and waives any objection to Proceedings in such courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum.

12.4 The Contract [together with the Contract Documents] constitute the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause does not exclude liability in respect of any Fraud or fraudulent misrepresentation.

Z3 Interpretation

Supplement clause 12 as follows:

12.5 The interpretation and construction of the Contract is subject to the following provisions:

- *Reference to a clause is a reference to the whole of that clause unless stated otherwise.*
- *Subject to secondary Option X2, reference to any statute, enactment, order, regulation or other similar instrument where appropriate is construed as referring to any subsequent amendment or re-enactment of the same.*
- *References to any person includes natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted.*
- The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation".

Z4 Waiver

Supplement clause 12 as follows:

12.6 The failure of either Party to insist upon strict performance of any provision of the Contract or the failure of either Party to exercise any right or remedy does not constitute a waiver of that right or remedy and does not cause a diminution of the obligations established by the Contract.

12.7 No waiver is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing.

12.8 A waiver of any right or remedy arising from a breach of Contract does not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

Z5 Severability

Supplement clause 12 as follows:

12.9 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, the provision will be severed and the remainder of the provisions of the Contract will continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

Z6 Counterparts

Supplement to clause 12 as follows:

12.10 The Contract may be executed in counterparts, each of which when executed and delivered constitutes an original but all counterparts together constitute one and the same instrument.

Z7 Freedom of Information

In this clause

- "Information" has the meaning given under section 84 of the Freedom of Information Act (FOIA) 2000.
- "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 or relevant government department in relation to such legislation.
- "Requests for Information" has the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" applies).
- "Environmental Information Regulations" means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Supplement clause 13 as follows:

13.9 The *Contractor* acknowledges that the *Employer* is subject to the requirements of the Code of Practice on Government Information, the FOIA and the Environmental Information Regulations and assists and co-operates with the *Employer* to enable the *Employer* to comply with its Information disclosure obligations.

13.10 The *Contractor*:

- ***transfers to the* Employer *all Requests for Information that it receives as soon as practicable and in any event within two working days of receiving a Request for Information;***
- ***provides the* Employer *with a copy of all Information in its possession, or power in the form that the* Employer *requires within five working days (or such other period as the* Employer *may specify) of the* Employer*'s request; and***
- ***provides all necessary assistance as reasonably requested by the* Employer *to enable the* Employer *to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.***

13.11 The *Employer* is responsible for determining in its absolute discretion and procures that its sub-contractors do likewise whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, the FOIA or the Environmental Information Regulations.

13.12 The *Contractor* does not respond directly to a Request for Information unless expressly authorised to do so by the *Employer*.

13.13 The* Contractor *acknowledges that the* Employer *may be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the* Contractor *or the* works *without consulting the* Contractor *or having taken their views into account.; where the* Employer *does not consult with the* Contractor *the* Employer *takes reasonable steps, where appropriate, to give the* Contractor *advanced notice, or draws the disclosure to the* Contractor*'s attention after any such disclosure.

13.14 The *Contractor* ensures that all Information is retained for disclosure in accordance with Appendix 1 (Commercially Sensitive Information) and

permits the *Employer* to inspect such records as requested from time to time.

13.15 The *Contractor* acknowledges that the Commercially Sensitive Information listed in Appendix 1 (Commercially Sensitive Information) is of indicative value only and that the *Employer* may be obliged to disclose Information, with or without consultation.

Z8 Project Manager and Supervisor

Amend clause 14 as follows:

14.3 The *Project Manager* may give an instruction to the *Contractor* which changes the Works Information or a Key Date and issue any other instruction implementing decisions and actions which he is authorised to take under this Contract, including instructions to accelerate, suspend, re-sequence or vary the *works* or part of them, or to open up and test the *works* or to correct Defects. All instructions are in writing signed by the *Project Manager* or his authorised representative.

Supplement clause 14 as follows:

14.5 The *Contractor* the *Project Manager* and the *Supervisor* do not without the prior written approval of the *Employer*:

(1) alter or vary the Contract,

(2) accept the *Contractor's* design (cl 21),

(3) accept a proposed Subcontractor (cl 26),

(4) decide the date of Completion (cl 30.2),

(5) suspend the *works* (cl 34),

(6) instruct acceleration of the *works* (cl 36),

(7) witness any tests carried out (cl 40),

(8) issue of the Defects Certificate (cl 43),

(9) change the Works Information,

(10) certify the amount due at each payment assessment date (cl 50),

(11) certify take over of part or whole of the *works,*

(12) accept Defects,

(13) certify termination payments (cl 90),

(14) certify the final payment, or

(15) issue an instruction pursuant to clause 17.1.

Z9 Early warning

Amend clause 16 as follows:

16.1 The *Employer* and the *Contractor* give an early warning by notifying the other as soon as either becomes aware of any matter which could

- increase the total of the Prices,
- delay Completion,
- change the Accepted Programme,
- delay meeting a Key Date,
- impair the usefulness of the *works* to the *Employer,*
- affect the work of the *Employer*, an *Employer's* contractor or another contractor,
- result in a change to a Key Person named in the Contract Data,
- affects the ability of the *Contractor* to provide the *works,* or
- constitute a Defect.

The *Contractor* may give an early warning by notifying the *Employer* of any other matter which could increase this total cost. The *Employer* enters early warning matters in the Risk Register. Early warning of a matter for which a compensation event has previously been notified is not required.

16.2 Either the *Project Manager* or the *Contractor* may instruct the other to attend a risk reduction meeting. The *Project Manager* may invite other people to attend and the *Contractor* may request the *Project Manager* to invite other attendees.

Z10 Prevention

Amend clause 19 as follows:

19.1 If an event occurs which

- stops the *Contractor* Providing the Works or
- stops the *Contractor* Providing the Works by the date shown on the Accepted Programme,

and which

- neither Party could prevent,
- an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it, and
- does not result from a breach of contract by the *Contractor,*

the *Employer* gives an instruction to the *Contractor* stating how he is to deal with the event.

Z11 Remedies Cumulative

Insert clause 19A as follows:

19A.1 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy does not exclude the exercise of any other remedy.

Z12 Audit

Insert clause 19B as follows:

19B.1 The *Contractor* and its Personnel keeps and maintains until 6 years after Completion, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the *works* supplied under it, risk management and special audit documentation, all expenditure reimbursed by the *Employer*, and all payments made by the *Employer*. The *Contractor* affords the *Employer* or the *Employer*'s representative(s) such access to those records as may be requested by the *Employer*.

19B.2 The *Contractor* and its Personnel permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and Data) for the purposes of the financial audit of the *Employer* and for carrying out

examinations into the economy, efficiency and effectiveness with which the *Employer* has used its resources. The *Contractor* provides such explanations as are reasonably required for these purposes. This clause does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the *Contractor* by the Comptroller and Auditor General under section 6(3)(d) of the National Audit Act 1983.

Z13 Contractor's Status

Insert new clause 19C as follows:

19C.1 At all times from the Contract Date to the Completion Date the *Contractor* will be an independent contractor and nothing in the Contract is construed as creating a partnership, a joint venture, a contract of employment or a relationship of principal and agent between the *Employer* and the *Contractor* and accordingly neither Party is authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

Z14 Information

Insert clause 19D as follows:

19D.1 The *Contractor* is responsible for the accuracy of all drawings, documentation and information supplied to the *Employer* by the *Contractor* in connection with the *works* and pays the *Employer* any extra costs occasioned by any discrepancies, errors or omissions therein.

19D.2 The *Contractor* satisfies himself as to the nature and extent of the *works* required by the *Employer*, the means of communication and access to the Site, the supply and conditions affecting labour, the suitability of the Site and the equipment necessary for the performance of the Contract, subject to all such matters being discoverable by the *Contractor*.

19D.3 Notwithstanding clause 16.1, the *Contractor* acknowledges that it has:

- *made and will make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the* **Employer***;*
- *raised all relevant due diligence questions with the* **Employer** *before the Contract Date;*
- *satisfied itself that it has sufficient information to ensure that it can Provide the Works; and*
- *entered into the Contract in reliance on its own due diligence alone.*

19D.4 The *Contractor*:

- *uses its reasonable endeavours to check and verify that the data, information, plans, drawings, documents, handbooks and codes of practice supplied by the* **Employer** *are accurate and*
- *notifies the* **Employer** *immediately if it discovers errors or discrepancies in the Data, information, plans, drawings, documents, handbooks and codes of practice supplied by the* **Employer.**

Supplement clause 19 with either clause 19D.4 (i) or 19D.4 (ii) (the Contract Data will state which, if any, is to apply):

19D.4 (i) *The* **Employer** *has made available to the* **Contractor** *before the submission of his tender all information relating to ground conditions at the Site which he has obtained from investigations undertaken relevant to the* **works.** *Notwithstanding anything in the Site Information or the Works Information, the* **Contractor** *is responsible for the interpretation of all such information for the purposes of the* **works.**

19D.4 (ii) Notwithstanding anything in the Site Information or the Works Information, the *Contractor* is to obtain all information in relation to ground conditions at the Site which he considers necessary for the *works*. This obligation applies irrespective of any information in the *Employer*'s possession.

Supplement clause 19 with Clause 19D.4 (iii) if so stated in the Contract Data:

19D.4 (iii) Notwithstanding anything in the Site Information or the Works Information, the *Contractor* is deemed to have inspected and examined the Site and its surroundings and

information available in connection therewith and to have satisfied himself so far as is practicable and reasonable before the award of the Contract as to:

- the form and nature thereof including the ground and subsoil,
- the details of all Installations,
- the extent and nature of work and materials necessary for constructing and completing the *works* and
- the means of communication with and access to the Site and the accommodation he may require

and in general to have obtained for himself all necessary information as to risks, contingencies and all other circumstances which may influence or affect his tender. Provided always that the *Contractor* accepts that he has had an opportunity of inspecting the physical conditions (including the sub-surface conditions) and other conditions of or affecting the Site and has fully acquainted himself with the same and obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect the execution of the *works*, any failure on the part of the *Contractor* to discover or foresee any such condition, risk, contingency or circumstances, which ought reasonably to have been discovered or foreseen, will have no effect on the Prices, the Completion Date or any of the Key Dates. If such conditions, risks, contingencies or circumstances arise, which the Contractor could not reasonably have been expected to discover or foresee, it shall be a compensation event. The *Contractor* will not be entitled to rely upon any survey, report or other document prepared by or on behalf of the *Employer* regarding any such matter as is referred to in this Clause and the *Employer* makes no representation or warranty as to the accuracy or completeness of any such survey, report or document. The *Employer* will have no liability arising out of or

in relation to any such survey, report or document or from any representation or statement, whether negligently or otherwise made, therein contained.

Z15 Assignment

Insert clause 19E as follows:

19E.1 The *Contractor* does not assign the Contract or any part of it without the prior written consent of the *Employer.*

19E.2 The *Employer* may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof as it sees fit provided that any such assignment, novation or other disposal does not increase the burden of the *Contractor*'s obligations under the Contract or create a conflict of interest for the *Contractor.*

19E.3 If the rights and obligations of the *Employer* under the Contract are assigned, novated or otherwise disposed of to a body which is not a Contracting Authority, or if there is a change in the legal status of the *Employer* such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "Transferee"):

- ***the rights of termination of the* Employer *are available to the* Contractor *in the event of respectively, the bankruptcy or insolvency or default of the Transferee; and***
- ***the Transferee may only assign, novate or otherwise dispose its rights and obligations under the Contract or any part thereof with the prior written consent of the* Contractor.**

19E.4 Any change in the legal status of the *Employer* such that it ceases to be a Contracting Authority does not affect the validity of the Contract. In such circumstances, the Contract binds and inures to the benefit of any successor body to the *Employer.*

19E.5 The *Employer* may disclose to any Transferee any Confidential Information of the *Contractor* which relates to the performance of the *Contractor*'s obligations under the Contract. In such circumstances the *Employer* authorises the Transferee to use such Confidential Information only for purposes relating to the performance of the *Contractor*'s obligations under the Contract and for no other purpose

and takes all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

19E.6 Each Party at its own cost and expense carries out, or uses all reasonable endeavours to ensure the carrying out of whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

Z16 Warranties

Insert clause 19F as follows:

19F.1 The *Contractor* warrants and represents that:-

(A) as at the **starting date**, *all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the* **Employer** *prior to execution of the Contract;*

(B) it is not subject to any contractual obligations, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;

(C) it owns, or has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract.

Z17 Providing the Works

Amend clause 20 as follows:

20.1 (1) The *Contractor* Provides the Works regularly and diligently in accordance with the Law, Good Industry Practice, the Works Information, the accepted Programme and the instructions of the *Project Manager*. The *Contractor* keeps the *Project Manager* informed of all material aspects of the *works*.

(2) Where legally entitled to do so, the *Contractor* obtains from Others all licences, consents and approvals necessary to enable him to Provide the Works other than those which the Works Information states are obtained by the *Employer* or Others.

(3) The *Contractor* complies with the conditions of all licences, consents and approvals referred to in clause 20.1(2).

(4) The *Contractor* is responsible for the adequacy of all design work executed by it or on its behalf and any comment, confirmation of approval or failure to disapprove such design work or any part thereof by the *Project Manager* will not in any way relieve the *Contractor* of that responsibility.

(5) The *Contractor* complies with the *Employer's* Health, Safety and Environmental Policies in force at the date of the Contract and as may be further revised.

Supplement clause 20 as follows:

20.2 The *Employer* may inspect and examine the manner in which the *Contractor* provides the *works* at the Site during normal business hours on reasonable notice.

20.3 Other than as set out in this Contract, the *Contractor* agrees and acknowledges that it is not given any rights of exclusivity whatsoever in relation to the *works* under this Contract.

Z18 Not Used

Z19 The Contractor's design

Amend clause 21 as follows:

21.2 (1) The *Contractor* complies with any provisions in the Works Information

on:

(a) the submission to the *Project Manager*, prior to their use for the construction of the *works*, of all (or such as are specified in the Works Information) drawings, details, documents or information which are reasonably necessary to explain and/or amplify the Works Information, or to enable the *Contractor* to execute and complete the *works* or to comply with any instruction issued by the *Project Manager* and

(b) the rights of the *Employer* in regard to the *Project Manager's* comments on the drawings, details,

documents or other information submitted in accordance with Clause 21.2(1)(a).

(2) The *Project Manager* may comment on any such drawings, details, documents or other information submitted in accordance with Clause 21.2(1)(a) provided that any such comment or lack of comment will not indicate the *Project Manager*'s consent or approval to those drawings, details, documents or other information.

(3) The *Contractor* provides within the programme for the *works* for sufficient time to enable subsequent drawings, details, documents or other information submitted in accordance with Clause 21.2(1)(a) to the *Project Manager* for comment in the event that the initial drawings, details, documents or other information are not to the satisfaction of the *Project Manager*.

(4) Neither the comment not the lack of comments by the *Project Manager* pursuant to the procedure to be followed by the *Project Manager* in giving his comments will relieve the *Contractor* of any liabilities or obligations under the Contract.

(5) If no comment is received from the *Project Manager* pursuant to Clause 21.2(2) within fourteen (14) days of submission of the drawings, documents or other information to the *Project Manager*, the *Contractor* will commence the works to which those drawings, details, documents or other information relate unless otherwise stated in the Works Information.

21.3 The *Contractor* will indemnify the *Employer* against all loss, damage, legal costs and professional and other expenses of any nature whatsoever incurred or suffered by the *Employer* or for which the *Employer* will become liable as a result of any dispute or contractual, tortious or other claims or proceedings brought against the *Employer* by a third party alleging infringement of its Intellectual Property.

Supplement clause 21 as follows:

21.4 (1) In carrying out all his design obligations under the Contract including those arising under Clause 21.4(2) of this Contract (and including the selection of materials and plant to the extent

that these are not specified in the Works Information) the Contractor exercises all reasonable skill care and diligence.

(2) Without prejudice to any express or implied warranties or conditions or to the generality of the foregoing, the *Contractor* warrants and undertakes to the *Employer* that:

(a) it will have in respect of any defect or insufficiency in any design of the *works* the like liability to the *Employer*, whether under statute or otherwise, as would an architect or, as the case may be, other appropriate professional designer holding himself out as competent to take on work for such design who, acting independently under a separate contract with the *Employer*, had supplied such design for or in connection with *works* to be carried out and completed by a building contractor not being the supplier of the design;

(b) the *works* will, when completed, comply with any performance specification or requirements contained in the Works Information or any variations thereto;

(c) the *works* are designed or specified using best up-to-date practice and to the highest standard compatible with the Works Information;

(d) subject to the remainder of this Clause 21,

- it has not used or specified and will not use or specify for use;
- it has exercised and will continue to exercise reasonable skill, care and diligence to see that there are not used;
- it is not aware and has no reason to suspect or believe that there have been or will be used;
- 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 *works*, 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 Contract;

(e) it uses all reasonable skill, care and diligence to see that materials as used in the *works* comprise or will comprise only materials and goods which are new and (unless otherwise provided in the Works Information) of satisfactory quality and that all workmanship, manufacture or fabrication will be to the highest standards compatible with the Works Information;

(f) the *works* will, when completed, comply with all relevant standards, codes of practice and statutory or regulatory requirements.

(3) Where any part of the *works* is designed by or on behalf of the *Employer* and that design has been included in the Works Information, the *Contractor* checks the design and accepts responsibility therefore having first obtained the approval of the *Project Manager* for any modifications thereto which the *Contractor* considers to be necessary.

Z20 Not Used

Z21 People

Delete clause 24.1 and replace as follows:

24.1 The *Contractor* employs 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.

24.2 The *Contractor* acknowledges that the *key persons* are essential to the proper provision of the *works* to the *Employer.*

24.3 The *key persons* are not be released from the provision of the *works* without the agreement of the *Employer*, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.

24.4 If the *Contractor* replaces any *key person* or appoints a new *key person* the *Contractor*

- gives at least 1 (one) month's written notice to the *Employer*
- seeks the *Employer*'s consent to and consults with the *Employer* concerning the proposed *key person*
- if requested, provides the *Employer* with the curriculum vitae of the proposed *key person.*

24.5 Such replacements will be of at least equal status or of equivalent experience and skills to the *key persons* being replaced and be suitable for the responsibilities of that person in relation to the provision of the *works*. The *Employer* may interview any proposed new or replacement *key persons*.

24.6 The *Employer* notifies the *Contractor* in writing of any objections to the proposed new or replacement *key persons* within two (2) weeks of receipt of the *Contractor's* notice, failing which the *Employer's* consent will be deemed to have been given. If the *Employer* notifies the *Contractor* of objections, the *Contractor* does not engage the proposed *key person* and may put forward another proposed *key person.*

24.7 The *Contractor* uses all reasonable endeavours to ensure that a process of skill and knowledge transfer occurs prior to replacement of any *key persons* to ensure continuity in Providing the Works. The *Contractor* ensures that there is a handover period of not less than 4 weeks from the outgoing *key person* to the incoming one.

Original clause 24.2 is re-numbered as clause 24.8.

Z22 Subcontracting

Amend clause 26 as follows:

26.3 Subject to 26.4, 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.

Supplement clause 26 as follows:

26.4 The *Contractor* subcontracts work only if the following conditions apply:

- if and when required by the *Employer*, the *Contractor* obtains the written consent of the *Employer* (which will not be unreasonably withheld or delayed) prior to the appointing or renewing the appointment of any Subcontractor or if it wishes to change the use or identity of any of the Subcontractors;
- the Subcontract contains an obligation that the *Contractor* pays the Subcontractors within thirty (30) days of receiving a valid invoice;
- the Subcontract includes, at the request of the *Employer*, an obligation on the Subcontractor to novate the Subcontract to the *Employer* so that the *Employer* may elect to assume the rights and obligations of the *Contractor* under such Subcontract automatically on the termination of the *Contractor's* obligation to Provide the Works howsoever arising;
- the Subcontractor agrees to provide rights for the *Employer* to use material prepared by the

Subcontractor 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 Subcontract includes a provision that the Subcontractor and its staff will at all times comply with Security requirements equivalent to the requirements as set out under this Contract;
- the Subcontract contains obligations of confidentiality on the Subcontractor equivalent to the *Contractor's* obligations under this Contract, including in relation to Official Secrets;
- the Subcontract contains a condition in similar terms to the *Contractor*'s Freedom of Information obligations, whereby the Subcontractor 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 Subcontractor to enter into a collateral warranty in favour of the *Employer* in the form set out in Appendix 4;
- the Subcontractor provides the necessary information and co-operation to enable the *Contractor* to comply with its reporting obligations to the *Employer;* and

- the Subcontract contains a requirement that in relation to any dispute between the Subcontractor 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.

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

Z23 Not Used

Z24 Health and Safety

Amend clause 27 as follows:

27.4 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 Site and which may affect the *Contractor* in the performance of the Contract.

Supplement clause 27 as follows:

27.5 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.

27.6 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.

27.7 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 27 as follows:

27.8 (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 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, the Site or any premises 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 the Site or any premises 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 Works. 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 Works.

(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 Works that are vetted by the Independent Safeguarding Authority. The *Employer* may in its sole discretion refuse access to the 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 staff 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 Personnel from 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 Conflicts of Interest

Supplement clause 27 as follows:

27.9 The *Contractor* takes appropriate steps to ensure that neither the *Contractor* nor any Contractor's Personnel is placed in a position where, in the reasonable opinion of the *Employer*:

- *there is or may be an actual conflict or potential conflict, between the pecuniary or personal interests of the* **Contractor** *and the duties owed to the* **Employer** *under the provisions of the Contract; or*
- *the behaviour of the* **Contractor** *or the Contractor's Personnel is not in the* **Employer***'s best interest or might adversely affect the* **Employer***'s reputation.*

The *Contractor*, as soon as reasonably practicable, discloses to the *Employer* full particulars of any behaviour which might give rise to an actual or potential conflict.

27.10 Subject to clause 91.2, the *Employer* may terminate the Contract by notice in writing and/or take such other steps it deems necessary where, in the reasonable opinion of the *Employer*, there is or may be an actual conflict or potential conflict between the financial or personal interests of the *Contractor* or the Contractor's Personnel and the duties owed to the *Employer* under the provisions of the Contract. The actions of the *Employer* pursuant to this clause do not prejudice or

affect any right of action or remedy which has accrued or will accrue to the *Employer*.

Z27 Employer Data

Supplement clause 27 as follows:

27.11 The *Contractor* does not delete or remove any proprietary notices contained within or relating to the Employer Data.

27.12 The *Contractor* does not store, copy, disclose or use the Employer Data except as necessary for the performance by the *Contractor* of its obligations under the Contract or as otherwise expressly authorised in writing by the *Employer*.

27.13 To the extent that Employer Data is held and/or processed by the *Contractor*, the *Contractor* supplies that Employer Data to the *Employer* as requested by the *Employer* in the format specified in the Works Information.

27.14 The *Contractor* takes responsibility for preserving the integrity of Employer Data and preventing the corruption or loss of Employer Data.

27.15 If at any time the *Contractor* suspects or has reason to believe that Employer Data is or may become corrupted, lost or sufficiently degraded in any way for any reason, then the *Contractor* will notify the *Employer* immediately and inform the *Employer* of the remedial action the *Contractor* proposes to take.

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 update 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 27 as follows:

27.16 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.

27.17 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 against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures***

are appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected and in any event the measures will not be of a lesser standard than that required by the Contractor*'s Information Security obligations;*

- *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*;*
- *notifies the* Employer *(within seven (7) days) if it receives:*

  a request from a Data Subject to have access to that person's Personal Data; or

  a complaint or request relating to the *Employer*'s obligations under the Data Protection legislation;

- *provides the* Employer *with full co-operation and assistance in relation to any complaint or request made, including by:*

  providing the *Employer* with full details of the complaint or request;

  complying with a Data access request within the relevant timescales set out in the Data Protection legislation and in accordance with the *Employer*'s instructions;

- **providing the *Employer* with any Personal Data it holds in relation to a Data Subject within the timescales required by the *Employer* and**
- **providing the *Employer* with any information requested by the *Employer*;**

- *permits the* **Employer** *(subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the* **Contractor***'s Data Processing activities (and/or those of its Personnel) and complies with all reasonable requests or directions by the* **Employer** *to enable the* **Employer** *to verify and/or procure that the* **Contractor** *is in full compliance with its obligations under the Contract;*

- *provides a written description of the technical and organisational methods employed by the* **Contractor** *for processing Personal Data (within the timescales required 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*.

27.18 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 Information Security

Supplement clause 27 as follows:

27.19 The *Contractor*:

- *identifies, keeps and discloses to the* **Employer** *upon request a record of those members of the Contractor's Personnel and any Subcontractors with access to or who are involved in handling Employer Data ("users"); and*

- *provides to the* **Employer** *details of its policy for reporting, managing and recovering from information risk incidents, including losses of protected Personal Data and ICT security incidents and its procedures for reducing risk and raising awareness; and*

- *immediately reports information security incidents to the* **Employer.** *Significant actual or potential losses of Personal Data may be shared with the Information Commissioner and the Cabinet Office by the* **Employer.**

27.20 The *Contractor* protects Employer Data whose release or loss could cause harm or distress to individuals. The *Contractor* handles all such Employer Data as if it were confidential while it is processed or stored by the *Contractor* or its Subcontractors, applying the measures set out in clauses 27.19 to 27.27 (inclusive).

27.21 When Employer Data is held on paper it is kept secure at all times, locked away when not in use or the premises on which it is held secured. If Employer Data held on paper is transferred it must be by an approved secure form of transfer with confirmation of receipt. When Employer Data is held and accessed on ICT systems on secure premises, the *Contractor* applies the minimum protections for information set out in the Works Information, or equivalent measures, as well as any additional protections as needed as a result of the *Employer*'s risk assessment. Where in exceptional circumstances equivalent measures are adopted the *Contractor* obtains the *Employer*'s prior approval in writing.

27.22 Wherever possible, Employer Data should be held and accessed on paper or ICT systems on secure premises protected as above. The *Contractor* does not use removable media (including laptops, removable discs, CD-ROMs, USB memory sticks, PDAs and media card formats) for storage or access to such Data where possible. Where the *Employer* agrees that this is not possible, the *Contractor* works to the following hierarchy, recording the reasons for a particular approach not being adopted in a particular case or a particular business area:

- ***best option: hold and access data on ICT systems on secure premises;***
- ***second best option: secure remote access, so that Data can be viewed or amended without being permanently stored on the remote computer. This is possible for Employer Data over the internet using products meeting the FIPS 140-2 standard or equivalent, unless otherwise agreed with the*** **Employer;**
- ***third best option: secured transfer of Employer Data to a remote computer on a secure site on which it will be permanently stored. Both the Employer Data at rest and the link should be protected at least to the FIPS 140-2 standard or equivalent. Protectively marked Employer Data must not be stored on privately owned computers unless they are protected in this way;***

- *in all cases the remote computer should be password protected, configured so that its functionality is minimised to its intended business use only, and have up to date software patches and anti-virus software.*

27.23 Where the *Employer* agrees that it is not possible to avoid the use of removable media, the *Contractor* applies all of the following conditions:

- *the Employer Data transferred to the removable media should be the minimum necessary to achieve the business purpose, both in terms of the numbers of people covered by the Employer Data and the Works Information of Employer Data held. Where possible only anonymised Employer Data should be held;*
- *the removable media should be encrypted to a standard of at least FIPS 140-2 or equivalent in addition to being protected by an authentication mechanism, such as a password;*
- *user rights to transfer Employer Data to removable media should be carefully considered and strictly limited to ensure that this is only provided where absolutely necessary for business purposes and subject to monitoring by the* **Contractor** *and the* **Employer***; and*
- *the individual responsible for the removable media should handle it – themselves, or if they entrust it to others – as if it were the equivalent or a large amount of their own cash.*

27.24 Where the *Employer* agrees that the second condition of encryption cannot be applied due to business continuity and disaster recovery considerations, such unprotected Employer Data should only be recorded, moved, stored and monitored with strong controls.

27.25 All material that has been used for confidential Employer Data should be subject to controlled disposal. The *Contractor* must:

- *destroy paper records containing protected Personal Data by incineration, pulping or shredding so that reconstruction is unlikely and*
- *dispose of electronic media that has been used for protected Personal Data through secure destruction, overwriting, erasure or degaussing for re-use.*

27.26 The *Contractor* has appropriate mechanisms in place in order to comply with the *Employer*'s requirements as set out in this clause including adequate training in handling confidential Data for the Contractor's Personnel.

27.27 The *Contractor*:

- ***puts in place arrangements to log activity of Data users in respect of electronically held protected personal information and for managers to check the arrangements are being properly conducted, with a particular focus on those working remotely and those with higher levels of functionality. Summary records of managers' activity must be shared with the* Employer *and be available for inspection by the Information Commissioner's Office on request;***
- ***minimises the number of users with access to the Employer Data.***

Z30 Confidentiality

In this clause

- "Commercially Sensitive Information" means the information listed in Appendix 1 (Commercially Sensitive Information).
- "Confidential Information" means the Employer's Confidential Information and/or the Contractor's Confidential Information.
- "Contractor's Confidential Information" means any information, however it is conveyed, that relates to the business affairs, developments, trade secrets, know-how, Contractor's Personnel and suppliers of the *Contractor*, including IPRs, together with all information derived from the above and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information.
- "Employer's Confidential Information" means all Personal Data and any information, however it is conveyed, that relates to the business affairs, developments, trade secrets, know-how, personnel and suppliers of the *Employer*, including all Intellectual Property Rights, together with all information derived from any of the above and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably to be considered to be confidential.