

Z22 Not Used

Z23 Sub-contracting and People

Supplement clause 21 as follows:

21.4 The *Contractor* shall employ at all times a sufficient number of Personnel to fulfil its obligations under the Contract. All of the Contractor's Personnel shall possess the qualifications and competence appropriate to the tasks for which they are employed. If and when so directed in writing by the *Employer* the *Contractor* shall within seven (7) days provide details of the qualifications and competence of any person employed or proposed to be employed by the *Contractor* in connection with the Contract and shall provide a copy of any certificate of qualification or competence that has been issued in respect of any such person. The *Contractor* shall, if required by the *Employer*, provide its personnel with a copy of the Cabinet Office Joint Statement on access to skills, trade unions and advice in government contracting.

21.5 The *Contractor* Sub-contracts work only if the following conditions apply:

- if and when required by the *Employer*, the *Contractor* obtains the written consent of the *Employer* (which shall not be unreasonably withheld or delayed) prior to the appointing or renewing the appointment of any Sub-contractor or if it wishes to change the use or identity of any of the Sub-contractors;
- the Sub-contract contains an obligation that the *Contractor* pays the Sub-contractors within 30 days of receiving a valid invoice;
- the Sub-contract includes, at the request of the *Employer*, an obligation on the Sub-contractor to novate the Sub-contract to the *Employer* so that the *Employer* may elect to assume the rights and

obligations of the *Contractor* under such Sub-contract automatically on the termination of the *Contractor's* obligation to Provide the Works howsoever arising;

- the Sub-contractor agrees to provide rights for the *Employer* to use material prepared by the Sub-contractor in accordance with the terms of this Contract;
- the Subcontract includes provisions that the Subcontractor and its staff will at all times comply with Information Security equivalent to the requirements set out under this Contract;
- the Sub-contract includes a provision that the Sub-contractor and its Personnel shall at all times comply with Security requirements equivalent to the requirements as set out under this Contract;
- the Sub-contract contains obligations of confidentiality on the Sub-contractor equivalent to the *Contractor's* obligations under this Contract, including in relation to Official Secrets;
- the Sub-contract contains a condition in similar terms to the *Contractor's* Freedom of Information obligations, whereby the Sub-contractor acknowledges the *Employer's* responsibilities under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and agrees to co-operate with the *Employer* so that these responsibilities can be discharged;
- if and when required by the *Employer*, the Subcontract requires the Sub-contractor to enter into

a collateral warranty in favour of the *Employer* in the form set out in Appendix 1;

- the Sub-contractor provides the necessary information and co-operation to enable the *Contractor* to comply with its reporting obligations to the *Employer*; and
- the Sub-contract contains a requirement that in relation to any dispute between the Sub-contractor and the *Contractor*, such a dispute will, where the *Employer* considers it appropriate, be consolidated with any dispute between the *Contractor* and the *Employer* so that all disputes arising out of one contractual or factual nexus are dealt with in the same proceedings.

21.6 Where the *Employer* consents to the placing of Subcontracts, copies of each Subcontract shall, at the request of the *Employer*, be sent by the *Contractor* to the *Employer* as soon as reasonably practicable.

Insert clause 23 “Other Responsibilities” as follows:

Z24 Health and Safety

Supplement clause 23 as follows:

- 23.1 The *Contractor* promptly notifies the *Employer* of any Health and Safety hazards which may arise in connection with the performance of the Contract. The *Employer* promptly notifies the *Contractor* of any Health and Safety hazards which may exist or arise at the *Employer's site* and which may affect the *Contractor* in the performance of the Contract.
- 23.2 While on the *site*, the *Contractor* complies with any Health and Safety measures implemented by the *Employer* in respect of Contractor's Personnel and other persons working on the *site*.
- 23.3 The *Contractor* notifies the *Employer* immediately in the event of any incident occurring in the performance of the Contract on the *site* where that incident causes any personal injury or damage to property which could give rise to personal injury.

23.4 The *Contractor* ensures that its Health and Safety policy statement (as required by the Health and Safety at Work etc., Act 1974) is made available to the *Employer* on request.

Z25 Security and Vetting

In this clause

- "Contractor's Personnel Vetting Procedure" means the *Employer's* procedures for the vetting of Contractor's Personnel, as advised to the *Contractor* by the *Employer*.
- "Employer's Personnel" means all employees, agents, consultants and Subcontractors of the *Employer*.
- "Independent Safeguarding Authority" is a non-departmental public body sponsored by the Home Office set up under the provisions of the Safeguarding Vulnerable Groups Act 2006 and which is responsible for the decision making and maintenance of two lists covering the children's and vulnerable adults' sectors.
- "Relevant Conviction" means a conviction that is relevant to the provision of the *works* or as listed by the *Employer* and/or relevant to the work of the *Employer*.
- "The Vetting and Barring Scheme" means the scheme set up under the provisions of the Safeguarding Vulnerable Groups Act 2006.

Supplement clause 23 as follows:

23.5 (1) Where the Contractor's Personnel are required to have a pass for admission to the site the Employer, subject to satisfactory completion of approval procedures, arranges for passes to be issued. Contractor's Personnel who cannot produce a proper pass when required to do so by any of the Employer's Personnel, or who contravene any conditions on the basis of which a pass was issued, may be refused

admission to the
Employer's site or required to leave the site if already there.

- (2) The *Contractor* promptly returns any pass if at any time the *Employer* so requires or if the person to whom the pass was issued ceases to be involved in the performance of the Contract. The *Contractor* promptly returns all passes on completion or earlier termination of the Contract.
- (3) Contractor's Personnel attending the *site* may be subject to a search at any time. Strip searches are only conducted on the specific authority of the *Employer* under the same rules and conditions applying to the Employer's Personnel. The *Contractor* is referred to the Prison Rules 1999 Part III and the Prison (Amendment) Rules 2005 and the Young Offender Institute Rules 2000 Part III and the Young Offender Institute (Amendment) Rules 2008.
- (4) The *Employer*, whose decision is final and conclusive, reserves the right under the Contract to refuse to admit to, or to withdraw permission to remain on, any *site* occupied by or on behalf of the *Employer*.

- *any member of the Contractor's Personnel or*
- *any person employed or engaged by a Subcontractor, agent or servant of the Contractor*

whose admission or continued presence is, in the opinion of the *Employer*, undesirable.

- (5) If and when directed by the *Employer*, the *Contractor* provides a list of the names and addresses, National Insurance numbers, periods of employment, immigration status and tax exemption certificates of all persons who it is expected may require admission in connection with the Contract to any *site* occupied by or on behalf of the *Employer*, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the *Employer* may reasonably desire.

- (6) The Contractor's Personnel, engaged within the boundaries of a Government establishment, comply with rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of Contractor's Personnel when at that establishment and when outside that establishment.
- (7) If the *Contractor* fails to comply with (2) and (5), the *Employer* (whose decision is final and conclusive) may decide that such failure is prejudicial to the interests of the Crown and if the *Contractor* does not comply with the *Employer's* reasonable requests within 2 months of the date of a written notice from the *Employer* so to do, then the *Employer* may terminate the Contract, provided that such termination does not prejudice or affect any right of action or remedy which has accrued or thereafter accrues to the *Employer*.
- (8) The *Contractor* bears the cost of complying with the requirements notices, instructions or decisions received from the *Employer* in relation to the *Contractor's* obligations in respect of information relating to individuals.
- (9) The *Contractor* does not employ any person where the *Contractor* knows, or by reason of the circumstances might reasonably be expected to know, that the person concerned is involved in any unlawful procurement of Social Security benefits or tax exemptions in connection with his employment by the *Contractor*. The *Contractor* does not make, facilitate or participate in the procurement of any unlawful payments to any person employed by the *Contractor*, whether in the nature of Social Security fraud, evasion of tax or otherwise.
- (10) The *Contractor* complies with the *Employer's* procedures for the vetting of Contractor's Personnel in respect of all persons to be employed or engaged to Provide the Work. The *Contractor* confirms that all persons employed or engaged by the *Contractor* or that will be employed or engaged by the *Contractor* in relation to this Contract are vetted and recruited on a basis that is equivalent to and no less strict than the

Contractor's Personnel Vetting Procedures. The Employer may treat failure to comply with the Contractor's Personnel Vetting Procedures as material breach.

- (11) The *Employer* may require the *Contractor* to ensure that any person employed to Provide the Works has undertaken a Criminal Records Bureau check as per the Contractor's Personnel Vetting Procedures or any other security check as may be required by the *Employer* from time to time. The *Contractor* ensures that no person who discloses that he/she has a Relevant Conviction, or is found by the *Contractor* to have a Relevant Conviction (whether as a result of a police check or through the Criminal Records Bureau check or otherwise) is employed or engaged to Provide the Work.
- (12) Individuals, including those held in lawful custody or on probation are regarded as vulnerable persons under the Safeguarding Vulnerable Groups Act 2006. Where the *Employer* deems it necessary, the *Contractor* provides a list of Personnel who Provide the Work that are vetted by the Independent Safeguarding Authority. The *Employer* may in its sole discretion refuse access to its *site* by any member of the Contractor's Personnel who do not successfully complete the vetting procedures under the Vetting and Barring Scheme.
- (13) Whilst on the *site* the Contractor's Personnel comply with all security measures implemented by the *Employer* in respect of Personnel and other persons attending the *site*. The *Employer* provides copies of its written security procedure to the *Contractor* on request. The *Contractor* and all members of the Contractor's Personnel are prohibited from taking any photographs on the *site* unless the *Employer* has given prior written consent and an *Employer* representative is present so as to have full control over the subject matter of each photograph to be taken.
- (14) *The Contractor takes measures needed to prevent its Contractor's Personnel taking, publishing or otherwise circulating such photographs.*

(15) The *Employer* has the right to carry out any search of Contractor's Personnel or of vehicles used by the *Contractor* at the *site*.

(16) The *Contractor* co-operates with any investigation relating to security which is carried out by the *Employer* or by any person who is responsible to the *Employer* for security matters, and when required by the *Employer*:

- *takes all reasonable measures to make any Contractor's Personnel identified by the Employer available to be interviewed by the Employer, or by a person who is responsible to the Employer for security matters, for the purposes of the investigation. Contractor's Personnel have the right to be accompanied by and to be advised or represented by the other person whose attendance at the interview is acceptable to the Employer and*
- *subject to any legal restriction on their disclosure, provides all documents, records or other material of any kind which may reasonably be required by the Employer or by a person who is responsible to the Employer for security matters, for the purposes of the investigation, so long as the provision of that material does not prevent the Contractor from performing the Contract. The Employer has the right to retain any such material for use in connection with the investigation and, so far as possible, provides the Contractor with a copy of any material retained.*

Z26 Not Used

Z27 Not Used

Z28 Data Protection

In this clause

- "Data Controller" has the same meaning as set out in the Data Protection Act 1998.
- "Data Processor" has the same meaning as set out in the Data Protection Act 1998.
- "Data Protection legislation" means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data

and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

- "Data Subject" has the same meaning as set out in the Data Protection Act 1998.
- "HMG Security Policy Framework" means the framework document as published and updated by the Cabinet Office from time to time.
(http://www.cabinetoffice.gov.uk/media/207318/hmg_security_policy.pdf).
- "Personal Data" has the same meaning as set out in the Data Protection Act 1998.
- "Process" has the meaning given to it under the Data Protection Legislation and, for the purposes of the Contract, it includes both manual and automatic processing.
- "Regulatory Body" means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the *Employer*.

Supplement clause 23 as follows:

23.6 With respect to the Parties' rights and obligations under the Contract, the Parties agree that the *Employer* is the Data Controller and that the *Contractor* is the Data Processor.

23.7 The *Contractor*:

- *processes the Personal Data only in accordance with instructions from the Employer (which may be specific instructions or instructions of a general nature as set out in the Contract or as otherwise notified by the Employer to the Contractor from the Contract Date to the Completion Date) and the Contractor complies with Information Security provisions and HMG Security Policy Framework as updated from time to time;*
- *processes the Personal Data only to the extent and in such manner as is necessary for the provision of the works or as is required by Law or any Regulatory Body;*
- *implements appropriate technical and organisational measures to protect the Personal Data;*

- *takes reasonable steps to ensure the reliability of any Contractor's Personnel who have access to the Personal Data;*
- *obtains prior written consent from the Employer in order to transfer the Personal Data to any Subcontractors or affiliates for the provision of the works;*
- *ensures that all Contractor's Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the Information Security obligations;*
- *ensures that none of the Contractor's Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Employer and*
- *does not Process Personal Data outside the European Economic Area without the prior written consent of the Employer and, where the Employer consents to a transfer, the Contractor complies with:*
 - **the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred and**
 - **any reasonable instructions notified to it by the Employer.**

23.8 The *Contractor* complies at all times with the Data Protection legislation and does not perform its obligations under the Contract in such a way as to cause the *Employer* to breach any of its applicable obligations under the Data Protection legislation.

Z29 Not Used

Z30 Confidentiality

Supplement clause 23 as follows:

23.9 The parties undertake to maintain the confidentiality of any confidential information. The provisions of this clause shall survive the termination of this contract however that occurs.

23.10 The parties acknowledge that, subject to the foregoing provisions regarding the *Contractor's* confidential information, the content of this

contract is not Confidential Information. Notwithstanding any other term of this Contract, the *Contractor* hereby gives consent for the *Employer* to publish the Contract in its entirety, including from time to time agreed changes to the contract, to the general public. Prior to publication the *Employer* may, at his sole discretion, in whole or in part, redact information for one or more of the following grounds:

- (a) national security;
- (b) personal data;
- (c) information protected by intellectual property law;
- (d) information which is not in the public interest to disclose (under a Freedom of Information Act analysis)
- (e) third party confidential information;
- (f) IT security; or
- (g) prevention of fraud.

Z31 Publicity

Supplement clause 23 as follows:

23.11 The *Contractor* may publicise the *works* only with the *Employer's* prior written agreement.

23.12 The *Contractor* shall take all reasonable steps to ensure that the Contractor's Personnel do not publicise the *works* other than in accordance with clause 23.11

Z32 Official Secrets

Supplement clause 23 as follows:

23.13 The *Contractor* abides by, and ensure that its Personnel abide by, the provisions of:

- *the Official Secrets Acts 1911 to 1989; and*
- *Section 182 of the Finance Act 1989.*

23.14 If the *Contractor* and its Contractor's Personnel fail to comply with this clause, the *Employer* may terminate the Contract by giving notice in writing to the *Contractor*.

Z33 Disruption

Supplement clause 23 as follows:

- 23.15 The *Contractor* takes reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the *Employer*, its employees or any other *Contractor* employed by the *Employer*.
- 23.16 In the event of industrial action by the Contractor's Personnel the *Contractor* will seek the *Employer's* prior written consent to its proposals to perform its obligations under the Contract.
- 23.17 If the *Contractor's* proposals are considered insufficient or unacceptable by the *Employer* acting reasonably, then the Contract may be terminated with immediate effect by the *Employer* by notice in writing.

Z34 Prevention of Corruption

Supplement clause 23 as follows:

- 23.18 The Contractor shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or for showing or refraining from showing favour or disfavour to any person in relation to the Contract.

Z35 Offender Management Act 2007

Supplement clause 23 as follows:

- 23.19 Nothing in the Contract is deemed to provide any authorisation to the *Contractor* in respect of any provision of the Offender Management Act 2007. The *Contractor* in providing the *works* complies with the provisions of PSO 1100 as published by the *Employer* from time to time.

Z36 Not Used

Z37 CDM Regulations and SWMP Regulations

Supplement clause 23 as follows:

- 23.20 The Principal Contractor for the purposes of both the Construction (Design and Management) Regulations 2007 (the "CDM Regulations") and the Site Waste Management Plans Regulations 2008 (the "SWMP

Regulations") is the *Contractor* or, if he ceases to be the Principal Contractor, such other contractor as the *Employer* will appoint pursuant to regulation 14 (2) of the CDM Regulations and regulation 4(1) of the SWMP Regulations.

- 23.21 The CDM Co-ordinator for the purposes of the CDM Regulations is the *Employer* or, if he ceases to be the CDM Co-ordinator, such other person as the *Employer* will appoint pursuant to regulation 14(1) of those regulations.

Z38 Traffic, Adjoining Properties and Installations

Supplement clause 23 as follows:

- 23.22 (1) All operations necessary for the construction and completion of the
works (including any demolition), in so far as compliance with the
requirements of the Contract permits, are carried on so as not to
interfere unnecessarily or improperly with

- (a) the convenience of the public or
- (b) the access to public or private roads, footpaths or properties whether in the possession of the *Employer* or of Others and with the use of occupation thereof.

The *Contractor* indemnifies and keeps the *Employer* indemnified in respect of all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out of or in relation to any such matters.

- (2) All work is carried out without unreasonable noise disturbance or other pollution.

- (3) To the extent that noise disturbance or other pollution is not the unavoidable consequence of Providing the Works or performing the Contract the *Contractor* indemnifies the *Employer* from and against any liability for damages on that account and against all claims, demands, proceedings,

damages, costs, charges and expenses whatsoever in regard or in relation to such liability.

- (4) The *Employer* indemnifies the *Contractor* from and against any liability for damages on account of noise disturbance or other pollution which is the unavoidable consequence of carrying out the *works* and from and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in regard or in relation to such liability. The *Contractor* advises the *Employer* as soon as possible of any potential liability for damages on account of noise disturbances or other pollution which would be the unavoidable consequence of carrying out the *works* and on measures to avoid such liability (such advice to be at the *Contractor's* cost). The *Contractor* complies with any necessary changes to the *works* to the satisfaction of the *Employer*. The cost of such compliance will be borne by the *Contractor* and will have no effect on the Prices, the Completion Date or any of the Key Dates.
- (5) All operations necessary for the construction and completion of the *works* (including any demolition) are carried on in order not to interfere with or damage any Installations. The *Contractor* indemnifies and keeps the *Employer* indemnified in respect of all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out of or in relation to any interference with or any damage to any Installations.

Z39 Environmental Requirements

Supplement clause 23 as follows:

- 23.23 When working on the *site*, the *Contractor* performs its obligations under the Contract in accordance with the *Employer's* environmental policy which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to Health and the environment.

Z40 The programme

Supplement clause 31 as follows:

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

- the *starting date*, *access dates*, Key Dates and Completion Date,
- planned Completion,
- the order and timing of the operations which the *Contractor* plans to do in order to Provide the Works,
- the order and timing of the work of the *Employer* and Others as last agreed with them by the *Contractor* or, if not so agreed, as stated in the Works Information,
- the dates when the *Contractor* plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the *Employer* and Others to do their work,
- provisions for:
 - float,
 - time risk allowances,
 - Health and Safety requirements and
 - the procedures set out in this Contract,
- the dates when, in order to Provide the Works in accordance with his programme, the *Contractor* will need:
 - acceptances,
 - Plant and Materials and other things to be provided by the *Employer*,
 - Information from Others and
 - decisions required from Others as stated in the Works Information that constrain the timing of the *Contractor's* work,
- for each operation, a statement of how the *Contractor* plans to do the work identifying the principal Equipment and other resources which he plans to use and

- other information which the Works Information requires the *Contractor* to show on a programme submitted for acceptance including but not limited to:
 - information and things to be provided by the *Employer* and
 - approvals from Others.

31.3 Within four (4) weeks of the *Contractor* submitting a programme to it for acceptance, the *Employer* either accepts the programme or notifies the *Contractor* of his reasons for not accepting it. A reason for not accepting a programme is that:

- the *Contractor's* plans which it shows are not practicable,
- it does not show the information which this Contract requires,
- it does not represent the *Contractor's* plans realistically,
- it does not comply with the Works Information,
- it does not allow Others to start or carry out or complete their work as planned, or
- it is not in a format which has been accepted by the Project Manager.

Z41 Access to and use of the Site

Insert clause 32 as follows:

32.1 The *Employer* allows access to and use of each part of the *site* to the *Contractor* which is necessary for the work included in this Contract.

32.2 The *Employer* does not guarantee exclusive access to or exclusive possession of the *site*.

Z42 Instructions to stop or not to start work

Insert clause 33 as follows:

33.1 The *Employer* may instruct the *Contractor* to stop or not to start any work and may later instruct it that he may re-start or start work.

33.2 During any period when work is stopped or not stopped following an instruction of the *Employer* to do so, the *Contractor* secures and

protects the *site*, the *works* and all Equipment, Plant and Materials against any weather or other damage, loss or theft.

Z43 Correcting Defects

Supplement clause 41 as follows:

- 41.5 Notwithstanding Clause 41.1 if, in the opinion of the *Employer*, any urgent measures will become reasonably necessary in order to avoid or prevent any risk of accident or failure, or if, by reason of the happening of any accident or failure or any other event, any remedial or other work or repair becomes urgently necessary and the *Contractor* is unable or unwilling at once to carry out such measures, the *Employer* may by his own Personnel and/or by using Others carry out such measures as the *Employer* may consider necessary. If, and to the extent that the measures carried out by the *Employer* or Others should have been carried out by the *Contractor*, in order to comply with his obligations under the Contract, the *Employer* assesses the cost of carrying out such measures and the *Contractor* pays this amount.

Z44 Not Used

Z45 Assessing the amount due

Amend clause 50 as follows:

- 50.4 The *Employer* corrects any wrongly assessed amount due and issues the *Contractor* with a certificate of payment which states the amount due. The *Contractor* submits an invoice to the *Employer* supported by documentation reasonably required by the *Employer* to process the invoice.

Supplement clause 50 as follows:

- 50.8 The *Contractor* does not issue any claim, statement of sums due or account to the *Employer* inclusive of Value Added Tax (in this paragraph referred to as 'tax'). When requesting or claiming payment the *Contractor* states how the work or supply in question is rated for

the purposes of tax and shows separately any relevant rates of tax relating to the work or supplies.

50.9 If the *Contractor* fails to carry out his obligations under this Contract and the *Employer* employs some other person to fulfil them and a payment in respect of tax is made or falls to be made to that other person, then the *Employer* is entitled to recover from the *Contractor* any tax (which he is not otherwise able to recover) additional to what he would have paid had the *Contractor* carried out his obligations under this Contract.

50.10 The *Contractor* pays to the *Employer* on presentation of a VAT invoice any tax chargeable in respect of any supply or deemed supply made by the *Employer* to the *Contractor*.

Z46 Not Used

Z47 Payment

Amend clause 51 as follows:

51.1 Each certified payment is paid within thirty (30) days of receipt of an invoice from the *Contractor* supported by the documentation reasonably required by the *Employer* to process the invoice.

Z48 Not Used

Z49 Suspension of works

Supplement clause 51 as follows:

51.3 Unless the Housing Grants Construction and Regeneration Act 1996 (HGCRA) applies, the *Contractor* does not suspend the *works* for non-payment. The *Contractor's* only remedy in this respect is termination of the Contract for failure to pay undisputed sums.

Z50 Recovery of sums due

Supplement clause 51 as follows:

51.4 Whenever under the Contract any sum of money is recoverable from or payable by the *Contractor* (including any sum which the *Contractor* is liable to pay to the *Employer* in respect of any default), the *Employer* may unilaterally deduct that sum from any sum then due, or

which at any later time may become due to the *Contractor* from the *Employer* under the Contract or under any other agreement or contract with the *Employer* or the Crown.

51.5 Any overpayment by either Party, whether in relation to costs or VAT, is a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

51.6 The *Contractor* makes any payments due to the *Employer* without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the *Contractor* has a valid court order requiring an amount equal to such deduction to be paid by the *Employer* to the *Contractor*.

Z51 Compensation events

Amend line 1 of clause 60.1 and insert additional Compensation event as follows:

60.1 The following are compensation events to the extent they do not result from a breach of Contract by the *Contractor*.

(15) An event stated in the Contract to be a compensation event.

Amend Line 1 of Clause 62.3 as follows:

62.3 The *Employer* replies within four (4) weeks of the *Contractor's* submission.

Z52 Not Used

Z53 Equipment

In this clause

- "Equipment" means the *Contractor's* equipment, plant, materials and such other items supplied and used by the *Contractor* in the performance of its obligations under the Contract.

Supplement clause 70 as follows:

70.3 Unless otherwise specified in the Works Information, the *Contractor* provides the Equipment necessary to provide the *works*.

70.4 The *Contractor* shall not deliver any Equipment nor begin any work on the *site* without obtaining the prior written consent of the *Employer*.

70.5 All Equipment, Plant and Materials brought onto the *site* is at the *Contractor's* own risk and the *Employer* has no liability for any loss of or damage to any Equipment unless the *Contractor* is able to demonstrate that such loss or damage was caused or contributed to by the *Employer's* default. Unless otherwise agreed, Equipment brought onto the *site* remains the property of the *Contractor*. The *Contractor* provides for the haulage or carriage to and the removal from the *site* of Equipment when no longer required at its sole cost.

70.6 The *Contractor* maintains all items of Equipment within the *site* in a safe, serviceable and clean condition.

70.7 The *Contractor* shall, at its own expense and as soon as reasonably possible:

- *remove from the site any Equipment which in the reasonable opinion of the Employer is either hazardous, noxious or not in accordance with the Contract and*
- *replace such item with a suitable substitute item of Equipment.*

70.8 On Completion of the *works* the *Contractor* removes the Equipment together with any other materials used by the *Contractor* to Provide the Works and leaves the *site* in a clean, safe and tidy condition. The *Contractor* is solely responsible for making good any damage to the *site* or any objects contained thereon, other than fair wear and tear, which is caused by the *Contractor* or any Contractor's Personnel.

Z54 Not Used

Z55 Not Used

Z56 Not Used

Z57 Not Used

Z58 Professional Indemnity Insurance

Insert clause 83 as follows:

83.1 If the Contract Data so requires, the *Contractor* maintains professional indemnity insurance as follows:

- The *Contractor* will maintain professional indemnity insurance covering (inter alia), all his liability hereunder in respect of defects

or insufficiency in design 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 territory named in the Contract Data (in an amount not less than that required by the Contract Data in respect of any one loss and in the aggregate annually for a period beginning with the *starting date* or the date of this Contract, whichever is the earlier and ending six (6) years (or such other period as is required by the Contract Data) after Completion), provided always that such insurance is available at commercially reasonable rates.

- Any increased or additional premium required by insurers by reason of the *Contractor's* claims records or other matters particular to the *Contractor* will be considered to be within commercially reasonable rates.
- The *Contractor* immediately informs the *Employer* if such insurance ceases to be available at commercially reasonable rates in order that the *Employer* and the *Contractor* can discuss means of best protecting the respective positions of the *Employer* and the *Contractor* in the absence of such insurance.
- The *Employer* fully co-operates with any measures reasonably required by the *Contractor*, 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.
- As and when it is reasonably requested to do so by the *Employer*, the *Contractor* produces for inspection documentary evidence (including, if required by the *Employer*, the originals of the relevant insurance documents) that its professional indemnity insurance is being maintained.

- The above obligations in respect of professional indemnity insurance continues notwithstanding determination or termination of the Contract in either case for any reason whatsoever, including (without limitation) breach by the *Employer*.

Z59 Termination

Amend clause 90 as follows:

90.3 The *Employer* may terminate if the *Employer* has notified the *Contractor* that the *Contractor* has defaulted in one of the following ways and the *Contractor* has not stopped defaulting within two weeks of the notification.

- Substantially failed to comply with this contract (R2); or
- Substantially hindered the *Employer* (R3); or
- Substantially broken a health or safety regulation (R4); or
- an act of Fraud or a Prohibited Act occurs (R 9); or
- the *Contractor* breaches its obligations in relation to a Change of Control (R10); or
- the *Contractor* fails to comply with the requirements of 23.5 (2) and/or (5) (R11) and has failed to remedy the same in accordance with clause 23.5 (7); or
- the *Contractor* breaches its obligations in relation to Official Secrets (R12); or
- the *Contractor* does not propose a remedy satisfactory to the *Employer* to manage disruption (R13); or
- a conflict of interest arises (R14).

For the purposes of clause 90.3 Change of Control means a change of control within

the meaning of section 416 of the Income and Corporation Taxes Act 1988 ("change

of control"). In such circumstances the *Employer* may terminate the Contract by

notice in writing with immediate effect within six (6) months of:

- *being notified that a change of control has occurred or*
- *where no notification has been made, the date that the Employer becomes aware of the change of control*

The *Employer* is not permitted to terminate where the agreement of the *Employer* was granted in writing prior to the change of control.

The *Employer* may terminate for any other reason (R5).

Supplement clause 90 as follows:

90.6 Where a complaint is received about the provision of the *works* or about the materials or procedures used or about any other matter connected with the performance of the *Contractor's* obligations under the Contract, then the *Employer* shall notify the *Contractor* and where considered appropriate by the *Employer*, investigate the complaint. The *Employer* may, in its sole discretion, uphold the complaint and take further action as it sees fit.

90.7 If the *Employer* is of the reasonable opinion that there has been a material breach of the Contract by the *Contractor*, then the *Employer* may, without prejudice to its rights under clause 90 (Termination), do any of the following:

- *without terminating the Contract, itself supply or procure the supply of all or part of the works until such time as the Contractor has demonstrated to the reasonable satisfaction of the Employer that the Contractor will once more be able to supply all or such part of the works in accordance with the Contract;*
- *without terminating the whole of the Contract, terminate the Contract in respect of part of the works only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself provide or procure a third party to provide such part of the works; and/or*
- *terminate, in accordance with clause 90 (Termination), the whole of the Contract (R15).*

90.8 The *Employer* may charge the *Contractor* for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the *works* by the *Employer* or a third party if such costs exceed the payment which would otherwise have been payable to the *Contractor* for such part of the *works* and provided that the

Employer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement works.

Z60 Procedures on termination

Supplement clause 91 as follows:

91.2 Save as otherwise expressly provided in the Contract:

- *termination or expiry of the Contract is without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract prejudices the right of either Party to recover any amount outstanding at such termination or expiry; and*
- *termination of the Contract does not affect the continuing rights, remedies or obligations of the Employer or the Contractor under clauses 51 Payment, Z28 Data Protection, Z30 Confidentiality, Z31 Publicity, Z32 Official Secrets, Z53 Equipment, and Z60 Procedures on termination.*

91.3 On the termination of the Contract for any reason, the Contractor.

- *immediately returns to the Employer all Confidential Information, Personal Data and IP Materials relating to the contract in its possession or in the possession or under the control of any permitted suppliers or Subcontractors, which was obtained or produced in the course of providing the works;*
- *immediately delivers to the Employer all Property (including materials, documents, information and access keys) provided to the Contractor for the purposes of the Contract. Such property is to be handed back in good working order (allowance to be made for reasonable wear and tear).*

Z61 Payment on termination

Amend clause 92 as follows:

92.2 If the *Employer* terminates for Reason 1, 2, 3, 4, 9, 10, 11, 12, 13, 14 or 15, the amount due on termination includes a deduction of the forecast additional cost to the *Employer* of completing the works.

Z62 Dispute Resolution

Supplement clause 93 as follows:

- 93.5 (1) Without prejudice to the Parties rights under this Option, the Parties
may seek to resolve any dispute by way of a meeting between
their
representatives identified in the Contract Data.
- (2) If the dispute is not resolved as a result of the meeting between the Parties' representatives identified in the Contract Data the representatives will both notify their respective managers accordingly within five days following the meeting.
- (3) Following receipt of a notification pursuant to the above clause, the respective managers from each Party arrange a meeting within seven (7) days to seek resolution of the dispute.
- (4) If the managers do not resolve the dispute at their meeting either Party may refer the dispute to mediation.

Z63 The site

Insert clause 100 as follows:

- 100.1 The *Contractor* takes all reasonable steps and all steps required by the Contract to prevent unauthorised persons being admitted to the *site*. If the *Employer* gives the *Contractor* notice that any person is not to be admitted to the *site*, the *Contractor* takes all practicable steps to prevent that person being admitted.
- 100.2 If and when instructed by the *Employer*, the *Contractor* gives to the *Employer* a list of names and addresses of all persons who are or may be at any time concerned with the *works* or any part thereof, specifying the capacities in which they are so concerned, and giving such other particulars as the *Employer* may reasonably require.
- 100.3 If passes are required for admission to the *site*, the *Employer* will either issue them to the *Contractor* or arrange for their issue by the *Contractor*. The *Contractor* will submit to the *Employer* a list of the names of the relevant employees and other persons issued or to be issued with passes and any other information the *Employer* reasonably requires in this connection as set out in clause Z25

(Security and Vetting). The passes are to be returned at any time on the demand of the *Employer* and in any case on the completion of the *works*.

100.2 Except in accordance with the Contract, the *Contractor* does not at any time take any photographs of the *site* or the *works* or any part thereof, and will take all reasonable steps to ensure that no such photographs will at any time be taken or published or otherwise circulated by any person employed by him, unless the *Contractor* has obtained the prior written consent of the *Employer*.

100.3 Where access to the *site* is required by way of the *Employer's* land the route of such access will be approved by the *Employer*. The *Contractor* will be responsible for ensuring that no person employed on his behalf trespasses beyond the agreed limits of the working area or access route and will, if required so to do, provide and maintain to the satisfaction of the *Employer* temporary fencing of an approved type to prevent trespass on neighbouring land.

Z64 Training and Apprenticeships

Insert clause 101 as follows:

101.1 The provisions of Appendix 2 apply.

Z65 Not Used

Z66 Not Used

Z67 Not Used

Z68 Not Used

Z69 Not Used

Z70 Not Used

Z71 Not Used

Z72 Third Party Rights

Insert clause 102 as follows:

102.1 No person or organisation who is not one of the Parties may enforce a term of this contract under the Contracts (Rights of Third Parties) Act 1999.

Z73 Not Used

Appendix 1: Form of Sub-contractor Collateral Warranty in favour of Employer

Collateral Warranty by Contractor's Sub-Contractor to Employer

Between:

[●] as Sub-contractor,

Secretary of State for Justice as *Employer*
and

[●] as *Contractor*

Relating to

[●]

This Agreement is dated [●] and made

Between:

- (1) **Party 1**, (the “Sub-contractor”), registered in England and Wales as company [●] and having its registered office at [●];
- (2) **Secretary of State for Justice**, (the “Employer”), (which term shall include their permitted assignees) whose registered office is at [●]; and
- (3) **Party 3**, (the “Contractor”), registered in England and Wales as company [●] and having its registered office at [●].

Whereas:

- (A) The *Employer* has entered into a Contract dated [●] (“the Contract”) with the *Contractor* for the provision of Project Works as described as works at [●] (“the Works”).
- (B) By the Sub-contract the Sub-contractor has agreed with the *Contractor* to carry out and complete the Sub-contract Works forming part of the *works* upon the terms and conditions of the Sub-contract.
- (C) It is a term of the Sub-contract that the Sub-contractor enters into this Contract with the *Employer* in relation to the Sub-contract Works.

Now in consideration of £1 (one pound) paid by the *Employer* to the Sub-contractor (receipt of which the Sub-contractor hereby acknowledges) this **Agreement Witnesses** as follows:

1. Sub-contractor’s warranties

- 1.1 The Sub-contractor covenants with the *Employer* that it has duly performed and observed, and will continue duly to perform and observe, all the terms of the Sub-contract on the Sub-contractor’s part to be performed and observed and, without prejudice to the generality of the

foregoing, the Sub-contractor warrants that it has exercised and will continue to exercise reasonable skill, care and diligence in the performance of its duties to the *Employer* under the Sub-contract.

- 1.2 The *Employer* shall be deemed to have relied and to rely upon the exercise of the Sub-contractor's skill, care and diligence hereunder.

2. Prohibited materials

- 2.1 Without prejudice to the generality of and subject to clause 1, the Sub-contractor further warrants:

- *that it has not used or specified and will not use or specify for use;*
- *that it has exercised and will continue to exercise reasonable skill, care and diligence to see that there are not used;*
- *that it is not aware and has no reason to suspect or believe that there have been or will have been used;*
- *that it will promptly notify the Employer in writing if it becomes aware or has reason to suspect or believe that there have been or will be used;*

in or in connection with the Sub-contract materials or substances other than in accordance with:

- the guidance in the publication 'Good Practice in the Selection of Construction Materials' published by Ove Arup & Partners in 1997 or the edition of which as may be current at the date of this Agreement;
- relevant British or European Standards or Codes of Practice; and
- any publications of the Building Research Establishment related to the specification of products or materials.

3. Sub-contractor's acknowledgement

- 3.1 The Sub-contractor acknowledges that the *Contractor* has paid all sums due and owing to the Sub-contractor under the Sub-contract up to the date of this Agreement. Subject to clauses 6 and 8 the *Employer* has no liability to the Sub-contractor in respect of sums due under the Sub-contract.

4. Authority to issue instructions

- 4.1 The *Employer* has no authority to issue any direction or instruction to the Sub-contractor in relation to performance of the Sub-contractor's duties under the Sub-contract unless and until the *Employer* has given notice under clauses 6 or 8.

5. Intellectual Property Rights

In this clause

- *"Intellectual Property Rights" ("IPRs") means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright (including rights in computer software), database rights, domain names, trade or business names, moral rights trade secrets, discovery, process, formula, know-how, specification, improvement, technique, topography right, technical information, drawing and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom), and the right to sue for passing off.*
- *"Know-How" means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to Providing the Works but excluding know-how already in the Contractor's or the Employer's possession before the Contract.*

- 5.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, Data, drawings, databases, patents, patterns, models, designs or other material (the "IP Materials"):

- *furnished or made available to the Contractor by or on behalf of the Employer remains the property of the Employer and*
- *prepared by or for the Contractor on behalf of the Employer for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract*