**Climate Adaptation Scilly - Coastal Defence Works – NEC3 ECC Contract Core Clause Amendments & “Z Clauses”**

| **Clause Heading** | **Clause No.** | **Amendment** |
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| **Identified and defined terms** | 11.2 | (2) (Definition of Completion)  In the first bullet point, delete the word "and".  In the second bullet point, insert a semi colon after the word "Defects" and delete the words "which would have prevented the *Employer* from using the *works* and Others from doing their work."  Add third and fourth bullet points as follows.   * "provided all documents and other information the Works Information states he is to provide by the Completion Date; and * provided any deed of warranty requested by the *Employer* in accordance with this contract." |
| **Identified and defined terms** | 11.2 | (5) (Definition of Defect)  At the first bullet point add the following after the words “Works Information”:  “or otherwise not in accordance with the contract;” |
| **Identified and defined terms** | 11.2 | (8) (Definition of “Fee”)  Add the following before the full stop at the end of clause 11.2(8):  “, in each case excluding the Defined Cost of   * correcting Defects (where the cost is not a Disallowed Cost) and * design and work undertaken to correct a failure of the design in circumstances in which the failure is due to the Contractor not meeting the standard of care required by clause X15.” |
| **Identified and defined terms** | 11.2 | (34) Add a new clause 11.2 (34) as follows  “Statutory Undertaker” means any person who has a statutory right or a right pursuant to a licence granted under any statute to place or maintain any apparatus (including any pipe conduit sewer drain or tunnel) on under or over the Site or to inspect adjust repair alter renew reposition or remove such apparatus. |
| **Identified and defined terms** | 11.2 | (35) Add a new clause 11.2(35) as follows.  "The CDM Regulations are the Construction (Design and Management) Regulations 2015 (including any amendment or addition to or replacement of those regulations from time to time) and any approved code(s) of practice issued in connection with such regulations." |
| **Identified and defined terms** | 11.2 | (36) Add a new clause 11.2(36) as follows.  "COVID-19 Guidance is the following as at the Contract Date:   1. The social distancing guidance required by Public Health England; 2. The guidance issued by the Construction Leadership Council; 3. The guidance issued by the UK Government; 4. The ‘test and trace’ guidance issued by the UK Government; 5. Any subsequent amendments or changes to the CDM Regulations and the health and safety file(s) to reflect the guidance listed in this sub-clause; and 6. any guidance, policies or procedures issued by the *Employer* arising from the items listed at (i) to (v) above,   all in respect of the COVID-19 Pandemic." |
| **Identified and defined terms** | 11.2 | (37) Add a new clause 11.2(37) as follows.  "COVID-19 Pandemic means the pandemic caused by COVID-19 (the official designation of the disease which can be caused by coronavirus which is a severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2))." |
| **Identified and defined terms** | 11.2 | (38) Add a new clause 11.2(38) as follows.  "The Planning Permissions are all planning permissions required for the *works*, including any planning permissions identified in the Works Information.” |
| **Identified and defined terms** | 11.2 | (39) Add a new clause 11.2(39) as follows.  "A Funder is any person, organisation, government organisation, office, department or body (including the Environment Agency and the Ministry of Housing, Communities and Local Government or any successor responsible for the European Regional Development Fund (“ERDF”) or similar grant or funding), firm, company or bank, including any mortgagee, who has provided funding or financial assistance in connection with all or any part of the *works*." |
| **Identified and defined terms** | 11.2 | (40) Add a new clause 11.2(40) as follows.  “Intellectual Property Rights are patents, trademarks, service marks, trade names, registered and unregistered designs, trade or business names, copyright (including, but not limited to, rights in software), database rights, design rights, rights in confidential information and any other intellectual property rights whatsoever (whether or not such intellectual property rights are registered or capable of registration) which may subsist in any part of the world." |
| **Identified and defined terms** | 11.2 | (41) Add a new clause 11.2 (41) as follows:  "The Project Manager is the Specified Person as defined in s110A (6) of the amended Housing Grants, Construction and Regeneration Act 1996, which may include the Employer.” |
| **Identified and defined terms** | 11.2 | (42) Add a new clause 11.2(42) as follows.  "A Purchaser is any person to whom the *Employer* transfers or agrees to transfer his interest in or who has contracted (whether with the *Employer* or any third party) to acquire a freehold interest in all or part of the Site and/or the *works*." |
| **Identified and defined terms** | 11.2 | (43) Add a new clause 11.2(43) as follows.  "A Tenant is any person to whom the *Employer* grants or agrees to grant a leasehold interest in or who has contracted (whether with the *Employer* or any third party) to acquire such an interest in all or any part of the Site and/or the *works*." |
| **Interpretation and the law** | 12.5 | Add a new clause 12.5 as follows.  "Reference to any statute or statutory provision includes any amendment modification or re-enactment of that statute or statutory provision." |
| **Interpretation and the law** | 12.6 | Add a new clause 12.6 as follows.  "Headings of clauses and sub-clauses are for convenience only and do not affect the interpretation of this contract." |
| **Interpretation and the law** | 12.7 | Add a new clause 12.7 as follows.  "In this contract:   * words placing an obligation on a party to do any act matter or thing include an obligation to procure that it be done; * words placing a party under a restriction include an obligation not to permit or allow infringement of the restriction; and * words introduced by the terms “including”, “include”, “in particular” or any similar expression are illustrative and do not limit the sense of the words preceding those terms." |
| **Communications** | 13.9 | Add a new clause 13.9 as follows.  "The following notifications have no effect if made by email or via a contract management software system:   * any notification relating to termination of this contract or the employment of the *Contractor* under it; * any notification by the *Contractor* of his intention to suspend performance of his obligations under this contract; and * any notification relating to any adjudication or other procedure for resolution of disputes or differences under or in connection with this contract.” |
| **The Project Manager and the Supervisor** | 14.1 | Add at the end of clause 14.1 as a new sentence after "for his design".  "For the avoidance of doubt, the *Contractor*’s responsibility to Provide the Works does not change by reason of:   * the Project Manager's or Employer's acceptance of his design or any part of his design; or * any approval of his design or any part of his design by Others.” |
| **Early warning** | 16.1 | Delete the bullet points and replace with:   * change the total of the Prices * change Completion * change the date a Key Date will be met * impair the performance of the works in use * adversely affect the Contractor’s performance |
| **Ambiguities and inconsistencies** | 17.1 | Delete the second sentence.  Add the following at the end of clause 17.1:  "If and when the *Project Manager* requests, the *Contractor* sets out in writing his proposed amendments to remove the ambiguity or inconsistency. The *Project Manager* gives an instruction to resolve the ambiguity or inconsistency, whether by acceptance of the *Contractor*'s proposal or otherwise.” |
| **Ambiguities and inconsistencies** | 17.2 | Add a new clause 17.2;  “Insofar as any of the additional or amended conditions of contract incorporated as Z clauses in this Section conflict or are inconsistent with any of the provisions of the conditions of contract then the additional conditions of contract shall prevail. If any clause is amended or substituted by the provisions of the additional conditions of contract, such clause is read and is construed as if such additional conditions of contract were part of such clause or as if the clause were drawn in its amended or substituted form.” |
| **Providing the Works** | 20.1 | Delete existing clause 20.1 and Substitute the following:  “The *Contractor* Provides the Works:   * in a proper and workmanlike manner * in accordance with;   + the Works Information, all statutes, statutory instruments, regulations, rules and orders made under any statute or directive having the force of law which affect the *works* or performance of any obligations under this contract, and   + any regulation, byelaw, Planning Permissions or approval of any local authority or Statutory Undertaker having jurisdiction in relation to the works or with whose systems the works are, or are to be, connected; and * so as to prevent any avoidable nuisance to or interference with the rights of any adjoining or neighbouring landowner tenant or occupier (including, where relevant, the *Employer*) or any Statutory Undertaker or other third party arising in connection with the *works*; and * so as not to cause or contribute to any breach by the *Employer* of any agreement entered or to be entered into by the *Employer* and identified in the Works Information or hinder the *Employer* in entering into or performing any such agreement.” |
| **Providing the Works** | 20.2 | Add the following as a new clause 20.2.  “Without prejudice to any other obligation under this contract, Plant and Materials used by the Contractor are of satisfactory quality and in the case of materials new or recycled unless the Works Information expressly requires otherwise. The Contractor shall obtain the express permission of the Project Manager prior to the use of recycled materials.  The *Contractor* does not use any substances or materials:   * generally known at the time of use to be deleterious or hazardous to health and safety or detrimental to integrity or durability in the particular circumstances in which they are specified or used; or * which do not comply with any applicable British Standard or European Standard or any applicable code of practice." |
| **The Contractor’s design** | 21.4 | Add a new clause 21.4 as follows.  "Unless the Works Information expressly states to the contrary:   * the *Employer* does not warrant that any drawing, document, design or information included or referred to in the Works Information or provided to the *Contractor* by or on behalf of the *Employer* is complete and accurate; * the *Contractor* acknowledges that it is not entitled to and will not rely on the completeness and accuracy of any such drawing, document, design or information; and * prior to relying on or otherwise using any such drawing, document, design or information the *Contractor* is deemed to have independently checked and verified that such drawing, document, design or information is complete and accurate." |
| **The Contractors Design** | 21.5 | Insert new clause 21.5 as follows:  “To the extent that the *works* involve design obligations, the *Contractor*'s liability to the *Employer* for any defect in design or the provision of any other professional services and/or for any deficiency or failure to comply with any statutory requirements, the Planning Permissions and/or the Works Information shall be the like liability of an architect, engineer or other appropriate professional designer holding himself out as competent to take on the work for such design.” |
| **Working with the Employer and Others** | 25.3 | Delete "within four weeks of" in the penultimate sentence and replace with "following" and delete the final sentence of clause 25.3. |
| **Subcontracting** | 26.3 | Add a new sentence to the end of the clause as follows:  "If reasonably required by the Employer the Contractor shall procure sub-contractors for each sub-contract package of works, or otherwise in accordance with the Employer’s contract procedure rules.” |
| **Subcontracting** | 26.4 | Add a new clause 26.4 as follows.  “The *Contractor* provides to the *Employer* on request certified copies of any contract entered into with a Subcontractor.” |
| **Subcontracting** | 26.5 | Add a new clause 26.5 as follows.  "If the *Contractor* terminates the appointment of any Subcontractor, the *Contractor* notifies the *Project Manager* as soon as practicable.” |
| **Subcontracting** | 26.6 | Add new clause 26.6 as follows.  "The *Employer* may at any time instruct the *Contractor* to remove any Subcontractor from carrying out the *works* if, in the *Employer's* reasonable opinion, that Subcontractor's performance or conduct is unsatisfactory. The *Contractor* shall remove any such Subcontractor promptly at no cost to the *Employer* and without any adjustment to the Key Dates or the Completion Date (unless otherwise agreed bv the Employer in writing)." |
| **Other responsibilities** | 27.5 | Add a new Clause 27.5 as follows.  “For the purposes of the CDM Regulations:   * the *Contractor* is the principal contractor; and * the *Employer* is the client.   The *Contractor* warrants that it is and will at all times whilst Providing the Works remain competent and adequately resourced to carry out the role of a principal contractor under the CDM Regulations and all obligations and duties placed on the *Contractor* under the CDM Regulations and to ensure that the conditions stated are achieved by the Key Dates and the Works are completed by the Completion Date. ” |
| **Other responsibilities** | 27.6 | Insert new clause 27.6 as follows:  "The Contractor prevents any unlawful nuisance (including any unlawful noisy working operations) or other unlawful interference with the rights of any adjoining owner, tenant or occupier or any Statutory Undertaker, of which the Contractor is or ought reasonably to have been aware, arising out of the carrying out of the works. The Contractor provides reasonable assistance to the Employer in defending any action or proceedings in relation to any such nuisance or interference. The Contractor is liable for and shall indemnify the Employer against any costs, claims, expenses and losses resulting from any failure or default by the Contractor in performing its obligations under this clause 27.6." |
| **Other responsibilities** | 27.7 | Insert new clause 27.7 as follows:  "The *Contractor* ensures that there is no trespass by the *Contractor*, his employees, agents or any Subcontractors, or anyone acting on its or their behalf (including the oversailing of tower crane jibs) on or over any adjoining or neighbouring property arising out of the *works* (without consent having been obtained) and takes all reasonable safety and other measures to prevent damage or injury to any persons including the occupiers of adjoining or neighbouring property and members of the public. If carrying out the works or rectifying a Defect would otherwise be an act of trespass, the *Contractor* obtains, at no cost to the *Employer*, the prior written agreement of the owners or occupiers of any adjoining or neighbouring property to that act. That agreement is subject to the *Employer's* approval before its completion, such approval not to be unreasonably withheld or delayed and the *Contractor* complies with any conditions contained in that agreement. Nothing in this clause 27.7 entitles the *Contractor* to a compensation event." |
| **Other responsibilities** | 27.8 | Insert new clause 27.8 as follows:  "Save where expressly stated otherwise in the Works Information, the *Contractor* obtains all necessary permits, consents and approvals (including third party approvals) necessary for the *works* and any costs or delays incurred by the *Contractor* in obtaining the same is not a compensation event for the purpose of clause 60 of this contract." |
| **The programme** | 31 | Add a fifth sub-bullet to the seventh main bullet in clause 31.2 as follows:   * consents and licences from Others. |
| **Defects** | 45.1 | Replace “assesses” with “may assess”. |
| **Assessing the amount due** | 50.1 | Add the following at the beginning of clause 50.1:  "Not later than three days prior to each assessment date the *Contractor* submits to the *Project Manager* an application for payment. Each application for payment shows the *Contractor*’s detailed assessment of:   * the Price for Work Done to Date; * other amounts to be paid to the *Contractor*; * amounts to be paid by or retained from the *Contractor*; * the amount due; * the change in the amount due since the last payment certificate (if any); and * any other matters required by the Works Information.   Each application is supported by such documents as may be reasonably required by the *Project Manager.”*  At the end of the first sentence of the standard text delete the full stop and add the following:  “provided that the *Project Manager* need not make an assessment on any assessment date in respect of which the Contractor has not submitted an application in accordance with the above.” |
| **Payment** | 51.2 | Delete clause 51.2 in its entirety and substitute the following:  "Subject to any pay less notice issued pursuant to clause Y(UK)2.3, each certified payment is made on or before the final date for payment. In the event that the *Project Manager* fails to certify a payment in accordance with clause 51.1, the sum stated in the *Contractor's* application for payment shall become the notified sum, subject to the remainder of this clause.” |
| **Payment** | 51.5 | Add a new clause 51.5 as follows.  "Notwithstanding any other provision of this contract, it is a condition precedent to any sum falling due under this contract that the *Contractor* has:   * provided to the *Employer* all deeds of warranty requested by the *Employer* in accordance with this contract; * if stated as applicable in the Invitation to Tender, delivered to the Employer a parent company guarantee in the form set out in the Works Information duly executed as a deed by the *Contractor’s* ultimate parent; and * if stated as applicable in the Form of Enquiry, provided a bond in the form set out in the Works Information by a surety approved by the *Employer* in its absolute discretion." |
| **Compensation events** | 60.1 (1) | (1) Delete "The" at the start of clause 60.1(1) and replace with "Subject always to clauses 11.2(19) and 21.1, the".  Add the following at the end of the second bullet point of clause 60.1(1).  "or to remove or correct an ambiguity or discrepancy therein."  Add third and fourth bullet points as follows.   * “a change required due to the manifestation of a risk carried by the *Contractor* or * a change by reason of any ambiguity or inconsistency in or between any Works Information provided by the *Contractor* or * where and to the extent that the *Contractor* is liable for the design of the *works*, a change required to correct an error, omission, inconsistency, ambiguity, discrepancy or divergence within or between any of the design documentation forming part of this contract and provided by the *Employer* or Others.” |
| **Compensation events** | 60.1 (4) | (4) Delete this Clause and replace with:  “(4) The Project Manager gives an instruction to stop or not to start any work or to change a Key Date unless such instruction is due to the Contractor not complying with the contract or the applicable law.” |
| **Compensation events** | 60.1(5) | In core clause 60.1(5) delete the words “or Others” and replace the words “do” with “does” in the first two bullet points. |
| **Compensation events** | 60.1 (10) | (10) At the end of this clause, before the full stop, insert the following:  "or the *Employer* had reasonable grounds to believe that a Defect had occurred". |
| **Compensation events** | 60.1 (12) | (12) Delete this clause. |
| **Compensation events** | 60.1 (13) | (13) Delete this clause. |
| **Compensation events** | 60.1(18) | (18) Substitute the following as clause 60.1(18).  “A breach of contract by the Employer which is not one of the other compensation events in this contract and to the extent that such breach was not caused or contributed to by the Contractor or any Subcontractor.” |
| **Compensation events** | 60.3 | (60.3) Delete this Clause and replace with:  “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 least favourable to doing the work” |
| **Notifying**  **Compensation events** | 61.3 | In the second sentence of clause 61.3, insert the following wording after the words “within eight weeks of becoming aware of the event”:  or the expected occurrence of an event. |
| **Notifying**  **Compensation events** | 61.4 | Delete the final sentence of the last paragraph. |
| **Quotations for**  **Compensation events** | 62.6 | Delete the final sentence of this clause. |
| **Assessing compensation events** | 63.4 | At the end of clause 63.4 delete the full stop and insert the following.  "and such rights are in place of and to the exclusion of any right or remedy at common law (including for the avoidance of doubt any right to claim damages) and any other remedy or relief in respect of any compensation event." |
| **The Project Manager’s assessments** | 63.6 | Add the following to the end of 63.6:  “Assessment of the effect of a compensation event shall also take into account the Project Manager assumptions as set out in the Works Information (or as subsequently amended by the Project Manager in accordance with the provisions of this contract).” |
| **The Project Manager’s assessment** | 64.1 | In the first line: replace “assesses” with “may assess”. |
| **The Project Manager’s assessments** | 64.4 | Delete the final sentence. |
| **Implementing compensation events** | 65.1 | Delete the comma and insert the word "or" at the end of the first bullet point and delete the last bullet point. |
| **The Employer’s title to Plant and Materials** | 70.1 | Delete clause 70 and replace with the following:  “70 Employer’s title to Plant and Materials  70.1 The value of Plant and Materials outside the Working Areas is excluded from the Price for Work Done to Date unless   * the Contractor demonstrates to the satisfaction of the Project Manager that the Contractor has unencumbered title to the Plant and Materials * the Plant and Materials is stored separately and is clearly and visibly marked as for the Employer and this contract, or the Contractor has provided a certificate of ownership of purchased off-site materials * the Plant and Materials is adequately protected against water, theft, vandalism and other casualties, * the Plant and Materials is insured against loss or damage while stored or in transit to the Working Areas for its full reinstatement value under a policy of insurance protecting the interests of the Parties in respect of the usual insured risks for the period until it is brought within the Working Areas and * the Contractor has provided an off-site materials bond for the value of the Plant and Materials, if required by the Employer.   70.2 If required by clause 70.1, the off-site materials bond is issued by a bank or insurer which the Project Manager has accepted. A reason for not accepting the proposed bank or insurer is that its commercial position is not strong enough to carry the bond. The bond is in a form acceptable to the Employer.  70.3 Where the value of Plant and Materials outside the Working Areas is included in the Price for Work Done to Date   * the Contractor’s title in the Plant and Materials passes to the Employer, * the Contractor does not remove it from where it is stored except for use on the works and * the risk of loss or damage to the Plant and Materials remains with the Contractor.   70.4 The value of Plant and Materials within the Working Areas is excluded from the Price for Work Done to Date unless   * title in the Plant and Materials has already passed to the Employer under clause 70.3 or * the Contractor demonstrates to the satisfaction of the Project Manager that the Contractor has unencumbered title in the Plant and Materials.   70.5 The Contractor’s title in Plant and Materials passes to the Employer when it is brought within the Working Areas, but (subject to clause 80.1) the risk of loss or damage to the Plant and Materials remains with the Contractor.  70.6 The Contractor does not remove Plant and Materials within the Working Areas from where it is stored except for use on the works or with the Project Manager’s permission.  70.7 The title to Plant and Materials passes back to the Contractor if it is removed from the Working Areas with the Project Manager’s permission.” |
| **Objects and materials within the site** | 73.2 | Delete this Clause and replace with the following:  73.2 “The Contractor has no title to materials from excavation and demolition except as stated in the Works Information.” |
| **Employer’s Risks** | 80.1 | Delete the fourth bullet point in clause 80.1 and replace with: "where the Works Information expressly states that the *Contractor* is not liable for design documentation supplied by the *Employer* or Others, a fault in that design." |
| **Indemnity** | 83.3 | Insert new Clause 83.3 as follows:  83.3 The Contractor indemnifies the Employer against all losses and claims in respect of:   * Death of or injury to a person and * Loss of and damage to any property (other than that covered by Clause 80.1) and * Claims, demands, proceedings, damages, compensation, costs - including the Employer’s legal costs, charges and expenses whatsoever   arising out of or in connection with the execution of the works and the remedying of any Defect therein by the Contractor save to the extent that such losses and claims were caused by any wrongful or negligent act of the Employer or any employee, agent or advisor of the Employer.  Responsibility for handling of all claims for which the Contractor provides indemnity under the contract is vested in the Contractor and / or his insurance companies. Details of all claims received directly from a claimant by the Employer which are to be dealt with by the Contractor or his insurance companies are passed to the Contractor accordingly. The Contractor keeps the Employer fully informed and consults with the Employer as appropriate in relation to the conduct of any such claim. |
| **Insurance cover** | 84.2 | Substitute the following as the first paragraph of clause 84.2.  “The insurances identified in the Insurance Table or Contract Data are in the joint names of:   * the Parties; and * any third parties identified in the Works Information or Contract Data as a parties to be included as joint insureds";   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 cover** | 84.3 | Insert new clause as follows.  “The *Contractor* procures and maintains at its own cost a policy of professional indemnity insurance covering its liabilities for professional negligence with a limit of indemnity of not less than the sum set out in the Contract Data for each and every claim arising out of any one event. The Employer may (in its absolute discretion) permit the Contractor to maintain such insurance on an aggregate basis subject to the Contractor having provided to the Employer's absolute satisfaction evidence of adequate cover and reinstatements and evidence of claims made against the policy in the current insurance year and if permitted, the Contractor shall notify the Employer immediately in the event of any claim which may reduce the remaining level of cover below the required minimum insurance limit.  The *Contractor* maintains such insurance at all times until twelve (12) years after Completion and for such further period during which the *Contractor* has any liability to the *Employer* (howsoever arising) under or in connection with this contract provided that such cover remains generally available on reasonable commercial rates and terms to competent contractors with good claims records of a similar size and experience as the *Contactor* engaged in similar activities.  If for any period such insurance is not available on reasonable commercial rates and terms the *Contractor* informs the *Project Manager* and obtains in respect of such period such reduced level of professional indemnity insurance as is available and as would be fair and reasonable in the circumstances for the *Contractor* to obtain.” |
| **Insurance Policies** | 85.1 | At the end of the clause, insert the following:  "If the *Contractor* fails to supply the relevant evidence, the *Employer* shall be at liberty to effect such insurance cover as he deems requisite and to recover the costs from the *Contractor* on demand." |
| **Insurance policies** | 85.3 | Insert the following at the end of this clause, before the full stop:  "and the Contractor warrants to the Employer that its policy of professional indemnity insurance is not invalidated by the terms of this contract. The Contractor does not knowingly do or permit anything to be done which would make the insurance policies void or voidable, or which would permit the insurer to reject, diminish or delay any claim under the insurance policies." |
| **Insurance policies** | 85.5 | Add the following as a new clause 85.5.  “If the *Contractor* receives any proceeds from insurance in respect of loss of or damage to the *works* or any Plant and Materials:   * the *Contractor* holds such proceeds on trust for the *Employer*; * immediately on receipt the *Contractor* pays such proceeds into a separate bank account identified as a trust account for the benefit of the *Employer*; * the *Contractor* does not make any withdrawal from such account other than in accordance with the *Employer*’s written instructions; and * if requested to do so by the *Employer*, the *Contractor* pays such proceeds (together with any interest) to the *Employer* in full free from any set off or deduction.” |
| **Termination** | 90.2 | In the Termination Table delete all references to A4. |
| **Reasons for termination** | 91.2 | Before the word "bond" insert "collateral warranty, ". |
| **Reasons for termination** | 91.8 | Add a new clause 91.8  “The Employer may terminate if they no longer require the Completion of the remainder of the works and services where the Employer has elected (in its absolute discretion) not to proceed with the remainder of the works and services. In the event of termination under 91.8 the Procedures P1 and P2 shall apply and the Amount due on termination will be calculated in accordance with A1 and A2.” |
| **Procedures on termination** | 92.1 | Delete clause 92.1 and substitute the following:  "On termination:  (a) the *Employer* may complete the *works* and may use any Plant and Materials to which he has title;  (b) the *Contractor* provides all reasonable assistance to the *Employer* to ensure an orderly handover of the *works* to a successor *Contractor;*  (c) the *Contractor* assigns to the *Employer* or any person nominated by the *Employer* the benefit of any agreement for the purposes of providing the *works*; and  (d) the *Contractor* ensures that the handover is carried out with the minimum inconvenience and disruption to the *Employer* (P1)." |
| **Payment on termination** | 93.2 | Delete A4. |
| **Dispute resolution** | W2 | Insert new clause W2.1 (3) as follows:  W2.1 (3) Without prejudice to clause W2.1(1) if either of the Parties is dissatisfied with any matter under the contract, he notifies his dissatisfaction to the other Party no later than fourteen days after he becomes aware of the dissatisfaction. Within fourteen days of such notification, the Contractor and the Project Manager attend a meeting to discuss and seek to resolve the matter of dissatisfaction within twenty eight days of a request. |
| **Dispute resolution** | W2 | Insert new clause W2.1 (4) as follows:  W2.1 (4) Where any matter remains unresolved for a period greater than twenty-eight days, the Project Manager, within seven days, gives a final decision in writing to the Parties. If either Party is dissatisfied with a final decision of the Project Manager that Party refers the matter to INSERT who will arrange a meeting with the responsible Director of the Contractor to discuss and seek to resolve the matter within twenty-eight days of such a referral. The INSERT and Contractors Director shall reach a decision within twenty-eight days of a request or such longer period as is agreed by the Parties after the request. If an agreement to settle the dispute is reached, it will be in writing and signed by the parties. If an agreement to settle the dispute is not reached, the dispute may then be referred to adjudication. |
| **Dispute resolution** | W2 | Insert new clause W2.1 (5) as follows:  W2.1 (5) The Parties agree that no matter is a dispute unless a notice of dissatisfaction has been given and the matter has not been resolved in accordance with W2.1 (3) within twenty-eight days or agreed extended period. The word dispute (which includes a difference) has that meaning. |
| **Limitation of the Contractor’s liability for his design to reasonable skill and care** | X15 | Insert the following at the beginning of sub-clause X15.1 before "The Contractor".  “Without prejudice to any other obligation under this contract, the *Contractor* designs any such parts of the *works* with all the skill, care and diligence reasonably to be expected of a suitably qualified designer experienced in designing works of a scale, character, nature and complexity similar to the *works*.” |
| **Retention (not used with Option F)** | X16 | Where Option X16 applies, add new clause X16.3 as follows:  "Any amount retained by the *Employer* is retained without obligation to invest and without creating any fiduciary obligations on the part of the *Employer* to the *Contractor* or any person with whom the *Contractor* may have contracted. The *Contractor* has no interest (either legal or equitable) in the retained amount or any interest earned on that amount thereon." |
| **Limitation of Liability** | X18.6 | Where Option X18 applies, add new clause X18.6 as follows:  "If any one or more of the liability limits in clauses X18.1, X18.2, X18.3 or X18.4 is exceeded such that any sum claimed by the *Employer* would be limited to the applicable amount stated in the Contract Data, this shall be a ground for termination for the purposes of clause 90 (Termination). For the purposes of the Termination Table in clause 90.2 the ground of termination shall be regarded as one to which procedure P1 and P2 applies and the amount due shall be A1 only. The *Contractor* shall not be entitled to claim any compensation for loss of profit or any other sum other than that calculated under clause 93.1. The *Contractor* shall comply with any requests of the *Employer* under clauses Z1.2 (*Contractor* warranties), Z1.3 (*Subcontractor* warranties) and Z1.20 (Assignment). |
| **Dates for payment**  **(Payer's Payment Notice)** | Y2.2 | At the end of the third paragraph add:  "It is immaterial that the *notified sum* may be zero." |
| **Contractor warranties** | Z1.2 | "At any time the *Employer* may request the *Contractor* to enter into deed(s) of warranty in favour of:   * any third party as so directed by the *Employer*; and * the *Employer* in the event the *Employer* assigns or novates the contract.   Within 21 days of any such request the *Contractor* executes and delivers to the *Employer* deed(s) of warranty in accordance with any such request. Each such deed of warranty is in the relevant form prescribed in the works information with such amendments as the Employer and/or relevant beneficiary may reasonably require." |
| **Subcontractor warranties** | Z1.3 | "At any time the *Employer* may request the *Contractor* to procure deed(s) of warranty from any Subcontractor(s) in favour of:   * any further third party as so directed by the *Employer*; and/or * the Employer.   Within 21 days of any such request the *Contractor* procures and delivers to the *Employer* deed(s) of warranty in accordance with any such request. Each such deed of warranty is in the relevant form prescribed in works information with such amendments as the Employer and/or relevant beneficiary may reasonably require." |
| **The Contracts (Rights of Third Parties) Act 1999** | Z1.4 | "A person or organisation who is not one of the Parties may not enforce a term of this contract under the Contract (Rights of Third Parties) Act 1999." |
| **Road Safety Audits** | Z1.5A  (for use only if Z1.5B is not selected) | Z1.5A.1 At any time before the date that is 12 months following Completion of the whole of the Works the *Contractor* accepts any instruction by the Project Manager to return to the Site to carry out works required following a post construction Road Safety Audit carried out in accordance with HD19/15 (or the most recent revision). For the avoidance of doubt nothing in this clause Z1.5A shall require the Contractor to carry out works required by Road Safety Audit Stage 4.  Z1.5A.2 The Contractor is liable for the cost of complying with Z1.5A.1 above. For the avoidance of doubt the Contractor shall not be entitled to a Compensation event as a result of complying with clause Z1.5A.1. |
| **Road Safety Audits** | Z1.5B  (for use only if Z1.5A is not selected) | “Z1.5B.1 At any time before the date that is 12 months following Completion of the whole of the Works the *Contractor* accepts any instruction by the Project Manager to return to the Site to carry out works required following a post construction Road Safety Audit carried out in accordance with HD19/15 (or the most recent revision).  Z1.5B.2 The *Contractor* shall be entitled to a compensation event as a result of complying with clause Z1.5B.1 above if:   1. The additional Works in question are not a *defect.* 2. Road Safety Audits Stage 1 and/or 2 and/or 3 have previously been carried out, the Works have been carried out in accordance with the recommendations of the Road Safety Audits Stage 1 and/or 2 and/or 3.” |
| **Assignment** | Z1.6 | NOT USED |
| **Contractor Designed Portions** | Z1.7 | “Where the Contractor is required to design a part of the works the Contractor is responsible for the integration of their design portions with the remainder of the design provided in the Works Information including checking the Employers design that is relevant to the portions for which they are liable and ensuring the design elements they are liable for are fully integrated with the Employers design and Works Information. The Contractor shall not be entitled to a Compensation Event for a failure to ensure their design is fully integrated with the Employer’s design and Works Information.” |
| **Safeguarding** | Z1.8 | Z1.8.1 The Contractor shall put or have in place a safeguarding policy which reflects and complements:  • the relevant statutory provisions relating to safeguarding children and / or vulnerable adults; and  • the Employer’s safeguarding policies and procedures (available upon request); and  • the Cornwall and Isles of Scilly Safeguarding Adults Board policies and procedures including but not limited to the Multi-Agency Safeguarding Adults Policy (available upon request); and  • the Cornwall and the Isles of Scilly Local Safeguarding Children Board’s safeguarding policies and procedures including the South West Safeguarding and Child Protection Procedures and the Local Safeguarding Children Board Guidelines for Providers (available upon request); and  • any updated and amended versions of the above documents  to ensure that all allegations, suspicions and incidents of abuse, harm or the risk of harm to children and / or vulnerable adults or where there is a concern about the behaviour of an individual are reported immediately to the Project Manager.  Z1.8.2 The Contractor shall comply with all statutory obligations in respect of safeguarding as amended from time to time. |
| **Risk Management** | Z1.9 | The Contractor shall take all reasonable steps to minimise risks that could have an adverse effect on the cost, the Accepted Programme or quality of the Works.  Notwithstanding the obligations of the Early Warning clause 16 in the contract, the Contractor, following its appointment, carries out (with assistance from the Employer, the Project Manager and any other organisations engaged in relation to the works as considered appropriate) an initial risk assessment within 1 (one) calendar month of the Contract Date to identify:   * potential risks relating to the carrying out of the works, the occurrence of which are capable of adversely affecting the time for completion, cost or quality of the works; and * the probability of these risks occurring; and * actions required.   The results of the initial risk assessment shall be included, in addition to the risks identified by both parties in the Contract Data, in the “Risk Register” established for the purposes of this contract. |
| **Risk Management** | Z1.10 | Notwithstanding the obligations of the Early Warning clause 16 in the contract, The Contractor will assist the Employer, the Project Manager and any other organisations engaged in relation to the works as considered appropriate, to regularly review and update the Risk Register, on a monthly basis, in relation to:   * any new risks that have arisen since the date of the last review; * the steps taken to prevent/mitigate previously identified risks; * risks which have been successfully prevented/ mitigated (which can be removed from the Risk Register); and * the prioritisation of all continuing risks and agreement of an action plan in respect of, and risk owners for, all risks prioritised as serious risks.   The Contractor shall report to the Project Manager at, and before, each progress meeting (and such progress meetings shall take place monthly) on the nature, likelihood and possible effect of the potential risks identified on the Risk Register. |
| **Quality management** | Z1.11 | The Contractor provides design services and carries out construction under a quality management system which   * complies with the BREEAM requirements and standards, as specified by the Employer; * complies with BS EN ISO 9001:2015 (or the current standard that replaces it); * incorporates an environmental management system consistent with ISO 14001:2015 (or the current standard that replaces it) and which is in accordance with the BREEAM requirements and standards as specified by the Employer); * has third party certification from an accreditation body approved by the applicable national member of the European Co-operation on Accreditation or is operating in preparation for accreditation within 12 months of the Contract Date; and * complies with good industry practice.   The Project Manager and Supervisor may carry out audits of the Contractor’s quality management system from time to time. The Contractor allows access to any place where he or any Subcontractor carries out any work that relates to this contract at all reasonable times for the Project Manager and Supervisor to carry out audits, to inspect work and materials and generally to investigate whether the Contractor is performing his obligations under this contract. The Contractor provides all facilities necessary to allow such audits and inspections to be carried out. |
| **Quality management** | Z1.12 | The Contractor corrects a failure to comply with a requirement of this contract within a time which minimises the adverse effect on the Employer or Others and takes corrective action to eliminate the cause of the failure before undertaking any operation the same as or similar to that in respect of which the failure occurred. The Contractor submits a corrective action report to the Project Manager for acceptance not later than two weeks after the failure is identified.  If the Project Manager does not accept the corrective action report he notifies the Contractor and instructs the Contractor to revise it. A reason for not accepting the corrective action report is that it will not allow the Contractor to Provide the Works effectively or efficiently.  If the Contractor fails to take corrective action within the time set out in the Contractor‘s corrective action report, the Contractor:   * establishes the reason for the failure; and * submits a new corrective action report to the Project Manager not later than two weeks after the failure is identified.   A failure by the Contractor to take corrective action within the time set out in the Contractor‘s new corrective action report is treated as a substantial failure by the Contractor to comply with his obligations. |
| **Statutory Undertakers** | Z1.13 | The Contractor, as agent for and on behalf of the Employer, shall identify any measures needing to be taken in relation to the Statutory Undertaker’s apparatus in consequence of, or in order to facilitate the Contractors execution of the Works (“the Necessary Measures”);  The Contractor shall take such steps as are reasonably required so as to secure the efficient implementation of the Necessary Measures and the avoidance of unnecessary delay to the Works. This shall include undertaking actions:   * to settle a specification of the Necessary Measures and determine by whom they are to be taken; and to co-ordinate the taking of the Necessary Measures and the execution of the Works. * The Contractor allows in his Accepted Programme any notice period required by a Statutory Undertaker in relation to the Necessary Measures.   The Contractor shall ensure they engage with Statutory Undertakers to agree the approach and expectations in relation to the Necessary Measures and ensure these have been accepted by the Employer prior to the Contractor carrying out any actions in relation to the Necessary Measures. The Employer and the Contractor will jointly engage with the Statutory Undertakers to set out their joint approach and expectations in relation to the Necessary Measures prior to the Contractor taking the steps set out above in this clause to secure the efficient implementation of the Necessary Measures. |
| Z1.14 | The Contractor shall appoint a single officer who will be responsible for co-ordinating the matters referred to in clause Z1.13 above. This individual will be a Key Person for the purposes of the Contract. |
| Z1.15 | The Contractor shall facilitate all reasonable access for Statutory Authorities / Undertakers undertaking Works on behalf of the Employer and shall allow for and co-ordinate their works within the overall programme as per the Works Information. |
| Z1.16 | Notwithstanding anything contained in core clause 60.1 (Compensation events), the Contractor shall only be permitted to bring a claim to a change to the Prices, the Completion Date or the Key Dates in connection with the Necessary Measures where:  (i) the Contractor has done all things reasonably necessary to enable the Statutory Undertaker to carry out the relevant works, and;  (ii) the relevant circumstances are not within the Contractor’s reasonable control, and;  (iii) The Contractor has not done or omitted to do anything that puts the Employer in breach of any agreement or arrangement between the Employer and the Statutory Undertaker in relation to any of the matters in clause Z1.13 above. |
| Z1.17A  **(For use if Z1.17B is not selected)** | The Employer will order such Necessary Measures as required by Statutory Undertakers. Without prejudice to anything in clauses Z1.13-16, and Z1.18 the Employer will consult with the Contractor as to the timing of orders placed in relation to the Necessary Measures to ensure any impact on the Contractor’s programme is minimised.  The Employer will pay the Statutory Undertaker’s allowable costs in respect of the Necessary Measures in accordance with the Street Works (Sharing of Costs of Works) (England) (Regulations 2000. |
| Z1.17B  **(For use if Z1.17A is not selected)** | The Contractor will order such Necessary Measures as required by Statutory Undertakers. Without prejudice to anything in clauses Z1.13-16, and Z1.18, the Contractor shall ensure all orders are placed in relation to the Necessary Measures to ensure any impact on the Contractor’s programme is minimised.  The Contractor shall pay the Statutory Undertaker’s allowable costs in respect of the Necessary Measures in accordance with the Street Works (Sharing of Costs of Works) (England) (Regulations 2000. |
| Z1.18 | The Contractor complies at his own cost with all special requirements of Statutory Undertakers known (or which would reasonably have been known by a contractor exercising reasonable skill and care) to the Contractor, including but not limited to those special requirements set out in the Works Information and takes these special requirements into account in order to Provide the Works. |
| **Confidentiality and Publicity** | Z1.19 | The Contractor has the right to use the Works Information or any other material relating to the works only for the purposes of providing the works and may make this right available to Subcontractors. Without prejudice to this right, the Contractor shall treat as confidential and shall not disclose to any person any information obtained in connection with the works or this contract without the Employer’s written consent.  The general prohibition on disclosure of information shall not apply to information which has ceased to be confidential and is in the public domain (other than as a result of its disclosure by the Contractor or its Subcontractors) nor to any disclosure which is required to be made by law.  The Contractor shall not, without the prior written consent of the Employer, publish alone or in conjunction with any other person any articles, illustrations, photographs, videos, press announcements relating to the project or publicise this contract or any works carried out pursuant to it. The Contractor shall ensure the observance of the provisions of this clause by all its employees, servants, agents and Subcontractors.  The Employer shall be entitled to publicise this contract. |
| **Assignment** | Z1.20 | The Contractor does not assign, transfer or charge the benefit of this contract or any part, share or interest herein without the prior written agreement of the Employer.  The Employer may assign the benefit of this contract or any part, share or interest herein without the consent of the Contractor.  If requested by the Employer, the Contractor executes an agreement in a form specified by the Employer to novate the benefit and burden of this contract to:  • another local authority,   * One of the Employer’s arms-length entities   • a Department or Office of Her Majesty's Government or  • another public body exercising similar functions. |
| **Records and Audit Access** | Z1.21 | The Contractor keeps documents and information obtained or prepared by the Contractor or any Subcontractor in connection with this contract for a period of 12 years after the defects date.  The Contractor permits the Employer, its agents and employees, its auditors and the National Audit Office at any time to examine documents held or controlled by the Contractor or any Subcontractor.  The Contractor provides such oral or written explanations as the Employer or the National Audit Office considers necessary. |
| **Waiver** | Z1.22 | No waiver by a Party of any breach of this contract shall operate as a waiver of any subsequent or continuing breach. No waiver shall be effective unless it is communicated in writing.  No failure or delay by any Party in exercising any right, power or privilege under this contract shall impair such right, power or privilege or be construed as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any other further exercise thereof or the exercise of any other right, power or privilege.  The rights and remedies of the Parties herein are cumulative and non-exclusive of any rights and/or remedies provided by law. |
| **Corrupt Gifts and Payments of Commission** | Z1.23 | The Contractor shall not do (and warrants that in entering this contract he has not done) any of the following (referred to in this clause as "prohibited acts"):   * offer, give or agree to give to any member or employee of the Employer any gift or consideration of any kind as an inducement or reward for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of this or any other contract with the Employer, or for showing or not showing favour or disfavour to any person in relation to this or any other contract with the Employer; * enter into this or any other contract with the Employer in connection with which commission has been paid or has been agreed to be paid by him or on his behalf, or to his knowledge, unless before the contract is made particulars of any such commission and the terms and conditions of any such agreement for the payment of it have been disclosed in writing to the Employer. |
| **Corrupt Gifts and Payments of Commission** | Z1.24 | If the Contractor, his employees, agents or any Subcontractor, or anyone acting on his or their behalf does any of the prohibited acts or commits any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010 with or without the knowledge of the Contractor, in relation to this or any other contract, the Employer shall be entitled:   * to immediately terminate this contract on written notice to the Contractor and recover from the Contractor the amount of any loss, cost or expense; * to recover from the Contractor the amount or value of any such gift, consideration or commission; and * to recover from the Contractor any loss sustained in consequence of any breach of this clause Z1.24.   In exercising its rights or remedies under this clause Z1.24, the Employer shall give all due consideration where appropriate to action other than termination of the contract including (without limitation to):   * requesting the Contractor to procure the termination of a sub-contract where the prohibited act is that of a Subcontractor; * requesting the Contractor to procure the dismissal of an employee (whether his own or that of a Subcontractor) where the prohibited act is that of such employee.   Any dispute, difference or question arising in respect of the interpretation of this clause, the right of the Employer to terminate this Contract or the amount or value of any such gift, consideration or commission shall be decided by the Employer acting reasonably, whose decision, in the absence of manifest error, shall be final and conclusive. |
| **Freedom of Information Act 2000 and Environmental Information Regulations 2004** | Z1.25 | The Contractor recognises that:   * the Employer is subject to legal duties which may require the release of information under the Freedom of Information Act 2000 (and any subordinate legislation, together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such Act) (“FOIA”) or the Environmental Information Regulations 2004 ("EIR") or any other applicable legislation or codes governing access to information and that the Employer may be under an obligation to provide information on request. Such information may include matters relating to arising out of or under this contract in any way; and * each request for information must be considered individually and that any decision to disclose the information will be at the sole decision of the Employer.   Notwithstanding anything in this contract to the contrary including, but without limitation, any obligation of confidentiality imposed on the Parties pursuant to the contract, in the event that the Employer receives a request for information under the FOIA, EIR or any other applicable legislation governing access to information, the Employer shall be entitled to disclose all information and documentation (in whatever form) as necessary to respond to that request in accordance with the FOIA, EIR or other applicable legislation governing access to information, save that in relation to any such information that may be exempt under the FOIA or EIR, the Employer shall use reasonable endeavours to consult the Contractor as soon as reasonably practicable and shall not:   * confirm or deny that the information in question is held by the Employer; or * disclose the information requested to the extent that in the Employer's opinion (having taken into account the views of the Contractor) that exemption is or may be applicable in accordance with the relevant section of the FOIA or clause of the EIR. |
| **Freedom of Information Act 2000 and Environmental Information Regulations 2004** | Z1.26 | In the event that the Employer incurs any costs, including but not limited to external legal costs, in seeking to maintain the withholding of the information, including but not limited to responding to information notices or lodging appeals against a decision of the Information Commissioner in relation to disclosure, the Contractor shall reimburse the Employer all such costs and expenses.  The Employer shall not be liable for any loss, damage, harm or other detriment however caused arising from the disclosure of any information under FOIA, EIR or other applicable legislation governing access to information.  The Contractor will assist the Employer to enable the Employer to comply with its obligations under FOIA, EIR or other applicable legislation governing access to information. In particular it acknowledges that the Employer is entitled to any and all information relating to the performance of this contract or arising in the course of performing this contract. In the event that the Employer receives a request for information under the FOIA or any other applicable legislation governing access to  This clause shall remain in force for a period of 12 years after the termination of this contract. |
| **Data Protection** | Z1.26 | Z1.26.1 The Data Protection Legislation is the Data Protection Act 2018 and the General Data Protection Regulation (GDPR) and any other laws or regulations relating to privacy or Personal Data.  Z1.26.2 Personal Data is defined in the Data Protection Legislation.  Z1.26.3 For the purposes of this contract and the Data Protection Legislation  • the Employer is the Data Controller; and  • the Contractor is the Data Processor.  The Contractor processes the Personal Data in accordance with (and so as not to put the Employer in breach of) the Data Protection Legislation and only to the extent necessary for the purpose of performing its obligations under this contract.  Z1.26.4 The Contractor has in place and maintains until the defects date:  • appropriate technical and organisational measures (having regard to the nature of the Personal Data) to protect the Personal Data against accidental, unauthorised or unlawful processing, destruction, loss, damage, alteration or disclosure; and  • adequate security programmes and procedures to ensure that unauthorised persons do not have access to the Personal Data or to any equipment used to process the Personal Data.  Z1.26.5 The Contractor immediately notifies the Project Manager if it receives:  • a request from any person whose Personal Data it holds to access his Personal Data; or  • a complaint or request relating to the Employer’s obligations under the Data Protection Legislation.  Z1.26.5 The Contractor assists and co-operates with the Project Manager in relation to any complaint or request received, including:  • providing full details of the complaint or request,  • complying with the request within the time limits set out in the Data Protection Legislation and in accordance with the instructions of the Project Manager; and  • promptly providing the Project Manager with any Personal Data and other information requested by him.  including:  • providing full details of the complaint or request, and  • complying with the request within the time limits set out in the Data Protection Legislation and in accordance with the instructions of the Project Manager. |
|  |  | Z1.26.6 The Contractor complies with the requirements of the Employer in relation to the storage, dispatch and disposal of the Personal Data in any form or medium.  Z1.26.7 The Contractor immediately notifies the Project Manager on becoming aware of any breach of this clause or of the Data Protection Legislation by the Contractor or any Subcontractor.  Z1.26.8 The Contractor does not process the Personal Data outside the European Economic Area without the agreement of the Project Manager. Where the Project Manager agrees, the Contractor complies with the instructions of the Project Manager and provides an adequate level of protection to any Personal Data in accordance with the requirements of the Data Protection Legislation.  Z1.26.9 The Contractor shall indemnify the Employer against all actions costs expenses claims proceedings and demands which may be made or brought against the Employer for breach of statutory duty under the Data Protection Legislation which arises from the use disclosure or transfer of personal data by the Contractor or his employees agents or Subcontractors.  Z1.27.9 A failure to comply with this clause Z1.26 is treated as a substantial failure by the Contractor to comply with his obligations. |
| **Equality Act 2010** | Z1.27 | The Contractor does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Equality Act 2010, any predecessor statute of it or any amendment or re-enactment of it from time to time (the “Discrimination Acts”).  In Providing the Works, the Contractor co-operates with and assists the Employer to satisfy its duty under the Discrimination Acts to eliminate unlawful discrimination and to promote equality of opportunity between persons of different racial groups and between disabled people and other people.  Where any employee or Subcontractor employed by the Contractor is required to carry out any activity on the Employer’s premises or alongside the Employer’s employees on any other premises, the Contractor ensures that each such employee or Subcontractor complies with the Employer’s employment policies and codes of practice relating to discrimination and equal opportunities. |
| **Equality Act 2010** | Z1.28 | The Contractor notifies the Project Manager in writing as soon as he becomes aware of any investigation or proceedings brought against the Contractor under the Discrimination Acts in connection with this contract and:   * provides any information requested by the investigating body, court or tribunal in the timescale allotted, * attends (and permits a representative from the Employer to attend) any associated meetings, * promptly allows access to any relevant documents and information and * co-operates fully and promptly with the investigatory body, court or tribunal.   The Contractor indemnifies the Employer against all costs, charges, expenses (including legal and administrative expenses) and payments made by the Employer arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the Contractor.  The Contractor includes in the conditions of contract for each Subcontractor obligations substantially similar to those set out above. |
| **Fair Payment** | Z1.29 | The Contractor assesses the amount due to a Subcontractor without taking into account the amount certified by the Project Manager.  The Contractor includes in its contract with each Subcontractor:   * a period for payment of no more than 19 days after the due date in this contract. The amount due includes but is not limited to, work which the Subcontractor has completed from the previous assessment date up to the current assessment date in this contract. * a provision requiring the Subcontractor to include in each sub subcontract the same requirement, except that the period for payment is to be not greater than 23 days after the due date in this contract * a provision requiring the Subcontractor to assess the amount due to its sub subcontractors without taking into account the amount paid by the Contractor.   The due date in this contract is the date on which the Project Manager certifies payment. |
| **Merger, Take-Over or Change of Control** | Z1.30 | In this clause, a Change of Control is an event where any single person, or group of persons acting in concert, acquires control of the Contractor or any direct or indirect interest in the relevant share capital of the Contractor, as a result of which that person or group of persons has a direct or indirect interest in more than 25% of the relevant share capital of the Contractor.  The Contractor notifies the Employer if a Change of Control of the Contractor has occurred or is expected to occur. The Employer may treat the Change of Control as a substantial failure by the Contractor to comply with this contract if the Change of Control stops the Contractor completing the works by the date shown on the Accepted Programme and is forecast to delay Completion.  The Contractor notifies the Employer immediately of:   * any material change to the direct or indirect legal or beneficial ownership of any shareholding in the Contractor. A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the Contractor; or * any material change in the composition of the Contractor’s partnership. A change in the composition of the partnership is material if it directly or indirectly affects the performance of this contract by the Contractor.   The Contractor notifies the Employer of any change or proposed change in the name or status of the Contractor. |
| **Set off** | Z1.31 | The Employer shall be entitled to set-off against any money (including retention) otherwise due under this contract, the amount of any claim for loss and/or expense and/or damage, suffered or incurred by the Employer by reason of any negligence, breach of duty or failure to observe the provisions of this contract by the Contractor. |
| **Intellectual Property rights** | Z1.32 | All Intellectual Property Rights in documents created by or on behalf of the Employer in connection with this contract are the property of the Employer.  The Contractor warrants that in carrying out the works he has not infringed and shall not infringe any copyright or other Intellectual Property Rights or design rights of any third party.  Notwithstanding the termination or conclusion of the Contractor’s employment under this contract, the Contractor shall supply the Employer with hard copies and/or digital media in an agreed format of such of the documents as the Employer may from time to time reasonably request. After the termination or conclusion of the Contractor’s employment under this contract, the Employer shall pay the Contractor’s reasonable costs of producing such hard copies or digital media. |
| **Third Party Agreements** | Z1.33 | In this clause Z1.33 Third Party Agreement is an agreement between the Employer and a third party relating to or affecting the works, a copy of which (or relevant extracts from which) the Employer has given to the Contractor.  The Contractor  • complies with any obligations relevant to the Works imposed on the Employer by a Third-Party Agreement (including obtaining required approvals or consents or executing any work), such Third Party Agreements to be made available to the *Contractor* on request  • Provides the Works so as not to put the Employer in breach of any Third-Party Agreement; and  • indemnifies the Employer against any damages, costs, fees, expenses or other losses arising from any breach of a Third-Party Agreement. |
| **Operations on Site** | Z1.34 | The Contractor shall provide the Project Manager if and as the Project Manager requests in writing, details of the Contractor's proposals for the means of access to the Site during the construction period, vehicle parking facilities on Site, loading and unloading areas for materials, site compounds, temporary warning and direction signs on adjacent highways and any other similar information as to the Contractor's working arrangements. If necessary the Contractor shall amend such details to obtain the approval of the local planning authority or other relevant public authority having jurisdiction with respect to the works.  The Contractor shall attend project meetings convened by the Project Manager upon reasonable notice and at monthly intervals and representatives of the Employer and of the Employer's other consultants (and any other persons authorised by the Employer and notified to the Contractor in writing for the purpose) shall be permitted to attend such meetings.  In and about the execution of the works the Contractor shall maintain and not cause any interference to any support enjoyed by any adjoining land or any structures, other than any structures which are to be demolished as part of the works.  The Contractor shall:   1. keep all enclosures around the Site clear of graffiti, posters and other unauthorised attachments, so far as is practicable; 2. implement measures for the regulation of traffic to and from the Site including wheel-washing procedures and street cleaning and comply with any requirements of the police or highway authorities with regard to local traffic arriving at and departing from the Site; 3. obtain for itself any licences required to oversail any land outside the Site boundaries; and 4. make good or meet the cost of making good of all damage caused to roads, footpaths and property adjoining the Site and to any services, arising from the carrying out of the works. |
| **Site Conditions** | Z1.35 | The Employer gives no warranty or representation as to the condition of the Site or any adjoining property or any services in or under the Site or as to the accuracy or sufficiency of any soils or survey data or other data contained in any document made available to the Contractor by the Employer, or as to any recommendations or conclusions made or reached in any such document. |
| **As Built Drawings and Service Manuals** | Z1.36 | At or before Completion of the works, the Contractor shall without charge provide to the Project Manager such draft as-built or final issue drawings, specifications and other details (in three copies) and draft service manuals (in three copies) as are specified in the Works Information, containing sufficient information to enable the works or such section to be properly maintained and operated.  Within three weeks after Completion of the whole of the works, the Contractor shall without charge provide to the Project Manager three copies of all such as-built or final issue drawings, specifications and other details and service manuals as are specified in the Works Information. |
| **COVID-19** | Z1.37 | Notwithstanding any other terms of this contract the following clauses Z1.37 to Z9.4 shall apply: |
|  |  | It is agreed by the *Contractor* that up to and including the Contract Date, the COVID-19 Pandemic has not resulted in any detrimental impact upon the *works* (including but not limited to delays to design, preparatory works and/or services, programme, availability of labour or supply of materials) which would amount to a compensation event under clause 60.1 of this contract. |
|  |  | It is acknowledged by the *Contractor* that the outbreak of the pandemic of COVID-19 is an ongoing event within the UK but that as at the Contract Date there is no statutory requirement in England for construction sites to close. |
|  |  | In Providing the Works, the *Contractor* will and is required to observe the current COVID-19 Guidance. |
|  |  | The *Contractor* confirms that the Prices and the Completion Date for the works includes for the *works* to be carried out in accordance with the current COVID-19 Guidance and complying with the current COVID-19 Guidance shall not be treated as a compensation event under clause 60.1 of this contract. |
| **Living Wage** | Z1.38 | “Living Wage” means the living wage as determined and amended from time to time by the Living Wage Foundation. Any staff employed by the Contractor or its Sub-Contractors in connection with the performance of its obligations under this contract will be paid no less than the Living Wage. |
| **Publicity** | Z1.39 | The *Contractor* confirms that he will comply at all times with the *Employer’s* and Funder’s publicity requirements which shall include the application of the HM Government brand and he shall comply with all relevant ERDF publicity requirements in accordance with the National ERDF Publicity Guidance in force from time to time as published on the National website for the ERDF programme in England.The Contractor gives consent to the Employer (including for a Funder) to publicise in the press or other medium details of this Contract. The Contractor shall not (and shall ensure that its employees agents and Sub-contractors do not) publicise details of this Contract in the press or other medium without the prior written consent of the Employer. |
| **Third Party Funding Agreements** | Z1.40 | For the purposes of this clause Z1.40 the ‘Funding Agreement’ shall refer to a funding agreement between the Employer and a government body relating to the works. The parties acknowledge that the works are to be funded by the government and the Employer agrees to provide the Contractor with copies of the Funding Agreements upon request.  The Contractor shall not knowingly do anything which would cause the Employer to be in breach of the Funding Agreement. |