**London Borough of Camden**

**Better Homes & Construction Framework**

**Contract Data**

**Part I**

**NEC3 ECC April 2013**

**Lot 1A: Small Commissions Internal and External**

**Packet 15 NW3: Various Properties**

## ECC Contract

## Contract Data

## Part One (Data provided by the *Employer)*

**Statements given in all contracts**

1. **General**
   1. The conditions of contract are the core clauses and the clauses for main Option A, Option W2 and secondary Options X1, X4, X5, X7, X13, X16 and X17, X20] Y(UK)2,Y(UK)3 and Z Clauses of the NEC3 Engineering and Construction Contract April 2013 as amended or inserted in each case in accordance with secondary Option Z.

The works are as set out in the Works Information document.

* 1. The *Employer* is

Mayor and Burgesses of the London Borough of Camden

Camden Town Hall

Judd Street

London, WC1H 9JE

* 1. The *Project Manager* is *Colin Kenny*
  2. The *Supervisor* is *Pellings*
  3. The *Adjudicator* is to be appointed by the adjudicator nominating body.
  4. The *Works Information* is contained in the attached Works Information section and includes;
* The Scope of Works (including relevant Framework Data) for Lot 1A Small Commissions Construction Packet 15
* The Employers Requirements Section A for Lot 1A Small Commissions Construction Packet 15
* The Technical Standards as listed and referred to under the Scope of Works
  1. The *Site Information* is not applicable; contractors to view sites and determine site information in line with Z 1.1 C 20.2
  2. The *boundaries of the* site are shown on drawing not applicable; contractors to view sites and determine site boundaries in line with Z1. 1 C 20.2
  3. The *language* of this contract is English.
  4. The *law* of the contract is the law of England and Wales.
  5. The *period for reply* is 2 weeks with the exception of replies to design submissions when the *period for reply* is 4 weeks
  6. The Adjudicator nominating body is the Royal Institution of Chartered Surveyors
  7. The *tribunal* is the English Courts.
  8. The following matters will be included in the Risk Register.

Discovery of matters relating to surveys including:

* The asbestos survey
* The demolition survey
* The structural survey

Potential alteration and adaptation of the electrical installation

Access for residents with special needs

1. **Time**
   1. The *starting* date is 20th January 2017

To be advised

* 1. The *access dates* are

*The access dates are to be advised and agreed with the Project Manager*

|  |  |
| --- | --- |
| **Part of Site** | **Date** |
|  |  |
|  |  |
|  |  |

* 1. The *Contractor* submits revised programmes at intervals no longer than 5 weeks.

1. **Testing & Defects**
   1. The *defects date* is 52weeks after Completion of the whole of the *works*.
   2. The *defect correction period* is 2 weeksor as otherwise specified by the *Project Manager*. The *defects correction period* shall be 1 day where in the opinion of the *Project Manager* the defect requires urgent correction for reasons of safety.
2. **Payment**
   1. The *assessment interval* is monthly.
   2. The currency of this contract is the GBP £ sterling.
   3. The *interest* rate is 1% per annum above the base rate in force from time to time of the Bank of England.
3. **Risks and Insurance**
   1. The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury or to death of a person (not an employee of the *Contractor*) caused by activity in connection with this contract for any one event is £10 million
   2. The amount of the minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this Contract for any one event is £10 million

**Optional Statements**

1. If the *Employer* has decided the completion date for the whole of the works
   1. The completion date for the whole of the works is 15th December 2017, or earlier as agreed.
2. If the Employer is not willing to take over the works before the Completion Date
   1. The *Employer* is not willing to take over the *works* before the Completion Date.
3. If no programme is identified in part two of the Contract Data
   1. The Contractor is to submit a first programme for acceptance within 2 weeks of the Contract Date.
4. If the Employer has identified work which is to meet a stated condition by a key date
   1. The key dates and conditions to be met are

|  |  |
| --- | --- |
| ***condition* to be met** | ***key date*** |
|  |  |
|  |  |
|  |  |

1. If Y(UK)2 is used and the final date for payment is not 14 days after the date when payment is due.
   1. The period for payment is 21 (twenty-one) days.
2. If there are any additional *Employer’s* risks

* 1. These are additional *Employer’s* risks

|  |
| --- |
| **Risks** |
|  |
|  |
|  |

1. If the *Employer* provides these insurances from the Insurance Table

|  |  |  |
| --- | --- | --- |
| 1 | **Insurance against** | NOT APPLICABLE |
| **Cover / indemnity is** | NOT APPLICABLE |
| **The deductibles are** | NOT APPLICABLE |
| 2 | **Insurance against** | NOT APPLICABLE |
| **Cover / indemnity is** | NOT APPLICABLE |
| **The deductibles are** | NOT APPLICABLE |
| 3 | **Insurance against** | NOT APPLICABLE |
| **Cover / indemnity is** | NOT APPLICABLE |
| **The deductibles are** | NOT APPLICABLE |

1. If additional insurances are to be provided
   1. The *Employer* provides these additional insurances

|  |  |  |
| --- | --- | --- |
| 1 | **Insurance against** | NOT APPLICABLE |
| **Cover / indemnity is** | NOT APPLICABLE |
| **The deductibles are** | NOT APPLICABLE |
| 2 | **Insurance against** | NOT APPLICABLE |
| **Cover / indemnity is** | NOT APPLICABLE |
| **The deductibles are** | NOT APPLICABLE |
| 3 | **Insurance against** | NOT APPLICABLE |
| **Cover / indemnity is** | NOT APPLICABLE |
| **The deductibles are** | NOT APPLICABLE |

* 1. The *Contractor* provides these additional insurances

|  |  |  |
| --- | --- | --- |
| 1 | **Insurance against** | Liability for death of or bodily injury to a person (not an employee of the Contractor) or loss of or damage to property resulting from an action of failure to take action by the Contractor. |
| **Cover / indemnity is** | £10 million |
| **The deductibles are** | ***To be advised by the Contractor not greater than £100,000.*** |
| 2 | **Insurance against** | Liability for death of or bodily injury to employees of the Contractor arising out of, and in the course of their employment in connection with this contract. |
| **Cover / indemnity is** | £10 million |
| **The deductibles are** | ***To be advised by the Contractor not greater than £100,000.*** |

1. ~~If Option B or D is used~~
   1. ~~The~~ *~~method of measurement~~* ~~is [insert] amended as follows [insert any amendments].~~

1. ~~If Option C is used~~
   1. ~~The~~ *~~Consultant’s~~* ~~share percentages and the share ranges are~~

|  |  |
| --- | --- |
| ***~~share range~~*** | ***~~Consultants share percentage~~*** |
| ~~less than [insert percentage]~~ | ~~[insert percentage]~~ |
| ~~from [insert percentage] to [insert percentage]~~ | ~~[insert percentage]~~ |
| ~~from [insert percentage] to [insert percentage]~~ | ~~[insert percentage]~~ |
| ~~greater than [insert percentage]~~ | ~~[insert percentage]~~ |

1. ~~If Option C, D or E is used~~
   1. ~~The~~ *~~Contractor~~* ~~prepares forecasts of Defined Cost for the works at intervals no longer than 5 weeks.~~
   2. ~~The~~ *~~exchange rates~~* ~~are those published in the Financial Times on the date of this contract~~
2. If Option X5 is used
   1. ***The completion date* for each *section of the works is to be advised. The Liquidated and Ascertained Damages is £175 per day***

|  |  |  |
| --- | --- | --- |
| **Section** | **Description** | **Amount per Day** |
| 1 |  |  |
| 2 |  |  |
| 3 |  |  |
| 4 |  |  |
| Remainder of the works | |  |

1. ***The Contractor shall provide a Parent Company Guarantee in the form set out in the Framework Schedule 17.***
   1. Delay damages for Completion of the whole of the *works* are £1,000 per week.
2. ***If the Contractor does not provide a Parent Company Guarantee as set out under Option X7 Schedule 17 of the Framework Agreement*** *then Option X13 is used;* ***as set out in the Framework Schedule 17*** 
   1. The amount of the performance bond is ***10%***
3. If Option X16 is used
   1. The *retention percentage* is 5% please refer to amended clause X.16.1 for the definition of the retention percentage and how it is to be applied.
   2. The retention amount is 2.5% of the Price for Work Done to Date***;*** please refer to amended clause X.16.2 for the definition of the retention amount and how it is to be applied.
4. ~~If Option X17 is used~~
   1. ~~The amounts for low performance damages are~~

|  |  |
| --- | --- |
| ***~~Amount~~*** | **~~Performance Level~~** |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

1. ~~If Option X20 is used~~
   1. ~~The~~ *~~incentive schedule~~* ~~for Key Performance Indicators is in [identify document]~~
   2. ~~A report of performance against each Key Performance Indicator is provided at intervals of [insert] months~~
2. ~~If Option Y(UK)3 is used~~

|  |  |
| --- | --- |
| **~~Term~~** | **~~Person of Organisation~~** |
|  |  |
|  |  |
|  |  |
|  |  |

1. If Option Z is used
   1. The *additional conditions of contract* are set out in OPTION Z – *additional conditions of contract* ***as appended.***

**Amendments to Core Clauses**

|  |  |
| --- | --- |
| **Z1. 1 The following amendments and additions are made to the Core and Main Option clauses** | |
| * 1. **Identified Terms** | |
|  | Replace clause 11.2(8) with:  “The Fee is the Defined Cost excluding the Defined Cost of :   * correcting Defects (where the cost is not a Disallowed Cost) and * design and work undertaken in order to correct a failure of the design to meet the functional and performance requirements specified in the Works Information”.   Replace clause 11.2(22) with:  “A Defined Cost includes only amounts calculated using rates and percentages stated in the Contract Data.  For the avoidance of doubt the Defined Cost shall also include:   1. the amount calculated using the *Central Overheads and Profit* *percentage* stated in the Contract Data; and 2. the Project Overheads (included as an Activity Schedule).”   Amend clause 11.2(25) (definition of “Disallowed Cost”) to read as follows  “Disallowed Cost is cost which the *Project Manager* decides   * is not justified by the *Contractor’s* accounts and records, * should not have been paid to a Subcontractor or supplier in accordance with his contract or * was incurred only because the *Contractor* did not   + follow an acceptance or procurement procedure stated in the Works Information,   + comply with a procedure set out in his quality plan 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, * correcting Defects caused by the *Contractor* not exercising reasonable skill, care and diligence in the design of the *works*, * correcting Defects caused by the *Contractor*’s failure to comply with a procedure set out in his quality plan, * correcting Defects which the *Contractor* has previously corrected, * standard or proprietary products manufactured outside the Working Areas which are not in accordance with the Works Information, * Plant and Materials not used to Provide the Works (after allowing for reasonable wastage) unless resulting from a change in the Works Information, * resources not used to Provide the Works (after allowing for reasonable availability and utilisation) or not taken away from the Working Areas when the *Project Manager* requested and * preparation for and conduct of an adjudication or proceedings of the *tribunal*.”   Amend Clause 11.2.(27)   * Omit last sentence which states: A completed activity is one which is without Defects which would either delay or be covered by immediately following work. * Insert: A completed activity is paid for on a monthly basis as set out in the activity schedule. |
| 12.1  Amendment | Delete existing clause 12.1 and replace with:  "In this contract, except where the context shows otherwise   * words in the singular also mean in the plural and the other way round, * words in the masculine also mean in the feminine and neuter and the other way round, * references to a document include any revision made to it in accordance with this contract, * references to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practice made under it and * References to a standard include any current relevant standard that replaces it." |
| 12.5  *Supplement* | Add new clause 12.5  “The term "including" does not limit the breadth of the words which precede it and the ejusdem generis rule of legal construction does not apply to this contract.” |
| 12.6  *Supplement* | Add new clause 12.6  “The applicable law includes any statute, subordinate legislation, enforceable European Community right and any statutory guidance, directions, determinations, or codes of practice having the force of law together with any amendment or modification to it.” |
| 12.7  *Supplement* | Add new clause 12.7  “The failure or delay of a Party to exercise any right, power or remedy against the other Party following failure by the one Party to act as stated in this contract is not a waiver of the right, power or remedy. The exercise or partial exercise of any right, power or remedy following failure by the other Party to act as stated in this contract does not prevent any further exercise of that right, power or remedy.” |
| 12.8  *Supplement* | Add new clause 12.8  “Nothing in this contract   * \_ requires the *Employer* to do anything that is inconsistent with its statutory duties or obligations as a local authority or * \_ fetters the *Employer* in discharging its statutory functions.” |
| 13.9  Supplement  (Retention of documents) | The *Contractor* retains throughout the *period for retention* copies of drawings, specifications, reports and other documents which record the works. The copies are retained in the form stated in the *Works* Information. |
| 13.10  Supplement  (Notices) | All communications between the *Contractor* and the *Project Manager* required by or authorised under this contract must comply with clause 13 but are deemed to be duly given or made:  13.10.1 two working days after being sent by prepaid special delivery post; or  13.10.2 when delivered by hand if a signature acknowledging its receipt has been obtained; or  13.10.3 when received by email if confirmation of receipt is obtained.   * In each case the notice must:-   13.10.4 refer to this contract, and  13.10.5 be marked for the attention of the appropriate officer, person or department as notified to the other Party in writing.  Each Party notifies the other in writing within five working days of any change in its address for *Service*.  Any notice served on a non-working day or outside of normal working hours is deemed to be served on the following working day. |
| 14.5  Supplement  (Examination of documents) | The *Project Manager* may at any reasonable time examine schedules, calculations, surveys, reports, specifications, drawings and/or any other documents and information which are in the possession of the *Contractor* and which concern this contract, but no such examination relieves the *Contractor* of any responsibility for the *works* to be provided under this contract. |
| 14.6  Supplement  (Liaison Meetings) | In addition to any risk reduction meetings convened under clause 16.2 of the contract, the *Contractor* attends regular meetings (“Liaison Meetings”) with the *Project Manager* to assess the performance of the *contract* and to facilitate due and satisfactory performance in accordance with the contract. The *Project Manager* arranges for an initial Liaison Meeting to be held within one month of the *starting date* and thereafter at monthly intervals.  The *Contractor* submits to the *Project Manager* no later than five days before each Liaison Meeting a written report which:  16.6.1 describes the performance of the *works* by reference to the contract and relevant instructions;  16.6.2 specifies all outstanding requests by the *Contractor* for information or instructions; and  16.6.3 explains any new circumstances arising since any previous meeting which in the opinion of the *Contractor* have affected the performance of the *works* adversely or beneficially.  The *Project Manager* issues to the *Contractor* no later than seven days after each Liaison Meeting a written record of the Liaison Meeting and where practicable a response to any requests by the *Contractor* for information or instructions. |
| 14.7 (Recovery of Other Sums)  Supplement | In this Clause:  The *Project Manager* is permitted to deduct and withhold from any sums otherwise due to the *Contractor* under this contract any sum of money due from the *Contractor* to the other parties under any one or more of:   * this contract; or * any other agreement between the *Contractor* and the *Employer*; or   provided that the terms of such other agreement provide for sums of money due from the *Contractor* under that agreement to be recovered by way of a deduction from sums of money due to the *Contractor* under this contract or any other contracts. |
| 14.8  Supplement  (Responsibility for work by Others) | 14.8.1 Where the *Contractor* is required to incorporate work provided by Others, the *Contractor*’s responsibility in respect of such work is limited to reviewing it to the extent required to ensure the satisfactory performance of the *contract*  14.8.2 Notwithstanding clause 14.8..1, if the *Contractor* finds any discrepancy in or divergence between any documents and/or information, including any found in documents and/or information provided by Others, the *Contractor* immediately notifies the *Project Manager* of the discrepancy or divergence. |
| 17  Supplement | Add a new clause 17.2  “Where the ambiguity or inconsistency is in the *Contractor*'s design accepted by the *Project Manager* or between the *Contractor*'s design and the Works Information, the *Contractor* provides the *Project Manager* with proposals  to remove the same which are acceptable to the *Project Manager* acting reasonably. Such acceptance shall not be treated as an instruction changing the Works Information.” |
| 19  Deletion | Delete clause 19 |
| 20.2  Supplement  (Conditions affecting the delivery of the Service) | The *Contractor* satisfies himself as regards the nature and extent of the *works* and conditions of or affecting the Site means of communication, the supply of and conditions affecting labour, the suitability, nature and extent of the Site and the Equipment required for the *Works*. No failure to foresee any matter affecting the provision of the *works* nor inaccuracy in any document or other information provided by the *Employer* or Others (unless that information is part of the *Works* Information) is a Compensation Event. |
| 24.3  Supplement  (Apprenticeships and other employment opportunities) | The *Contractor* is required to take all reasonable steps to provide jobs advertised through local vehicles, apprenticeships and work placement opportunities, and report to the *Employer* the numbers employed and the wider skills training provided, during the delivery of the *works*. The minimum target to be achieved during the *works period* is that set out in section 10.0 of Appendix C of the CITB Construction Skills Guide dated June 2011 titled “ Client based approach to developing and implementing an Employment and Skills Strategy on construction projects” or such higher target provide by the *Contractor* intheir Tender*.*  The *Contractor* is required to make available to its employees and Subcontractors working on the contract, information about the Government’s Apprenticeship programme and wider skills opportunities.  The *Contractor* is to provide any further skills training opportunities that are appropriate for its employees engaged in Providing the *Works*.  The *Contractor* is to provide a written report at Liaison Meetings detailing the following measures  24.3.1 the number of people during the reporting period employed on the contract, including support staff and Subcontractors;  24.3.2 the number of apprentices and number of new starts on apprenticeships directly initiated through the procurement process;  24.3.3 the percentage of all employees taking part in an apprenticeship programme;  24.3.4 if applicable, an explanation from the *Contractor* as to why it is not managing to meet the specified percentage target;  24.3.5 actions being taken to improve the take up of apprenticeships;  24.3.6 other training/skills development being undertaken by employees in relation to this contract, including:  (a) work experience placements for 14 to 16 year olds;  (b) work experience /work trial placements for other ages;  (c) student sandwich/gap year placements;  (d) graduate placements;  (e) vocational training;  (f) basic skills training; and  24.3.7 on-site training provision/ facilities. |
| 25.4  Supplement  (Dispute with Others) | If any difference arises between the *Contractor* and Others, the *Contractor* uses its best endeavours to achieve a reconciliation. If the reconciliation is not achieved and is not likely to be achieved before such difference becomes detrimental to the provision of the works, the *Contractor* refers the matter or difference to the *Project Manager* for instructions. |
| 25.5  Supplement  (Contractor’s responsibility to ensure) | 25.5.1 Where in this contract the *Contractor* is under an obligation to ensure that events occur which are under the direct control of Others and, due to Others, the *Contractor* is unable to comply with that obligation, the *Contractor* is liable to the *Employer* only in the event that the *Contractor* has failed to use reasonable endeavours to ensure the occurrence of the event.  25.5.2 The *Contractor* does not warrant the work of Others but the *Contractor* is nevertheless required to inform the *Project Manager* in writing of the action taken by the *Contractor* in seeking to ensure that the event occurred and recommend to the *Project Manager* a further course or courses of action to ensure the occurrence of the event or mitigate the consequences of its non- occurrence. |
| 25.6  Direct appointment of Others | Where Others are appointed by the *Employer*, the *Contractor* co-operates fully with those Others in order to ensure that production of the *Contractor*’s drawings, design information or other relevant documents or information is fully co-ordinated with the work of the Others. |
| 26.3  *replacement* | Delete the existing clause.  Replace with  “The *Contractor* submits the proposed conditions of contract for each subcontract to the *Project Manager* for acceptance unless 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, * they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation, * if the Subcontractor is to be appointed on an Open-book basis, they do not allow the *Contractor* to inspect the accounts and records of the Subcontractor at any time within working hours, * they do not provide for any required collateral warranties or third party rights, * they include unacceptable termination provisions, * they do not include the obligations on the Subcontractor that this contract requires are imposed on the Subcontractor, * they do not secure rights of access for the *Employer* and his auditors for the purpose of conducting any audit investigation of the contract similar to those applying to the Contractor or * they do not include provisions having substantially the same effect as those applying to the *Contractor* under this contract.” |
| 26.4  SMEs  Supplement | 26.4.1 The *Contractor* is required to take all reasonable steps to engage (Small and Medium sized Enterprises (“SMEs”)) as Subcontractors.  26.4.2 The *Contractor* is required to report to the *Employer* at Liaison Meetings the numbers of SMEs engaged as Subcontractors.  26.4.3 Where available, the *Contractor* is required to tender its Subcontracts using the same online electronic portal as was provided by the *Employer* for the purposes of tendering this contract.  26.4.4 The *Contractor* is to ensure that the terms and conditions used to engage Subcontractors are no less favourable than those of this contract. A reason for the *Project Manager* not accepting subcontract conditions proposed by the *Contractor* is that they are unduly disadvantageous to the Subcontractor. |
| 26.5  Contractor’s records  Supplement | The *Contractor* maintains and procures that any Subcontractors maintain for the *period for retention* detailed records of all time spent on any part of the *works* assessed on a time charge basis and when requested by the *Contractor* makes those records available to the *Project Manager*. |
| 27.5  Conflicts of Interest  Supplement | 27.5.1 The *Contractor* discloses to the *Project Manager* any actual or potential conflict of interest arising from the *Contractor*’s provision of the *works* as soon as practicable after becoming aware of such actual or potential conflict.  27.5.2 The *Contractor* immediately notifies the *Project Manager* of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the *Contractor* and/or the *Employer* (including without limitation its reputation and standing) of which it is aware or anticipates may justify the *Employer* taking action to protect its interests.  27.5.3 If the Parties are unable to either remove the conflict of interest and/or to reduce its damaging effect to a reasonably acceptable level the *Employer* has the right to terminate this contract whereupon the provisions of clause 90.2 apply to the termination as though the termination had been in respect of reason R11. |
| 27.6  Environmental Requirements  Supplement | 27.6.1 The *Contractor* complies with all applicable environmental laws and regulations in force from time to time in relation to the *works* and promptly provides evidence of compliance when reasonably requested by the *Project Manager*.  27.6.2 The *Contractor* satisfies all reasonable requests by the *Project Manager* for information regarding the environmental impact of the *works*. |
| 27.7  Access to Property  Supplement | 27.7.1 If in the course of providing the *works* the *Contractor* is required to enter any premises not owned or occupied by the *Contractor*, the *Contractor* complies with the requirements of the *Project Manager* and with the occupier’s rules and regulations regarding admission and only visits the premises at times acceptable to the *Project Manager* and/or the occupier.  27.7.2 The *Contractor* complies with any changes to the above requirements, rules or regulations notified to him as an instruction requiring a change in the *Works*  Information in accordance with clause 14.3  27.7.3 The names and addresses of all the *Contractor*’s or Subcontractors’ staff to be employed in connection with this contract and requiring access to such premises are submitted to the *Project Manager* or the occupier concerned to enable the necessary clearances to be obtained. |
| 27.8  Tender documents and contracts  Supplement | 27.8.1 The *Contractor* has due regard to all statutory requirements when conducting a procurement exercise and obtains written instructions from the *Project Manager* regarding the *Employer*’s procedures for obtaining tenders, the forms of contract to be used and any specification requirements or other matters relevant to the type of work to be addressed by the *Contractor*.  27.8.2 In the event that the *Contractor* is required as part of the *works* to produce tender documents, the *Contractor* submits to the *Project Manager* and to other advisers, if so directed by the *Project Manager*, drafts of the proposed tender documents and obtains the *Project Manager*’s approval of the drafts prior to finalising and issuing the finished documents to tenderers |
| 27.9  Timber and Wood-derived products  supplement | Requirement for timber  All timber and wood-derived products supplied or used by the *Contractor* in the performance of the Contract (including all timber and wood-derived products supplied or used by Subcontractors shall comply with the *Works* Information.  In addition to the requirement of the clause above, all timber and wood-derived products supplied or used by the *Contractor* in performance of the Contract (including all timber and wood-derived products supplied or used by Subcontractors) shall originate from a forest source where management of the forest has full regard for:   * Identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest; * Mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and * Safeguarding the basic labour rights and health and safety of forest workers.   The *Employer* reserves the right at any time during the contract and for a period of 6 years from the Completion Date to require the *Contractor* to produce the evidence required for the *Employer*’s inspection within 14 days of the *Employer*’s written request.  The *Contractor* shall maintain records of all timber and wood-derived products delivered to and accepted by the *Employer*. Such information shall be made available to the *Employer* if requested, for a period of 6 years from the Completion Date.  Independent verification  The *Employer* reserves the right to decide whether the evidence submitted to it demonstrates legality and sustainability, or FLEGT-licence or equivalent, and is adequate to satisfy the *Employer* that the timber and wood-derived product complies with the *Works* Information. The *Employer* reserves the right to decide whether the evidence submitted to it is adequate to satisfy the *Employer* that the timber and wood-derived products complies with the requirements of the social criteria defined in the bullet points above. In the event that the *Employer* is not satisfied, the *Contractor* shall commission and meet the costs of an “independent verification” and resulting report that will (a) verify the forest source of the timber or wood and (b) assess whether the source meets the relevant criteria.  In this clause, “Independent Verification” means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to ‘ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems’ or equivalent, and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to ‘ISO 17011: 20044 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies’ or equivalent.  *Employer*’s right to reject timber  The *Employer* reserves the right to reject any timber and wood-derived products that do not comply with the *Works* Information. The *Employer* reserves the right to reject any timber and wood-derived products that do not comply with the requirements of the social criteria defined in the bullet points above. Where the *Employer* exercises its right to reject any timber and wood-derived products, the *Contractor* shall supply alternative timber and wood-derived products, which do so comply, at no additional cost to the *Employer* and without causing delay to the completion of the contract. |
| 27.10  Record Keeping | “The *Contractor* keeps these records   * details of the breakdown of the Prices in the Price List and * other records as stated in the *Works* *Information*.”   “The *Contractor* allows the *Project Manager* to inspect at any time within working hours the records which he is required to keep and supplies copies free of charge to the Employer on request.” |
| 34.2  Instructions to start work  Supplement | Add a new clause 34.2 as follows  “If the *Contractor* fails to Provide the Works in accordance with the requirements of the *Works Information*, the *Project Manager* may instruct the *Contractor* to stop and instruct that the work will be carried out by other contractors”. |
| 50.2  Supplement | Insert the following sentence at the end of clause 50.2:  "The amount due does not include any amount by which the Price for Work Done to Date exceeds the total of the Prices." |
| 50.6  *supplement* | Add new paragraph to the end of existing clause  “Details of the application for payment procedure may be amended and recorded in Contract Data Part 2.” |
| 51.1 | ~~Replace first sentence with:~~  ~~The~~ *~~Project Manager~~* ~~certifies a payment within two weeks of each assessment date.~~ |
| 51.5 | ***Alter Clause 51.1 to read that the Project Manager certifies a payment within 5 days of each assessment date. Add the following: the Contractor shall provide an application for payment 6 working days or more prior to the assessment date working days not including Saturdays or Sundays*** |
| 52.1 | Replace clause 52.1 with:  “A Defined Cost includes only amounts calculated using rates and percentages stated in the Contract Data.  For the avoidance of doubt the Defined Cost shall also include:   1. the amount calculated using the *Central Overheads and Profit* *percentage* stated in the Contract Data; and 2. the Project Overheads (included as an Activity Schedule).” |
| Compensation Events  Replaces 60.1 | Delete the existing clause 60.1 and replace with the following  “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.* 2. *Not used* 3. The *Employer* does not provide something which he is to provide as stated in the Works Information in accordance with the Accepted Programme. 4. The *Project Manager* gives an instruction to stop or not to start any work, except where the *Contractor* fails to deliver work in accordance with the requirements of the Works Information and the *Project Manager* has instructed the *Contractor* to stop and has instructed the work to be carried out by another contractor. 5. The *Employer* or Others do not work in accordance with the Accepted Programme or within the conditions stated in the *Works Information*. 6. The *Project Manager* does not reply to a communication from the *Contractor* within the period required by this contract. 7. The *Project Manager* changes a decision which he has previously communicated to the *Contractor.* 8. The *Project Manager* withholds an acceptance (other than acceptance of a quotation for not correcting a Defect) for a reason not stated in this contract. 9. A test or inspection done by the *Project Manager* causes unnecessary delay. 10. The *Project Manager* 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.The *Employer* does not provide materials, facilities and samples for test and inspections as stated in the *Works Information*. 11. An event which is an *Employer’s* risk in this contract. 12. The *Project Manager* notifies a correction to an assumption which he has stated about a compensation event. 13. A breach of contract by the *Employer* which is not one of the other compensation events in this contract.” |
| 63.5  Assessing compensation events | Delete existing clause 63.5 and replace with  “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 not given an early warning.” |
| 70  Title  Amendment | 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 *Employer* agrees it should be included, * the Plant and Materials is within the United Kingdom, * the *Contractor* demonstrates to the satisfaction of the *Project Manager* that the *Contractor* has unencumbered title to the Plant and Material * the Plant and Materials is stored separately and is clearly and visibly marked as for the *Employer* and this contract, * the Plant and Materials is adequately protected against water, theft, vandalism and other casualties, * the Plant and Materials is insured against loss or damage while stored or in transit to the Working Areas for its full reinstatement value under a policy of insurance protecting the interests of the Parties in respect of the usual insured risks for the period until it is brought within the Working Areas and * the C*ontracto*r has provided an off site materials bond for the value of the Plant and Materials.   70.2 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.  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.” |
| 84.3  Insurance  Supplement | 84.3.1 All insurances required to be effected or maintained by the insuring party under clause 84 are placed with reputable insurers, to whom the other party has no reasonable objection, lawfully carrying on such insurance business in the EU, and upon customary and usual terms prevailing for the time being in the insurance market. The said terms and conditions do not include any term or condition to the effect that any insured must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930 as amended by the Insolvency (Northern Ireland) Order 1989.  84.3.2 If, without the approval of the *Project Manager*, the *Contractor* fails to effect and maintain any insurance that it is required to effect and maintain under clause 84 or obtains a different policy of insurance or fails to provide a copy of insurances or certificates when required to do so, the *Employer* may, but is not required to, effect and maintain appropriate insurance cover and deduct the cost of doing so from any payment due to the *Contractor* under this contract, or recover such sum from the *Contractor* as a debt.  84.3.3 For the avoidance of doubt, it is agreed that nothing in this clause relieves the *Contractor* from any of its obligations and liabilities under this contract. |
| 84.4  Professional indemnity  Supplement | 84.4.1 If required to obtain professional indemnity insurance providing cover against a failure of the *Contractor* to use the skill and care normally used by professional designers undertaking design of *works* similar to the *Works*, the *Contractor* obtains and maintains the professional indemnity insurance upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the EU on the basis and in an amount not less than that stated in the Contract Data, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions do not include any term or condition to the effect that the *Contractor* must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930 as amended by the Insolvency (Northern Ireland) Order 1989.  84.4.2 The *Contractor* immediately informs the *Project Manager* if the professional indemnity insurance ceases to be available at rates and on terms that the *Contractor* considers to be commercially reasonable. Any increased or additional premium required by insurers by reason of the *Contractor*’s own claims record or other acts, omissions, matters or things particular to the *Contractor* is deemed to be within commercially reasonable rates.  84.4.3 The *Contractor* co-operates fully with any measures reasonably required by the *Project Manager* including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the *Employer* undertakes in writing to reimburse the *Contractor* in respect of the net cost of such insurance to the *Contractor* above commercially reasonable rates or, if the *Employer* effects such insurance at rates at or above commercially reasonable rates, reimbursing the *Employer* in respect of what the net cost of such insurance to the *Employer* would have been at commercially reasonable rates.  84.4.4 The above obligation in respect of professional indemnity insurance continues notwithstanding termination of the *Contractor*’s employment under this contract for any reason whatsoever, including (without limitation) breach by the *Employer*. |
| 90.2  *replacement* | Delete the existing Termination Table  Replace with  **TERMINATION TABLE** |
| 91.9  *Supplement* | Add new clause 91.9  Not used (R23).” |
| 91.10 to 91.15Termination Events  Supplement | 91.10. The *Employer* has relied on the information provided by the *Contractor* contained in the Form of Tender and the documentation submitted to the *Employer* prior to its acceptance and prior to the *Employer* entering into this contract. Any misrepresentation contained therein shall entitle the *Employer* to terminate this contract at its option.  91.11 The *Employer* may at any time by notice in writing to the *Project Manager* terminate the *Contractor*’s obligation to Provide the *Works* if any of the events specified below (the “Termination Events”) occur, namely, if the *Contractor*:  91.11.1 is convicted or has been convicted of a criminal offence relating to the conduct of its business or profession; or  91.112 commits or is found to have committed an act of grave misconduct in the course of its business or profession; or  91.11.3 fails or has failed to comply with any obligations relating to the payment of any taxes or social security contributions; or  91.11.4 has made any serious misrepresentations in the tendering process for any project or matter in which the public sector has or had a significant participation; or  91.11.5 fails to obtain any necessary licences or to obtain or maintain membership of any relevant body; or  91.11.6 demerges into two or more firms, merges with another firm, incorporates or otherwise changes its legal form or there is a change of control as defined by section 416 of the Income and Corporation taxes Act 1988 (any such case being a “Change of Control”) and, in any such Change of Control, there are reasonable grounds for the *Employer* to withhold its consent relating to the financial standing of the new entity through which it is proposed that the *Works* will be delivered or there are security concerns arising from the provision of the *Works* by the new entity; whereupon the *Project Manager* promptly issues a termination certificate to both Parties and the provisions of clause 90.2 apply to the termination as though the termination had been in respect of reason R11.  91.12 The *Contractor* promptly notifies the *Project Manager* in writing on each occasion of the occurrence of any Change of Control. The *Employer* is permitted to exercise its rights pursuant to this clause for only six months after service of each and any notice by the *Contractor* pursuant to this clause and is not permitted to exercise such rights where the *Employer* has agreed in advance in writing to the particular Change of Control provided such Change of Control takes place as agreed.  91.13 Security concern  The *Employer* may by notice in writing to the *Project Manager* terminate the *Contractor*’s obligation to Provide the *Works* if the *Employer* has any reasonable security concern in respect of the *Contractor*, whereupon the *Project Manager* promptly issues a termination certificate to both Parties and the provisions of clause 90.2 apply to the termination as though the termination had been in respect of reason R11.  91.14 Unincorporated joint venture  The *Employer* may by notice in writing to the *Project Manager* terminate the *Contractor*’s obligation to Provide the *Works* if the *Contractor* is an unincorporated joint venture and any of the events entitling the *Project Manager* to terminate occur in relation to any member of that unincorporated joint venture, whereupon the *Project Manager* promptly issues a termination certificate to both Parties and the provisions of clause 90.2 apply to the termination as though the termination had been in respect of reason R11.  91.15 Part Termination  The *Employer* may terminate a part only of the *works* if it is practicable for the *Contractor* to continue to provide separately the remaining part or parts of the *works*. In that event:  91.15.1 with regard to the part of the *works* terminated, the procedures followed and the amounts due on termination are in accordance with the Termination Table;  91.15.2 the provisions of clause 9 which would have been applicable if the *works* had been terminated in its entirety are applicable to the part of the *works* terminated; and  91.15.3 all other provisions of the contract continue to apply to the part or parts of the *works* which are not terminated. |
| 93.2  *Supplement* | Add new A5  “A5 An amount equal to the amount or value of any corrupt gift or consideration received by the *Contractor*.” |

**Amendments to Option Clauses**

|  |  |
| --- | --- |
| **Option W2**  **Dispute Resolution** | |
| W2.1(3)  *Supplement* | Add new clause W2.1(3)  “Subject to the rights of the Parties to refer a dispute to the *Adjudicator* at any time, the Parties agree that in the event of any dispute or difference arising between them in relation to this contract they will seek to resolve any such dispute or difference   * by agreement in accordance with the provisions of this contract and in particular in the spirit of clause 10.1 and * through the use of the dispute resolution escalation procedure in clause W2.1(4).” |
| W2.1(4)  Dispute Resolution – Prior to Adjudication  Supplement to W2 | The periods for resolving matters that may lead to dispute at the various levels are as set out below. Failure to make a decision within the stated period will result in the matter being referred up to the higher level.  Under clause W2.1(1)the Parties retain the right to refer a dispute to the *Adjudicator* at any time, but agree that a dispute will not crystallise until the following procedure (Levels 1-3) has been exhausted.  The period for resolving the dispute is within one working week from the date of notification of the dispute.  **LEVEL 1 – Project Manager and Contractor’s Site Manager**  In a dispute between the *Project Manager(s)* and *Contractor*, arising from  an action of the *Project Manager*,  an inaction by the *Project Manager* or  any other reason  The period for resolving the dispute is within one working week from the date of notification of the dispute.  **LEVEL 2 – Strategic Management**  The relevant members at this level are:  LB Camden Head of Commissioning and QA or the Head of Service Delivery  Contractor Operations Director  The period for resolving the dispute at this level is within one working week from  the date it is agreed that the dispute cannot be resolved at levels 1 or  the end of the one working week period provided to resolve the dispute at levels 1 whichever is the shorter.  **LEVEL 3 – Assistant Director /Senior Executive**  The relevant members at this level are:  LB Camden Assistant Director HASC  Contractor Chief Executive  The period for resolving the dispute at this level is within one week from  the date it is agreed that the dispute cannot be resolved at level 2 or  the end of the one working week period provided to resolve the dispute at level 2 whichever is the shorter.  If no resolution is possible under Clause W2.6, this situation is made clear to the Parties. The aggrieved Party should then give notice of adjudication to the other Party within a week if they still wish to pursue the issue. |
| **X13 Performance Bond** | |
| X13.1  *replacement* | Delete existing clause  Replace with  “If requested by the *Employer* the *Contractor* gives the *Employer* a performance bond, provided by a bank or insurer which the *Project Manager* has accepted, for the amount and in a form accepted by the Project Manager. A reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond. If the bond is not given by the starting date, it is given to the *Employer* within four weeks of the starting date” |
| **X16 Retention** | Add new clause heading  **Option X16 Retention** |
| X16.1  *New clause* | Add new clause X16.1  “During the contract an amount is retained from each amount due. Until the *End Date* the amount retained at each assessment date is the *retention percentage* applied to the change in the Price for Work Done to Date since the last assessment date.” |
| X16.2  *New Clause* | Add new clause X16.2  “The amount retained is adjusted in the assessment made at the *End Date* so that it equals the *retention amount*.  The amount retained remains at this amount until twelve months after the *End Date*. No amount is retained after twelve months after the *End Date*.” |
| **X20 Key Performance Indicators** | |
| X20.5  *replacement* | Delete clause X20.5  Replace with  “The *Employer* may not add, delete or change a Key Performance Indicator or associated payment except with the agreement of the *Contractor*.” |

**Other Z Clauses**

|  |  |
| --- | --- |
| Z2  Extra identified and defined terms | Z2.1 An “Apprentice” is a person registered as an apprentice with an industry recognised body.  Z2.2 “Best Value” means the functions of a best value authority in Part I of the Local Government Act 1999.  Z2.3 “Business Continuity Plan” is a plan showing how the *Contractor* can continue to Provide the Works throughout the first week after any incident that disrupts the *Contractor’s* normal operations including a fire or the loss of electrical power to the *Contractor’s* or a Subcontractor’s premises.  Z2.6 “Codes of Practice” is all relevant Codes of Practice and Guidance issued by the Information Commission or Ministry of Justice in relation to the DPA or FOIA including any Codes of Practice on the discharge of the functions of Public Authorities under Part 1 of the FIOA.  Z2.7 “Confidential Information” is any information which has been notified as confidential by either Party to the other or that ought to be considered as confidential (however it is communicated or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, works, developments, trade secrets, patents or copyright or other intellectual property right, know-how, personnel, customers and suppliers of either Party and all personal data and sensitive personal data within the meaning of the DPA.  Z2.8 “Contract Manager” is the *Contractor’s* site manager.  Z2.9 “Data Controller” has the meaning given in the DPA.  Z2.10 “Data Subject” has the meaning given in the DPA.  Z2.11 The “Directive” is the European Acquired Rights Directive 2001/23/EC.  Z2.12 “DPA” is the Data Protection Act 1998.  Z2.13 The “Employer Data” are all data, information, text, drawings, diagrams, images, records or sound embodied in any electronic or tangible medium which the *Employer* supplies or gives access to the *Contractor* under this contract or which the *Contractor* produces or obtains under this contract.  Z2.14 “Employee Liability Information” is such information as the *Employer* requests about the employees of the *Contractor* and Subcontractor who are Providing the Works and who may be the subject of a Relevant Transfer including information referred to in Regulation 11(2) of the TUPE Regulations.  Z2.15 The “End Date” is the date of the earlier of the end of the *works period* or termination.  Z2.16 “Environmental Information Regulations” means the Environmental Information Regulations 2004.Z2.17 “Equality and Diversity Legislation” is all European and UK Legislation preventing discrimination including discrimination on the basis of colour, race, nationality, ethnic or national origins, gender, marital status, maternity, paternity, sexual orientation, gender reassignment, religion, age, disability or part time or temporary status.”  Z2.18 The “Exit Management Plan” specifies how the Parties will effect and assist one another in an orderly professional and seamless cessation of the *works* on the End Date.  Z2.19 “FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to this legislation.  Z2.20 “Incoming Contractor” is a person or organisation appointed by the *Employer* to provide works which are similar to the *works.*  Z2.21 “Incumbent Contractor” is the contractor providing works equivalent to the *works* or part of the *works* immediately before the Initial Transfer Date.  Z2.22 “Information” has the meaning given by section 84 of the FOIA.  Z2.23 “Intellectual Property Rights” means all intellectual property rights including, without limitation, patents, trademarks, designs, design rights, copyright, inventions, trade secrets, know-how and confidential information.  Z2.24 “New Employees” are those new employees employed by the *Contractor* to provide the works who will be working alongside the transferring employees.  Z2.25 A “New Entrant” is a person who is   * leaving an educational establishment or a training provider, * a non-employed person that is seeking employment that includes training and assessment in on the Site or training elsewhere or * a mix of these.   Z2.26 “Other Trainees” are people who are not Apprentices but have a trainee contract and   * have a contract of employment or * are self-employed.   Z2.27 “Personal Data” is personal data as defined in the DPA obtained or provided in connection with the *works* or this contract.  Z2.28 A “Person-week” is the equivalent of one person working for 5 days either at the Site or through a mix of work at the Site and training elsewhere.  Z2.29 “Recruitment and Training Method Statement” is the document prepared by the *Contractor* showing how he will comply with his recruitment and training obligations under this contract.  Z2.30 “Relevant Employees” are the persons who are or could potentially be the subject of a Relevant Transfer under this contract or any subcontract.  Z2.31 “Relevant Transfer” is a transfer to which the TUPE Regulations apply as set out in Regulation 3 of TUPE.  Z2.32 “Request for Information” has the meaning set out in FOIA and includes any apparent request for information under the FOIA or the Environmental Information Regulations.  Z2.33 “ROA 1974” is the Rehabilitation of Offenders Act 1974.  Z2.34 A “Small Business” is an organisation with less than fifty employees.  Z.35 A “Social Enterprise” is a business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or the community, rather than being driven by the need to maximise profit for shareholders and owners.  Z2.36 “Subject Access Request” has the meaning given in the DPA.  Z2.37 The “Transferring Employees” are the employees of the *Employer a*ssigned to the organised grouping of resources or employees that is the subject of a Relevant Transfer during the contract.  Z2.38 The “Transferring Equipment” is the items of Equipment provided by the *Contractor* for the *Employer’s* use as stated in the Works Information or which is transferred on the End Date to the Employer or an Incoming Contractor in accordance with the Exit Management Plan.  Z2.39 The “TUPE Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.  Z2.40 A “Work Placement Person” is a person engaged on a relevant vocational training programme that is seeking unpaid experience in on the Site.  Z2.41 “Workforce Standards” means those standards of good employment practice set out in Schedule 1 hereto.  Z4.42 “*works period*” is the period commencing on the starting date and ending on the End Date. |
| Z3  Contractor’s Obligations | Z3.1 The *Contractor* does not receive any additional payment for performing these clauses Z3 to Z41, save where specifically provided for by the clause. |
| Z4  Exclusivity and work content | Z4.1 This contract does not prevent the *Employer* doing or contracting for similar work with his own labour or Others within at the Site. The *Contractor* has no claim for additional costs where the *Employer* does or contracts for similar work.  Z4.2 The *Employer* does not use this clause as an alternative to termination. The *Project Manager* continues to instruct work throughout the *works period*.  Z4.3 The *Employer* makes no representations or warranties to the *Contractor* about the amount or value of the work that he will instruct the *Contractor* to do under the contract. Any indications of these amounts or values in the Works Information or any other documentation about the contract or the *works* are estimates only.  Z4.4 The *Contractor* has no claim for loss of profit or loss of business or otherwise if the *works* or any part of the *works* is less in amount or value or scope than anticipated. |
| Z5  Employer Data | Z5.1 The *Contractor* acts as bailee of any Employer Data and stores it safely and separately from any data not relating to the *works* and in a manner which makes it readily identifiable as Employer Data.  Z5.2 The *Contractor* acknowledges that the Employer Data belongs solely to the *Employer*. The *Contractor* does not delete or remove any copyright notices contained in or relating to the Employer Data.  Z5.3 The *Contractor* takes all steps necessary to ensure that it can restore or procure the restoration of the Employer Data if it is lost or corrupted. If the Employer Data is lost or corrupted and the *Employer* so requests the *Contractor* restores or procures the restoration of the Employer Data to its state immediately before the corruption or loss.  Z5.4 Subject to the Intellectual Property Rights, ownership in all Employer Data including existing documents and the physical embodiments of designs relating to this contract, transfers from the *Contractor* to the *Employer* on the End Date. Following the End Date, the *Contractor* hands over all such Employer Data to the *Employer* immediately upon request.  Z5.5 The *Contractor* ensures that the *Employer* is able to use any software necessary to access and use the Employer Data after the End Date. If the *Project Manager* so requires the *Contractor* enters into an escrow agreement in the standard form of National Computer Centre Limited (or such other industry standard body the *Project Manager* approves) to protect the *Employer’s* access to any software in which the *Contractor* owns the Intellectual Property Rights. |
| Z6  Best Value | Z6.1 The *Contractor* throughout the *works period* but only to the extent of his obligations in this contract   * makes arrangements to secure a continuous improvement in the way the *Contractor* and his Subcontractors (if any) Provide the Works having regard to a combination of economy efficiency and effectiveness and * actively seeks to achieve leading performance targets for local authorities in respect of the Site during the *works period.*   Z6.2 If the *Employer* reasonably so requests the *Contractor* undertakes or refrains from undertaking any actions to enable the *Employer* to comply with Best Value including   * supporting and assisting the *Employer* in meeting Best Value in the way the *Contractor* Provides the Works and * complying with requests from the Employers for information, data or other assistance to achieve Best Value. |
| *Z7*  *Contractor’s* employees and personnel | Z7.1 The *Contractor* submits to the *Project Manager* details of people who are to be employed by him and his Subcontractors in connection with the *works.*  The details include   * a list of names and addresses, * the capacities in which they are employed, * any relevant criminal convictions of which the *Contractor* is aware about an employee, Subcontractor or employee of a Subcontractor and * other information required by the *Project Manager*.   Z7.2 The *Contractor* informs the *Project Manager* of any relevant criminal convictions of an employee, Subcontractor or employee of a Subcontractor used in Providing the Works of which the *Contractor* becomes aware during the *works period*.  Z7.3 If the nature of the *works* or Providing the Works means that any employee, Subcontractor or any employee of a Subcontractor is exempt from the restriction on disclosing spent convictions under Regulation 4(2) of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 the *Contractor* ensures that that employee or Subcontractor provides information in accordance with the ROA 1974 and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 about any convictions which would otherwise be deemed to be spent.  Z.4 If the *Project Manager* so requires, the *Contractor* (at his own risk) removes any employee, Subcontractor or employee of a Subcontractor who has a criminal conviction from the Site. This includes any relevant convictions which would otherwise be spent where the nature of the *works* or Providing the Works means that the employee is exempt from the restriction on disclosing spent convictions under Regulation 4(2) of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.  Z7.5 The *Contractor* procures that his and his Subcontractor’s employees comply with the *Employer’s* reasonable requirements for identification, dress code, conduct and security whilst they are on the Site.  Z7.6 If the *Employer* requires passes to be issued, the *Contractor* gives a list of the names of the people for whom passes are required to the *Project Manager*. The *Project Manager* issues the passes to the *Contractor.* Each pass is returned to the *Project Manager* when the employee no longer requires access to the Site or after the *Project Manager* has given notice that the employee is not to be admitted to the Site.  Z7.7 The *Contractor* ensures that there is an adequate number of suitably skilled, experienced, qualified and competent employees Providing the Works.  The *Contractor* does not relocate key persons to other work without the approval of the *Project Manager*.  The *Contractor* appoints a Contract Manager to act for the *Contractor* in Providing the Works. The *Contractor* notifies the *Employer* not later than one month before the *starting date* of the name of the Contract Manager.  The Contract Manager is a key person as stated in the Contract Data.  Z7.9 Any communication given to the Contract Manager is given to the *Contractor.* The *Contractor* ensures that the Contract Manager or his delegate is available to meet the *Project Manager* at all reasonable times during the *works period*.  Z7.10 The *Contractor* is not required to breach the DPA or any other applicable law, but the *Contractor* seeks all necessary consents to make the disclosures required by this contract. |
| Z8  Health and Safety | Z8.1 The *Contractor* complies with all applicable health and safety law and regulations in Providing the Works.  Z8.2 Before the *starting date* the *Contractor* notifies the *Employer* of the name of the person responsible for health and safety. When on premises owned or occupied by the *Employer*, the *Contractor* ensures that his and his Subcontractor’s employees comply with the *Employer's* general health and safety policy and with the lawful requirements of the *Project Manager*.  Z8.3 The *Project Manager* may suspend the Providing of the Works or any part of the *works* if the *Contractor*   * does not comply with health and safety legislation, * has not provided his health and safety policy to the *Employer* or * has not notified the *Employer* of the person responsible for health and safety.   Z8.4 Following such suspension the *Contractor* does not Provide the Works or any part of the *works* until the *Project Manager* is satisfied that the *Contractor* has remedied the failure. An assessment of a compensation event does not include cost and time for the period of the suspension.  Z8.5 In Providing the Works the *Contractor* adopts safe methods of work to protect the health, safety and welfare of   * the Contractor’s employees, agents, suppliers and Subcontractors, * his Subcontractor’s employees and agents, * employees and agents of the *Employer* and * all other persons, including members of the public.   Z8.6 The *Contractor* complies with the requirements of his own safety policy and safety codes of practices.  Z8.7 The *Contractor* provides the information and documents the *Project Manager* requires as evidence of compliance with his own safety policy and applicable safety codes of practice. The Contractor maintains copies of all applicable law, codes of practice and working rules applicable to Providing the Works and permits his employees to use and refer to them.  Z8.8 The *Contractor* informs the *Project Manager* as soon as he becomes aware of any prosecution, pending or likely prosecution or conviction of the *Contractor*, any of his employees, any Subcontractor or agent or any of the Subcontractor’s employees or agents for any offence relating to health and safety. Following this notification the *Contractor* provides the *Project Manager* with whatever further information and documents the *Project Manager* requires.  Z8.9 The *Contractor* permits the *Project Manager* without earlier notification and at any time   * to enter and inspect any premises of the *Contractor,* his agents or Subcontractors used or to be used in Providing the Works and * to inspect any Equipment or Plant and Materials. |
| Z9  Quality assurance | Z9.1 The *Contractor* warrants that he has a documented quality assurance policy which covers the *works*.  Z9.2 The *Contractor* allows the *Employer* to inspect, check and audit his quality system at any time during the *works period* during normal office hours without earlier notification.  Z9.3 The *Contractor* allows the *Project Manager* access at any time while the *Contractor* is Providing the Works to premises owned or occupied by the *Contractor* to examine, test or check any properties, Equipment, documentation or anything else used in Providing the Works.  Z9.4 The *Contractor* gives all reasonable assistance the *Project Manager* requires in carrying out quality assurance monitoring. The *Contractor* cooperates with the *Project Manager* and permits him to test, take measurements, samples and photographs of any premises, Equipment or Plant and Materials used or proposed to be used in Providing the Works. |
| Z10  Equality and diversity | Z10.1 The *Contractor* does not discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of colour, race, nationality, ethnic or national origins, gender, marital status, maternity, paternity, sexual orientation, gender reassignment, religion, age disability or part time or temporary status.  Z10.2 The *Contractor* recruits for each vacancy by a process that accords with good equality and diversity procedures and Equality and Diversity Legislation.  Z10.3 The *Contractor* establishes a procedure for recording and responding to incidents of discrimination and abuse on the basis of colour, race, nationality, ethnic or national origins, gender, marital status, maternity, paternity, sexual orientation, gender reassignment, religion, age disability or part time or temporary status.  Z10.4 In Providing the Works the *Contractor* observes Equality and Diversity Legislation and follows all relevant codes of good practice including those produced by   * the Commission for Racial Equality and * the Equality and Human Rights Commission   Z10.5 Where the *Contractor*, his Subcontractors, or any of his or their employees are required to Provide the Works on the *Employer's* premises or alongside the *Employer’s* employees on any other premises, the *Contractor* complies with the *Employer's* employment policy and codes of practice relating to equality and diversity, copies of which are available from the *Employer* on request.  Z10.6 The *Contractor* monitors its workforce on the basis of ethnicity (which means groups of people classified as 'ethnic groups' in the most recent official census by the Office of National Statistics) gender, age, disability and/or such other bases as the *Employer* requires.  Z10.7 Where it appears to the *Contractor* in relation to particular work, that people of one social group or men, women or people with disabilities are underrepresented amongst the *Contractor’s* or a Subcontractor’s workforce compared to their representation in the *Contractor’s* or Subcontractor’s workforce generally or in the population as a whole or in the areas from which his or his Subcontractor’s employees are normally recruited, the *Contractor* does the following to the extent appropriate and reasonably practicable   * places and uses job advertisements to reach people of those social groups, of that gender or with disabilities and to encourage their applications, * uses employment agencies and careers offices in areas where members of those social groups, of that gender or with disabilities live and work, * promotes recruitment and training schemes for school-leavers and/or unemployed people intended to reach members of those social groups, of that gender or with disabilities and * provides appropriate training and encouragement of employees from those social groups, of that gender or with disabilities to apply for promotion or transfer to do work in which people from those social groups, men, women or people with disabilities (as applicable) are under-represented.   Z10.8 The *Contractor* submits a report to the *Employer* demonstrating his compliance with the equality and diversity requirements of this contract at least two weeks before the *starting date* and on each anniversary of the *starting date*. The *Contractor* also provides any additional information as the *Employer* reasonably requires to assess the *Contractor's* compliance with the equality and diversity requirements of this contract.  Z10.9 The *Contractor*   * makes full use of the services and funding provided to construction sector employers by * the agencies named by the *Project Manager*, * Job Centre Plus, * the Learning and Skills Council, * the Construction Industry Training Board and * construction training providers or * follows the recruitment procedures as detailed in the targeted recruitment and training obligations if they are included in this contract.   Z10.10 The *Contractor* notifies the *Project Manager* as soon as he becomes aware of any investigation of or proceedings brought against the *Contractor* or any Subcontractor under Equality and Diversity Legislation.  Z10.11 Where there is a finding against the *Contractor* or a Subcontractor in any investigation conducted or proceedings brought under Equality and Diversity Legislation as a direct or indirect result of any act or omission of the *Contractor*, a Subcontractor, or any of his or their employees, any costs incurred by the *Employer* (including any payment the *Employer* is ordered or required to pay to a third party) are at the *Contractor’s* risk.  Z10.12 Where any investigation is undertaken by a person or proceedings are instituted under Equality and Diversity Legislation relating to the *Contractor* or a Subcontractor Providing the Works, the *Contractor*   * provides any information the *Employer* requests in the timescale specified in the request, * attends any meetings the *Project Manager* requires and procures that his and any Subcontractor’s employees involved in the investigation or proceedings also do so, * promptly gives the *Project Manager* access to and allows him to investigate any documents or data the *Project Manager* deems relevant, * allows any of his employees to appear as witness in any ensuing proceedings and procures that Subcontractors allow their employees to do so and * co-operates fully and promptly with the person or body conducting the investigation. |
| Z11  Intellectual property | Z11.1 Each Party retains Intellectual Property Rights in all designs (if any) and other documents he prepares for this contract.  Z11.2 As beneficial owner each Party grants to the other an irrevocable, nonexclusive, royalty-free licence (including the right to grant sub-licences) to copy, use, adapt and modify all designs and documents he makes available in connection with this contract provided that neither Party shall be liable to the other Party for any claim arising from the use of any such designs and documents for any purpose other than that for Providing the Works. The Party granting the licence ensures that it is supported by such rights from Subcontractors and third parties as necessary to allow the grant of such licence.  Z11.3 Each Party providing a design or other document in connection with this contract bears the risk that it infringes the Intellectual Property Rights of a third party. |
| Z12  Confidentiality | Z12.1 Each Party   * keeps confidential all Confidential Information belonging to the other Party and in doing so uses the same degree of care that it uses for its own confidential information, * does not, without the other Party’s written consent, disclose that Party’s Confidential Information other than to its employees, agents, supplier and Subcontractors involved in Providing the Works and who need to know the Confidential Information in order to do so and * uses the other Party’s Confidential Information solely in connection with Providing the Works and not for its own benefit or the benefit of any third party.   Z12.2 A Party may disclose Confidential Information if and to the extent that the disclosure is lawful, not otherwise in breach of this contract and   * the information is already in the public domain through no fault of that Party, * the Party making the disclosure receives the information from a third party who lawfully acquires it and who is under no obligation restricting its disclosure, * the Party making the disclosure independently develops the information without access to any Confidential Information belonging to the other, * the Party making the disclosure is required to do so by law or any court order or regulatory or governmental body to which it is subject, * the information is disclosed to its professional advisers or to the *Adjudicator*, * the party to whom this information is Confidential information has given written consent, * the disclosure is to enable that Party’s accounts to be audited or * the disclosure made by the *Employer* to an actual or potential Incoming Contractor.   Z12.3 Each Party   * makes all the contractor’s, agents, employees, suppliers and Subcontractors (in the case of the *Contractor*) and Others (in the case of the *Employer*) aware of the confidentiality of Confidential Information belonging to the other, * takes all steps necessary to ensure its employees, agents, suppliers and Subcontractors keep such Confidential Information confidential and * when disclosing Confidential Information as permitted by this contract, to the extent legally possible imposes the same duty of confidentiality on the person to whom the disclosure is made to that in this contract.   Z12.4 Each Party may use data processing techniques, ideas or know-how gained in Providing the Works to further its normal business, to the extent that this does not involve disclosing the other Party’s Confidential Information or infringing the other Party’s Intellectual Property Rights. |
| Z13  Data Protection | Z13.1 The *Contractor* complies (as a Data Controller if necessary) with the DPA in relation to any Personal Data the Contractor holds in relation to this contract. This includes   * observing the eight data protection principles listed in Part 1 of Schedule 1 to the DPA, * responding to requests from Data Subjects for access to that Personal Data and * maintaining a valid and up to date notification to the Information Commissioner under Part II of the DPA which covers all processing of such Personal Data it undertakes under this contract.   Z13.2 The *Contractor*   * ensures that he does nothing which places the *Employer* in breach of the *Employer’s* obligations under the DPA, * at least seven days before the *starting date* inspects the terms of the *Employer’s* notification to the Information Commissioner under the DPA, * processes Personal Data owned or controlled by the *Employer* only as instructed by the *Employer,* * in all respects co-operates with the *Employer* so as to enable the Employer to comply with his obligations under the DPA and * promptly implements any further steps which the *Employer* requires to ensure compliance with the DPA.   Z13.3 If the *Employer* notifies the *Contractor* that the *Employer* has received a Subject Access Request the *Contractor* provides all Personal Data in its possession relating to that Data Subject as requested by the *Employer* within the timescale specified by the *Employer* and in any event within one week of such a request being made.  Z13.4 The *Contractor*   * only processes Personal Data obtained in Providing the Works where it is reasonably required in connection with Providing the Works, * processes Personal Data in accordance with the requirements of this contract and only in accordance with the lawful and reasonable instructions of the *Employer* unless the *Contractor* is properly of the opinion that to act on such instructions would be unlawful, * does not disclose such Personal Data to any third party other than in accordance with the DPA and the *Contractor’s* notification to the Information Commissioner, * where required by the DPA obtains the consent of Data Subjects to the disclosure of any Personal Data under this contract, * does not transfer any Personal Data outside the European Economic Area and * complies fully with all applicable Codes of Practice.   Z13.5 *The Contractor*   * brings into effect and maintains all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including taking reasonable steps to ensure the reliability of staff having access to the Personal Data, * provides the *Employer* with such information as the *Employer* requires to satisfy himself that the *Contractor* is complying with his obligations under the DPA including a copy of the *Contractor’s* notification under the DPA and * ensures that each agent or supplier or Subcontractor to the *Contractor* complies with the DPA and that the terms of the contract with them requires them to do so in similar terms to the requirements placed on the *Contractor* under this contract.   Z13.6 If the *Contractor* becomes aware that he or any of his employees, agents, suppliers or Subcontractors is processing or has processed Personal Data in contravention of this clause the *Contractor* notifies to the Project Manager of this within three days with full details of the contravention.  Z13.7 The *Contractor* co-operates and provides reasonable assistance with any proceedings or inquiry by the *Employer*, any affected Data Subject and/or the Information Commission or other statutory body responsible for enforcing the DPA.  Z13.8 On the request of the *Employer* at any time after the End Date the *Contractor* either returns to the *Employer* or destroys the Personal Data (and all copies of such Personal Data) in the *Contractor's* or a Subcontractor’s possession as directed by the *Employer*. |
| Z14  Freedom of Information | Z14.1 The *Contractor* acknowledges that the *Employer* is subject to the FOIA and the Environmental Information Regulations. The *Contractor* assists and cooperates with the *Employer* and ensures that his Subcontractors and agents do so to enable the *Employer* to comply with the Employer’s Information disclosure requirements under the FOIA and the Environmental Information Regulations.  Z14.2 The *Contractor* ensures that he and his Subcontractors   * transfer any Request for Information received to the *Employer* as soon as practicable after its receipt and in any event within two working days, * do not respond directly to any Requests for Information unless expressly authorised to do so by the *Employer*; * provide the *Employer* with a copy of all Information in its possession, power or control in the form that the *Employer* requires within five working days (or such other period as the *Employer* specifies) of the *Employer* requesting that information and * provide all assistance the *Employer* reasonably requests to enable the *Employer* to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.   Z14.3 The *Contractor* acknowledges that the *Employer* is responsible for determining, at his absolute discretion (having regard to the Codes of Practice)   * whether any information is exempt from disclosure under the FOIA, * in the case of a qualified exemption whether the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption and * whether any information is to be disclosed in response to a Request for Information.   Z14.4 If the *Contractor* considers that all or any Confidential Information provided to the *Employer* under this contract is a “trade secret” under section 43(1) of FOIA, or a duty of confidentiality applies under section 41(1) of the FOIA, or is otherwise exempt from disclosure under the FOIA, the *Contractor* ensures that the relevant information and the claimed exemption is clearly identified as such to the *Employer*. Despite such identification, the *Employer* determines at his absolute discretion whether such Information and/or any other information is exempt from disclosure or is to be disclosed in response to a Request for Information.  Z14.5 Where the *Employer* receives a Request for Information relating to any Confidential Information, the *Employer* (unless the *Employer* has decided not to disclose that information either because the FOIA does not apply or because it is exempt from disclosure under the FOIA) where reasonably practicable   * notifies the *Contractor* of that Request for Information in accordance with Part VII of the Code of Practice issue by the Secretary of State under section 45 of the FOIA and * considers any representations made by *Contractor* before disclosing that Confidential Information under the FOIA.   Z14.6 The *Contractor* acknowledges that the *Employer* may, acting in accordance with the Code of Practice, be obliged under the Codes of Practice, the FOIA, or the Environmental Information Regulations to disclose Information   * without consulting with the *Contractor* or * following consultation with the *Contractor* and having considered his views.   Z14.7 If the *Employer* decides to disclose any Confidential Information under the FOIA, he shall use all reasonable endeavours to notify the *Contractor* of this decision before making the disclosure.  Z14.8 Where the *Contractor* holds information on behalf of the Employer the *Contractor*   * has regard to the Codes of Practice issued under section 46 of the FOIA, * complies with any practice recommendation issued to him under section 48 of the FOIA and * complies with any retention and destruction of information policy which the *Employer* notifies to the *Contractor*.   Z14.9 The *Contractor*   * ensures that all Information produced under this contract or relating to the contract is retained for disclosure and * permits the *Employer* to inspect such information during normal working hours as the *Employer* requires. |
| *Z15*  *Contractor* to comply with special requirements in relation to statutory bodies | Z15.1 The *Contractor* complies with the special requirements as set out in the Works Information in relation to the organisations as set out in the Works Information. Compliance with the special requirements does not relieve the *Contractor* of any of his other obligations and liabilities under the contract and compliance by the *Contractor* with his other obligations and liabilities under the contract does not relieve him of his responsibility to comply with the special requirements. |
| Z16  Business continuity planning | Z16.1 Within four weeks of the *starting date* the *Contractor* submits a draft Business Continuity Plan.  Z16.2 The Business Continuity Plan shows   * which works the Contractor in Providing the Works provides that must continue within the first week following an incident that disrupts his normal operations, * the minimum number of people, Equipment and Plant and Materials (including employees, accommodation, IT, telephones etc.) needed to continue to Provide the Works, * details of key personnel (whether or not key persons) and their role in an emergency, * a register of all employees used in Providing the Works under the Business Continuity Plan with contact details (to be kept by the Contractor for emergency purposes) and * any other information required by the Works Information.   Z163 If the *Project Manager* does not accept the Business Continuity Plan, he notifies the *Contractor* and specifies those areas that require revision. The *Contractor* submits a revised plan within the period the *Project Manager* allows for reply and continues to do so until the Business Continuity Plan is accepted by the *Project Manager*. A reason for not accepting a Business Contracting Plan is that   * the *Contractor’s* plans are not practicable, * it does not show the information which this contract requires, * it does not represent the *Contractor’s* plans realistically, * it does not comply with the Works Information or * it does not continue the Provision of the Works. |
| Z17  TUPE “in” | Z17.1 The *Contractor* pays all remuneration, benefits, entitlements and outgoings for Transferring Employees from and including the Initial Transfer Date or (where appropriate) the date of any subsequent Relevant Transfer to the *Contractor*. This includes all wages, holiday pay, bonuses, commission, PAYE payments, national insurance contributions and pension contributions.  Z17.2 If before a Relevant Transfer the Transferring Employees are   * employed by the *Employer*, the *Employer* provides the information referred to in regulation 11(2) of the TUPE Regulations or * employed by an Incumbent Contractor, the *Employer* does not provide any information about the Transferring Employees and the *Contractor* applies to the Incumbent Contractor for the Employee Liability Information.   Z17.3 Within two weeks of a request from the *Employer* the *Contractor* provides full information about any measures (within the meaning of the TUPE Regulations and the Directive) that the *Contractor* intends to take in relation to any transferring Employee. The *Contractor* provides this information to the *Employer* and any Incumbent Contractor employing the Transferring Employees before the date of the Relevant Transfer. The *Contractor* bears the risk of any failure to provide this information.  Z17.4 The *Contractor* bears the risk of any claim or demand (even if arising before a Relevant Transfer) from   * any Transferring Employee in connection with the employment or termination of the employment of such Transferring Employee which arises from any act, fault or omission of the *Contractor* in relation to that Transferring Employee on or after the Relevant Transfer, * any trade union or staff association or employee representative (whether or not recognised by the *Contractor* in respect of the Transferring Employees) arising from or connected with any failure by the *Contractor* to comply with any legal obligation to that trade union, staff association or employee representative whether under Regulation 13 of the TUPE Regulations, under the Directive or otherwise) or * any Transferring Employee that the identity of the *Contractor* or a Subcontractor is to that Transferring Employee’s detriment or that the terms and conditions to be provided by or any proposed measures of the *Contractor* or Subcontractor are to that Transferring Employee’s detriment.   Z17.5 The *Employer* bears the risk of any claim or demand (even if arising after a Relevant Transfer) from   * any Transferring Employee in connection with the employment or termination of the employment of such Transferring Employee which arises from any act, fault or omission of the *Employer* in relation to that Transferring Employee before a Relevant Transfer, or * any trade union or staff association or employee representative (whether or not recognised by the *Employer* in respect of the Transferring Employees) arising from or connected with any failure by the *Employer* to comply with Regulation 13(4) of the TUPE Regulations, under the Directive or otherwise). |
| Z18  Pensions | Z18.1 The *Contractor* complies with its obligations under the Pension Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005. |
| Z19  TUPE “out” | Z19.1 On each Relevant Transfer, the *Contractor* complies with all of his obligations under the TUPE Regulations and the Directive in respect of all Relevant Employees affected by that Relevant Transfer.  Z19.2 Within three weeks of a request of the *Project Manager*, the *Contractor* provides full and accurate Employee Liability Information about all personnel he and his Subcontractors employ in Providing the *Works* including all Relevant Employees and personnel dismissed for a reason connected with a Relevant Transfer but not more than once each year and twice during the 12 months preceding any Relevant Transfer. The Contractor bears the risk of any inaccuracy in that Employee Liability Information.  Z19.3 The *Contractor* authorises the *Employer* to use any of the Employee Liability Information as the *Employer* considers necessary for the purposes of its business or for informing any Incoming Contractor or tenderer for any works which are similar to the *works* or any part of the *works*.  Z19.4 During the 52 weeks before the end of the *works period* or after one Party has notified the other Party he is terminating   * the *Contractor* allows the *Employer* or any other persons whose names the *Project Manager* notifies to the *Contractor* to communicate with and meet the Relevant Employees and their trade union or employee representatives as the *Project Manager* requests, * the *Contractor* does not and ensures his Subcontractors do not (in each case) without the prior written consent of the *Employer* other than in the ordinary course of business * vary or purport or promise to vary the terms and conditions of employment of any employee employed in Providing the Works*,* * increase or decrease the number of employees employed in used in Providing the Works, * assign, replace or redeploy any employee used in Providing the Works to other duties unconnected with the *works* or * terminate or give notice to terminate the employment of any employee employed in Providing the Works other than for gross misconduct or retirement and * the Contractor notifies the *Project Manager* immediately if any employee employed in Providing the Works * is dismissed for gross misconduct, * gives notice to terminate their employment, * has their employment terminated for any reason or * has a material change to their terms and conditions of employment.   Z19.5 The *Contractor* bears the risk of all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the *Employer* or any Incoming Contractor arising out of the employment or termination of employment of any employee of the *Contractor* or a Subcontractor during any period before the End Date.  Z19.6 The *Contractor* imposes in each contract with a Subcontractor the same TUPE and pension terms (or terms materially to the same effect) as those imposed on it under this contract and ensures that the Subcontractor complies with those terms. The *Contractor* bears the risk of any failure by the Subcontractor to comply with those terms.  Z19.7 The *Employer* bears the risk of all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the *Contractor* or a Subcontractor arising out of the employment or termination of employment of any employee of the *Contractor* or a Subcontractor during any period after the End Date.  Z19.8 The *Contractor* pays all remuneration, benefits entitlements and outgoings that are due in respect of the Relevant Employees who are the subject of a Relevant Transfer on the End Date up to the End Date. This includes all wages, holiday pay, bonuses, commission PAYE payments, national insurance contributions and pension contributions. |
| Z20  End Date | Z20.1 On the End Date the *Contractor*   * either returns any equipment provided by the *Employer* to the *Employer* or transfers it to an Incoming Contractor in accordance with the Exit Management Plan and * transfers any Transferring Equipment with full title guarantee and free of encumbrances to the *Employer* or to an Incoming Contractor in accordance with the Exit Management Plan.   Z20.2 The *Contractor* executes and delivers to the *Employer* or Incoming Contractor all consents and other documents as the *Employer* reasonably requires   * to complete the transfer of ownership in the Transferring Equipment and * to return to the *Employer* (or Incoming Contractor as set out in the Exit Management Plan) the equipment provided by the *Employer* to the *Contractor*.   Risk in the Transferring Equipment and the equipment provided by the *Employer* passes to the *Employer* or Incoming Contractor when the transfer of ownership is completed.  Z20.3 The *Contractor* transfers to the *Employer* or Incoming Contractor the benefit and burden of any subcontract or any other contract related to Providing the Works, in accordance with the Exit Management Plan. The *Contractor* enters into any novation agreement the *Employer* requires for this purpose. The *Contractor* and the *Employer* send a letter to each third party concerned with each such subcontract or contract in a form agreed between them (each acting reasonably). The letter provides for the assignment or novation (as required by the Employer) of that subcontract or contract from the *Contractor* to the *Employer* or Incoming Contractor as set out in the Exit Management Plan.  Z20.4 If the consent of any third party is required to the assignment or novation of a subcontract or other contract related to Providing the Works and has not been obtained at or before the End Date   * the *Employer* or Incoming Contractor (as set out in the Exit Management Plan) and the *Contractor* each use all reasonable endeavours to obtain that consent as soon as possible after the End Date, * the *Contractor* acts in connection with the subcontract or contract as the *Employer* or Incoming Contractor reasonably requests and, to the extent permitted by applicable law, receives and holds the benefit of the subcontract or contract as agent for the *Employer* or Incoming Contractor and * the *Employer* performs, observes and fulfils or procures that the Incoming Contractor performs, observes and fulfils all the *Contractor’s* obligations under to the subcontract or contract after the End Date, and bears the risk of any failure to do so.   Z20.5 The *Contractor*   * bears the risk of any breach, act, fault or omission of the *Contractor* or a Subcontractor in relation to any subcontract before the End Date and * warrants to the *Employer* for the benefit of the *Employer* and Incoming Contractor at the End Date (except as the *Contractor* notifies the *Employer* and Incoming Contractor in writing on or before the End Date) that * the *Contractor* has not given or received notice of any material breach or of termination of any subcontracts and * the *Contractor* is not in breach any subcontracts (other than any breach which is minor and capable of remedy without cost). |
| Z21  Corrupt gifts and payment of commission | Z21.1 The *Contractor* shall:  (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery, anti-money laundering and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);  (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;  [Hide Note: Activity outside the UK](http://publicsector.practicallaw.com/6-503-5299?source=relatedcontent#null#null)Note: Activity outside the UK  1.1(b) Activity outside the UK  **Activity outside the UK**  If the supplier (or any of its associated persons) has no "close connection" with the UK and commits bribery outside the UK then its activities are not caught by the BA 2010, although any such bribery on behalf of the customer will result in liability for the customer under section 7 of the BA 2010. See [Practice note, Bribery Act 2010: Territorial application (section 12) (www.practicallaw.com/5-500-8692)](http://publicsector.practicallaw.com/5-500-8692#a297422) for further information on the territorial scope of the BA 2010 and the meaning of "close connection".  This clause ensures that a non-UK supplier is contractually bound to avoid bribery as defined in the BA 2010, even though the BA 2010 may not be applicable to it. [*Clause 1.1(a)*](http://publicsector.practicallaw.com/6-503-5299?source=relatedcontent#a999191#a999191) combined with this clause obliges the supplier to ensure that its non-UK associated persons similarly avoid bribery as per the BA 2010. If the supplier is UK based and will not subcontract outside the UK then this clause and the cross reference to it in [*clause 1.1(d)*](http://publicsector.practicallaw.com/6-503-5299?source=relatedcontent#a387434#a387434) may be omitted.    [Hide Note](http://publicsector.practicallaw.com/6-503-5299?source=relatedcontent#null#null)  (c) comply with the *Employer*'s Ethics, Anti-bribery and Anti-corruption Policies (in each case as the Employer or the relevant industry body may update them from time to time) (**Relevant Policies**).  [Hide Note: Relevant policies](http://publicsector.practicallaw.com/6-503-5299?source=relatedcontent#null#null)Note: Relevant policies  1.1(c) Relevant policies  **Relevant policies**  If the customer has its own policies and procedures on bribery prevention, the customer should ask the supplier to comply with these. The policies should be annexed to the agreement. See [Practice note, Anti-corruption policies (www.practicallaw.com/9-502-3153)](http://publicsector.practicallaw.com/9-502-3153) for advice on creating an anti-corruption policy.  The supplier may have its own anti-corruption policies which conflict with or differ from those of the customer. In this scenario, the customer may need to review the supplier's policies to assess whether they are adequate and, if they are, rely on [*clause 1.1(d)*](http://publicsector.practicallaw.com/6-503-5299?source=relatedcontent#a387434#a387434).  In addition, there may also be industry codes for the relevant industry that the supplier should comply with.  If acting for the supplier, consider whether the customer should bear some of the costs incurred by the supplier in complying with changes to the customer's policies and whether the supplier should have the right not to comply with changes to the customer's policies which it has not approved.    [Hide Note](http://publicsector.practicallaw.com/6-503-5299?source=relatedcontent#null#null)  (d) have and shall maintain in place throughout the term of this contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and the Relevant Policies and will enforce them where appropriate;  Z21.2 The *Employer* shall be immediately entitled to terminate the contract or any part of it and to recover from the *Contractor* the amount of any loss resulting, plus the value of any gift or consideration if in relation to the contract or any other contract with the Employer the *Contractor*, or any of its personnel (whether with or without that *Contractor*’s knowledge) shall have offered, or given, or agreed to give, to any person, any gift, or consideration, inducement or reward of any kind, for doing or not doing any action (except in accordance with a permitted and lawful subcontract); or the *Contractor* or any of its personnel shall have:-   1. committed any offence under the Prevention of Corruption Acts 1889 to 1916; or 2. committed any offence under the Bribery Act 2010 3. given any fee or reward, the receipt of which is an offence under Section 117 (2) of the Local Government Act 1972. |
| Z22  Audit and inspection | Z22.1 The *Contractor* shall, and shall procure that its sub-contractors shall maintain a complete and correct set of records pertaining to (“Records”):   * all activities relating to the performance of the works’ * the *Contractor*’s obligations under the contract; and * all transactions entered into by the *Contractor* for the purposes of the contract (including time-sheets for the *Contractor*’s Personnel where such records are material to the calculation of the Contract Price).   Z22.2 For the purpose of conducting any audit investigation of the contract, the *Contractor* shall provide all facilities and allow full access to the *Employer* or its auditors to:   * 1. all offices and premises of the *Contractor* for the purpose of inspecting Records and documents in the possession, custody or control of the *Contractor* in connection with the Provision of the Works;   2. all technology, resources, systems and procedures used or proposed to be used in connection with the Provision of the Works; and   3. interview the *Contractor’*s Personnel and officers.   4. verify that any of the *Contractor*’s policies, procedures, systems referred to in this contract are up-to-date and are in place for the duration of the contract.   Z22.3 The *Contractor* shall keep and maintain until 12 years after the end of the contract , or as long a period as may be agreed between the Parties, full and accurate records of the contract including, but not limited to:   1. the works provided under the contract; 2. all expenditure reimbursed by the *Employer*; and 3. all payments made by the *Employer*.   Z22.4 The *Contractor* shall by a term in any sub-contract authorised by the *Employer*, secure a similar right of access for the *Employer* and its auditors for the purpose of conducting any audit investigation of the contract.  Z22.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material breach of contract by the *Contractor* in which case the *Contractor* shall reimburse the *Employer* for all the *Employer*’s reasonable costs incurred in the course of the audit.  Z22.6 For the purposes of allowing the *Employe*r to access London Living Wage information, the *Contract*or shall provide the *Employer* and/or any person nominated by the *Employer* with all reasonable co-operation including:   * 1. granting access to any premises, equipment, plant, machinery or systems used in the *Contractor*’s performance of the ontract, and where such premises, equipment, plant, machinery or systems are not the *Contractor’s* own, using all reasonable endeavours to procure such access;   2. ensuring that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration to any Records;   3. making all Records available for inspection and providing copies of any Records if requested; and   4. making the *Contractor*’s Personnel available for discussion with the *Employer.*   Z22.7 Any audit, inspection and/or testing by the *Employer* pursuant to this clause shall not relieve the *Contractor* (or any of its sub-contractors) from any obligation under the contract or prejudice any of the *Employer’*s rights, powers or remedies against the *Contractor.*  Z22.8 If as a result of any audit, inspection and/or testing pursuant to this condition, the *Employer* is not satisfied that the works are conforming or will conform in all respects with the contract and the *Employer* so informs the *Contractor*, the *Contractor* will take all steps necessary to ensure compliance. |
| Z23  Local Government Ombudsman | Z23.1 The *Contractor* fully co-operates with any enquiry or investigation made by the Local Government Ombudsman or the *Employer* which in any way concerns, affects or relates to the performance of this contract. This includes providing access to   * the originals or copies of documents, letters, notes, minutes, records or any other information (whether held or stored electronically, in hard copy format or otherwise) which relate to the investigation, * premises, vehicles, plant, equipment (including IT hardware and software) or other assets used by the *Contractor* in Providing the Works and * the *Contractor’s* employees Providing the Works (including management or supervisory staff) or who may be the subject of, or be named in any enquiry or investigation by the Local Government Ombudsman (including providing suitable facilities for interviewing the employees).   Z23.2 The *Contractor* pays to the *Employer* the whole or an appropriate part of any compensation paid or the value of any other benefit given by the *Employer* to any person following a report or investigation by the Local Government Ombudsman which clearly identifies the *Contractor* or any Subcontractor as being wholly or partly responsible for any maladministration or other failure and recommends compensation to be paid.  Z233 If the *Contractor* disputes the amount of any compensation paid or the value of any benefit given by the *Employer*, following a Local Government Ombudsman report or investigation the assessment of that amount or value is referred to the dispute resolution escalation procedure in the contract. |
| Z24  Complaints about Works Provision | Z24.1 The *Contractor* deals with any complaints received from whatever source in a prompt, courteous and efficient manner and in accordance with the Employer’s service standards for complaints as set out in the Works Information.  Z24.2 The *Contractor* keeps a record of all complaints received and of the action taken in relation to such complaints. This record is kept available for inspection by the *Project Manager* at all reasonable times. The *Contractor* notifies the *Project Manager* of all complaints received and of all steps taken in response to them in accordance with the Works Information.  Z24.3 Where compensation is payable to a complainant, the procedure and amount will be determined as set out in the Works Information*.* |
| Z25  No partnership or agency | Z25.1 This contract does not create a legal partnership or joint venture between the Parties.  Z25.2 This contract does not make either Party the agent of the other or give either Party any authority or power to contract in the name of or create a liability against the other Party except where it states otherwise. |
| Z26  Publicity and media | Z26.1 The *Contractor* does not, and ensures that Subcontractors do not, give information concerning the *works* for publication in the press or on radio, television, screen, social media or any other medium without the consent of the *Project Manager* (or following the End Date the *Employer*)*.*  Z26.2 The *Contractor* does not, and ensures that Subcontractors do not, take photographs of the Site or of work carried out in connection with the *works* unless he has obtained the approval of the *Project Manager* (or following the End Date the *Employer*)*.*  Z26.3 The *Contractor* takes the measures needed to prevent his and his Subcontractor’s people taking, publishing or otherwise circulating such photographs. |
| Z27  Assignment and Novation | Z27.1 The *Contractor* does not, without the written consent of the *Project Manager*, assign or transfer this contract, or any part of, share of or interest in it. In the absence of the *Project Manager*’s written consent no sum of money becoming due under this contract is payable to any person other than the *Contractor*.  Z27.2 In this clause “Contracting Authority” means a contracting authority as defined in the current Public Contracts Regulations or relevant succeeding rules.  Z27.3 The *Employer* is entitled to:   * assign or otherwise dispose of its rights under this contract or any part thereof to any Contracting Authority, or * assign or otherwise dispose of its rights under this contract or any part thereof to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Employer*   provided always that where such assignment or other disposal increases the burden of the *Contractor*’s obligations pursuant to this contract, the *Contractor* is entitled to such additional payment as may be reasonable to compensate for such additional burden.   1. Z27.4 The *Employer* is entitled, without the need to obtain the *Contractor*’s consent, to:  * novate this contract or any part thereof to any Contracting Authority; or * novate its rights and obligations under this contract to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Employer*;   upon such terms as the *Employer* proposes, provided that where such novation increases the burden of the *Contractor*’s obligations pursuant to this contract, the *Contractor* is entitled to such additional payment as may be reasonable to compensate for such additional burden.  Z27.5 Any change in the legal status of the *Employer* such that it ceases to be a Contracting Authority does not affect the validity of this contract. In such circumstances, this contract binds and inures to the benefit of any successor body to the *Employer*.  Z27.6 If this contract is novated to a body which is not a Contracting Authority or if a successor body which is not a Contracting Authority becomes the *Employer* (both such bodies being referred to in the remainder of this clause as the “transferee”) the transferee is only able to assign, novate or otherwise dispose of its rights and obligations under this contract or any part thereof with the written consent of the *Contractor*. |
| Z28  Collateral warranties | Z28.1 The *Contractor* enters into or obtains from his Subcontractors the collateral warranty agreements as stated in the Works Information. |
| Z29  Tax and national insurance contributions | Z29.1 This contract falls within the scope of the Construction Industry Scheme (“the Scheme”) Regulations. If the *Contractor* (subcontractor in terms of the Scheme) is not registered under the Scheme and is not a local authority or other public body exempt from registration under the Scheme, in all invoices applications for payment the *Contractor* separately identifies the cost of labour. The *Employer* deducts payment in accordance with the requirements of the Scheme. |
| Z30  Emergencies | Z30.1 The *Contractor* provides additional works which are the same or similar to the *works* under the contract at any time and any place and in the manner instructed by the *Project Manager* to enable the *Employer* to carry out any of his functions in a situation which, in the opinion of the *Project Manager*, amounts to a possible, potential, or an actual emergency or disaster. These additional works are a compensation event.  Z30.2 The *Contractor* is responsible at no cost to the *Employer* for training any appropriate employee in such manner as the *Project Manager* requires to enable those employees to prevent, deal with, or alleviate the consequence of any such emergency or disaster.  Z30.3 The *Contractor* makes and submits to the *Project Manager* his emergency plan. If the *Project Manager* does not accept the *Contractor’s* emergency plan, he notifies the *Contractor* and specifies those areas which require revision. A reason for not accepting is that   * it does not correspond with *the Employer’s* emergency plan, * it does not represent the *Contractor’s* plans realistically, * it is not practicable or * it does not allow the *Contractor* to continue Provide the Works in accordance with this contract.   The *Contractor* reviews and updates his emergency plan as necessary during the *works period*. |
| Z31  Recruitment and training method statement | Z31.1 If a Recruitment and Training Method Statement is not identified in the Contract Data, the *Contractor* submits a first Recruitment and Training Method Statement to the *Project Manager* for acceptance within the period stated in the Contract Data.  Z31.2 The *Contractor* shows on each Recruitment and Training Method Statement the information which the Works Information requires the *Contractor* to show.  Z31.3 The *Contractor* develops working methods and where necessary secures Subcontractor co-operation to achieve the recruitment and training requirements in accordance with the Recruitment and Training Method Statement.  Z31.4 Within two weeks of the *Contractor* submitting a Recruitment and Training Method Statement to him for acceptance, the *Project Manager* either accepts the Recruitment and Training Method Statement or notifies the *Contractor* of his reasons for not accepting it. A reason for not accepting a Recruitment and Training Method Statement is that·   * it is not practicable, * it does not show the information which this contract requires or * it does not comply with the Works Information. |
| Z32  Revising the recruitment and training method statement | Z32.1 The *Contractor* submits a revised Recruitment and Training Method Statement 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 the intervals stated in the Contract Data. |
| Z33  Supply-chain initiatives | Z33.1 The *Contractor* uses reasonable endeavours to provide opportunities for Small Businesses and Social Enterprises. |
| Z34  Staff induction | Z34.1 The *Contractor* ensures that if and when so instructed by the *Project Manager* people employed by the *Contractor* and Subcontractors in Providing the Works attend a training session provided by the *Employer.* This training session covers customer service, equality and diversity and such other topics as the *Employer* requires. The maximum length of the training session is one day. |
| Z35  Monitoring information | Z35.1 When instructed by the *Project Manager*, or required by a training provider or a trainee, the *Contractor* maintains a training plan as stated in the Contractor’s Workforce Standard Method Statement or as directed by the Employer and provides evidence of work undertaken for a trainee’s portfolio.  Z35.2 The *Contractor* allows the *Project Manager* to inspect at any time within working hours the training plans and other documents he is required to keep.  Z35.3 The *Contractor* uses best endeavours to obtain from each New Entrant trainee a signed statement authorising the release of Personal Data in relation to his training information to the *Project Manager* for the purposes of contract monitoring.  Z35.4 The *Contractor* provides the *Project Manager* with a progress schedule and report at periods as stated in the Contract Data.  Z35.5 The *Contractor* shows in each progress schedule and report which he submits   * the number of Person-weeks used on the contract that are delivered by New Entrants who are trainees, split between Apprentices and Other Trainees, and what percentage this represents of the total Person-weeks used on the contract, * the number of Person-weeks delivered by Work Placement Persons and what percentage this represents of the total Person-weeks used on the contract; * the number of vacancies notified to the organisations named in the Works Information, * the number and percentage of vacancies that are filled by candidates referred by the organisations named in the Works Information, * the numbers of people working on the contract for which a training plan is being maintained, * the names and addresses of Small Businesses that \_ have been invited to price for subcontracts or supply contracts, * have not worked for the *Contractor* in the previous five years, and * are awarded contracts and * the number and total value of contracts awarded to Social Enterprises and the names and addresses of the Social Enterprises to which they have been awarded. |
| Z36  Whistle blowing | Z36.1 In this clause, “Whistle Blowing” means the exposure of unlawfulness, malpractice, negligence, abuses or dangers, such as professional misconduct or incompetence, which exists in the organisation in which the whistle blower works.  Z36.2 Nothing in this contract shall prevent any of the *Contractor*’s employees from making a protected disclosure within the meaning of the Public Interest Disclosure Act 1998. Workers who make a protected disclosure are protected against dismissal and victimisation in respect of the disclosure.  Z36.3 The *Contractor* shall:  a. comply with all applicable laws, statutes, regulations, and codes relating to Whistle Blowing, including but not limited to the relevant provisions under the Public Interest Disclosure Act 1998 (“Whistle Blowing Legislation”) and insert the same provision in any sub-contract relating to provision of any works, goods or services under the contract;  b. have and maintain throughout the term of this contract, policies and procedures to ensure compliance with the Whistle Blowing Legislation, and will enforce them where appropriate; and  c. ensure all employees are given access to the *Contractor*’s policies on Whistle Blowing.  Z36.4 Where the *Contractor* has previously breached Whistle Blowing Legislation prior to entering into the contract, the *Contractor* shall provide evidence to the *Employer* that suitable processes have been put in place to ensure future compliance.  Z36.5 Upon breach of thisclause, the *Employer* shall be entitled to terminate the contract or any part of it with immediate effect and to recover from the *Contractor* the amount of any loss resulting from such termination, including but not limited to, the costs of appointing a third party to complete the contract requirements on the *Contractor’s* behalf. |
| Z37  Blacklisting | Z37.1 The *Employer* supports equality within the workplace and is committed to tackling all forms of malpractice including the illegal practice of blacklisting.  Z37.2 The *Contractor* shall:  a) comply with all applicable laws, statutes, regulations, and codes relating to illegal blacklisting practices, including but not limited to the relevant provisions under the Employment Relations Act 1999 Blacklisting Regulations 2010 and the Data Protection Act 1998 (“Blacklisting Legislation”), and shall insert the same provision in any sub-contract relating to provision of any works, goods or services under the contract;  b) not engage in any activity, practice or conduct which would constitute an offence under Blacklisting Legislation if such activity, practice or conduct is carried out in the UK;  c) have and maintain throughout the term of this contract, policies and procedures to ensure compliance with the Blacklisting Legislation, and will enforce them where appropriate;  d) take appropriate steps to ensure that neither the *Contractor,* sub-contractors nor any employees engage in any illegal blacklisting practices.  Z37.3 Where the *Contractor* has previously breached Blacklisting Legislation prior to entering into the contract, the *Contractor* shall provide evidence to the *Employer* that suitable processes have been put in place to ensure that the practice of Blacklisting does not reoccur.  Z37.4 Upon breach of this clause , the *Employer* shall be immediately entitled to terminate the contract or any part of it and to recover from the *Contractor* the amount of any loss resulting from such termination, including but not limited to, the costs of appointing a third party to complete the contract requirements on the *Contractor*’s behalf. |
| Z38  London Living Wage | “London Living Wage” shall mean the basic hourly wage as defined on the Greater London site (before tax, other deductions and any increase for overtime) as may be updated from time to time and notified to the *Contractor* by the *Employer.*  Z38.1 Without prejudice to any other provision of this contract, the *Contractor* shall:   * 1. ensure that none of its employees, sub-contraction’s employees, sub-contractors or agents engaged in the Provision of the Works is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage (unless otherwise directed by the *Employer*);   2. ensure that any increase in the London Living Wage notified to the *Contractor* by the *Employer* takes effect immediately from the date of notification;   3. provide to the *Employer* such information concerning the payment of the London Living Wage to its employees or to the employees of its sub-contractors engaged in the Provision of the Works as the *Employer* may reasonably require from time to time;   4. disseminate on behalf of the *Employer* to its employees engaged in the Provision of the Works such perception questionnaires as the *Employer* may reasonably require from time to time and promptly collate and return to the *Employer* responses to such questionnaires;   5. co-operate and provide all reasonable assistance to the *Employer* in monitoring the effect of the London Living Wage on the quality of works provided under this contract. |
| Z39  Civil Contingencies Act 2004 | Z39.1 The *Contractor* acknowledges and accepts that the *Employer* has obligations under the Civil Contingencies Act 2004 (“CCA”) and hereby agrees:   * during and after the *works period* to provide any information, documentation and assistance that the *Employer* may reasonably require to be able to comply with its obligations under section 2 of the CCA; * to put in place such measures as may be reasonably practicable so that as far as reasonably possible it can continue to undertake its obligations under this contract in the event of an Emergency (as defined in the CAA) and to notify the *Employer* of such measures;   to obey any instruction of the *Employer* during and in respect of an Emergency, the *Employer* undertakes to remunerate and indemnify the *Contractor* against any direct claims, costs or losses directly arising from the *Contractor*’s compliance with such instructions. |
| Z40  Working with Children and vulnerable adults | Z40.1 The *Contractor* shall comply with all relevant legislation, codes of practice, statutory guidance and good practice guidance published by the Department of Health and the *Employer*’s Safeguarding Boards as appropriate.  Z40.2 The *Contractor* shall ensure that these policies are communicated to its employees (including volunteers, agents and sub-contractors) and that appropriate training relevant to their role in the organisation, is provided on safeguarding children and vulnerable adults.  Z40.3 The *Contractor* will ensure that it has appropriate procedures in place that support:   1. the immediate reporting of concerns to the *Project* Manager; and 2. the encouragement of ‘whistle blowing’ where appropriate, through clear procedures for employees. |
| Z41  Work Related Road Risk (WRRR) safety requirements | Z41.1 The defined terms within this clause are as follows:  *“Approved Driver Training”* means the Safe Urban Driving course as accredited by the Joint Approvals Unit for Periodic Training details of which can be found at: [www.fors-online.com](http://www.fors-online.com) This course if offered to free FORS members and Camden Council also offers this training course. Please enquire with [WRRR@Camden.gov.uk](mailto:WRRR@Camden.gov.uk) for details of upcoming courses.  *“Bronze Accreditation”* means the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at: [www.forsonline.org.uk](http://www.forsonline.org.uk).  *“Class VI Mirror”* means a mirror fitted to a Freight Vehicle which allows the driver to see what is immediately in front of the vehicle and that complies with Directive 2003/97/EC.  *“Close Proximity Sensor”* means a device consisting of a sensor system which detects objects in a vehicle’s blind spot and alerts the driver via in-cab visual and/or audio stimuli and which alerts other road users to the planned movement of the vehicle when the vehicle’s indicators are engaged.  *“Collision reporting”* means a report detailing all collisions during the previous 12 months involving injuries to persons or fatalities and within 5 working days of occurring.  *“Driver”* means any employee of the Contractor (including an agency driver), who operates Large Vehicles on behalf of the Contractor while Providing the Works.  *DVLA* means the Driver and Vehicle Licensing Agency.  *“eLearning”* means an online driver training course offered via FORS and one of either two modules ‘cycle safety’ or ‘safety’, which can be found at:  <http://www.fors-online.org.uk/index.php?page=AE_INTRO&return=PTE_INTRO>  *“FORS”* means the Fleet Operator Recognition Scheme, which is an accredited scheme for businesses operating van and lorry fleets and Large Vehicles. It is free to join and offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance.  *“FORS Standard”* means the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at: [www.fors-online.org.uk](http://www.fors-online.org.uk).  *“Fresnel Lens”* means a clear thin plastic lens that is press fitted to a lorry window on the passenger side and allows the driver to see that which is in the vehicle’s blind spot.  *“Gold Accreditation”* means the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at: [www.fors-online.org.uk](http://www.fors-online.org.uk).  *“Large Vehicle”* means a vehicle with a MAM exceeding 3,500 kilograms.  *“MAM”* means the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road. This is also known as the gross vehicle weight (GVW).  *“Side guards”* means guards that are fitted between the front and rear axles of a Lorry and that comply with EC Directive 89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986.  *“Silver Accreditation”* means the intermediate level of accreditation within the FORS Standard, the requirements of which are more particularly described at: [www.fors-online.org.uk](http://www.fors-online.org.uk).  Z41.2 **FORS accreditation**   1. Where the Contractor operates Large Vehicles, it shall within 90 days of the *starting date* (unless already registered) register for FORS or a scheme, which in the reasonable opinion of the Authority, is an acceptable substitute to FORS (the “Alternative Scheme”); and (unless already accredited) have attained the standard of Bronze Accreditation (or higher) or the equivalent within the Alternative Scheme. 2. The Contractor shall maintain the standard of Bronze Accreditation (or equivalent standard within the Alternative Scheme) by way of an annual independent assessment in accordance with the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme. 3. Alternatively, where the Contractor has attained Silver or Gold Accreditation, the maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.   Z41.3 **Safety Equipment on Vehicles**  The Contractor shall ensure that any Large Vehicle, which it uses to Provide the Works, shall:   * + 1. Have side guards fitted, unless the Contractor can demonstrate to the reasonable satisfaction of the *Employer* that the vehicle will not perform the function for which it was built if side guards are fitted;     2. Have a close proximity warning system fitted comprising: a front-mounted, rear-facing CCTV camera with in-cab live feed from the said camera, or a Fresnel Lens where the Fresnel Lens provides a reliable alternative to the CCTV camera and where the Contractor has obtained the Employer’s approval to use the Fresnel Lens, which approval the Employer may withhold in its unfettered discretion; and a Close Proximity Sensor with in-cab audible or visual feed;     3. Class VI Mirror (where suitable);     4. Bear prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside.   Z41.4 **Driver Licence Checks**  The Contractor shall ensure that each of its drivers has a driving licence check with the DVLA before that driver commences delivery and that the driving licence check with the DVLA is repeated in accordance with either the following risk scale, or the Contractor’s risk scale, provided that the Contractor’s risk scale has been approved in writing by the Employer within the last 12 months:  i. 0 – 3 points on the driving licence – annual checks;  ii. 4 – 8 points on the driving licence – six monthly checks;  iii. 9 – 11 points on the driving licence – quarterly checks; or  iv. 12 or more points on the driving licence – monthly checks  Z41.5  **Driver Training**  The Contractor shall ensure that each of its drivers who has not undertaken:  i. Approved Driver Training (or training, which in the reasonable opinion of the Employer, is an acceptable substitute) in the last three years, undertakes Approved Driver Training or the said substitute training within 60 days of the commencement of this Contract; and  ii. A FORS e-learning ‘safety’ or ‘cycle safety’ module in the last 12 months, undertakes a FORS e-learning safety module (or e-learning, which in the reasonable opinion of the Employer, is an acceptable substitute).  Z41.6 **Collision Reporting**  The Contractor shall notify the Employer of any collisions involving injuries to persons or fatalities within five working days.  Z41.7  **Subcontracts**  If the Employer considers it appropriate to do so, they will specify that these terms shall also apply to the Contractor’s subcontractors or any of them and in this event the Contractor shall ensure that any specified subcontracts awarded by them include terms requiring subcontractors to comply with these obligations. The Contractor shall provide documentary evidence of the inclusion of such terms in their subcontracts if requested to do so by the Employer.  Z41.8 **Failure to Comply with WRRR requirements**   1. If the Contractor fails to comply with clauses Z41.1 – Z41.7 above:    1. the Contractor shall be in material breach of this Contract and subject to the Enforcement Procedure referred to in sub-paragraph (v) below; and    2. the Employer may refuse the Contractor, its employees, agents and Large Vehicles entry onto any property that is owned, occupied or managed by the Employer for any purpose (including but not limited to deliveries);    3. Contractors will self-certify their compliance at the start of the Contract and provide annual updates on their compliance, as well as notifying the Employer if their compliance changes at any stage.;    4. Spot checks will be undertaken at random times at the Employer’s properties and potentially also at Contractors vehicle operators sites or depots.    5. A copy of the Enforcement Procedure is attached in Schedule 10 of the Invitation to Tender. Contractors should note that the Employer has the option to terminate this contract in the event of non-compliance with clauses Z41.1 – Z41.7 |
| **Z42**  **Recovery of VAT** | Z42.1 The *Contractor* pays to the *Employer* within 7 days of a written demand by the *Project Manager* any VAT or amount in respect of VAT incurred by the *Employer* as a result of the *Contractor*’s failure to carry out his obligations under this contract where the failure results in the *Employer* engaging another person to fulfil the *Contractor*’s obligations and incurring expenditure on which the *Employer* is unable to recover the VAT from HM Customs & Excise.  Z42.2 Clause Z42.1 does not apply to the extent that the *Employer* would have been unable to recover VAT even if the *Contractor* had fulfilled its obligations under this contract.  Z42.3 Where either party is liable to reimburse or indemnify the other party for costs incurred by that other party, the amount to be paid does not include any VAT charged on such costs, save where the payee is unable to recover such VAT from HM Customs & Excise as input tax. |
| **Z43**  **Workforce Standards** | Z43.1 The *Contractor* complies with the Workforce Standards.  Z43.2 The *Contractor* provides to the *Employer* on request evidence of his compliance with the Workforce Standards.  Z43.3 In the event that the *Employer* is not satisfied that the *Contractor* is complying with the Workforce Standards the Parties discuss and agree how such compliance may be achieved during the remainder of the contract. |
| **Z44**  **Rectification** | ***Z44.1 “Contractor Performance Measure Default”***shall mean any one or more of the following events:   1. a consistent underperformance by the *Contractor* against one or more of the Performance Measures; 2. a Persistent Breach, namely a breach of contract which occurs in two consecutive months or more than 4 individual breaches in a calendar year; 3. a failure by the *Contractor* to comply with the Agreed Programme; 4. a failure by the *Contractor* to maintain adequate and proper resources (plant, materials and labour) both on and off Site to fulfil his obligations in the contract; 5. a failure by the *Contractor* to provide timely and accurate information both in the planning and performance stages of the contract; 6. a repeated failure by the C*ontractor* to comply with the Workforce Standards; 7. a breach by the *Contractor* of its obligations to take out and maintain any of the Required Insurances.   **Z44.2 Rectification of Contractor Performance Measure Default**  Z44.2. 1.Rectifiable Default  If a Contractor Performance Measure Default has occurred and it is rectifiable by the *Contracto*r, the *Project Manager* shall serve a Rectification Notice on the *Contractor*.  Z44.2.2 The Rectification Notice must specify:   1. the type and nature of Contractor Performance Measure Default that has occurred together with reasonable details of the same; 2. the timescale in which the Contractor Performance Measure Default must be rectified; 3. any costs which the *Employer* will recover from the *Contractor* pursuant to the Contractor Performance Measure Default.   Z44.2.3 The *Contractor* must:   1. put forward within the stated timescale a programme and plan that is to the satisfaction of the *Project Manager* and which is intended to rectify the Contractor Performance Measure Default (the **"Default Rectification Programme");** and 2. implement the Default Rectification Programme in accordance with its terms such that the Contractor Performance Measure Default is rectified.   Z44.2.4 If the *Contractor* fails to rectify the Contractor Performance Measure Default within the given timescale the *Employer* may seek to appoint an alternative contractor to rectify the Contractor Performance Measure Default and recover any costs from the *Contractor*.  Z44.2.5 At the discretion of the *Project Manager,* the *Employer* may deduct the appropriate amount from any sums payable to the *Contractor*, having regard to the rates set out in the Price List, necessary to reflect recovery of sums paid or to become payable in respect of any part of the *works* for which a Rectification Notice has been served and not complied with.  **Z44 2 6 Non-rectifiable Contractor Performance Measure Default**  Where a non-rectifiable Contractor Performance Measure Default has occurred, the *Project Manager* shall advise the *Employer* who may terminate the contract at no cost to the *Employer*. |
| **Z45**  **Local procurement objectives** | Z45.1 The *Contractor* uses reasonable endeavours to promote the local economy in the London Borough of Camden by achieving a spend of 10% of their supply chain costs with local suppliers, Small and Medium Enterprises and Voluntary & Community Sector organisations such as local voluntary and community groups, large and small registered charities, foundations, trusts, social enterprises and co-operatives (“the Target Spend”). A directory of local suppliers is available from the *Employer* on request.  Z45.2 The *Contractor* reports its achievement of the Target Spend to the *Employer* on a monthly basis.  Z45.3 The *Contractor* includes a term in all subcontracts requiring subcontractors to achieve the Target Spend. |