

COMPILATION OF PPP TERMS AND CONDITIONS OF CONTRACT

PUBLIC SERVICE SECTOR

CLAUSE 31: PROTESTORS AND TRESPASSERS

DBFOM CONTRACT

CONCESSION CONTRACT

DBFM CONTRACT

DBF CONTRACT

DBOM CONTRACT

DBM CONTRACT

OMF CONTRACT

O&M CONTRACT

INTRODUCTION

This drafting (born of the UK Highways Agency DBFO roads projects) places all of the risk of protestor and trespasser activity on the PPP Co, once it has been given access.

CORE CONTRACT DRAFTING

31. PROTESTORS AND TRESPASSERS

31.1 Responsibility for Protestors and Trespassers

- (a) The Authority shall not be responsible for the presence on or around or entry onto or around the Site [or Off-Site Areas], or any other interference with or affecting the Site [or Off Site Areas] or within the vicinity of [it/them] or the Project by or caused by, any Protestor or Trespasser nor for any act, omission or default of any such person at any time prior to or during the Contract Period. The presence on or around or entry onto or around the Site [or Off-Site Areas] or any other interference with or affecting the Site [or Off-Site Areas] or within the vicinity of [it/them] or the Project, by or caused by, any Protestor or Trespasser and any lawful or unlawful activities of any such person during such period shall not be a breach of any obligation or warranty of the Authority under this Agreement.
- (b) Subject to Clause 37 (Relief Events) PPP Co shall not be relieved of any requirement to carry out the Project if it is unable to access the Site [or Off-Site Areas] or is otherwise delayed or disrupted because of the presence on or around, or entry onto or around the relevant areas of, or any other interference with or affecting the Site [or Off-Site Areas] or within the vicinity of [it/them] or the Project, of any Protestor or Trespasser or any lawful or unlawful activities of any such person at any time prior to or during the Contract Period.

31.2 PPP Co to Bear Loss

- (a) As between the Authority and the PPP Co, the PPP Co shall bear, without recourse to the Authority, any Loss suffered by any person, which is caused by any Protestor or Trespasser while present on or around or having entered on or around the Site [or Off-Site Areas], or having interfered with or affected the Site [or Off-Site Areas] or the Project, including without limitation any damage to property, any personal injury or death, and any loss of income.
 - (b) For the avoidance of doubt, nothing in Clause 31.2(a) shall affect:
 - (i) any right of the Authority to make or recover any Claim against any Protestor or Trespasser for damage suffered by the Authority, its agents or contractors (other than the PPP Co) or sub-contractors of any tier or any employees of any of them; or
 - (ii) any right of the PPP Co or any Associated Company to make or recover any Claim against any Protestor or Trespasser for damage suffered by the PPP Co or any Associated Company and at the request and expense of the PPP Co, the Authority will provide the PPP Co:
 - (A) with all evidence and information as may be reasonably required by the PPP Co and which is available to the Authority in connection with such Claim; and
 - (B) any affidavits, in respect of factual matters only, which would, in the reasonable opinion of the PPP Co, further its said Claim,
- in each case, subject to any confidentiality or legal restriction as may be binding on the Authority.

31.3 Protestors and Trespassers

- (a) The PPP Co shall not, without Approval (which shall not be unreasonably withheld), give directly or indirectly to any Protestor or Trespasser any inducement, monetary or otherwise, with a view to avoiding, limiting or influencing the manner of protest activities by that Protestor or Trespasser or by other Protestors or Trespassers.
- (b) The PPP Co shall comply (and secure compliance by the Staff) with the requirements set out in Part [●] of Schedule [●] (Land Issues).

31.4 Recovery from Protestor and Trespasser

The PPP Co will consult with the Authority and consider any suggestions or opinions of the Authority before prosecuting or pursuing any Protestors and/or Trespassers in respect of any amount of Loss or Claims suffered by it due to any action taken by a Protestor or Trespasser.

CROSS REFERENCES

This clause is referred to in the following clauses of the Compendium:

- Clause 7 (Health, Safety and Security)
- Clause 28 (Land)
- Clause 30 (Statutory Powers)

This clause is referred to in the following entry of the Risk Matrix:

- C2 (Public Protest)