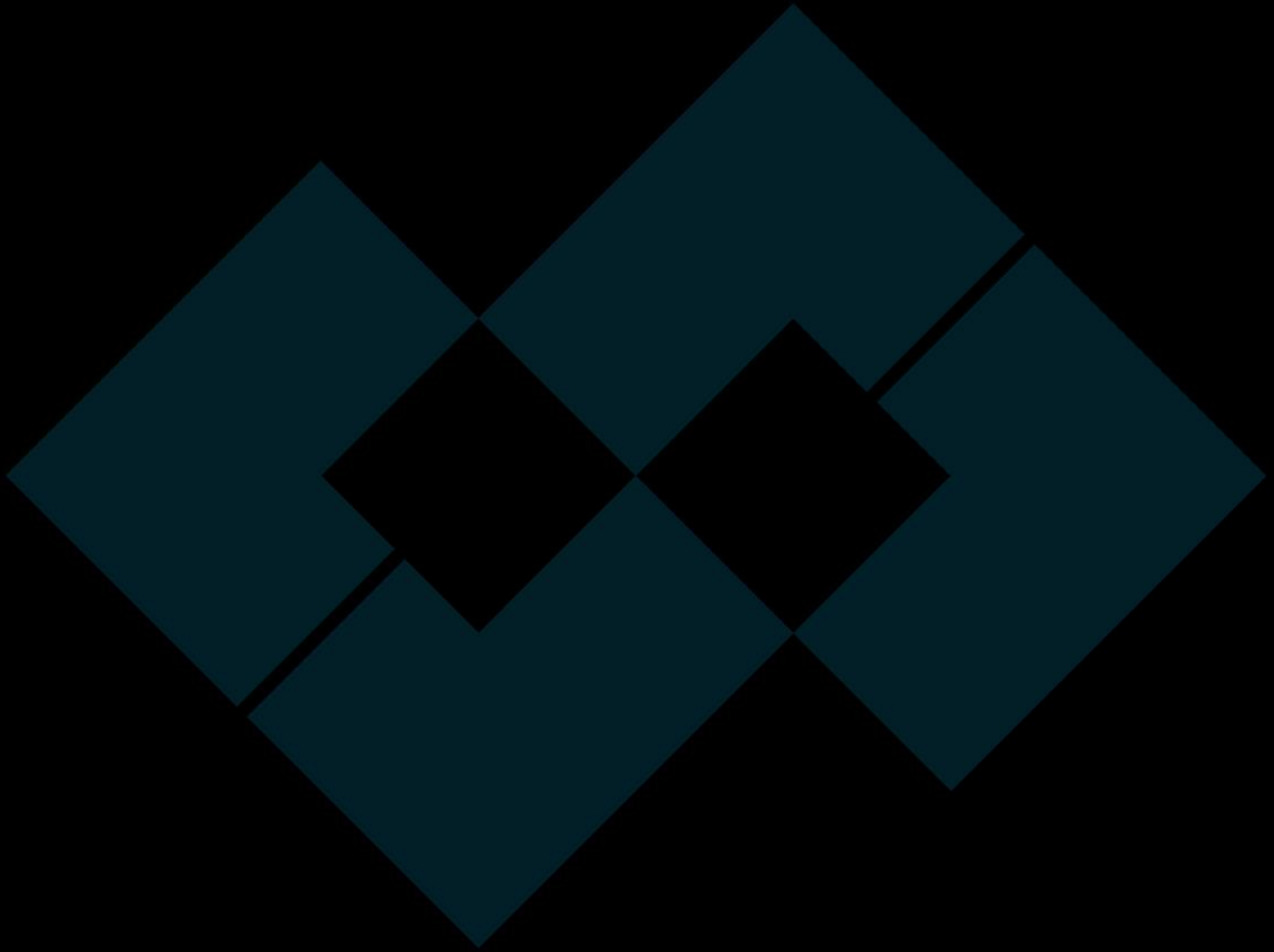





GOSPORT
Borough Council



Construction of Flood Defence Structures at
Alverstoke and Forton
NEC 4: ECC Option A
Contract Data: Part 1

Gosport Borough Council
October 2020

 GOSPORT Borough Council	Contract Documents NEC4 ECC	Contract Data Part One
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Data provided by the *Employer*

1. General
<ul style="list-style-type: none"> • The <i>conditions of contract</i> are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Engineering and Construction Contract June 2017 (with amendments January 2019) • Main Option: A • Option for resolving and avoiding disputes: W2 Secondary Options: X2, X4, X5, X7, X9, X11, X15, X16, X18, X21, Y(UK)2, Y(UK)3 and Z • The <i>works</i> are: Construction of Flood Structures at Alverstoke & Forton • The <i>Client</i> is: Name: Gosport Borough Council Address for Communications: Town Hall, High Street, Gosport, PO12 1EB • The <i>Project Manager</i> is: Name: To be confirmed prior to award of Contract Address for communications: Town Hall, High Street, Gosport, PO12 1EB Address for electronic communications: to be confirmed, once named. • The <i>Supervisor</i> is: Name: To be confirmed prior to award of Contract Address for communications: Town Hall, High Street, Gosport, PO12 1EB Address for electronic communications: to be confirmed, once named

- The Scope is in: **the document titled ‘Construction of Flood Defence Structures at Alverstoke & Forton Scope’ dated October 2020 and shown on the Contract Drawings listed in S 2100 of that document.**
- The Site Information is in: **the documents and files listed in the content sheet titled ‘Construction of Flood Defence Structures at Alverstoke & Forton: Site Information - Content Sheet’ date October 2020’.**
- The *boundaries of the site* are: defined on **Drawing Numbers 405363-MMD-AS-XX-DR-C-1002, 405363-MMD-FT-XX-DR-C-1002**
- The *language of this contract* is: **English**
- The *law of this contract* is the law of: **England, subject to the jurisdiction of the Courts of England.**

- The *period for reply* is: **two weeks** except that
 - The *period for reply* for the **Contractor** to submit a revised programme for acceptance after the **Project Manager** has instructed to is **one week**.
- The following matters will be included in the Early Warning Register (these are not additional *Client* liabilities, and do not change the risk allocation):

1	Disruption to the public	The Site is located in a residential area. The <i>works</i> have potential to disrupt local residents, causing an adverse public reaction.
2	Interaction with private property owners	At the Alverstoke site, works are required in private residential properties.
3	Existing services	There are a number of services present within the construction areas, especially at Alverstoke. Buried services that have not been identified during the design stage could be discovered. Contractors must satisfy themselves as to the location of services prior to the <i>works</i> .
4	Environmental Designations:	The Site includes areas of environmental sensitivity. The <i>works</i> have the potential to damage internationally designated sites.
5	Restricted access and safe working	Alverstoke has restricted width and access on central wall section – risks from live services and falls from height.
6	Existing wall condition	The existing Alverstoke seawall is historic (conservation of wall is important). Risks to damage to seawall and maintaining its integrity and a working platform

Early Warning meetings are to be held at intervals no longer than: **four weeks**.

2. The Contractor's main responsibilities

- The *key dates* and *conditions* to be met are:

Condition to be met	Key date
(1) All work completed and the area of the site vacate and fully reinstated in accordance with the Scope within the Forton Summer Working Area as shown on Drawing 405363-MMD-FT-XX-DR-C-1002	31st August 2021
(2) All work completed and the area of the site vacated and fully reinstated in accordance with the Scope within the Stoke House and Lakeside House private property boundaries on Little Anglesey Road, Gosport	6 weeks after first occupation within the private properties site boundary

3. Time

- The *starting date* is **1st March 2021**
- The *access dates* are

	part of the Site	Date
1.	Alverstoke Site	1 st March 2021
2.	Forton Site: Summer working area	1 st April 2021
3.	Forton Site: areas outside Summer working area	1st April 2021

- The *Contractor* submits revised programmes at intervals no longer than **4 weeks**.
- The *completion date* for the whole of the works is **11 calendar months after the starting date**.

The *Client* is willing to take over the *works* before the Completion Date.

The *Contractor* is to identify a first programme for acceptance in part two of the Contract Data.

4. Quality Management

The period after the Contract Date within which the *Contractor* is to submit a quality policy statement and quality plan is **14 days**

- The period between Completion of the whole of the *works* and the *defects date* is **52 weeks**.
- The *defect correction period* is **four weeks**

5. Payment

- The *currency of this contract* is the **pound sterling (£)**.
- The *assessment interval* is **monthly**.
- The *interest rate* is **2%** per annum above the **base** rate of the **National Westminster Bank**.

X16: Retention

- The *retention free amount* is **£100,000**
- The *retention percentage* is **5%**.
- The *Contractor may not* give the *Client* a retention bond

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

- The period for payment is **28 days** after the date on which the payment becomes due.

Y(UK)3: The Contracts (Rights of Third Parties) Act 1999

- term **None**
- *beneficiary* **None**

6. Compensation events

- The place where weather is to be recorded is: **Hayling Island, Hampshire.**
- The *weather measurements* to be recorded for each calendar month are:
 - the cumulative rainfall (mm),
 - the number of days with rainfall more than 5 mm,
 - the number of days with minimum air temperature less than 0 degrees Celsius,
 - the number of days with snow lying at 1000 hours GMT,and these measurements:

None.
- The *weather measurements* are supplied by **The Met Office, Fitzroy Road, Exeter, Devon, EX1 3PB.**
- The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at **Hayling Island, Hampshire** and which are available from **the Met Office.**
- The *value engineering percentage* is 50%

These are additional compensation events: **None**

8. Liabilities and Insurances

- There are **no additional *Client's* liabilities**
- **Public and Products Liability:** The minimum amount of cover for insurance against loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor* Providing the Works for any one event is **£10,000,000.00 (ten million pounds)**. The minimum limit of indemnity of insurance covering liability from goods sold, installed or supplied by the *Contractor* in relation to all claims in the aggregate during any one period of insurance in respect of Products Liability is **£10,000,000.00 (ten million pounds)**.

Employers Liability: The minimum limit of cover 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 the contract for any one event is **£10,000,000.00 (ten million pounds)**.

Resolving and avoiding disputes

- The *tribunal* is **arbitration**
- The *arbitration procedure* is **the Institution of Civil Engineers' Arbitration Procedure (2006) or any amendment or modification in force when the Arbitrator is appointed**
- The place where the arbitration is to be held is **London**
- The person or organisation who will choose an arbitrator
 - if the Parties cannot agree a choice or
 - if the *arbitration procedure* does not state who selects an arbitrator is **the Institution of Civil Engineers**

The *Senior Representatives* of the *Client* are

Name: **To be confirmed prior to award of Contract**

Address for Communications: Coastal Partners, c/o Public Service Plaza, Havant, PO9 2AX

Address for electronic communications: **to be confirmed, once named**

The *Senior Representatives* of the *Client* are

Name: **To be confirmed prior to award of the Contract**

Address for Communications: Town Hall, High Street, Gosport, PO12 1EB

Address for electronic communications: **to be confirmed, once named**

- The *Adjudicator* is
Name: **to be appointed by the Adjudicator nominating body which is the Institution of Civil Engineers**
Address: **One Great George Street, Westminster, London, SW1P 3AA**

X5: Sectional Completion

- The *completion date* for each *section* of the *works* is

<i>section</i>	<i>description</i>	<i>completion date</i>
1	Alverstoke: Construction	30 th November 2021
2	Forton: Construction	30th October 2021

X7: Delay Damage

- Delay damages for each *section* of the *works* are

<i>Section</i>	<i>Description</i>	<i>Amount per Day</i>
1	Alverstoke: Construction	£475
2	Forton: Construction	£450

X15: The Contractor's design

The *period for retention* following Completion of the whole of the *works* or earlier termination is **12 years**

The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use the skill and care normally used by professionals designing works similar to the *works* is, in respect of each claim: is **limited to the sum equivalent to ten (10) times the fees payable for the design work under this contract.**

The period following Completion of the whole of the *works* or earlier termination for which the *Contractor* maintains insurance for claims made against it arising out of its failure to use skill and care is **12 years**

X18: Limitation of Liability

The *Contractor's* liability to the *Client* for indirect or consequential loss is limited to **£10,000,000.00 (ten million pounds).**

For any one event, the *Contractor's* liability to the *Client* for loss of or damage to the *Client's* property is limited to **£5,000,000.00 (five million pounds)**

The *Contractor's* liability for Defects due to his design in which are not listed on the Defects Certificate are limited to **£1,000,000.00 (one million pounds)**

The *Contractor's* total liability to the *Client* for all matters arising under or in connection with this contract, other than excluded matters is limited to **£10,000,000.00 (ten million pounds).**

The *end of liability date* is **12 years** after Completion of the whole of the *works*.

Option Z: Additional conditions of contract

The *additional conditions of contract* are: Z1, Z2, Z3, Z6, Z7, Z8, Z9, Z10 Z11, Z12 and Z13.

Z1 Identified and defined terms

Z1.1 Delete the definition of "A Corrupt Act" in clause 11.2(5) and the replace with the following:

"A Corrupt Act is

- corruptly offering, giving or agreeing to give to any person an inducement or reward in respect of this or any other *Council* contract (even if the *Contractor* does not know this has been done);
- showing or forbearing to show favour or disfavour to any person in relation to this contract or any other contract with the *Client*;
- committing any offence:
 - (a) under the Bribery Act 2010;
 - (b) under sub-section (2) of Section 117 of the Local Government Act 1972;
 - (c) under legislation or common law concerning fraudulent acts; or
 - (d) defrauding, attempting to defraud or conspiring to defraud the *Client*; or
- any activity, practice or conduct which would constitute one of the offences listed in this definition of a Corrupt Act, if such activity, practice or conduct had been carried out in the UK."

Z2 Subcontracting

Z2.1 Delete the second sentence of clause 26.2 and replace with the following:

"A reason for not accepting the Subcontractor is that

- the appointment will not allow the *Contractor* to Provide the Works or,
- they are not the Subcontractor identified in the *Contractor's* tender to undertake the work to be subcontracted and the *Project Manager* has not been provided with sufficient information to satisfy them that the replacement Subcontractor will provide at least the same quality of work and value for money."

Z2.2 Delete the words "except any pricing information" from clause 26.3.

Z2.3 Add the following bullet points at the end of clause 26.3:

- "the *Project Manager* deems that their use will not provide value for money to the *Client*;
- they do not clearly define the mechanisms for calculation of the amount due for work undertaken and/or the management and costing of change;
- they are not compatible with the *conditions of contract* and the *additional conditions of contract*.

Z3 Assignment

Z3.1 Delete clause 28.1 and replace with the following:

"The *Client* can assign the benefit of all or any of the benefit of the *Contractor's* obligations under this contract and/or the benefit arising under or out of this contract, or any part, share or interest herein, at any time without the consent of the *Contractor* to any local authority or public body or organisation performing all or part of the duties currently undertaken by the *Client*. Any assignment to any other person shall be with the consent of the *Contractor*, not to be unreasonably withheld or delayed."

Z3.2 Insert a new clause 28.2:

"The *Contractor* can only assign the benefit of all or any of the *Client's* obligations under this contract and/or the benefit arising under or out of this contract with the prior written consent of the *Client*."

Z6 Compensation Events

Z6.1 In clause 60.1(12) the following words are inserted after "physical conditions":
"(including ground conditions and sub-surface conditions)".

Z6.2 In clause 60.1 (12), second bullet point is amended to: "are not weather conditions or floods and"

Z6.3 Add the following to the end of clause 60.1(18) before the full stop:
"but only to the extent that such breach was not caused or contributed to by the *Contractor* or any Subcontractor."

Z6.4 Delete first sentence of clause 62.2 and replace with:
"Quotations for compensation events except for the compensation event described in 60.1(19) comprise proposed changes to the Prices and any delay to the Completion Date and Key Dates assessed by the *Contractor*. Quotations for the compensation event described in 60.1(19) comprise any delay to the Completion Date and Key Dates assessed by the *Contractor*.
Delete 'The' At start of clause 63.1 and replace with:
"For the compensation event described in 60.1(19) the Prices are not changed. For other compensation events the....."

Z7 Client's liabilities

Z7.1 Remove the last bullet of Clause 80.1 and replace with:
"Additional *Client's* liabilities, if any, stated in the Contract Data Part 1.'

Z9 Correctness of Information

Z9.1 Site Information about the ground, subsoil, ducts, cables, pipes and structures is provided in good faith by the *Client*, but is not warranted correct. Clause 60.3 does not apply to such site information and the *Contractor* is responsible for checking the correctness of any such Site Information they rely on for the purpose of pricing for or providing the works.

Z9.2 Information regarding construction methods or processes referred to in pre contract health and safety plans are provided in good faith by the *Client* but are not warranted correct (except for the purpose of promoting high standards of health and safety) and the *Contractor* is responsible for checking the correctness of any such information he relies on for the purpose of pricing for, or providing the *works*.

Z10 Freedom of Information Act

Z10.1 The *Contractor* acknowledges that the *Client* is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and shall assist and co-operate with the *Client* to enable the *Client* to comply with these information disclosure requirements. Any costs incurred by the *Contractor* in complying with any request will be treated as a Compensation Event.

Z11 Discrimination

Z11.1 The *Contractor* does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Equality Act 2010 (and legislation/code referred to therein) (the "Discrimination Acts").

Z11.2 Where possible in providing the *works*, the *Contractor* co-operates with and assists the *Client* to satisfy its duty under the Discrimination Acts to eliminate unlawful discrimination and to promote equality of opportunity between persons of different "Protected Characteristics" (as defined in the Discrimination Acts including age, race, gender, religion, disability, sexual orientation, gender reassignment, pregnancy or maternity, or marriage and civil partnership) and other people.

Z11.3 Where an employee or Subcontractor employed by the *Contractor* is required to carry out any activity at the *Client* premises, the *Contractor* must ensure that each such employee or Subcontractor complies with the *Client* 's employment policies and codes of practice relating to discrimination and equal opportunities.

Z11.4 The *Contractor* notifies the *Project Manager* in writing as soon as he becomes aware of any investigation or proceedings brought against the *Contractor* under the Discrimination Acts in connection with this contract and provide any information requested by the investigating body, court or tribunal in the timescale allotted, attend (and permits a representative from the *Client* to attend) any associated meetings, promptly allow access to any relevant documents and information and co-operates fully and promptly with the investigatory body, court or tribunal.

Z11.5 The *Contractor* indemnifies the *Client* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Client* arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the *Contractor*.

Z11.6 The *Contractor* should include in the conditions of contract for each Subcontractor obligations substantially similar to those set out above.

Z12 Data Protection

Z12.1 In this Clause Z12, the following words have the following meaning:

Data Controller: the data controller as defined by the Data Protection Legislation.

Data Protection Legislation: (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

GDPR: General Data Protection Regulations ((EU) 2016/679).

Personal Data: the personal data as defined by the Data Protection Legislation.

Z12.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. Clause Z12 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

Z12.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the *Employer* is the Data Controller and the *Contractor* is the data processor. The parties confirm the information contained in the table below:

Subject matter of the processing:	The use of Personal Data to engage with local landowners to gain permission for access to working areas.
Duration of the processing:	The processing of personal data will commence on the start date of the Contract and will continue until the services have been delivered to the <i>Employer</i> .
Nature and Purpose of the processing:	The collection, recording, organisation, storage, retrieval, consultation and use of Personal Data to enable the <i>Contractor</i> to provide the Services and to satisfy its obligations under this Agreement. The <i>Contractor</i> is required to liaise with the landowner to provide and complete the <i>Works</i> .
Types of personal data:	Name Address Telephone & mobile numbers Email address
Categories of data subject:	Landowners whose land backs the area of repair, to arrange access if required for the works.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data:	On termination of this Agreement, the <i>Contractor</i> shall return all Personal Data or destroy or dispose of it in a secure manner and in accordance with any specific instructions issued by the <i>Employer</i> .

Z12.4 Without prejudice to the generality of Additional Clause 7(2), the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this agreement:

- a. process that Personal Data only on the written instructions of the Employer unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to process Personal Data (Applicable Laws). Where the Contractor is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Contractor shall promptly notify the Employer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Contractor from so notifying the Employer;
- b. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Employer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- c. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- d. not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Employer has been obtained and the following conditions are fulfilled:
 - i. the Employer or the Contractor has provided appropriate safeguards in relation to the transfer;
 - ii. the data subject has enforceable rights and effective legal remedies;
 - iii. the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - iv. the Contractor complies with reasonable instructions notified to it in advance by the Employer with respect to the processing of the Personal Data;
- e. assist the Employer, at the Employer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under

the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- f. notify the Employer without undue delay on becoming aware of a Personal Data breach;
- g. at the written direction of the Employer, delete or return Personal Data and copies thereof to the Employer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- h. maintain complete and accurate records and information to demonstrate its compliance with this clause 70.5.1 and allow for audits by the Employer or the Employer's designated auditor.

Z12.5 The Employer does not consent to the Contractor appointing any third-party processor of Personal Data under this agreement.

Z12.6 Either party may, at any time on not less than 30 days' notice, revise this clause 5 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

Z12.7 The Contractor shall fully indemnify the Employer in respect of all losses, claims, actions, proceedings, demands, liabilities, costs, charges or expenses arising out of or in connection with any civil claim made in respect of information subject to the Data Protection Legislation which claims would not have arisen but for some act, omission or negligence on the part of the Contractor, its employees or any sub-contractor (or anyone acting on its or their behalf).

Z13	Use of <i>Client's</i> material by the Contractor
Z13.1	Any material furnished by the <i>Client</i> to the <i>Contractor</i> in connection with this contract shall remain the property of the <i>Client</i> and such material together with any information derived there from shall be kept confidential and shall not without the consent in writing of the <i>Client</i> be published or disclosed to any third party or made use of by the <i>Contractor</i> except for the purpose of implementing this contract. All such material shall be returned to the <i>Client</i> on expiry or termination of this contract.
Z13.2	The <i>Contractor</i> shall not cause or permit anything that may change or endanger the intellectual property of the <i>Client</i> or the <i>Client's</i> title to any material furnished by the <i>Client</i> to the <i>Contractor</i> in connection with this contract.
Z13.3	The <i>Contractor</i> shall forthwith notify the <i>Client</i> if any claim or demand is made or action brought against the <i>Contractor</i> or when known it's Sub-contractor for infringement or alleged infringement of any intellectual property right in connection with the performance of this contract. The <i>Contractor</i> shall not and shall procure that its Subcontractor does not make any admission that may be prejudicial to the defence or settlement of any claim demand or action for infringement or alleged infringement of any intellectual property right by the <i>Contractor</i> or Subcontractor in connection with the performance of this contract.
Z13.4	In this clause Z13, the term "material" includes all drawings, plans, specifications, manuals, records, calculations and all other documents and all revisions and additions to the same and all intellectual property rights of whatever nature contained in them including (without limitation) copyright design rights image rights and database rights domain and website name rights and rights to merchandise (whether registerable or otherwise) and all applications for any of the same and other similar rights whatsoever and wheresoever in the world furnished by the <i>Client</i> to the <i>Contractor</i> in connection with this contract.
Z14	<p>De-Scoping of Scheme</p> <p>Lack of available funding or approvals may result in the Client de-scoping either the Alverstoke or the Forton Scheme in part or in full from this contract. This would be instructed prior to the access date and work commencing on the relevant section of the works.</p> <p>Where de-scoping of one of the schemes is necessary the usual Compensation Event assessment process will not apply but rather the Prices will be adjusted by subtraction in full of each de-scoped item and corresponding cost in the tendered activity schedule.</p>