity or inconsistency.

Illegal and impossible requirements 18

18.1 The *Contractor* notifies the *Project Manager* as soon as he considers that the Works Information requires him to do anything which is illegal or impossible. If the *Project Manager* agrees, he gives an instruction to change the Works Information appropriately.

Prevention 19

19.1 If an event occurs which

- stops the *Contractor* completing the *works* or
- stops the *Contractor* completing the *works* by the date shown on the Accepted Programme,

and which

- neither Party could prevent and
- an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it,

the *Project Manager* gives an instruction to the *Contractor* stating how he is to deal with the event.

2 The Contractor's main responsibilities

Providing the Works 20

Z1.8

Z1.8.1

20.1 The Contractor Provides the Works in accordance with the Works Information.

20.2 Not used (as not an option C clause)

20.3 The Contractor advises the Project Manager on the practical implications of the design of the works and on subcontracting arrangements.

20.4 The Contractor prepares forecasts of the total Defined Cost for the whole of the works in consultation with the Project Manager and submits them to the Project Manager. Forecasts are prepared at the intervals stated in the Contract Data from the starting date until Completion of the whole of the works. Each forecast is in a format prescribed in the Works Information. An explanation of the changes made since the previous forecast is submitted with each forecast.

20.5 Not used (as not an option C clause)

Z1.8.2

20.6 These conditions of contract and the warranties and undertakings in them are deemed to apply to all work and/or services performed by the Contractor both before and after the Contract Date.

Z1.8.2

20.7 The Contractor satisfies itself in good and sufficient time before it is due to commence any part of the works as to the position, dimensions and suitability of any previous work undertaken by Others which might affect the works and promptly advises the Project Manager in writing if such previous work undertaken by Others is out of position or wrongly dimensioned or unsuitable.

Z1.8.3

20.8 The Contractor warrants to the Employer that the Contractor does not specify or approve for use in the works, or use in the works, any Prohibited Materials.

Z1.8.4

20.9 If in the performance of his duties under this contract, the Contractor becomes aware that he or any person has specified, approved or used any Prohibited Materials, the Contractor immediately notifies the Employer of the same. 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.

Z1.9.2

21.2 The Contractor submits the particulars of his design as the Works Information requires to the Project Manager for acceptance. A reason for not accepting the Contractor's design is that it does not comply with the Works Information, this contract and/or the applicable law.

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

21.3 The Contractor may submit his design for acceptance in parts if the design of each part can be assessed fully.

Using the Contractor's Design 22

Z1.10

Z1.10.1

22.1 The Employer may use and copy the Contractor's design for any purpose connected with construction, use, alteration or demolition of the works unless otherwise stated in the Works Information and for other purposes as stated in the Works Information specified in clause Z2.7.

Design of Equipment 23

23.1 The Contractor submits particulars of the design of an item of Equipment to the Project Manager for acceptance if the Project Manager instructs him to. A reason for not accepting is that the design of the item will not allow the

Contractor to Provide the Works in accordance with

- the Works Information,
- the Contractor's design which the Project Manager has accepted or
- the applicable law.

People 24

Z1.11
Z1.11.1

24.1 The Contractor either employs each key person named to do the job stated in the Contract Data or employs a replacement person who has been accepted by the Project Manager. The Contractor submits the name, relevant qualifications and experience of a proposed replacement person to the Project Manager for acceptance. A reason for not accepting the person is that his relevant qualifications and experience are not as good as those of the person who is to be replaced.

Z1.11.2

24.2 The Project Manager may, having stated his reasons, instruct the Contractor to remove ~~an employee~~ any person under his control. The Contractor then arranges that, after one day, ~~the employee~~ such person has no further connection with the work included in this contract.

Working with the Employer and Others 25

Z1.12
Z1.12.1

25.1 The Contractor co-operates with the Project Manager and Others in obtaining and providing information which they need in connection with their works and the works. He co-operates with Others, co-ordinates his activities with them and shares the Working Areas with them as stated in accordance with the Works Information. The Contractor permits the carrying out of work by Others and concurrently with the execution of the works

Z1.12.2

25.2 The Employer and the Contractor provide services and other things as stated in the Works Information. Any cost incurred by the Employer as a result of the Contractor not providing the services and other things which he is to provide is assessed by the Project Manager and paid by the Contractor.

Z1.12.3

25.3 If the Project Manager decides that the work does not meet the Condition stated for a Key Date by the date stated and, as a result, the Employer incurs additional cost either

- in carrying out work or
- by paying an additional amount to Others in carrying out work

on the ~~same project~~ Project, the additional cost which the Employer has paid or will incur is paid by the Contractor, which cost includes any Losses incurred by the Employer arising from any resulting compensation event claimed by Interfacing Others. The Project Manager assesses the additional cost within four weeks of the date when the Condition for the Key Date is met. ~~The Employer's right to recover the additional cost is his only right in these circumstances.~~ The Project Manager's assessment is without prejudice to any other rights and remedies the Employer may have arising from the Contractor's failure to meet a Key Date, including the Employer's right to delay damages pursuant to Option X7.

Z1.12.4

25.4 Without limiting Clause 25.1, the Contractor liaises with Interfacing Others and as often as may be required to ensure that any programme produced by the Contractor in accordance with this contract is developed to ensure that the works are co-ordinated and interfaced with the works to be undertaken by Interfacing Others and the Contractor Provides the Works in accordance with any such co-ordinated and interfaced programme. If the Contractor fails to properly coordinate and interface the works with the works to be undertaken by Interfacing Others the Contractor is not entitled to: a compensation event pursuant to Clause 60.1; a change in the Prices; a change to the Completion Date; or a change to any Key Date.

Subcontracting 26

Z1.13

Z1.13.1

26.1 If the *Contractor* subcontracts work, he is responsible for Providing the Works as if he had not subcontracted and he complies with the provisions of the Works Information. This contract applies as if a Subcontractor's employees and equipment were the *Contractor's*.

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

Z1.13.2

26.3 The *Contractor* submits the proposed conditions of contract for each subcontract to the *Project Manager* for acceptance unless

~~an NEC contract is proposed or~~
the *Project Manager* has agreed that no submission is required.

The *Contractor* does not appoint a Subcontractor on the proposed subcontract conditions submitted until the *Project Manager* has accepted them. A reason for not accepting them is that

- they will not allow the *Contractor* to Provide the Works, or
- they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation
- they do not include Subcontractor proposals satisfactory to the *Project Manager* for open book costs determinations and reasonable breakage costs in the event of termination,
- if the proposed Subcontractor is an Affiliate of the *Contractor*, they do not reflect a transaction procured and contracted at arm's length terms,
- they contain payment terms that do not comply with the Public Contracts Regulations 2015 or
- in the case of a Key Sub-Contract, they do not oblige the Key Sub-Contractor to provide a Key Sub-Contractor collateral warranty in favour of the *Employer*, in accordance with the *Contractor's* obligation pursuant to clause Z2.2.¹

~~26.4 The *Contractor* submits the proposed contract data for each subcontract for acceptance to the *Project Manager* if~~

- ~~• an NEC contract is proposed and~~
- ~~• the *Project Manager* instructs the *Contractor* to make the submission.~~

~~A reason for not accepting the proposed contract data is that its use will not allow the *Contractor* to Provide the Works.~~

Z1.13.3

26.4 The *Contractor* includes in each subcontract with a Subcontractor conditions of contract that meet the subcontracting requirements identified in the Works Information.

Z1.13.4

26.5 Within 21 days of entering into a Key Sub-Contract the *Contractor* provides the *Employer* with a certified copy of the relevant Key Sub-Contract.

Other responsibilities 27

Z1.14

27.1 The *Contractor* obtains approval of his design from Others where necessary. The *Contractor's* responsibility includes obtaining all Licences required for carrying out the works except for those which the Works Information expressly states will be obtained by the *Employer*.

In relation to Licences which it is the *Employer's* responsibility to obtain, the *Contractor* (without taking the risk that such Licences are not obtained, save to the extent that this is caused by the *Contractor's* failure to provide

¹ Note that each Key Sub-Contractor (from whom a Key Sub-Contractor Collateral Warranty will be required pursuant to clause Z2.2 needs to be identified in the Works Information.

support required by this contract and/or the Works Information)

- provides such support as the Works Information states the *Contractor* is to provide to the *Employer* in applying for and obtaining such Licences and
- provides such other support as the *Employer* reasonably requires, not entailing excessive cost to the *Contractor* (or if entailing such cost, provided the same is reimbursed by the *Employer*).

The *Contractor* ensures that the *works* comply with all Licences and laws. The *Contractor's* duty to Provide the Works includes providing all work necessary to satisfy the requirements of any agreement entered into by the *Employer* and/or the *Contractor* with Others pursuant to the requirements of a Licence (including any agreements under section 106 of the Town and Country Planning Act 1990 or sections 38 and/or 278 of the Highways Act 1980), unless (in relation only to work which is not situated on or adjacent to the Site) the *Employer*, acting reasonably, agrees otherwise in writing.

27.2 The *Contractor* provides access to work being done and to Plant and Materials being stored for this contract for

- the *Project Manager*,
- the *Supervisor* and
- Others notified to him by the *Project Manager*.

27.3 The *Contractor* obeys an instruction which is in accordance with this contract and is given to him by the *Project Manager* or the *Supervisor*.

Z1.14.1

27.4 The *Contractor* acts in accordance with the health and safety requirements stated in the Works Information and co-operates with persons having health and safety responsibilities on or adjacent to the Site for the effective discharge of all such responsibilities. Without prejudice to the generality of the above, if a Safety Breach is committed by one of the *Contractor's* employees or agents or by any Subcontractor (or one of the Subcontractor's employees or agents) then the *Employer* may (at his sole discretion) choose to serve a warning notice upon the *Contractor* instead of exercising his right to terminate with immediate effect pursuant to clause 91.8 and unless, within thirty (30) days of receipt of such warning notice, the *Contractor* removes or procures the removal of the relevant person or Subcontractor (as the case may be) from the Site and (if necessary) procures the provision of the affected *works* by another person or Subcontractor this constitutes a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with clause 91.8.

Z1.14.2

27.5 For the purposes of the CDM Regulations

- the *Contractor* takes full responsibility for the adequacy stability and safety of their site operations and methods of construction and complies fully with the requirements of the CDM Regulations,
- the *Contractor* warrants that it is fully conversant with the guidance and any codes of practice published by the Health and Safety Executive in relation to the CDM Regulations,
- the *Contractor* is the *Principal Contractor* and performs all the functions and duties of and exercises the powers of the "principal contractor" as defined in the CDM Regulations,
- the *Contractor* performs all the functions and duties of a "contractor" and (where the *Contractor* is responsible for design) a "designer" as defined in the CDM Regulations,
- the *Contractor* warrants to the *Employer* that it has the skills, knowledge, experience, organisational capability and level of resources necessary to meet the requirements of the CDM Regulations and to fulfil the role of "contractor" and (where the *Contractor* is responsible for the design of any part of the *works*)

“designer” as defined in the CDM Regulations,

- the *Contractor* at all times co-operates, so far as is reasonably practicable, with all parties having health and safety responsibilities on or adjacent to the Site, including the Principal Designer for the effective discharge of those responsibilities and
- the *Contractor* procures that each Subcontractor complies fully with the requirements of the CDM Regulations.

3 Time

Starting, Completion and Key Dates 30

Z1.15

30.1 The *Contractor* does not start work on the Site until the first *access date* and does the work so that Completion is on or before the Completion Date.

Z1.15.1

30.1A The *Contractor* notifies the *Project Manager* when in his opinion the *works* will have been completed in accordance with this contract and requests an inspection. The *Project Manager* and the *Contractor* undertake such inspection in accordance with the requirements set out in the Works Information. The *Supervisor* may attend the inspection.

Z1.15.2

30.2 The *Contractor* provides all information and evidence listed or identified in the Works Information as being required to demonstrate that the *works* have been so completed. If the *Project Manager* is satisfied that the *works* have been so completed, he ~~Project Manager~~ decides the date of Completion. The *Project Manager* certifies Completion within one week of Completion. If the *Project Manager* is not so satisfied, he notifies the *Contractor* of his reasons for not accepting that the *works* have been completed and the *Contractor* notifies the *Project Manager* in accordance with clause 30.1A when the necessary corrective action has been taken.

30.3 The *Contractor* does the work so that the Condition stated for each Key Date is met by the Key Date.

The programme 31

Z1.16

31.1 If a programme is not identified in the Contract Data, the *Contractor* submits a first programme to the *Project Manager* for acceptance within the period stated in the Contract Data.

Z1.16.1

31.2 The *Contractor* shows on each programme which he submits for acceptance

- the *starting date*, *access dates*, Key Dates and Completion Date,
- planned Completion,
- the order and timing of the operations which the *Contractor* plans to do in order to Provide the Works and any interfaces with any other activities and work being undertaken for the Project but which do not form part of the *works* (including interfaces with Interfacing Others),
- the order and timing of the work of the *Employer* and Others as last agreed with them by the *Contractor* or, if not so agreed, as stated in the Works Information,
- the dates when the *Contractor* plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the *Employer* and Others to do their work,
- provisions for
 - float,
 - time risk allowances,
 - **environmental and** health and safety requirements and
- the procedures set out in this contract,
- the dates when, in order to Provide the Works in accordance with his programme, the *Contractor* will need
 - **any access in accordance with the access requirements in the Works Information and** access to a part of the Site if later than its *access date*,
 - acceptances,
 - Plant and Materials and other things to be provided by the *Employer* and
 - information from Others,
- for each operation, a statement of how the *Contractor* plans to do the work identifying the principal Equipment and other resources which he plans to use ~~and~~

- details of the interface with Others as required in the Works Information, and
 - other information which the Works Information requires the Contractor to show on a programme submitted for acceptance.
- 31.3 Within two weeks of the Contractor submitting a programme to him for acceptance, the Project Manager either accepts the programme or notifies the Contractor of his reasons for not accepting it. A reason for not accepting a programme is that
- the Contractor's plans which it shows are not practicable,
 - it does not show the information which this contract requires,
 - it does not represent the Contractor's plans realistically or
 - it does not comply with the Works Information.
- 31.4 The Contractor provides information which shows how each activity on the Activity Schedule relates to the operations on each programme which he submits for acceptance.**
- Revising the programme 32**
- 32.1 The Contractor shows on each revised programme
- the actual progress achieved on each operation and its effect upon the timing of the remaining work,
 - the effects of implemented compensation events,
 - how the Contractor plans to deal with any delays and to correct notified Defects and
 - any other changes which the Contractor proposes to make to the Accepted Programme.
- 32.2 The Contractor submits a revised programme to the Project Manager for acceptance
- within the period for reply after the Project Manager has instructed him to,
 - when the Contractor chooses to and, in any case,
 - at no longer interval than the interval stated in the Contract Data from the starting date until Completion of the whole of the works.
- Access to and use of the Site 33**
- Z1.17
Z1.17.1
- 33.1 Subject to the provisions of the Works Information regarding access, the Employer allows access to and use of each part of the Site to the Contractor which is necessary for the work included in this contract. Access and use is allowed on or before the later of its access date and the date for access shown on the Accepted Programme.
- Z1.17.2
- 33.1A The Employer does not guarantee uninterrupted or exclusive access to or use of the Site or any Working Area and access is limited in accordance with this contract.
- Instructions to stop or not to start work 34**
- 34.1 The Project Manager may instruct the Contractor to stop or not to start any work and may later instruct him that he may re-start or start it.
- Take over 35**
- Z1.18
- 35.1 The Employer need not take over the works before the Completion Date if it is stated in the Contract Data that he is not willing to do so. Otherwise the Employer takes over the works not later than two weeks after Completion.
- Z1.18.1
- 35.2 The Employer may use or permit Others to use any part of the works before Completion has been certified. If he does so, he does not take takes-over, and is not treated as having taken over, the part of the works when he (or

Others) begins to use it and the *Contractor* remains responsible for that part of the *works* and for its maintenance in accordance with the requirements of the *Works Information* whilst it is being used by the *Employer* and/or *Others* until take over is certified by the *Project Manager* in accordance with clause 35.3. except if the use is

- ~~for a reason stated in the *Works Information* or~~
- ~~to suit the *Contractor's* method of working.~~

35.3 The *Project Manager* certifies the date upon which the *Employer* takes over any part of the *works* and its extent within one week of the date.

Z1.19 **Acceleration 36**

36.1 The *Project Manager* may instruct the *Contractor* to submit a quotation for an acceleration to achieve Completion before the Completion Date. The *Project Manager* states changes to the *access dates and/or* Key Dates to be included in the quotation. A quotation for an acceleration comprises proposed changes to the Prices and a revised programme showing the earlier Completion Date and the changed *access dates and/or* Key Dates. The *Contractor* submits details of his assessment with each quotation.

36.2 The *Contractor* submits a quotation or gives his reasons for not doing so within the *period for reply*.

Z1.19.1 **36.3 When the *Project Manager* accepts a quotation for an acceleration, he changes the Prices, the Completion Date and the Key Dates accordingly and accepts the revised programme.**

4 Testing and Defects

Tests and inspections 40

- 40.1 This clause only applies to tests and inspections required by the Works Information or the applicable law.
- 40.2 The *Contractor* and the *Employer* provide materials, facilities and samples for tests and inspections as stated in the Works Information.
- 40.3 The *Contractor* and the *Supervisor* each notifies the other of each of his tests and inspections before it starts and afterwards notifies the other of its results. The *Contractor* notifies the *Supervisor* in time for a test or inspection to be arranged and done before doing work which would obstruct the test or inspection. The *Supervisor* may watch any test done by the *Contractor*.
- 40.4 If a test or inspection shows that any work has a Defect, the *Contractor* corrects the Defect and the test or inspection is repeated.
- 40.5 The *Supervisor* does his tests and inspections without causing unnecessary delay to the work or to a payment which is conditional upon a test or inspection being successful. A payment which is conditional upon a *Supervisor's* test or inspection being successful becomes due at the later of the *defects date* and the end of the last *defect correction period* if
- the *Supervisor* has not done the test or inspection and
 - the delay to the test or inspection is not the *Contractor's* fault.
- 40.6 The *Project Manager* assesses the cost incurred by the *Employer* in repeating a test or inspection after a Defect is found. The *Contractor* pays the amount assessed.
- 40.7 When the *Project Manager* assesses the cost incurred by the *Employer* in repeating a test or inspection after a Defect is found, the *Project Manager* does not include the *Contractor's* cost of carrying out the repeat test or inspection.**

Testing and inspection before delivery 41

- 41.1 The *Contractor* does not bring to the Working Areas those Plant and Materials which the Works Information states are to be tested or inspected before delivery until the *Supervisor* has notified the *Contractor* that they have passed the test or inspection.

Searching for and notifying Defects 42

- 42.1 Until the *defects date*, the *Supervisor* may instruct the *Contractor* to search for a Defect. He gives his reason for the search with his instruction. Searching may include
- uncovering, dismantling, re-covering and re-erecting work,
 - providing facilities, materials and samples for tests and inspections done by the *Supervisor* and
 - doing tests and inspections which the Works Information does not require.
- 42.2 Until the *defects date*, the *Supervisor* notifies the *Contractor* of each Defect as soon as he finds it and the *Contractor* notifies the *Supervisor* of each Defect as soon as he finds it.

Correcting Defects 43

Z1.19A

- 43.1 The *Contractor* corrects a Defect whether or not the *Supervisor* notifies him of it.

Z1.19A.1

- 43.2 The *Contractor* corrects a notified Defect before the end of the *defect correction period* and in accordance with any programme agreed with the *Employer* and any relevant *Interfacing Other*. The *defect correction period* begins at Completion for Defects notified before Completion and when the Defect is notified for other Defects.
- 43.3 The *Supervisor* issues the Defects Certificate at the later of the *defects date* and the end of the last *defect correction period*. The *Employer's* rights in

respect of a Defect which the *Supervisor* has not found or notified are not affected by the issue of the Defects Certificate.

Z1.19A.2

43.4 The *Project Manager* arranges for the *Employer* to allow the *Contractor* access to and use of a part of the *works* which he has taken over if they are needed for correcting a Defect. In this case the *defect correction period* begins when the necessary access and use have been provided. If the *Contractor* requires access to premises or any other area occupied by an *Interfacing Other* in order to correct a Defect the *Contractor* gives the *Project Manager* reasonable prior notice of the date and time when he will require access to the relevant premises or area and complies with any proper health and safety and security requirements of that *Interfacing Other* in relation to such access.

Z1.19A.3

43.5 The *Contractor* corrects each Defect in such a way that minimises disruption to the *Employer* and *Others* (including the *Interfacing Others*). If the *Contractor* causes any damage in the course of correcting a Defect he remedies such damage to the reasonable satisfaction of the *Employer* at no cost to the *Employer*.

Accepting Defects 44

44.1 The *Contractor* and the *Project Manager* may each propose to the other that the Works Information should be changed so that a Defect does not have to be corrected.

44.2 If the *Contractor* and the *Project Manager* are prepared to consider the change, the *Contractor* submits a quotation for reduced Prices or an earlier Completion Date or both to the *Project Manager* for acceptance. If the *Project Manager* accepts the quotation, he gives an instruction to change the Works Information, the Prices and the Completion Date accordingly.

Uncorrected Defects 45

45.1 If the *Contractor* is given access in order to correct a notified Defect but he has not corrected it within its *defect correction period*, the *Project Manager* assesses the cost to the *Employer* of having the Defect corrected by other people and the *Contractor* pays this amount. The Works Information is treated as having been changed to accept the Defect.

45.2 If the *Contractor* is not given access in order to correct a notified Defect before the *defects date*, the *Project Manager* assesses the cost to the *Contractor* of correcting the Defect and the *Contractor* pays this amount. The Works Information is treated as having been changed to accept the Defect.

Payment

	Assessing the amount due	50
Z1.20	50.1	The <i>Project Manager</i> assesses the amount due at each assessment date. The first assessment date is decided by the <i>Project Manager</i> to suit the procedures of the Parties and is not later than the <i>assessment interval</i> after the <i>starting date</i> . Later assessment dates occur <ul style="list-style-type: none">at the end of each <i>assessment interval</i> until four weeks after the <i>Supervisor</i> issues the Defects Certificate andat Completion of the whole of the <i>works</i>.
Z1.20.1		
	50.2	The amount due is <ul style="list-style-type: none">the Price for Work Done to Date,plus other amounts to be paid to the <i>Contractor</i>,less amounts to be paid by or retained from the <i>Contractor</i>. Any tax which the law requires the <i>Employer</i> to pay to the <i>Contractor</i> is included in the amount due.
	50.3	If no programme is identified in the Contract Data, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the <i>Contractor</i> has submitted a first programme to the <i>Project Manager</i> for acceptance showing the information which this contract requires.
Z1.20.2	50.3A	If any revised programme is not submitted by the <i>Contractor</i> to the <i>Project Manager</i> for acceptance showing the information which this contract requires within the timescales required by clause 32.2, one tenth of the total cumulative increase in the amount due since the assessment date following the last submission of such revised programme is retained in all assessments of the amount due and is not payable to the <i>Contractor</i> until such revised programme has been submitted to the <i>Project Manager</i> for acceptance.
Z1.20.3	50.4	In assessing the amount due, the <i>Project Manager</i> considers any application for payment the <i>Contractor</i> has submitted in accordance with clause 50.1A on or before the assessment date . The <i>Project Manager</i> gives the <i>Contractor</i> details of how the amount due has been assessed.
	50.5	The <i>Project Manager</i> corrects any wrongly assessed amount due in a later payment certificate.
	50.6	Payments of Defined Cost made by the <i>Contractor</i> in a currency other than the <i>currency of this contract</i> are included in the amount due as payments to be made to him in the same currency. Such payments are converted to the <i>currency of this contract</i> in order to calculate the Fee and any <i>Contractor's</i> share using the <i>exchange rates</i>.
	50.7	Not used (as not an Option C clause).
Z1.20.4	50.8	If any parent company guarantee required by this contract is not procured by the <i>Contractor</i> and delivered to the <i>Employer</i> in accordance with Option X4, one quarter of the Price for Work Done to Date is retained in assessments of the amount due and is not payable to the <i>Contractor</i> until such documents have been delivered.
Z1.20.5	50.9	If a warranty required under clause Z2.2 is not delivered to the <i>Employer</i> in accordance with the provisions of clause Z2 save where the Subcontractor has become insolvent or has suffered an insolvency event and ceased to trade, 10% of the total cumulative increase in the amount due since the assessment date following the end of the period for provision of such warranty which is relative to the work carried out and/or goods supplied by the relevant Subcontractor and/or consultant is retained in all assessments of the amount due and is not payable to the <i>Contractor</i> until such warranty is

delivered.

- Z1.20.6 50.10 If a Management Plan is not provided by the times or within the timescales required by this contract, one tenth of the total cumulative increase in the amount due since the assessment date following the end of the period for provision of such Management Plan is retained in all assessments of the amount due and is not payable to the Contractor until such Management Plan is delivered.
- Z1.20.7 50.11 If the Contractor's employment is terminated under clause 91.1 because the Contractor has become insolvent within the meaning of section 113 of the Act (R10A), the Employer need not pay any sum due to the Contractor other than any amount due to him under clause 90.4 either:
- where the Contractor becomes insolvent prior to the prescribed period before the final date for payment, provided that the Employer or Project Manager issues a Pay Less Notice notifying the Employer's intention not to pay such sum, or
 - in any event, if the Contractor becomes insolvent after the prescribed period before the final date for payment.

Payment 51

- Y1.1.1 51.1 The Project Manager certifies a payment within ~~one week~~ seven days of each assessment date. The first payment is the amount due. Other payments are the change in the amount due since the last payment certificate. A payment is made by the Contractor to the Employer if the change reduces the amount due. Other payments are made by the Employer to the Contractor. Payments are in the currency of this contract unless otherwise stated in this contract. If a certificate is not issued by the Project Manager in accordance with this clause 51.1, the sum to be paid by the Employer is the sum stated as due in the Contractor's application in accordance with clause 50.1A.
- Y1.1.2 Y2.2 The date on which payment becomes due is seven days after the assessment date. The final date for payment is fourteen days or a different period for payment if stated in the Contract Data after the date on which payment becomes due.
- Y1.1.2A 51.1B The Project Manager's certificate is the Employer's notice of payment to the Contractor specifying the amount due at the payment due date (the notified sum) and stating the basis on which the amount is calculated.
- Y1.1.2B 51.1C 
- Y1.1.3 51.2 Each certified payment is made within ~~three weeks~~ twenty-one days of the assessment date or, if a different period is stated in the Contract Data, within the period stated. If a certified payment is late, or if a payment is late because the Project Manager does not issue a certificate which he should issue, or either Party fails to pay a sum or any part of it due to the other Party by the final date for its payment, interest is paid on the late payment. Interest is assessed from the final date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.
- Y1.1.3A 51.2A If the amount to be paid to the Contractor is less than the amount to be paid by or retained from the Contractor, the difference is recoverable from the Contractor as a debt due on demand.
- Y1.1.4 Y2.3 If either Party intends to pay less than the notified sum, he notifies the other Party not later than seven days (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under this contract unless he has notified his intention to pay less than the notified sum as required by this contract. In the case of the Employer, the notice may be given on his behalf by the Project Manager.
- 51.3 If an amount due is corrected in a later certificate either

- by the *Project Manager* in relation to a mistake or a compensation event or
- following a decision of the *Adjudicator* or the *tribunal*,

interest on the correcting amount is paid. Interest is assessed from the date when the incorrect amount was certified until the date when the correcting amount is certified and is included in the assessment which includes the correcting amount.

51.4 Interest is calculated on a daily basis at the *interest rate* and is compounded annually.

51.5



Defined Cost 52

52.1 All the *Contractor's* costs which are not included in the Defined Cost are treated as included in the Fee. Defined Cost includes only amounts calculated using rates and percentages stated in the Contract Data and other amounts at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered.

52.2 The *Contractor* keeps these records

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

52.3 The *Contractor* allows the *Project Manager* to inspect at any time within working hours the accounts and records which he is required to keep.

The Contractor's Share 53

53.1 The *Project Manager* assesses the *Contractor's* share of the difference between the total of the Prices and the Price for Work Done to Date. The difference is divided into increments falling within each of the share ranges. The limits of a share range are the Price for Work Done to Date divided by the total of the Prices, expressed as a percentage. The *Contractor's* share equals the sum of the products of the increment within each share range and the corresponding *Contractor's* share percentage.

53.2 If the Price for Work Done to Date is less than the total of the Prices, the *Contractor* is paid his share of the saving. If the Price for Work Done to Date is greater than the total of the Prices, the *Contractor* pays his share of the excess.

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

53.4 The *Project Manager* makes a final assessment of the *Contractor's* share using the final Price for Work Done to Date and the final total of the Prices. This share is included in the final amount due.

53.5 Without limiting sub-clauses 53.1 to 53.4 and 93, if at any time prior to Completion:

- the Price for Work Done to Date exceeds the total of the Prices (excluding, for the avoidance of doubt, any adjustment to the Prices arising from compensation events which have not yet been implemented); and
- the *Project Manager* assesses that the final Price for Work Done to Date is likely to exceed the final total of the Prices

the *Project Manager* may deduct from sums otherwise due to the *Contractor* a sum equivalent to the *Project Manager's* reasonable assessment of the likely share of the excess of the forecast final Price for Work Done to Date over the forecast final total of the Prices. Any sum so deducted is taken into account in assessing the amount due under clauses 53.3 and 53.4 or, if applicable, clause 93.

The Activity Schedule	54
	54.1 Information in the Activity Schedule is not Works Information or Site Information.
	54.2 If the <i>Contractor</i> changes a planned method of working at his discretion so that the activities on the Activity Schedule do not relate to the operations on the Accepted Programme, he submits a revision of the Activity Schedule to the <i>Project Manager</i> for acceptance.
	54.3 A reason for not accepting a revision of the Activity Schedule is that <ul style="list-style-type: none">• it does not comply with the Accepted Programme,• any changed Prices are not reasonably distributed between the activities or• the total of the Prices is changed
	55 Not used (as not an Option C clause)
Z1.21.1	56 In addition to any other rights of the <i>Employer</i> whether at law or equity under this contract, whenever <ul style="list-style-type: none">• under this contract or any other contract between the <i>Employer</i> and the <i>Contractor</i> any sum of money is recoverable from or payable by the <i>Contractor</i> or• any Losses are reasonably and properly owed to, or incurred by, the <i>Employer</i> or any member of the TfL Group under or arising out of this contract or any other contract between the <i>Employer</i> and the <i>Contractor</i> <p>the same may be set-off and/or deducted from any sum then due or which at any time thereafter may become due to the <i>Contractor</i> under this contract.</p>
Z1.22.1	57.1 If the <i>Employer</i> is or at any time up to the making of the final payment under this contract becomes a 'contractor' for the purposes of the Construction Industry Scheme, his obligation to make any payment under this contract is subject to the provisions and requirements of the Construction Industry Scheme and the <i>Contractor</i> complies with the provisions of the Works Information regarding the Construction Industry Scheme.

6 Compensation events

Compensation events 60

Z1.23

Z1.23.1

60.1 The following are compensation events

(1) The *Project Manager* gives an instruction changing the Works Information except

- a change made in order to accept a Defect or
- a change to the Works Information provided by the *Contractor* for his design which is made either at his request or to comply with other Works Information provided by the *Employer*, or
- an instruction which is stated in this contract not to give rise to a compensation event.

(2) ~~The *Employer*~~ Subject to the requirements of the Works Information regarding access and provided that the *Contractor* has booked and co-ordinated access in accordance with the *Employer's* requirements, the *Employer* does not allow access to and use of a part of the Site in accordance with the provisions of this contract by the later of its access date and the date shown on the Accepted Programme.

(3) The *Employer* does not provide something which he is to provide by the date for providing it shown on the Accepted Programme.

(4) The *Project Manager* gives an instruction to accelerate or to stop or not to start any work or to change a Key Date or change any of the access dates.

(5) The *Employer* or Others

- do not work within the times shown on the Accepted Programme,
- do not work within the conditions stated in the Works Information or
- carry out work on the Site that is not stated in the Works Information, or.
- exercise the *Employer's* right to early use of any part of the works in accordance with clause 35.2.

(6) The *Project Manager* or the *Supervisor* does not reply to a communication from the *Contractor* within the period required by this contract.

(7) The *Project Manager* gives an instruction for dealing with an object of value or of historical or other interest found within the Site.

(8) The *Project Manager* or the *Supervisor* changes a decision which he has previously communicated to the *Contractor*.

(9) The *Project Manager* withholds an acceptance (other than acceptance of a quotation for acceleration or for not correcting a Defect) for a reason not stated in this contract.

(10) The *Supervisor* instructs the *Contractor* to search for a Defect and no Defect is found unless the search is needed only because the *Contractor* gave insufficient notice of doing work obstructing a required test or inspection.

(11) A test or inspection done by the *Supervisor* causes unnecessary delay.

(12) The *Contractor* encounters physical conditions which

- are within the Site,
- are not weather conditions and
- an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him 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.

(13) A *weather measurement* is recorded

- within a calendar month,
- before the Completion Date for the whole of the *works* and
- at the place stated in the Contract Data

the value of which, by comparison with the *weather data*, is shown to occur on average less frequently than once in ten years.

Only the difference between the *weather measurement* and the weather which the *weather data* show to occur on average less frequently than once in ten years is taken into account in assessing a compensation event.

(14) An event which is an *Employer's* risk stated in this contract.

(15) The *Project Manager* certifies take over of a part of the *works* before both Completion and the Completion Date.

(16) The *Employer* does not provide materials, facilities and samples for tests and inspections as stated in the Works Information.

(17) The *Project Manager* notifies a correction to an assumption which he has stated about a compensation event.

(18) A breach of contract by the *Employer* which is not one of the other compensation events in this contract **or an act of prevention by the *Employer* which does not arise as a consequence of the *Employer's* exercise of its rights and/or the discharge of its obligations under and in accordance with the contract.**

(19) An event which

- stops the Contractor completing the works or
- stops the Contractor completing the works by the date shown on the Accepted Programme,

which is not

- **an event of insolvency identified in clause 91.1 of the Contractor or any Subcontractor or supplier,**
- **a strike on any form of public transport,**

and which

- neither Party could prevent,
- an experienced contractor would have judged at the Contract Date 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~~ **otherwise expressly referred to** in this contract.

Z1.23.2

60.2 In judging the physical conditions for the purpose of assessing a 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.

Z1.23.3

60.3 If there is an ambiguity or inconsistency within the Site Information (including the information referred to in it), the *Contractor* is assumed to have taken into account the physical conditions more favourable to doing the work.

60.4 The *Contractor* shall take reasonable steps to mitigate the effects of any compensation event.

Notifying compensation Events 61

Z1.24

61.1 For compensation events which arise from the *Project Manager* or the *Supervisor* giving an instruction, issuing a certificate, changing an earlier decision or correcting an assumption, the *Project Manager* notifies the *Contractor* of the compensation event at the time of that communication. He

also instructs the *Contractor* to submit quotations, unless the event arises from a fault of the *Contractor* or quotations have already been submitted. The *Contractor* puts the instruction or changed decision into effect.

61.2 The *Project Manager* may instruct the *Contractor* to submit quotations for a proposed instruction or a proposed changed decision. The *Contractor* does not put a proposed instruction or a proposed changed decision into effect.

Z1.24.1

61.3 The *Contractor* notifies the *Project Manager* 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 *Project Manager* has not notified the event to the *Contractor*.

If the *Contractor* does not notify a compensation event within eight weeks of becoming aware or when he ought reasonably to have become aware of the event, he is not entitled to a change in the Prices, the Completion Date or a Key Date unless the event arises from the *Project Manager* or the *Supervisor* giving an instruction, issuing a certificate, changing an earlier decision or correcting an assumption.

Z1.24.2

61.4 If the *Project Manager* decides that an event notified by the *Contractor*

- arises from a fault of the *Contractor*, including any error, breach of contract, breach of statutory duty, omission or negligence of the *Contractor* or any of its employees or agents or of any *Subcontractor* or its employees or agents,
- has not happened and is not expected to happen,
- has no effect upon Defined Cost, Completion or meeting a Key Date or
- is not one of the compensation events stated in this contract

he notifies the *Contractor* of his decision that the Prices, the Completion Date and the Key Dates are not to be changed. If the *Project Manager* decides otherwise, he notifies the *Contractor* accordingly and instructs him to submit quotations.

The *Project Manager* notifies his decision to the *Contractor* and, if his decision is that the Prices, the Completion Date or the Key Dates are to be changed, instructs him to submit quotations before the end of either

- one week after the *Contractor's* notification or
- a longer period to which the *Contractor* has agreed,

If the *Project Manager's* decision is that the Prices, the Completion Date or the Key Dates are not to be changed, the *Contractor* notifies the *Project Manager* if he does not accept the decision and at the same time of his reasons for not accepting the decision. The *Contractor's* notification does not affect the *Project Manager's* decision that the Prices, Completion Date or the Key Dates are not to be changed. If the *Contractor* does not provide this notification within four weeks of notification of the *Project Manager's* decision, he is treated as having accepted the *Project Manager's* decision.

If the *Project Manager* does not notify his decision, the *Contractor* may notify the *Project Manager* of his failure. A failure by the *Project Manager* to reply within two weeks of this notification is treated as acceptance by the *Project Manager* that the event is a compensation event and an instruction to submit quotations.

61.5 If the *Project Manager* decides that the *Contractor* did not give an early warning of the event which an experienced contractor could have given, he notifies this decision to the *Contractor* when he instructs him to submit quotations.

61.6 If the *Project Manager* decides that the effects of a compensation event are too uncertain to be forecast reasonably, he states assumptions about the event in his instruction to the *Contractor* to submit quotations. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the *Project Manager* notifies a correction.

61.7 A compensation event is not notified after the *defects date*.

Quotations for compensation events 62

Z1.25

62.1 After discussing with the *Contractor* different ways of dealing with the compensation event which are practicable, the *Project Manager* may instruct the *Contractor* to submit alternative quotations. The *Contractor* submits the required quotations to the *Project Manager* and may submit quotations for other methods of dealing with the compensation event which he considers practicable.

Z1.25.1

62.2 Quotations for compensation events comprise proposed changes to the Prices and any delay to the Completion Date and Key Dates assessed by the *Contractor*. The *Contractor* submits details of his assessment **in accordance with the requirements of the Works Information** with each quotation. If the programme for remaining work is altered by the compensation event, the *Contractor* includes the alterations to the Accepted Programme in his quotation.

62.3 The *Contractor* submits quotations within three weeks of being instructed to do so by the *Project Manager*. The *Project Manager* replies within ~~two~~ **three** weeks of the submission. His reply is

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

62.4 The *Project Manager* instructs the *Contractor* to submit a revised quotation only after explaining his reasons for doing so to the *Contractor*. The *Contractor* submits the revised quotation within three weeks of being instructed to do so.

62.5 The *Project Manager* extends the time allowed for

- the *Contractor* to submit quotations for a compensation event and
- the *Project Manager* to reply to a quotation

if the *Project Manager* and the *Contractor* agree to the extension before the submission or reply is due. The *Project Manager* notifies the extension that has been agreed to the *Contractor*.

62.6 If the *Project Manager* does not reply to a quotation within the time allowed, the *Contractor* may notify the *Project Manager* of his failure. If the *Contractor* submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the *Project Manager* does not reply to the notification within ~~two~~ **three** weeks, and unless the quotation is for a proposed instruction or a proposed changed decision, the *Contractor's* notification is treated as acceptance of the quotation by the *Project Manager*.

Assessing compensation Events 63

Z1.26

63.1 The changes to the Prices are assessed as the effect of the compensation event upon

- the actual Defined Cost of the work already done,
- the forecast Defined Cost of the work not yet done and
- the resulting Fee.

If the compensation event arose from the *Project Manager* or the *Supervisor* giving an instruction, issuing a certificate, changing an earlier decision or correcting an assumption, the date which divides the work already done from the work not yet done is the date of that communication. In all other cases, the date is the date of the notification of the compensation event.

63.2 If the effect of a compensation event is to reduce the total Defined Cost, the Prices are not reduced except as stated in this contract.

- Z1.26.1 63.3 A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme. A delay to a Key Date is assessed as the length of time that, due to the compensation event, the planned date when the Condition stated for a Key Date will be met is later than the date shown on the Accepted Programme
- The Project Manager may determine an earlier Completion Date or Key Date if the effect of the compensation event is to reduce the time required for Completion or meeting a Key Date.
- Z1.26.2 63.4 
- 63.5 If the *Project Manager* has notified the *Contractor* of his decision 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.
- Z1.26.3 63.6 Assessment of the effect of a compensation event includes **reasonable and proportionate** risk allowances for cost and time for matters which have a significant chance of occurring and are at the *Contractor's* risk under this contract. Assessments take into account the extent to which the compensation event is caused or contributed to by any fault of the *Contractor* and assumes that the *Contractor* has taken all reasonable steps to mitigate the actual or potential effects of the event.
- 63.7 Assessments are based upon the assumptions that the *Contractor* reacts competently and promptly to the compensation event, that any Defined Cost and time due to the event are reasonably incurred and that the Accepted Programme can be changed.
- 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, the Completion Date and the Key Dates were for the interpretation most favourable to the Party which did not provide the Works Information.
- 63.9 If a change to the Works Information makes the description of the Condition for a Key Date incorrect, the *Project Manager* corrects the description. This correction is taken into account in assessing the compensation event for the change to the Works Information.
- 63.10 Not used (as not an Option C clause).**
- 63.11 If the effect of a compensation event is to reduce the total Defined Cost and the event is
- a change to the Works Information other than a change to the Works Information provided by the *Employer* which the *Contractor* proposed and the *Project Manager* has accepted or
 - a correction of an assumption stated by the *Project Manager* for assessing an earlier compensation event
- the Prices are reduced.
- 63.12 Assessments for changed Prices for compensation events are in the form of changes to the Activity Schedule.
- 63.13 Not used (as not an Option C clause).**
- 63.14 If the *Project Manager* and the *Contractor* agree, rates and lump sums may be used to assess a compensation event.
- 63.15 ~~If the *Project Manager* and the *Contractor* agree, the~~ **The Contractor** assesses a compensation event using the Schedule of Cost Components. The *Project Manager* may make his own assessments using the Schedule of Cost Components..

The Project Manager's Assessments 64

Z1.27

Z1.27.1

- 64.1 The *Project Manager* assesses a compensation event
- if the *Contractor* has not submitted a quotation and details of his assessment in accordance with the *Works Information* within the time allowed,
 - if the *Project Manager* decides that the *Contractor* has not assessed the compensation event correctly in a quotation and he does not instruct the *Contractor* to submit a revised quotation,
 - if, when the *Contractor* submits quotations for a compensation event, he has not submitted a programme or alterations to a programme which this contract requires him to submit or
 - if, when the *Contractor* submits quotations for a compensation event, the *Project Manager* has not accepted the *Contractor's* latest programme for one of the reasons stated in this contract.
- 64.2 The *Project Manager* assesses a compensation event using his own assessment of the programme for the remaining work if
- there is no Accepted Programme or
 - the *Contractor* has not submitted a programme or alterations to a programme for acceptance as required by this contract.
- 64.3 The *Project Manager* notifies the *Contractor* of his assessment of a compensation event and gives him details of it within the period allowed for the *Contractor's* submission of his quotation for the same event. This period starts when the need for the *Project Manager's* assessment becomes apparent.

Z1.27.2

- 64.4 If the *Project Manager* does not assess a compensation event within the time allowed, the *Contractor* may notify the *Project Manager* of his failure. If the *Contractor* submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the *Project Manager* does not reply within ~~two~~ **three** weeks of this notification the notification is treated as acceptance of the *Contractor's* quotation by the *Project Manager*.

Implementing compensation events 65

Z1.28

- 65.1 A compensation event is implemented when
- the *Project Manager* notifies his acceptance of the *Contractor's* quotation,
 - the *Project Manager* notifies the *Contractor* of his own assessment or
 - a *Contractor's* quotation is treated as having been accepted by the *Project Manager*.
- 65.2 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.
- Z1.28.1 65.3 **The *Contractor* notifies the *Project Manager* if he does not accept the *Project Manager's* assessment and at the same time of his reasons for not accepting the *Project Manager's* assessment. If the *Contractor* does not provide this notification within four weeks of notification of the *Project Manager's* assessment, he is treated as having accepted the *Project Manager's* assessment.**
- 65.4 **The changes to the Prices, the Completion Date and the Key Dates are included in the notification implementing a compensation event.**

7 Title

The Employer's title to Plant and Materials	70
Z1.29 Z1.29.1	70.1 Whatever title the <i>Contractor</i> has to Plant and Materials which is outside the Working Areas passes to the <i>Employer</i> as soon as the <i>Contractor</i> or <i>Supervisor</i> has marked them as for this contract or the <i>Employer</i> makes payment (partial or otherwise) for them, whichever is the earlier— if the <i>Supervisor</i> has marked it as for this contract. The <i>Contractor</i> ensures that such Plant and Materials are clearly identified as belonging to the <i>Employer</i> and are set aside for the <i>Employer</i> .
	70.2 Whatever title the <i>Contractor</i> has to Plant and Materials passes to the <i>Employer</i> if it has been brought within the Working Areas. The title to Plant and Materials passes back to the <i>Contractor</i> if it is removed from the Working Areas with the <i>Project Manager's</i> permission.
Z1.29.2	70.3 If requested by the <i>Project Manager</i> , the <i>Contractor</i> provides proof of his title to Plant and Materials prior to their value being included in the assessment of any amount due under this contract.
Marking Equipment, Plant and Materials outside the Working Areas	71
	71.1 The <i>Supervisor</i> marks Equipment, Plant and Materials which are outside the Working Areas if <ul style="list-style-type: none">• this contract identifies them for payment and• the <i>Contractor</i> has prepared them for marking as the Works Information requires.
Removing Equipment	72
	72.1 The <i>Contractor</i> removes Equipment from the Site when it is no longer needed unless the <i>Project Manager</i> allows it to be left in the works.
Objects and materials within the site	73
	73.1 The <i>Contractor</i> has no title to an object of value or of historical or other interest within the Site. The <i>Contractor</i> notifies the <i>Project Manager</i> when such an object is found and the <i>Project Manager</i> instructs the <i>Contractor</i> how to deal with it. The <i>Contractor</i> does not move the object without instructions.
	73.2 The <i>Contractor</i> has title to materials from excavation and demolition only as stated in the Works Information.

8 Risks and insurance

	Employer's risks	80	
Z1.30		80.1	The following are <i>Employer's</i> risks. <ul style="list-style-type: none"> • Claims, proceedings, compensation and costs payable which are due to <ul style="list-style-type: none"> • use or occupation of the Site by the <i>works</i> or for the purpose of the <i>works</i> which is the unavoidable result of the <i>works</i>, • negligence, breach of statutory duty or interference with any legal right by the <i>Employer</i> or by any person employed by or contracted to him except the <i>Contractor</i> or • a fault of the <i>Employer</i> or a fault in his design • Loss of or damage to Plant and Materials supplied to the <i>Contractor</i> by the <i>Employer</i>, or by Others on the <i>Employer's</i> behalf, until the <i>Contractor</i> has received and accepted them. • Loss of or damage to the <i>works</i>, Plant and Materials due to <ul style="list-style-type: none"> • war, civil war, rebellion, revolution, insurrection, military or usurped power, • strikes, riots and civil commotion not confined to the <i>Contractor's</i> employees or • radioactive contamination. • Loss of or wear or damage to the parts of the <i>works</i> taken over by the <i>Employer</i>, except loss, wear or damage occurring before the issue of the Defects Certificate which is due to <ul style="list-style-type: none"> • a Defect which existed at take over, • failure by the Contractor to comply with his obligations under this contract • an event occurring before take over which was not itself an <i>Employer's</i> risk or • the activities of the <i>Contractor</i> on the Site after take over. • Loss of or wear or damage to the <i>works</i> and any Equipment, Plant and Materials retained on the Site by the <i>Employer</i> after a termination, except loss, wear or damage due to the activities of the <i>Contractor</i> on the Site after the termination. • Additional <i>Employer's</i> risks stated in the Contract Data.
Z1.30.1			
Z1.30.2			
	The Contractor's risks	81	
		81.1	From the <i>starting date</i> until the Defects Certificate has been issued, the risks which are not carried by the <i>Employer</i> are carried by the <i>Contractor</i> .
	Repairs	82	
		82.1	Until the Defects Certificate has been issued and unless otherwise instructed by the <i>Project Manager</i> , the <i>Contractor</i> promptly replaces loss of and repairs damage to the <i>works</i> , Plant and Materials.
	Indemnity	83	
Z1.31		83.1	Each Party The Contractor is responsible for and indemnifies the Employer, his employees and agents and members of the Tfl Group against all Losses, including Losses arising under the Employer's contracts with Others, in respect of events or matters the other against claims, proceedings, compensation and costs due to an event which is are at his risk including: <ul style="list-style-type: none"> • personal injury to or death of any person; • loss of or damage to property real or personal other than to the works prior to Completion.
Z1.31.1			

- any infringement of any intellectual property right of any third party (including a Subcontractor) arising out of the design, construction or use of the works,
- any nuisance or interference referred to in clause Z2.6 and which could not have been avoided by the Contractor using all reasonable and practical means, and
- any breach of Data Protection Legislation or clause Z2.17.

Z1.31.2

83.2



Remedies

Z1.32

83A.1 The Parties acknowledge and agree that the payment or deduction of:

- (a) liquidated damages for disruption to the DLR Network pursuant to clause Z2.12 is without prejudice to the Employer's other rights and remedies (including its right to delay damages pursuant to Option X7); and
- (b) delay damages pursuant to Option X7 is without prejudice to the Employer's right to liquidated damages for disruption pursuant to clause Z2.12.

Insurance cover 84

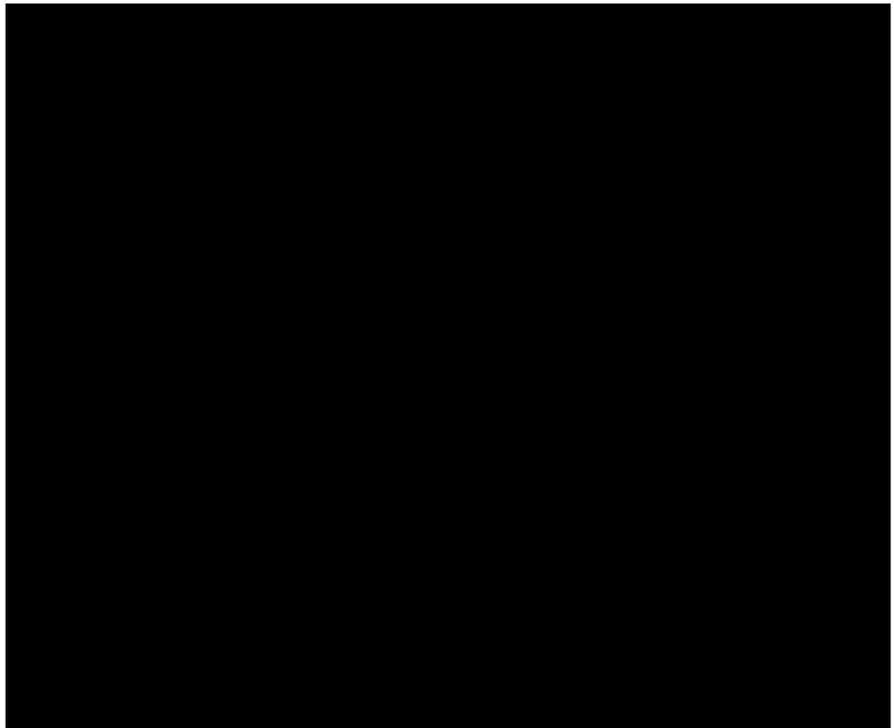
Z1.33

Z1.33.1

84.1 The Parties provide ~~Contractor provides~~ the insurances stated in the Insurance Table ~~except any insurance which the Employer is to provide as stated in the Contract Data.~~ The Contractor provides additional insurances as stated in the Contract Data.

Z1.33.2

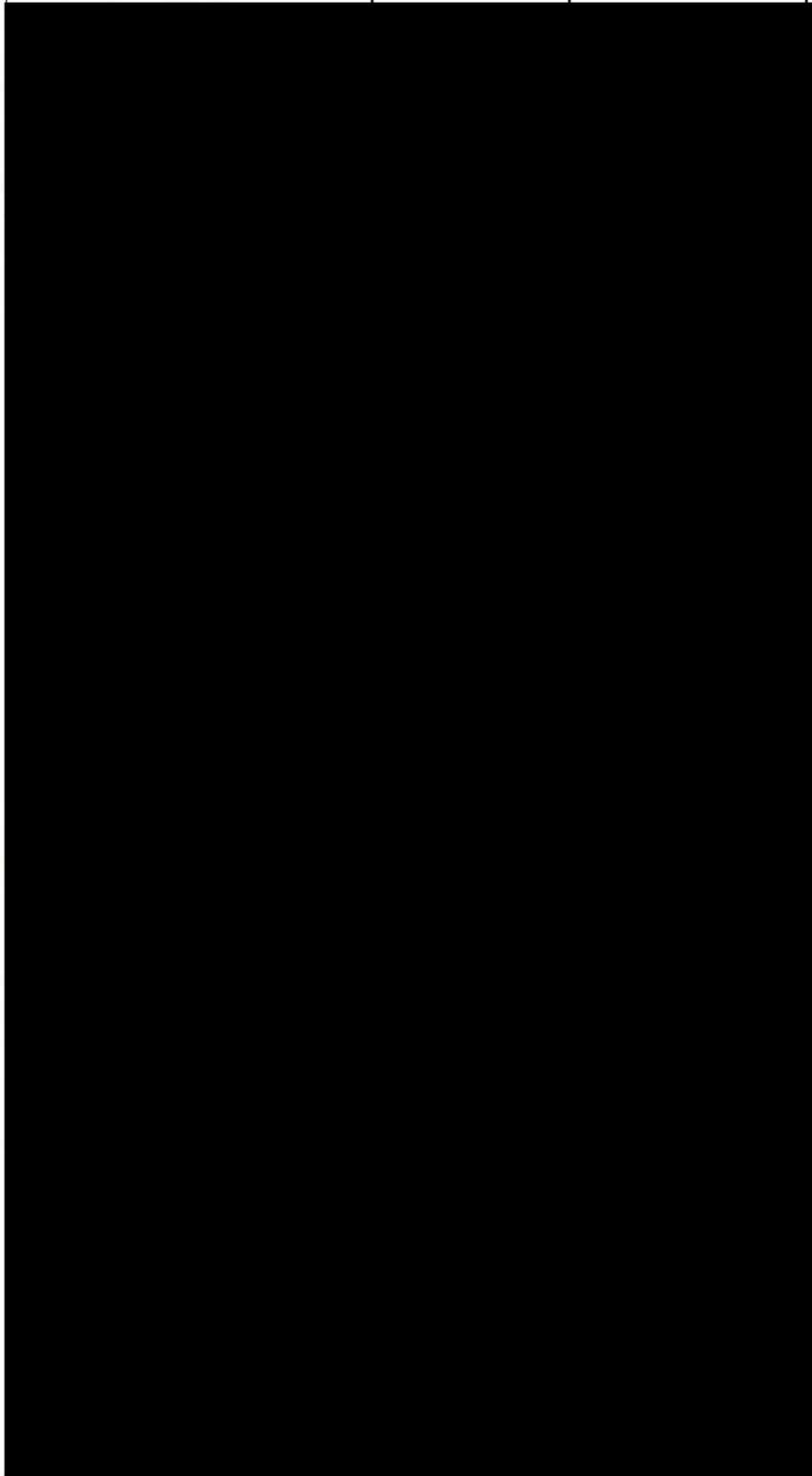
84.2 ~~The insurances are in the joint names of the Parties and provide cover for events which are at the Contractor's risk from the starting date until the Defects Certificate or a termination certificate has been issued.~~

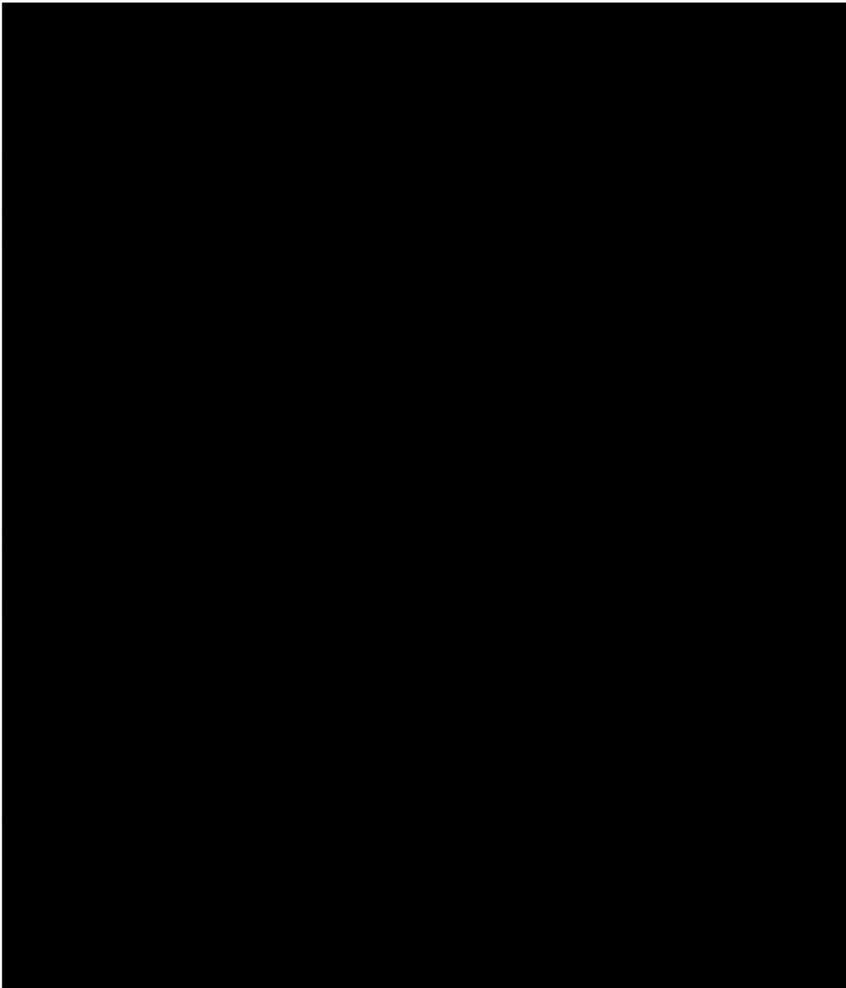




Insurance Table

Insurance Against	Party Responsible for ensuring insurance is in place	Minimum amount of cover or minimum limit of indemnity
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- Z1.33.3 84.3 In respect of the insurances provided by the *Contractor*:
 - the insurances provide cover from the *starting date* until the Defects Certificate or a termination certificate has been issued, whichever is the later, provided however that the *Contractor* ensures that his professional indemnity insurance is in place from the Contract Date until not less than 12 years after Completion;
 - the *Contractor* bears the cost of all premiums, which is deemed to be included in the Fee;
 - if such professional indemnity insurance ceases to be available at commercially reasonable rates and on reasonable terms, the Parties meet and the *Contractor* outlines the steps he intends to take to manage such risks. If the steps proposed by the *Contractor* are not acceptable to the *Employer* (acting reasonably), the Parties agree an alternative method of managing such risk.
- Z1.33.4 84.4 The *Contractor* does not by any act or fault prejudice, lose or forgo the Parties' right or the right of either of them to make or proceed with a claim against any insurer.
- Z1.33.5 84.5 
 - I 
- Z1.33.6 84.6 The insurances provided pursuant to this contract do not relieve the

Contractor from any of his obligations and liabilities under this contract.

Insurance policies 85

Z1.34

Z1.34.1

85.1 Before the *starting date* and on each renewal of the insurance policy until the *defects date*, the *Contractor* submits to the *Project Manager* for acceptance certificates which state that the insurance required by this contract is in force. The certificates are signed by the *Contractor's* insurer or insurance broker. A reason for not accepting the certificates is **that**:

- ~~that~~ they do not comply with this contract,
- the proposed insurer is not a reputable insurer authorised to underwrite the insurances in the United Kingdom; or
- the proposed insurer is not, having regard, without limitation, to the size, nature and complexity of the *works*, of sufficient financial strength.

Z1.34.2

85.2 ~~Insurance policies include a waiver by the insurers of their subrogation rights against directors and other employees of every insured except where there is fraud. Not used.~~

85.3 The Parties comply with the terms and conditions of the insurance policies.

Z1.34.3

85.4 Any amount not recovered from an insurer (including excesses or deductibles) is borne by the *Employer* for events which are at his risk and by the *Contractor* for events which are at his risk.

Z1.34.4

85.5 In the event of the insolvency of an insurer of either Party, the insuring Party informs the other Party forthwith on becoming aware thereof and submits documentary evidence of alternative insurance to the other Party for acceptance.

If the *Contractor* does not insure 86

Z1.35

Z1.35.1

86.1 The *Employer* may insure a risk which this contract requires the *Contractor* to insure if the *Contractor* does not submit a required certificate. The cost of this insurance (including all reasonable expenses incurred by the *Employer* in respect of taking out such insurance) to the *Employer* is paid by the *Contractor*. If the *Employer* insures a risk which this contract requires the *Contractor* to insure, this is without prejudice to any of the *Employer's* other rights, powers or remedies under this contract.

Insurance by the *Employer* 87

Z1.36

87.1 The *Project Manager* submits policies and certificates for insurances provided by the *Employer* to the *Contractor* for acceptance before the *starting date* and afterwards as the *Contractor* instructs. The *Contractor* accepts the policies and certificates if they comply with this contract.

87.2 The *Contractor's* acceptance of an insurance policy or certificate provided by the *Employer* does not change the responsibility of the *Employer* to provide the insurances stated in the Contract Data.

87.3 The *Contractor* may insure a risk which this contract requires the *Employer* to insure if the *Employer* does not submit a required policy or certificate. The cost of this insurance to the *Contractor* is paid by the *Employer*.

Z1.36.1

87.4 The *Contractor* co-operates with the *Employer* regarding the handling and settlement of claims under the *Employer's* insurances and complies with the requirements of the *Employer's* insurers in connection with the handling and settlement of claims, including where appropriate the provision of such information, documents and records as the *Employer*, its claims handler and its insurers require.

Z1.36.2

87.5 The *Contractor* complies and ensures that its Subcontractors comply with the requirements of the *Employer's* claims handling procedures, such procedure to be provided to the *Contractor* by the *Employer*.

Z1.36.3

87.6 The *Contractor* does not compromise, settle or waive any claim which the *Contractor* may have under the *Employer's* insurances without the prior

written consent of the *Employer*.

- Z1.36.4 87.7 The insurances provided by the *Employer* are in effect for the duration of the *works* at the Site and any associated compounds storage and transit locations and other places accepted by the *Project Manager* and used solely for the purposes of carrying out of the physical works within the United Kingdom.
- Z1.36.5 87.8 The *Contractor* ensures that each subcontract with its Subcontractors includes an acknowledgement that the Subcontractor is an insured party under the insurances provided by the *Employer* while the Subcontractor is engaged in carrying out the *works* at the Site and any associated compounds storage and transit locations and other places accepted by the *Project Manager* and used solely for the purposes of carrying out of the physical works within the United Kingdom.

9 Termination

Z1.37 Termination 90

- 90.1 If either Party wishes to terminate the *Contractor's* obligation to Provide the Works he notifies the *Project Manager* and the other Party giving details of his reason for terminating. The *Project Manager* issues a termination certificate to both Parties promptly if the reason complies with this contract.
- 90.2 The *Contractor* may terminate only for a reason identified in the Termination Table. The *Employer* may terminate for any reason. The procedures followed and the amounts due on termination are in accordance with the Termination Table.

TERMINATION TABLE

Z1.37.1

Terminating Party	Reason	Procedure	Amount due
The Employer	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
The Contractor	[REDACTED]	[REDACTED]	[REDACTED]

	████████		████████
	████████	████████	████████

Z1.37.2

- 90.3 The procedures for termination are implemented immediately after the *Project Manager* has issued a termination certificate.
- 90.4 Within thirteen weeks of termination, the *Project Manager* certifies a final payment to or from the *Contractor* which is the *Project Manager's* assessment of the amount due on termination less the total of previous payments. Payment is made within three weeks of the *Project Manager's* certificate **or (where payment is due to the Contractor) within three weeks of receipt of the VAT invoice. Within 5 days of issue of the payment certificate the Contractor delivers to the Employer a VAT invoice in the amount of the certificate.**
- 90.5 After a termination certificate has been issued, the *Contractor* does no further work necessary to Provide the Works **other than all work necessary for the protection of people or property or for the safety and security of the works and/or the Site.**

Reasons for termination 91

Z1.38
Z1.38.1

- 91.1 Either Party may terminate if the other Party has done one of the following (or its equivalent in other jurisdictions) and the *Employer* may terminate if the *Contractor* comprises two or more persons in joint venture, partnership, consortium or other unincorporated grouping (a "**Joint Venture**") and any of the parties comprising the Joint Venture has done one of the following (or its equivalent in other jurisdictions).
- If the other Party is an individual and has
 - presented his petition for bankruptcy (R1),
 - had a bankruptcy order made against him (R2),
 - had a receiver appointed over his assets (R3) or
 - made an arrangement with his creditors (R4).
 - If the other Party is a company or partnership and has
 - had a winding-up order made against it (R5),
 - had a provisional liquidator appointed to it (R6),
 - passed a resolution for winding-up (other than in order to amalgamate or reconstruct) (R7),
 - had an administration order made against it (R8),
 - had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets (R9) or
 - made an arrangement with its creditors (R10).
 - **If the other Party has become insolvent as defined in section 113 of the Act (R10A).**
- 91.2 The *Employer* may terminate if the *Project Manager* has notified that the *Contractor* has defaulted in one of the following ways and not put the default right within four weeks of the notification.
- Substantially failed to comply with his obligations (R11).
 - Not provided **or replaced** a bond or guarantee which this contract requires (R12).
 - Appointed a Subcontractor for substantial work before the *Project Manager* has accepted the Subcontractor (R13).
- 91.3 The *Employer* may terminate if the *Project Manager* has notified that the *Contractor* has defaulted in one of the following ways and not stopped defaulting within four weeks of the notification.
- Substantially hindered the *Employer* or Others (R14).

Z1.38.2