

# Jersey Future Hospital Project

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## Outline Business Case

### Appendix 35 - Contract Clauses – NEC3

**Document Control**

<b>Version</b>	<b>Date Issued</b>	<b>Summary of Changes</b>	<b>Author</b>
V1	26.9.17	Document compilation	T Nicholls
V2	24.10.17	Template updated	T Nicholls

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## Schedule of Additional Conditions of Contract amending the NEC3 Engineering and Construction Contract (April 2013)

This schedule of *additional conditions of contract* is Secondary Option Z (*additional conditions of contract*) and amends the NEC3 Engineering and Construction Contract April 2013 (the “NEC3”). In the event of any ambiguity between the provisions of this schedule of *additional conditions of contract* and the other provisions of the unamended NEC3 standard form, the provisions of this schedule of *additional conditions of contract* shall prevail and take precedence over the NEC3 standard form provisions.

### **Secondary Option Z (additional conditions of contract)**

Z1 The Core Clauses, clauses for Options and Contract Data are amended and added to as follows:

Clause 11.2(2) Delete and substitute:

“11.2(2)<sup>1</sup> Completion is when the *Contractor* has

- done all the work which the Works Information states he is to do by the Completion Date and
- corrected Defects which would have prevented the *Employer* from fully and conveniently using the *works* without impediment, and Others from doing their work without impediment.

If the work which the *Contractor* is to do by the Completion Date is not stated in the Works Information, Completion is when the *Contractor* has done all the work necessary for the *Employer* fully and conveniently to use the *works* without impediment, and for Others to do their work without impediment.”

Clause 11.2(5)<sup>2</sup> At the end of the first bullet point, before “or” insert: “(including, but without limitation, any design issued to the *Contractor* by the *Project Manager*) or the *Contractor’s* obligations under this contract”.

Delete “applicable law” and substitute “Applicable Law”.

Clause 11.2(6)<sup>3</sup> Delete and substitute:

“11.2(6) The Defects Certificate is either a list of Defects which the *Contractor* finds before the *defects date*, or which the *Supervisor* finds before the *defects date* and notifies to the *Contractor* in accordance with this contract, which the *Contractor* has not corrected or, if there are no such Defects, a statement that there are none.”

Clause 11.2<sup>4</sup> Insert the following new definitions:

“(34) Applicable Law is any applicable statute, Act, statutory rule, order or other law, directive, regulation, ordinance, custom or by-law or any rule, code, direction,

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<sup>1</sup> Taken from SOJ precedent

<sup>2</sup> As above

<sup>3</sup> As above

<sup>4</sup> As above

notification, instruction, permission, guideline or other instrument having the force of law or any regulatory licence, consent, permit, authorisation or other approval including any conditions attached thereto of the States of Jersey or of any public or parochial body, authority or regulatory body which has any jurisdiction with regard to the *Works* and/or the Project or with whose systems the same are or will be connected including any statutory provisions and any decisions of a relevant authority under the statutory provisions which control the right to develop the Site in connection with which the *works* are to be provided, for the time being in force<sup>5</sup>.

- (35) Construction Regulations are the 'Management in Construction (Jersey) Regulations 2016' issued under the Health and Safety at Work (Jersey) Law 1989 together with any other Statutory Requirement pursuant to the Health and Safety at Work (Jersey) Law 1989 or any other Applicable Law from time to time, or any directives, guidance issued by the Social Security Minister for Jersey and/or the Health and Safety Inspectorate for Jersey.<sup>6</sup>
- (36) Pre-Construction Services Agreement is the contract between the *Employer* and the *Contractor* for the design [**from RIBA Stage 5-6**] of the *works* based upon the NEC Professional Services Contract and dated [            ]
- (37)<sup>7</sup> Design Consultant is any consultant appointed by the *Employer* under any form of contract to provide design services in relation to the Project.
- (38)<sup>8</sup> Good Industry Practice means the standards, practices, methods and procedures conforming to all Applicable Law and the degree of skill, care, diligence, prudence and foresight which would reasonably be expected from a skilled and experienced person undertaking all or part of the *works*, as the case may be, under the same or similar circumstances.
- (39) <sup>9</sup>GST means a goods and services tax as defined in the GST Law and any future tax of a like nature and "GST Law" means the Goods and Services Tax (Jersey) Law 2007, as amended.
- (40)<sup>10</sup> Intellectual Property is all copyright and all neighbouring and database rights and moral rights, registered designs, registered and unregistered design rights, or any similar rights or property in any part of the world whether registered or unregistered together with the right to apply for the registration of such rights in any part of the world and the rights to current applications for registration of any such intellectual property.
- (41) The Project is the [construction of the Jersey Future Hospital at St Helier, Jersey]<sup>11</sup>

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<sup>5</sup> Taken from PCSA and amended

<sup>6</sup> Taken from PCSA

<sup>7</sup> Taken from SOJ precedent

<sup>8</sup> As above

<sup>9</sup> As above

<sup>10</sup> As above

<sup>11</sup> Description to be agreed

(42)<sup>12</sup> A Statutory Requirement is a requirement placed on the *Contractor* or affecting or governing the performance of the *works* by Applicable Law and/or any relevant codes of practice issued by any government agency or body including in relation to health, safety and environmental matters.

(43)<sup>13</sup> [A Working Day is any day which is not a Saturday, a Sunday or a day on which banks in Jersey are closed for business].”

(44) Confidential Information is any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the Data Protection (Jersey) Law 2005

(45) Necessary Consents means the planning permissions, building warrants and any other permissions, warrants, approvals, consents, licences and the like which may be necessary to enable the *works* to be carried out, including, without prejudice to the generality of the foregoing, the detailed planning consent for the *works* and all the conditions of all such permissions, warrants, approvals, consents, licences and the like.

Clause 12.1 Delete and substitute:

“12.1<sup>14</sup> In this contract, except where the context shows otherwise

- words in the singular also mean the plural, and the reverse
- words in the masculine also mean the feminine and neuter
- a general expression shall not be limited by any more specific expression preceding or following it
- section means one of each nine sections of the core clauses
- clause means each separate numbered clause of the *conditions of contract*
- day means any continuous period of twenty-four hours
- week means any continuous period of seven days
- month means calendar month
- references to legislation mean such legislation as amended or re-enacted from time to time.”

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<sup>12</sup> Taken from SOJ precedent

<sup>13</sup> As above – SOJ to confirm

<sup>14</sup> As above

Clause 12.2<sup>15</sup> After “This contract” insert “and any non-contractual obligations arising out of or in connection with it”.

At the end of the clause insert:

“The *Contractor* ascertains and conforms in all respects with the provision of any Applicable Law, Statutory Requirement or custom for the time being in force in the Island of Jersey and with such rules and regulations of public bodies and companies which may be applicable to the provision of the *works* and keeps the *Employer* indemnified against all penalties and liability of every kind for breach of any such Applicable Law, Statutory Requirement or custom.”

Clause 12.4<sup>16</sup> Delete and substitute:

“12.4 The Pre-Construction Services Agreement, the Agreement and this contract together comprise the entire understanding of the Parties and there are no other arrangements between the Parties relating to the subject matter of the Agreement and this contract intended to form part of the Agreement and/or this contract. For the purposes of this clause 12.4, “Agreement” means the Agreement to which this contract is annexed.”

Clause 12.5<sup>17</sup> Insert a new clause:

“12.5 Any obligation imposed on either Party in this contract in the present tense is to be construed as an ongoing obligation unless that obligation has been fulfilled.”

Clause 12.6 Insert a new clause:

“12.6<sup>18</sup> The *Employer* and the *Contractor* agree and acknowledge that they are bound by the provisions of this contract and that the *Contractor* shall Provide the Works in accordance with the terms of this contract.”

Clause 12.7<sup>19</sup> Insert a new clause:

“12.7 The Parties agree that no action or proceedings may be brought or commenced under this contract at any time after the date being ten years after the date of Completion of the whole of the *works*.”

Clause 12.8<sup>20</sup> Insert a new clause:

“12.8 Without prejudice to any other term of this contract, the *Contractor* represents and undertakes as a condition of this contract to the *Employer* that:

- he has sufficient information about the *Employer* and the *works* and that he has made all appropriate and necessary enquiries to enable him to Provide the Works in accordance with this contract
- he is neither entitled to any additional payment nor excused from any obligation or liability under this contract due to any misinterpretation or

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<sup>15</sup> Taken from SOJ precedent

<sup>16</sup> Taken from SOJ precedent with slight amends

<sup>17</sup> Taken from SOJ precedent

<sup>18</sup> As above

<sup>19</sup> As above

<sup>20</sup> As above

misunderstanding by the *Contractor* of any fact relating to the Works Information, Site Information or otherwise to the contract (including, but without limitation, the requirement for the *Contractor* to bear all expenses in connection with the shipment and landing of any plant, materials or other things landed or brought into or despatched from the Island of Jersey by him for the purpose of the Contract together with all Customs Duties (howsoever incurred) upon all such plant, materials or other things)

- he has full capacity and authority and all necessary licences, permits, permissions, powers and consents to enter into and perform his obligations under this contract and that this contract is a valid and binding obligation on the *Contractor* in accordance with its terms
- this contract is executed by a duly authorised representative of the *Contractor*
- he has all the resources, including financial, technical and human resources, as are required to Provide the Works in accordance with this contract
- the *works* will not deteriorate at a greater rate than that reasonably to be expected of high quality, reliable, well-designed works, structures and installations of a similar nature and manufacture to the *works*
- the proceeds of insurance received by the *Contractor* pursuant to this contract will be used solely for the purposes of the *works* and for no other purpose.”

Clause 12.9<sup>21</sup> Insert a new clause:

“12.9 If any provision of this contract is held to be invalid or unenforceable then such provision shall (insofar as it is invalid or unenforceable) be given no effect and shall be deemed not to be included in this contract but without invalidating any of the remaining provisions of this contract. The *Employer* and the *Contractor* shall use all reasonable endeavours to replace the invalid or unenforceable provision by a valid and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid or unenforceable provision.”

Clause 12.10<sup>22</sup> Insert a new clause:

“12.10 Where any provision of this contract conflicts with the Supply of Goods and Services (Jersey) Law 2009, the Parties agree that the terms of such provision shall prevail to the extent permitted by the Supply of Goods and Services (Jersey) Regulations 2010, as amended.”

Clause 12.11<sup>23</sup> Insert a new clause:

“12.11 The *Contractor* warrants to the *Employer* that: (i) it is and will at all times be appropriately licensed and qualified under the laws of Jersey to enter into this contract and carry out the *works* in accordance with the terms of this contract; and (ii) it shall procure that all employees and subcontractors shall similarly be appropriately licensed and qualified under the laws of Jersey to carry out the *works* or any part thereof in accordance with this contract.”

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<sup>21</sup> Taken from SOJ precedent

<sup>22</sup> As above

<sup>23</sup> As above

Clause 12.12 Insert a new clause:

“12.12<sup>24</sup> The *Employer* and the *Contractor* do not intend that any of the terms of this contract are enforceable by any person not a Party provided that nothing in this clause 12.12 shall prejudice the rights of the *Employer* under clause 26.1 or any of his successors or assignees.”

Clause 12.13<sup>25</sup> Insert a new clause:

“12.13 If the *Contractor* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons:

12.13.1 these persons shall be deemed to be jointly and severally liable to the *Employer* for the performance of the contract;

12.13.2 these persons shall notify the *Employer* of their leader who shall have authority to bind the *Contractor* and each of these persons; and

12.13.3 the *Contractor* shall not alter its composition or legal status without the prior consent of the *Employer*.”

Clause 12.14 Insert a new clause:

“12.14 The liability of the *Contractor* under this contract shall extend to those for whom he is responsible including their respective acts, omissions and negligence as if of the *Contractor* itself. The *Contractor* is responsible for its sub-consultants and sub-contractors (of any tier), suppliers and their respective employees or invitees and others carrying out the *works* or on the Site with its/their approval. All sub-contractors (including any named sub-contractors or those whose identity requires to be approved in advance by or on behalf of the *Employer* for specified elements of the *works*) shall be domestic to the *Contractor* who shall be fully responsible in all respects for all such sub-contractors as stated above, including in connection with any insolvency or analogous matters.”

Clause 12.15 Insert a new clause:

“12.15 Where any act is required to be done within a specified period after or from a specified date:

12.15.1 the period begins immediately after that date; and

12.15.2 where the specified period would include [Christmas Day, Good Friday or a day which under the Public Holidays and Bank Holidays (Jersey) Law 1951 is a Bank Holiday in the Island of Jersey, that day will be excluded]<sup>27</sup>.”

Clause 12.16 Insert a new clause:

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<sup>24</sup> Taken from SOJ precedent

<sup>25</sup> As above

<sup>27</sup> SOJ to confirm

“12.16 The following shall not be deemed to have been accepted unless expressly accepted in writing by the Project Manager:

1. Any acceptance of an acceleration quotation under clause 36
2. A proposal or change under clause 44”

Insert a new clause:

Clause 12.17 “Failure by the *Employer* (or the *Project Manager* or the *Supervisor* ) any time to enforce any provision of this contract or to require performance by the *Contractor* of any of the provisions of the contract shall not be construed as a waiver of any such provision and shall not affect the validity of the contract or any part of it or create any estoppel or in any other way affect the right of the *Employer* to enforce any provision in accordance with its terms.

“12.17

No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.”

“Insert a new clause:

Clause 12.18 The terms of the Pre-Construction Services Agreement are superseded in their entirety by the provisions of this contract, and the provisions of this contract apply to any works and services carried out by the Contractor under the Pre-Construction Services Agreement, notwithstanding the date or dates on which such works and services were carried out. [Any payments made under the Pre-Construction Services Agreement shall be treated as payments under this contract]<sup>28</sup>.

“12.18

Insert at the end of the clause:

Clause 13.2<sup>26</sup>

“Provided the relevant communication is not returned as undelivered, a communication sent by electronic mail shall be deemed to have been given four hours after the communication was sent or sooner where the other Party acknowledges receipt of such item of electronic mail. Any notice or other communication which relates to any dispute between the Parties arising out of or in connection with the contract and/or the termination of the contract shall be given by letter (sent by hand, post, registered post or by the recorded delivery service).”

Clause 13.4<sup>29</sup> Insert a new clause:

“13.4

13.4.1 The *Contractor* acknowledges that it is required to co-ordinate its work with any Others engaged on the Project. Such communications shall not give rise to any extension of time or additional payment. If, as a consequence of such communications, there is likely to be an impact on the *Contractor's* costs or programme, the *Contractor* shall advise the *Project Manager* prior to complying with such communications. Any entitlement to additional costs and extra time will be subject to the *Contractor* having first complied with clause 61.

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<sup>26</sup> Taken from SOJ precedent

<sup>28</sup> Position on payments to be confirmed

<sup>29</sup> Taken from SOJ precedent

13.4.2 For the avoidance of doubt, the *Contractor* agrees that the *Employer* has no liability arising out of or in relation to any communications directly between the *Contractor* and any Others engaged on the Project and the *Contractor* shall not in any way be discharged from his responsibility to Provide the Works, his liability for Defects and for his design.”

Clause 14.1<sup>30</sup> Delete and substitute:

“14.1 No approvals, comments, instructions, consents or advice or indication of satisfaction given by or from the *Employer* and/or the *Project Manager*, nor any enquiry or inspection which the *Employer* and/or the *Project Manager* makes or has carried out for its benefit or on its behalf at any time, operates to reduce, extinguish, exclude, limit or modify the *Contractor’s* obligation to fulfil its duties and obligations under this contract unless it is in writing from the *Employer* and/or the *Project Manager*, refers to this contract and clearly identifies the duty or obligation and the extent to which such duty or obligation is to be reduced, extinguished, excluded, limited or modified. The *Project Manager’s* acceptance of a communication from the *Contractor* or of his work does not change the *Contractor’s* responsibility to Provide the Works or his liability for his design.”

Clause 15.1 Delete and substitute:

The Contractor may submit a proposal for adding an area to the Working Areas to the Employer for acceptance. The Employer may choose not to accept the Contractor's proposal for any reason whatsoever or to accept it subject to such conditions as the Employer shall notify the Contractor. The Employer's consent shall be required to any adjustment of the Site boundaries or Working Areas for the works (or temporary works). No refusal to accept the proposal or acceptance subject to any conditions shall constitute a Compensation Event. The Contractor shall confine the works (including temporary works) and its operations and activities in relation to this contract to the Site and Working Areas.

Clause 16.1<sup>31</sup> At the end of the third bullet point, delete “or” and substitute “,”.

At the end of the fourth bullet point, delete “.” and substitute “,”.

Insert new fifth and sixth bullet points:

- “• materially affect any interest of the *Employer* regarding the Project (including, but without limitation, the works being carried out by Others and the operation of the Project by the *Employer*), including causing a variation to the scope of the Project, an increase in the cost of the Project or a change to its financial viability, quality or function or a variation in the programme for the Project or
- materially affect the running of the Project.”

Clause 17.1<sup>32</sup> At the end of the first sentence insert:

“; the Construction Regulations, the Necessary Consents and the Statutory Requirements”.

At the end insert:

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<sup>30</sup> Taken from SOJ precedent and slightly amended

<sup>31</sup> Taken from SOJ precedent

<sup>32</sup> Taken from SOJ precedent and slightly amended

“There is no addition to the Prices or any delay to the Completion Date or to any Key Dates arising from any ambiguity or inconsistency.”

Clause 17.2

Insert a new clause:

“17.2

The Project Manager, Employer or the Contractor notifies the other parties as soon as any of them become aware of any conflict, ambiguity, discrepancy, error, omission, inadequacy, divergence or inconsistency in or between or amongst any requirements of this contract (including the Works Information and Site Information) and any Applicable Law, Statutory Requirements or Necessary Consents. The Project Manager gives an instruction resolving the conflict, ambiguity, discrepancy, error, omission, inadequacy, divergence or inconsistency. The Contractor shall not be entitled to a Compensation Event as a result of any such instruction, conflict, ambiguity, discrepancy, error, omission, inadequacy, divergence or inconsistency.”

Insert a new clause:

Clause 18.2<sup>33</sup>

“18.2

In the event of any discrepancy, ambiguity or conflict between these *conditions of contract* (as amended by the *additional conditions of contract*) and any other contract document or condition, the terms of these *conditions of contract* (as amended by the *additional conditions of contract*) prevail.”

Clause 19.2

Insert a new clause:

“19.2

“Notwithstanding the provisions of Clause 60 and subject to Clause 19.4, the Contractor’s sole right to payment in respect of the occurrence of an event under Clause 19.1 is as provided in Clause 93 “

Clause 19.3

Insert a new clause:

“19.3

“The Contractor and the Employer shall take all reasonable steps to mitigate the effect of the occurrence of an event under Clause 19.1. “

Clause 19.4

Insert a new clause:

“19.4

“If the Project Manager instructs the Contractor to take steps to Provide the Works in a manner not prevented by the occurrence of an event under Clause 19.1, and such instruction changes the Works Information, the Contractor is entitled to notify a compensation event under Clause 60”

Clause 20.1<sup>34</sup>

At the end insert: “, this contract, the Statutory Requirements, the Necessary Consents and approvals from Others known to the *Contractor* and:

20.1.1 Provides the Works as a minimum in accordance with Good Industry Practice;

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<sup>33</sup> from SOJ precedent

<sup>34</sup> Taken from SOJ precedent and updated

- 20.1.2 maintains well documented records and other relevant information relating to the *works* in accordance with Good Industry Practice;
- 20.1.3 Undertakes that the *works* and each *section* thereof will, when complete, comply with all Applicable Law and any performance specification or other requirement included in or referred to in the Works Information (including any changes to the Works Information).
- 20.1.4 to the extent applicable to the *works* complies with any requirements of the *Employer* (including health and safety, export control, site security (including any security aspects letters provided by the *Employer*), quality, IT security and operational requirements) which apply to access to and use of the Site and any of the *Employer's* sites, premises, plant, equipment information and/or systems;
- 20.1.5 ensures it remains certified to and in compliance with BS EN ISO 9001 Quality Control System or an equivalent Jersey quality control system approved by the *Employer* covering the *works*. The *Contractor* shall inform the *Employer* forthwith in the event that it ceases to be BS EN ISO 9001 certified for all of the *works* and shall (upon written request by the *Employer*) supply full details as to the reasons for withdrawal of the such certification together with a copy of the withdrawal of certification letter or notice;
- 20.1.6 observes the requirements of the Code of Considerate Practice issued in relation to the Considerate Constructor Scheme (or any such Jersey equivalent requirements);
- 20.1.7 ensures it remains certified to and in compliance with BS EN ISO 14000 Environmental System or an equivalent approved environmental system.

Clause 20.5

Insert a new clause:

"20.5

"The Contractor warrants that he has the experience and resources (including financial, technical and human resources) to provide the works (including the design of the works) and has experience of, and provided works similar in size, scope and complexity to the works at sites similar to the *Site* or for employers of a similar nature to the *Employer*."

Clause 20.6

Insert a new clause:

20.6

The *Contractor* warrants that the *Contractor* has:

- a) had an opportunity of inspecting the Site (including the sub-surface, sub-soil, water table, tidal, and ground and environmental conditions) and its surroundings and all existing structures thereon (including physical conditions and other conditions of or affecting this site) and shall be deemed to have fully acquainted itself with the same and to have obtained all the information as to risks, contingencies and all other circumstances which may influence or affect the *works*;

- b) without prejudice to clause 20.6 (a), read, considered, assessed and addressed the contents, implications and recommendations of any reports, investigations or surveys which are comprised in or referred to in this contract or of which a copy has been provided to or made available to the *Contractor* prior to the Contract Date and allowed for in the Prices and the Accepted Programme the carrying out of any further investigations or works recommended therein;
- c) ascertained the location and condition of existing utility services and all other services and service media within and about the Site (including live and redundant) together with any utility services and service media that pass over, to or under the Site from adjoining or neighbouring properties;
- d) has satisfied itself as regards existing roads, railways or other means of communication with and access to the *works*, the risk of injury or damage to property adjacent to the *works* or to occupiers of such property, the conditions under which the *works* will have to be carried out, the supply of and conditions affecting labour, the facilities for obtaining any things whether or not for incorporation and generally has obtained its own information in all matters affecting the execution of the *works* and the prices tendered therefor

and the Contractor shall or shall be deemed to have assessed, addressed and allowed for all of the above within the Contract Data Part 2, its pricing, its programme for designing and constructing the works and in calculating the Prices, Fee, rates etc. contained in this contract.

Notwithstanding any other provision of this contract, no unexpected physical conditions or obstructions (other than weather conditions constituting a compensation event), and no failure on the part of the *Contractor* to discover or foresee any such condition, risk, contingency or circumstance shall constitute a compensation event or shall otherwise entitle the Contractor to an addition to the Prices or to a change in the Completion Date or to claim indemnities or otherwise any additional sum.

The *Contractor* shall not be entitled to rely upon any survey, report or other document prepared by or on behalf of the *Employer* (including the Works Information and the Site Information) 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 (including the Works Information and the Site Information) or any representation or statement whether negligently or otherwise made therein.”

Clause 20.7

“20.7

Insert a new clause:

The *Contractor* will provide continual supervision of the *works* and perform and provide everything necessary for the organisation and co-ordination of the *works*.”

Clause 20.8

Insert a new clause:

“20.8

The *Contractor* and the *Employer* each undertake to fulfil their respective duties and obligations as set out in the Works Information. The *Contractor* further undertakes to comply with (and to procure that those for whom it is responsible comply with) the *Employer's* policies on drugs, alcohol, smoking and any other policies referred to in the Works Information or otherwise notified to the *Contractor* and any updates thereof notified to it from time to time. The *Contractor* shall use all reasonable endeavours to procure copies of any such policies to the extent that it has not been provided with the same."

Clause 20A<sup>35</sup>

Insert a new clause:

"20A.1<sup>36</sup>

**Health and safety**

The *Consultant* warrants and undertakes to the *Employer* that:

he has performed and fulfilled and will continue to perform and fulfil the duties imposed on him by the Construction Regulations including those of the health and safety project co-ordinator (HSPC);

he is competent to perform all duties imposed on him by the Construction Regulations including the HSPC role;

he has allocated and will continue to allocate both sufficient time and adequate resources to ensure that he performs and fulfils his duties under the Construction Regulations properly; and

he has advised and supported and will continue to advise and provide support to the *Employer* to assist the *Employer* in performing the duties imposed by the Construction Regulations on a "client" (as defined by the Construction Regulations).

20A.2

The *Contractor* further warrants to the *Employer* that he will ensure that all designers, subcontractors and suppliers engaged in connection with the *works* carry out and fulfil, in all respects, their respective duties under the Construction Regulations and confirms that he has and is deemed to have made all due allowance in the programming, planning and pricing of the whole of the *works* for compliance with this clause 20A. Before appointing any subcontractor to carry out or manage any work the Contractor will satisfy itself that such a subcontractor has the skills, knowledge, experience and organisational capability and has allocated adequate resources in terms of the Construction Regulations to do such work;

20A.4

The *Contractor* acknowledges that the *Employer* regards health and safety as a matter of extreme importance and that each of the Parties will ensure that a 'zero harm' approach is taken in relation to the *works*.

20A.5

The *Contractor* shall not commence any work on site until an adequate construction phase plan is in place, as required by the Construction Regulations

20A.7

Notwithstanding his other obligations under this contract, the *Contractor* conforms to the safety provisions as set out in the Construction (Safety Provisions) (Jersey) Regulations 1970, and any subsequent amendment or replacement thereof and

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<sup>35</sup> Clause 20A to be reviewed and updated with local law advice to reflect requirements under Construction Regulations.

<sup>36</sup> Taken from PCSA

takes due account of the Health and Safety at Work (Jersey) Law, 1989 and any other Applicable Law and Statutory Requirement.”

Clause 20B<sup>37</sup> Insert a new clause:

“20B The *Contractor* ensures that all traffic conforms with the Road Traffic (Jersey) Law, 1956, as amended or replaced, and obtains all necessary permits and licences before allowing any extraordinary traffic to use the roads.”

Clause 20C<sup>38</sup> Insert a new clause:

“20C The *Contractor* in the execution of this contract where appropriate pays rates of wages and observes the hours and conditions for the employment of operatives not less favourable than those established for the time being by the Employment Forum of the Social Security Department Jersey Building and Allied Trades Employers Federation (or any successor entity),

Clause 21.2<sup>39</sup> Delete “applicable law” and substitute “Applicable Law”.

Clause 21.4 Insert a new clause:

“21.4 The Project Manager shall examine the design documents provided by the Contractor and without limitation, shall be entitled to reject a design document as unsatisfactory where he considers:-

- a) that the design document is not in accordance with this contract (including the Works Information); or
- b) that the design document does not comply with any Statutory Requirements, Necessary Consents or Applicable Laws; or
- c) that, if it is used for construction, it would render the Contractor’s design unfit for the purpose or purposes described in this contract.”

Clause 21.5 Insert a new clause:

“21.5 The Project Manager’s (or Employer’s) acceptance of the Contractor’s design (or any part of it) does not change or remove or reduce the Contractor’s responsibility to Provide the Works or his liability for the works including the design of the works.”

Clause 21.6 Insert a new clause:

“21.6 The Employer and the Contractor will fulfil their respective duties and obligations set out in the design review procedure in the Works Information”.

Delete and substitute:

Clause 22<sup>40</sup>

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<sup>37</sup> Taken from SOJ precedent

<sup>38</sup> As above

<sup>39</sup> Taken from SOJ precedent

<sup>40</sup> Clause 21.1 to 21.6 Taken from SOJ precedent

- “22.1 Title to all Intellectual Property in any drawings, designs, charts, specifications, plans, software and any other documents or materials in any medium which have been created and/or developed by the *Contractor* in the course of performing its obligations under this contract (“the Documents”) shall vest in the *Employer* and the *Contractor* hereby assigns all and whole its present and future right, title and interest in and to all such Intellectual Property free from all liens, charges and encumbrances. At the request of the *Employer*, the *Contractor* shall (at the *Contractor’s* own expense) execute promptly any documents reasonably required to give effect to such vesting in the *Employer* and to assist the *Employer* in enforcing such rights.
- 22.2 Title to all Intellectual Property created by the *Contractor* prior to or outside of the course of performing its obligations under this contract (“Background IPR”) remains the property of the *Contractor*. The *Contractor* grants (or, if such a grant cannot legally take place until a later date, agrees to grant) to the *Employer*, with effect from the date of this contract or in the case of any Background IPR not yet in existence with effect from the creation of such Background IPR, an irrevocable, royalty-free, non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the *Contractor’s* obligations or the termination of this contract or the determination of the *Contractor’s* engagement under this contract or any dispute under this contract) to use the Background IPR and to reproduce all Documents for any purpose whatsoever connected with the Project including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Project. Such licence will carry the right to grant sub-licences and will be transferable to third parties.
- 22.3
- 22.3.1 Where any Intellectual Property required for the *works* is owned by a third party (“Third Party IPR”), the *Contractor* will procure that the third party grants to the *Employer* an irrevocable non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the *Contractor’s* obligations or the termination of this contract or the determination of the *Contractor’s* engagement under this contract or any dispute under this contract) to use the Third Party IPR and to reproduce all Documents for any purpose whatsoever connected with the Project including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Project. Such licence will carry the right to grant sub-licences and will be transferable to third parties. The *Contractor* is responsible for the payment of all fees, royalties and other charges that may be payable in connection with Third Party IPR for the duration of the contract and the same shall be deemed to be included in the amount due.
- 22.3.2 The *Employer* grants to the *Contractor* a non-exclusive royalty-free licence to use its *Employer*-owned IPR for purposes relating to this contract and permits the *Contractor* to sub-license its rights under any such licence to any of its Subcontractors without the consent of the *Employer* for any purposes relating to the provision of the *works* under this contract.
- 22.3.3 Any usage by the *Contractor* of *Employer*-owned IPR belonging to the *Employer* or its licensors is limited to activities necessary for the *Contractor* to discharge its obligations under this contract or the provision of the *works* under this contract and the right to use the *Employer*-owned IPR will terminate when no longer required for this purpose. When no longer required for such purpose any documents

or other records embodying any *Employer*-owned IPR or other Intellectual Property belonging to the *Employer* will be destroyed or returned to the *Employer* unless otherwise agreed.

22.3.4 For the purposes of this contract, "*Employer*-owned IPR" means any Intellectual Property owned by the *Employer* or licensed to the *Contractor* and/or the *Employer* that is not Background IPR.

22.4 The *Contractor* agrees on reasonable request at any time and following reasonable prior written notice to give to the *Employer*, and any persons authorised by the *Employer*, access to the Documents and to provide copies (including copy negatives and CAD discs) of the Documents to the *Employer*. On expiry or earlier termination of this contract, the *Contractor* preserves and delivers-up to the *Employer* all documents and other articles (including copies) in his possession or control bearing or embodying any Intellectual Property owned by or licensed to the *Employer* subject to any pre-existing rights of third parties.

22.5 The *Contractor* warrants that the Documents (save to the extent that duly authorised sub-contractors/sub-consultants have been used) are the *Contractor*'s own original work and that in any event their use will not infringe the rights of any third party. The *Contractor* further warrants that where duly authorised sub-contractors/sub-consultants are used their work will be original.

22.6 All royalties or other sums payable in respect of the supply and use of any patented articles, processes or inventions required in connection with the performance of the *works* shall be paid by the *Contractor* and shall be deemed to be included in the amount due and the *Contractor* shall indemnify the *Employer* from and against all claims, proceedings, damages, costs and expenses suffered or incurred by the *Employer* by reason of the *Contractor* infringing or being held to infringe any third party's Intellectual Property in the performance of its obligations under this contract.

22.7 The *Contractor* carries out and completes the design for the *works* (including any further design which the *Contractor* is to carry out or procure as a result of any change to the Works Information) in accordance with this contract (including the Works Information). The *Contractor* designs all temporary works and is fully responsible for all temporary works (including all of their design).

22.8 The *Contractor* accepts entire responsibility for any mistake, conflict, ambiguity, discrepancy, error, omission, inadequacy, divergence or inconsistency contained in the design of the *works*. Any references in this contract to design which the *Contractor* has prepared or shall prepare or otherwise issue for the *works* shall include a reference to any design which the *Contractor* has caused or shall cause to be prepared or issued by others and any design relating to or for the *works* prepared for or by the *Employer* prior to the Contract Date. It is agreed that the *Contractor* shall have in respect of any mistake, conflict, ambiguity, discrepancy, error, omission, inadequacy, divergence or inconsistency in any design prepared by or on behalf of the *Employer* prior to the Contract Date and set out or referred to in this contract and/or in any documents forming part of or referred to in this contract the same liability as it would for the design that it has prepared or procured.

22.9<sup>41</sup> In addition to its obligations under Clause 22.8, the *Contractor* warrants and undertakes that he has exercised and will continue to exercise in the design of the *works* all reasonable skill and care as may be expected of a properly qualified designer of the appropriate discipline(s) for such design, experienced in carrying out *works* of a similar scope, nature, timescale and complexity and on a similar site

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<sup>41</sup> Taken from SOJ precedent with some updates

or at a similar location to the *works* and the *Contractor* accepts sole and exclusive responsibility for the design of the *works* and for the selection and standards of all materials, goods and workmanship forming part of the *works*, including without limitation:

- (1) all and any design and other work undertaken in relation to the *works* before the Contract Date by any other person whether by or on behalf of the *Contractor* or by or on behalf of the *Employer* and
- (2) all and any design and other work undertaken in relation to the *works* after the Contract Date by any other person on behalf of the *Contractor*

and all such design and other work undertaken by any such person shall be treated for all the purposes of this contract as undertaken by the *Contractor*. Further, without limitation, the *Contractor* warrants that the *works* and the Site shall, as at the date of Completion of the *works*, or, if the *works* are divided into *sections*, that each *section* and the site of each *section* shall, as at the date of Completion of the relevant *section*, comply with all Statutory Requirements and Necessary Consents applicable at the Contract Date.

22.10<sup>42</sup>

The *Contractor* warrants to the *Employer* that the *Contractor* does not specify or approve for use in the *works*, or use in the *works*, any products or materials which are generally known within the construction industry to be deleterious at the time of use in the particular circumstances in which they are used, or those identified as potentially hazardous in or not in conformity with

- the guidance given in the edition current at the date of specification and/or use of the publication “Good Practice in Selection of Construction Materials 2011” published by the British Council for Offices in March 2011
- relevant British or European Standards or Codes of Practice or
- any publications of the Building Research Establishment related to the specification of products or materials.

If in the performance of his duties under this contract, the *Contractor* becomes aware that he or any person has specified, approved or used any such products or materials, the *Contractor* immediately notifies the *Employer* of the same.

22.11

22.11.1 The *Contractor* and the *Employer* agree that the appointments of the Novated Consultants will on the date of this Contract or any date thereafter as required by the *Employer* be novated to the *Contractor* and the *Contractor* hereby agrees to enter into novation agreements in respect of each of the Novated Consultants in the form contained in [Schedule 2]<sup>44</sup> to this Contract and shall deliver the same to the *Employer*.

22.11.2 The *Contractor* shall procure that the Novated Consultants shall deliver to the *Employer*, upon execution of this Contract, collateral warranties in the relevant form set out in the Works Information in favour of the *Employer*.

22.11.3 The *Contractor* shall properly enforce the obligations of the Novated Consultants and duly observe and perform and shall procure that the Novated Consultants shall duly observe and perform their obligations under their appointments and (without limitation) shall not do or omit to

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<sup>42</sup> Taken from SOJ precedent

<sup>44</sup> Location TBC

do anything which would entitle the Novated Consultants to treat their appointments as terminated for breach.

22.11.4 The Contractor shall not terminate the appointment of the Novated Consultants nor waive, release, vary or estop himself from enforcing or seeking redress for any breach of obligation on the part of the Novated Consultants without the prior consent of the Employer, which consent shall not be unreasonably withheld or delayed.

22.11.5 For the purposes of this Clause 21A, the term Novated Consultants shall mean [ ]<sup>45</sup>

22.12<sup>43</sup>

(1) The *Contractor* does not, without the prior written approval of the *Employer* take or permit to be taken any photographs of the *works* for use in any publicity or advertising.

(2) The *Contractor* and his agents and employees do not, without the prior written approval of the *Employer*, disclose to any other person (other than any person to whom disclosure must be made in order for the *Contractor* to fulfil his duties under this contract, the *Contractor's* lawyers, auditors and other professional advisers subject to a duty of confidence or as may be required by statute or by a court of competent jurisdiction) any information about the *works* including the Documents or any information about the *Employer* or his business including any *Employer*-owned IPR or any information about any person in whose favour the *Contractor* is obliged under this contract to execute a warranty or their businesses, nor does the *Contractor* exploit any such information for his own benefit or the benefit of any other person. The *Contractor's* obligations under this clause 22.9 do not apply to any information which is already in the public domain or to any information which came to him otherwise than in connection with his involvement in relation to the *works* except where its entry into the public domain or its coming to the *Contractor* was as a result of a breach of any contractual obligation by the *Contractor* or any other person for whom the *Contractor* is responsible.

(3) The *Contractor* ensures that similar provisions are included in his contracts with subcontractors and shall enforce such provisions.”

Clause 23.2<sup>46</sup> Insert a new clause:

“23.2 If the *Contractor* is instructed to submit particulars of the design of an item of Equipment to the *Project Manager* for acceptance, he does not use the item of Equipment until his design has been accepted.”

Clause 24.1<sup>47</sup> At the end of the clause, insert:

“The replacement person commences the job of the key person being replaced within a reasonable period prior to such key person leaving, in order to facilitate an appropriate handover of work. The *Contractor's* cost of the replacement key person during this period is to the *Contractor's* account.”

Clause 25.1<sup>48</sup> At the end of the clause, insert:

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<sup>43</sup> Taken from SOJ precedent

<sup>45</sup> Insert details of novated consultants

<sup>46</sup> SOJ Taken from SOJ precedent

<sup>47</sup> As above

<sup>48</sup> As above

“The *Contractor*

- obeys the *Project Manager’s* instructions in respect of co-ordination of all work for the Project
- accepts that the Project requires the *Contractor* to work in close proximity to Others, as set out in the Works Information, and that continuity in working is not guaranteed
- uses Good Industry Practice and otherwise his reasonable endeavours to ensure that he does not cause any interruptions or interference to the carrying out or progress of any work to be undertaken by Others
- assists in the joint preparation of co-ordination drawings, the joint setting out of work and the re-sequencing of activities
- makes available design information which is relevant to the work of Others in a timely fashion and upon the *Project Manager’s* request
- provides advice, assistance or information for the *Employer* to comply with his obligations under the Applicable Law.”

Clause 25.4<sup>49</sup> Insert a new clause:

“25.4

- 25.4.1 The *Contractor* permits the execution of work not forming part of this contract by any persons authorised or licensed by the *Employer* to carry out work on those parts of the Site in the *Contractor’s* possession and the *Employer* and/or any such persons may at any time re-enter those parts of the Site and any part of the *works* for the purposes of executing any work or installing any goods, equipment or other articles. The *Contractor* provides every reasonable facility for such persons to execute their work, provided that the *Contractor* shall not be obliged to provide any attendances temporary services and the like to any such persons.
- 25.4.2 The *Contractor* permits the execution of work not forming part of this contract by statutory undertakers or authorities engaged by or employed by the *Employer*.
- 25.4.3 Every person referred to in **clauses 25.4.1** and **25.4.2** shall be deemed to be a person for whom the *Employer* is responsible and not to be a subcontractor of the *Contractor*. The *Employer* uses his reasonable endeavours to instruct such persons or procures that such persons are instructed to comply with all reasonable instructions of the *Contractor* during the execution of any work or installation of any goods, equipment or other articles.
- 25.4.4 Where the *Contractor* allows access and use of the *works* by others for work or activities relating to the Project (including but without limitation the execution of work referred to in **clauses 25.4.1** and **25.4.2**), such access and use does not give rise to a taking over by the *Employer* of any part of the *works*.
- 25.4.5 The *Contractor* at all times liaises and co-operates in good faith with each contractor (and their subcontractors) appointed or notified by the *Employer* so as to procure access to the Site for such contractors and subcontractors to carry out their works and so as to ensure that all health

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<sup>49</sup> Taken from SOJ precedent

and safety considerations including but not limited to the CDM Regulations arising out of such access are properly addressed.

- 25.4.6 Upon and from such date as the *Employer* reasonably requires the *Contractor* permits access to the *Employer* and the *Employer's* contractors and consultants to the Site generally for the purpose of measuring and designing works for the *Employer* and the *Contractor* hereby acknowledges that the *Contractor* has allowed for such access. Further, to the extent that the carrying out of work by the persons identified in this clause 25 is referred to in the Works Information or any other document making up this contract, the *Contractor* confirms that he has made all due allowance in the planning, pricing and programming of the *works* for such work within the conditions stated therein.
- 25.4.7 The *Contractor* ensures that no damage is caused by the *Contractor* or by any of his subcontractors to any works carried out by or on behalf of the *Employer* and if any such damage occurs the *Contractor* immediately makes it good at the *Contractor's* own expense or, at the *Employer's* option, the *Employer* assesses the cost of having the damage corrected by other people and the *Contractor* pays this amount.

Clause 26.1<sup>50</sup> Delete and substitute:

"26.1

- 26.1.1 The *Contractor* does not, without the prior written consent of the *Employer*, assign the benefit of and his rights and benefits under this contract. The *Employer* may assign the benefit of and its benefits and rights under this contract to any person by way of absolute assignment, on up to two occasions only without consent and afterwards only with the consent of the *Contractor* (not to be unreasonably withheld or delayed) provided that an assignment by the *Employer* to another Minister of the States of Jersey or an assignment by way of security or other grant of a security interest (which it is agreed this contract permits), to any party providing finance to the *Employer* shall not count towards the number of assignments permitted without consent under this clause 26.1.
- 26.1.2 In the event of any such assignment pursuant to clause 26.1.1, the *Contractor* shall not be entitled to contend that any such assignee is precluded from recovering any loss resulting from any breach of this contract (whatever the date of such breach) by reason only that such assignee is not a named promisee under this contract or by reason that the *Employer* originally named as promisee escaped any loss resulting from such breach by reason of the disposal of any interest in this contract or that the *Employer* has not suffered any or as much loss as the assignee.
- 26.1.3 If the *Contractor* subcontracts work, he is responsible for Providing the Works as if he had not subcontracted. This contract applies as if a subcontractor's employees and equipment were the *Contractor's*."

Clause 26.2<sup>51</sup> At the end of the clause insert:

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<sup>50</sup> Taken from SOJ precedent

<sup>51</sup> Taken from SOJ precedent

“provided always that the *Project Manager* shall accept the proposed Subcontractor if the relevant Subcontractor is included on the approved subcontracting list that forms part of the Works Information.”

Clause 26.3<sup>52</sup>

After “mutual trust and co-operation” insert “or” and new bullet points:

“•

- in the opinion of the *Employer* they are not consistent with the terms of this contract”.
- they do not include the power to terminate the subcontract as a consequence of termination of this contract;
- they do not include a provision to the effect that, from the commencement to the completion of the subcontract, all Plant and Materials belonging to the person who enters into the subcontract which are brought on the Site in connection with the subcontract shall vest in the Contractor subject to any right of the Contractor to reject the same;
- they do not include such provisions as may be necessary to enable the Contractor to fulfill his obligations to the Employer under the contract;
- they do not include such provisions as will impose on the person who enters into the subcontract, liabilities similar to those imposed on the Contractor under the contract;
- they do not include a provision to the effect that no part of the subcontract work shall be further subcontracted without the consent of the Contractor;
- they do not include provision which secures the same rights in favour of the Employer in respect of Equipment belonging to the Subcontractor as apply under clause 92.2 in respect of Equipment belonging to the Contractor; or
- In the opinion of the Employer they are not consistent with the terms of this contract.

At the end of the clause, insert the following:

“The *Contractor* pays the amount properly due to its Subcontractors in accordance with the terms of its subcontracts not later than 30 days after receipt of a valid invoice from each of its Subcontractors in respect of such Subcontractors’ works and services.”

Clause 27.1<sup>53</sup>

At the end insert: “and the *Contractor* communicates the approvals he has obtained to the *Project Manager*. The *Contractor* gives the *Project Manager* any information required in order for the *Employer* to obtain the approval or sanction of the *Contractor’s* design from Others. Approval or sanction of the *Contractor’s* design by Others does not change, alter, diminish or exclude any duty or liability of the *Contractor* under this contract”.

Clause 28

Insert a new clause 28:

“28

28.1

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<sup>52</sup> Taken from SOJ precedent with some additional bullet points

<sup>53</sup> SOJ Taken from SOJ precedent

28.2 The *Contractor* operates a quality management system for Providing the Works as stated in the Works Information. The quality management system complies with the requirements stated in the Works Information.

28.3 The *Contractor* provides the *Project Manager*, within the period stated in the Works Information, with a quality plan for acceptance. The quality plan shall comply with the requirements stated in the Works Information.

28.4 The *Contractor* complies with an instruction from the *Project Manager* to the *Contractor* to correct a failure to comply with the quality plan.

28.5 The *Contractor* shall provide a management organisation to co-ordinate and carry out the *works* based upon the management regime approved at Contract award. The *Contractor's* management organisation is as set out in the Works Information.

28.5 If the *Contractor* wishes at any time to change the management regime he shall notify the *Project Manager* of the proposed change together with reasons and with an assessment of the effects of the proposed change on carrying out of the *works*. If the *Project Manager* is satisfied that the proposed change would not adversely affect the carrying out of the *works* the *Project Manager* shall approve the change to the management regime. The *Project Manager* shall be further entitled following a proposal from the *Contractor* or at any other time to make alternative recommendations as to the management regime and/or require changes to be made to the management regime so that the *works* are capable of being carried out in accordance with the other provisions of this contract.”

30.1 Add at the end of Clause 30.1:  
“The *Contractor* proceeds regularly and diligently, using at all times all reasonable endeavours to avoid and mitigate any delay howsoever caused.”

30.4 Insert a new clause 30.4:  
The *Project Manager* at his discretion may certify Completion notwithstanding that minor items of work and/or minor Defects remain to be completed, in which event details of such incomplete work and/or minor Defects shall be included in an appropriate schedule and issued forthwith to the *Contractor* who shall complete such outstanding minor items of work and or attend to and rectify any minor Defects as soon as possible but in any case not later than fourteen (14) Calendar Days from the date of Completion. Where such minor items of work and/or minor Defects have not been completed within the time period stated under this clause 30.4 the *Employer* may employ others to carry out such work and/or rectify any minor Defects and deduct the cost of the same from any monies due and owing to

Clause 31.3 the *Contractor* (or the *Employer* shall be entitled to recover such cost from the *Contractor* as a debt).

Add at the end of Clause 31.3:

“No acceptance or a programme prejudices or affects the *Employer’s* rights or remedies”

Clause 31.5<sup>54</sup> Insert a new clause 31.5

“31.5 The *Contractor* complies with section [ ] of the Works Information in connection with commissioning and handover for the whole of the works. The *Contractor* accepts and agrees that the *Project Manager* is not under any obligation to certify Completion unless and until the *Contractor* fully complies with such requirements.” **[S+W DRAFTING NOTE: COMMISSIONING REQUIREMENTS TO BE CONFIRMED.]**

Insert a new clause 33.2:

Clause 33.2

“33.2

Possession of or access to or egress from the *Site* or parts thereof is subject to the constraints specified in this contract and the *Contractor* shall take into account and comply with such constraints which shall not be Compensation Events.”

Clause 33.3

“33.3

Insert a new clause 33.3:

The *Contractor* complies with any instruction from the *Project Manager* to take measures to prevent unauthorised persons being admitted on the *Site*.”

Clause 34.1

Add at the end of clause 34.1:

“During any period in which any work is so stopped or not started, the *Contractor* keeps secure and protects the *Site* and the *works* and all Equipment, Plant and Materials against any deterioration, loss, damage or theft.”

Clause 35.4

“35.4

Insert a new clause 35.4:

The *Project Manager* shall not be obliged to certify completion (and Completion shall not be deemed to have occurred) unless the *Contractor* shall have provided to the *Employer* (1) any drawings, specifications, test certificates, health and safety files, operation and maintenance manuals that require to be delivered in accordance with the Works Information; (2) any collateral warranties that have been requested in terms of clause Z2 and (3) any other documents or evidence reasonably required by the *Project Manager* so as to satisfy himself that Completion has occurred. “

Clause 35.5

Insert a new clause 35.5

“35.5 The Contractor allows the Employer and Others authorised by the Project Manager access across the works and/or Working Areas to any part of the works taken over by the Employer in accordance with an access regime which shall be agreed from time to time by the Parties.”

Clause 35.6 Insert a new clause 35.6:

“35.6 In the event that any part of the *works* have not been tested or commissioned at completion or take over, the *Contractor’s* obligations and liabilities for any subsequent failure of such part of the *works* shall not be diminished or extinguished by any such failure to test or commission.”

Clause 40.3 Delete the final sentence and substitute the following:

“The *Supervisor* may watch any test done by the *Contractor* and if the *Contractor* fails so to notify, the *Contractor* repeats the test at its cost or inspection and gives notification as required in this clause 40.3.”

Clause 42.1<sup>55</sup> Delete “Until the *defects date*” and substitute “At any time before he issues the Defects Certificate”.

Clause 43<sup>56</sup> Delete and substitute:

“43.1 The *Contractor* corrects Defects which he finds before the *defects date*, and Defects which the *Project Manager* finds before the *defects date* and notifies to the *Contractor* in accordance with this contract.

43.2 The *Contractor* corrects those Defects before the end of the *defect correction period*. The *defect correction period* begins at Completion for Defects which the *Contractor* finds, or which the *Project Manager* notifies to the *Contractor*, before Completion. For Defects which the *Contractor* finds, or which the *Project Manager* notifies to the *Contractor*, after Completion, the *defect correction period* begins upon finding by the *Contractor* or notification by the *Project Manager*.

43.3 The *Project Manager* issues the Defects Certificate at the later of the *defects date* and the end of the last *defect correction period*. The *Contractor* is not required or entitled himself to correct Defects listed in the Defects Certificate, but continues to be liable for those Defects in accordance with this contract. The *Employer’s* rights in respect of a Defect which the *Project Manager* has not found or notified are not affected by the issue of the Defects Certificate.

43.4 The *Project Manager* arranges for the *Employer* to give the *Contractor* the access to, and use of, those parts of the Site which the *Contractor* needs to correct a Defect which he is required to correct under this contract, after the *Employer* has

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<sup>55</sup> Taken from SOJ precedent

<sup>56</sup> Clause 43.1 to 43.4 taken from SOJ precedent

taken over any part of the *works*. In this case the *defect correction period* begins when the necessary access and use have been provided.

43.5 Where the Contractor is to carry out any works or remedy any Defects after Completion ("**Post Completion Works**"), the Contractor shall (except in the case of emergencies) obtain the Project Manager's prior written approval of the Contractor's proposals, programme, specification and method statement and any other documents required for the carrying out of the Post Completion Works. The Contractor undertakes that in relation to the Post Completion Works, it shall comply with (and shall carry out the Post Completion Works in accordance with) the approved proposals, programme, specification and method statement and:

- a) shall cause the minimum disruption or interference possible to the operations of the Employer, or other occupiers or operators of the completed works or to the businesses of the owners, tenants and occupiers of the adjoining sites and undertakes that, in carrying out the Post Completion Works, it shall cause no interruption (unless agreed otherwise with the Employer) to said parties; and
- b) shall make good any damage caused by it or its Personnel to the completed works and any equipment, plant, materials, fixtures, fittings, stock or other property of whatsoever nature in or on the Site as soon as reasonably possible after the occurrence of the same, all at no cost to the Employer.

If the proposals, programme, specification and method statement for the Post Completion Works are not so approved or the Contractor fails to comply with the same (or procure that the Post Completion Works comply with the same), the Project Manager may in his sole and absolute discretion notify the Contractor of the revised proposals, programme, specification or method statement with which he must comply or the arrangements for uncorrected notified Defects shall apply.

43.5 The Contractor complies with all constraints and conditions imposed by the method statement or otherwise advised by the Project Manager to the correction of Defects.

43.6 The *Contractor* complies with its obligations arising from clause 43 and in relation to Defects generally all at no cost to the *Employer*."

Clause 45.1<sup>57</sup> Delete and substitute:

If the *Contractor* is given access in order to correct a Defect but he has not corrected it within its *defect correction period*, the *Project Manager* assesses the cost to the *Employer* of having the Defect corrected by other people and the *Contractor* pays this amount. The *Project Manager* also assesses the cost to the *Employer* of having the Defects listed in the Defects Certificate corrected by other people and the *Contractor* pays this amount. The Works Information is treated as having been changed to accept such Defects."

Clause 45.3<sup>58</sup> Insert a new clause:

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<sup>57</sup> Taken from SOJ precedent

<sup>58</sup> As above

- “45.3 The *Contractor* continues to be liable for Defects (including Defects listed in the Defects Certificate and latent or inherent Defects) after
- the issue of the Defects Certificate
  - the operation of this section and
  - the termination of this contract for any reason (including breach by the *Employer*)

in accordance with the *law of the contract*, subject to any time limit on claims and limitation on liability expressly provided by this contract.”

- 50.1 **[S+W DRAFTING NOTE: PAYMENT FREQUENCY TO BE AMENDED AS NECESSARY ONCE AGREED CYCLES ARE CONFIRMED. ]**
- [GMS NOTE: MONTHLY PAYMENTS PROPOSED BY COMPLETION OF DELIVERABLES.]**

Clause 50.2<sup>59</sup>

After “the *Contractor*” insert “or which the *Contractor* is liable to account for to the Controller of Taxes (including any GST)”.

50.4

Delete and substitute with the following:

“One week before each assessment date the *Contractor* submits to the *Project Manager* an application for payment setting out what the *Contractor* considers to be the amount due and substantiation of such amounts together with any further information required by the *Project Manager*. In the event of any delay or failure by the *Contractor* to submit an application in accordance with this clause the *Project Manager* shall assess amounts due on the best information available to the *Project Manager* and taking full account of the *Contractor's* breach in particular with regard to absence of full and proper justification of any amounts claimed or to be assessed. The *Contractor* warrants and undertakes to the *Employer* (such warranty being deemed repeated at the point of each submission) that such application is in accordance with the contract and true in all respects and given in good faith. The application shall require to be

- a) in a format, structure and level of detail acceptable to the *Project Manager*; and
- b) includes substantiation of the amounts that the *Contractor* considers to be due.

Clause 50.7 Insert a new clause:

“50.7<sup>60</sup> The *Contractor* gives all notices and pays all fees required to be given or paid by any Applicable Law or Statutory Requirement. The *Contractor* conforms in all respects with the provisions of any Applicable Law or Statutory Requirement and keeps the *Employer* indemnified against all penalties and liabilities of every kind for breach of any such Applicable Law or Statutory Requirement. The *Employer*

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<sup>59</sup> Taken from SOJ precedent

<sup>60</sup> Taken from SOJ precedent

pays or allows the *Contractor* all such sums as the *Project Manager* shall certify to have been properly payable and paid by the *Contractor* in respect of such fees and also such rates (except water rates) and taxes paid by the *Contractor* in respect of the Site or anything constructed or erected thereon, or any part thereof or any temporary structures situated elsewhere but used exclusively for the purpose of the carrying out of the *works*.”

Clause 50.8  
“50.8

Insert a new clause:  
The *Contractor* does not include amounts in any application for payment in respect of the following:

- a) any Plant and Materials in which he does not have title; and
- b) costs disallowed pursuant to and in accordance with the contract

and the *Project Manager* does not include such in his assessments.”

Clause 50.9  
“50.9

Insert a new clause:  
Notwithstanding any statement to the contrary any documentation received from the *Contractor* and any payment made by the *Employer* will not be construed as acceptance by the *Employer* of the performance of the *Contractor*’s obligations nor as a waiver of his rights and remedies under this contract or otherwise.”

Clause 51.4<sup>61</sup> Delete “compounded annually” and substitute “simple interest”.

Clause 51.5<sup>62</sup>  
“51.5

Insert a new clause:  
In addition to any other rights of the *Employer* at law, whenever under this contract any sum of money is recoverable from or payable by the *Contractor*, the same may be deducted from any sums then due, or which at any time thereafter may become due to the *Contractor* under this contract provided that the *Employer* notifies the *Contractor* in writing to the extent that any such notification in writing is required by this contract in relation to the withholding of any sums due.”

Clause 56<sup>63</sup>  
“56

Insert a new clause:  
In relation to any payment to the *Contractor* under this contract the *Contractor* shall separately identify any *GST* properly chargeable by the relevant tax authority on the supply to the *Employer* of goods and/or services by the *Contractor* under this contract and the *Employer* shall pay to the *Contractor* such *GST* subject to a valid invoice (complying with any requirements imposed by the relevant tax authority of the States of Jersey) being provided by the *Contractor* to the *Employer* indicating the requisite amount of *GST* due.

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<sup>61</sup> Taken from SOJ precedent

<sup>62</sup> As above

<sup>63</sup> As above

If any dispute or question arises between either the *Employer* or the *Contractor* and the relevant tax authority in relation to any tax chargeable or alleged to be chargeable in connection with this contract each Party shall render to the other such support and assistance as may be necessary to resolve the dispute or question.”

Clause 60.1

Amend as follows:

(1) In the second sub-paragraph delete “for his design”.

Add the following as a third sub-paragraph:

- a change made based on the application of the order of precedence set out in this contract or to resolve any conflict, ambiguity, discrepancy, error, omission, inadequacy, divergence or inconsistency in, amongst or between any Works Information or Site Information or Applicable Laws, Statutory Requirements or Necessary Consents (including any conditions thereof).

(2)<sup>64</sup>

At the end, insert “unless access is restricted by Others outside the control of the *Employer* and provided further that compliance by the *Contractor* with all relevant policies issued or provided by the *Employer*, any regulations, codes of practice, guidance notes or other requirements of any relevant government or governmental agency and in compliance with all other applicable provisions of this contract shall not be treated as a compensation event”.

(5) In the penultimate bullet point, delete “or” and substitute “.”

Delete the final bullet point.

(7) Delete and replace with “not used”

(8) At the end of the clause insert “in writing”.

(9) Delete and replace with:

“The *Project Manager* unreasonably withholds an acceptance (other than acceptance of a quotation for acceleration or for not correcting a Defect or acceptance of a proposal which does not comply with this contract) for a reason not stated in this contract.”

(10) At the end of the clause insert “or if it was reasonable in the circumstances for the *Supervisor* to so instruct having regard to Defects that have previously been identified”.

(12) Delete.

(13)

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<sup>64</sup> Taken from SOJ precedent

**[S+W DRAFTING NOTE: POSITION ON WEATHER RISK TO BE CONFIRMED.]**

(18)<sup>65</sup> After “*Employer*” insert “(except to the extent that it is caused or contributed to by the *Contractor* or any Subcontractor or any person for whom those parties are responsible)”.

(19) Add the following as new bullet points, in the second set of bullet points in the clause:

- “is not a matter for which the Party seeking to found upon it has accepted responsibility or the risk under this contract; and
- makes it impossible or illegal for that Party to perform its obligations under or in relation to this contract in each case affecting the Site.”

At the end, insert: “provided that the *Contractor’s* sole entitlement for a compensation event stated in clause 60.1(19) is limited to changes to the Key Dates and the Completion Date; the Prices are not increased”.

Clause 60.3<sup>66</sup> Delete.

Clause 60.4<sup>67</sup> Insert a new clause:

“60.4<sup>68</sup> A compensation event does not give rise to

- any change to the Key Dates and/or the Completion Date and/or
- any increase in the Prices or to any further amounts being due under this contract to the *Contractor*

if and to the extent that the event giving rise to the *Contractor’s* claim is caused or contributed to by any breach of contract, breach of statutory duty, negligence or default, whether by act or omission, of the *Contractor* or any person for whom the *Contractor* is responsible or is stated in this contract to be at the *Contractor’s* risk.”

Clause 61.3<sup>69</sup> Delete “eight weeks” and substitute “four weeks”.

Clause 61.4<sup>70</sup> After “meeting a Key Date” delete “or”. After “events stated in this contract” insert “or” and the following new bullet point:

“• arises from a failure by the *Contractor* to comply with this contract”.

At the end insert:

“If the *Project Manager* decides that an event notified by the *Contractor* has no effect upon Defined Cost, he may notify the *Contractor* of his decision that the Prices are not to be changed and instruct the *Contractor* to submit assessments only in respect of delay to the Completion Date and Key Dates.”

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<sup>65</sup> Taken from SOJ precedent

<sup>66</sup> Taken from SOJ precedent

<sup>67</sup> As above

<sup>68</sup> As above

<sup>69</sup> As above

<sup>70</sup> As above

- Clause 61.7<sup>71</sup> At the end insert:
- “Any claim in respect of a compensation event shall be barred if it is not notified before the *defects date*.”
- Clause 62.6 Delete and substitute with the following:
- “If the *Project Manager* does not reply to a quotation within the time allowed, the Contractor may notify the *Project Manager* to this effect. If the Contractor submitted more than one quotation for the Compensation Event, he states in his notification which quotation he proposes is to be accepted. If the *Project Manager* to reply within two (2) weeks of this notification the Contractor will be entitled to issue a further notification.”
- Clause 63.1 Insert the following as a new paragraph at the end of the clause:
- “The *Contractor* shall act in good faith and disclose matters to the *Employer* in a transparent basis, including in connection with all claims for additional payments, delay, applications for payment, environmental, health and safety matters and/or (if and to the extent applicable) any non-compliance of the *works* with the contract. Transparent shall mean full and open disclosure on an elemental basis with supporting particulars reasonably required by the *Employer*. The *Contractor* warrants and undertakes to the *Employer* (such warranty being deemed repeated at the point of submission) that all documentation, including evidence and payment applications submitted to the *Employer* are exhaustive and true in all respects and given in good faith.”
- Clause 63.2 Delete and substitute:
- “If the effect of a Compensation Event is to reduce the total Defined Cost, the Prices are reduced accordingly and in any event the Prices shall be reduced:
- 63.2.1 as stated in this contract;
- 63.2.2 for reduction in quantities; and
- 63.2.3 in respect of changes to the Works Information that omit or reduce the scope of the *works*.”
- Clause 63.3 Insert the following at the end of the clause:
- “Where any delay to the planned Completion Date (or to a Key Date) is caused concurrently by a Compensation Event and by any matter that is not a Compensation Event (whether or not the said event and matter commence or conclude simultaneously) the delay to the Completion Date (or to the relevant Key Date) shall be assessed as nil.”
- Clause 63.5<sup>72</sup> At the end insert:
- “and had taken such actions which the *Employer* reasonably decides should have been taken to avoid or reduce:
- an increase to the total of the Prices,

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<sup>71</sup> As above

<sup>72</sup> Taken from SOJ precedent

- a delay to Completion, or
- the impairment of the performance of any part of the *works* when in use.”

Clause 63.7<sup>73</sup> After “can be changed” insert: “and that the *Contractor* had taken such action as the *Employer* decides should have been taken to avoid or reduce any increase to the total of the Prices or any delay to Completion or any impairment of the performance of the Project in use”.

Clause 63.8<sup>74</sup> Delete.

Clause 63.11 **Delete**

**[S+W DRAFTING NOTE; THIS HAS BEEN SUPERSEDED BY NEW CLAUSE 63.2]**

Clause 63.14 Delete and substitute with the following:

“Notwithstanding any other provision of this contract to the contrary, the Employer may, at its discretion, assess a Compensation Event based on the values of work, prices, sums or rates referred to in this contract or extrapolated therefrom.”

Clause 63.16 Insert a new clause:

“63.16 The *Contractor* is not entitled to a change in the Prices, the Completion Date or a Key Date to the extent that the matters giving rise to the compensation event have been caused or contributed to by the *Contractor’s* fault or an event at his risk.”

Clause 64.4 Delete and substitute the following:

“If the Employer does not assess a Compensation Event within the time allowed, the Contractor may notify the Employer to this effect. If the Contractor submitted more than one quotation for the Compensation Event, he states in his notification which quotation he proposes is to be accepted. If the Employer fails to reply within two (2) weeks of this notification the Contractor will be entitled to issue a further notification to the Employer.”

Clause 65.1 Insert “or” at the end of the first bullet point.

Delete “or” at the end of the second bullet point.

Delete the entire third bullet point.

Clause 70<sup>75</sup> Delete and substitute:

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<sup>73</sup> Taken from SOJ precedent

<sup>74</sup> Taken from SOJ precedent

- "70.1 No payment is made to the *Contractor* on account of Plant and Materials and Equipment which are outside the Working Areas unless this contract expressly so provides.<sup>76</sup>
- 70.2 The *Contractor* ensures that the unencumbered title to Plant and Materials passes to the *Employer*
- at the time they are brought on to the Working Areas without it being necessary to perform any formalities or do anything else for title to pass or
  - the date when the *Contractor* becomes entitled to payment for the Plant and Materials in question or
  - the date upon which title passes to the *Employer* under the provisions of a vesting certificate
- whichever is the earlier.
- 70.3 Loss or damage to Plant and Materials is at the *Contractor's* risk whether or not title has passed to the *Employer*, unless the contract expressly states that such loss or damage is the *Employer's* risk.
- 70.4 Title to Plant and Materials for which the *Employer* has not paid passes back to the *Contractor* if they are removed from the Working Areas with the *Project Manager's* permission. If the Plant and Materials have been paid for by the *Employer*, the title to them remains with the *Employer* even if they are removed from the Working Areas. It is a pre-condition to payment for any Plant and Materials that the *Contractor* marks and stores it in accordance with this contract and signs a vesting certificate in a form which is acceptable to the *Employer* (acting reasonably)."
- Clause 72.2<sup>77</sup> Insert a new clause:
- "72.2 If the *Project Manager* gives an instruction that certain Equipment is not to be removed from the Site, the *Contractor* does not remove such Equipment from the Site."
- Clause 80.1 Delete the first line and substitute the following:
- "The following are Employer's Risks "(a) only to the extent that such events are not consequent upon or necessitated by any act, negligence, omission, default, breach of contract or breach of statutory duty of the Contractor, its subcontractors of whatever tier and including Subcontractors or suppliers or those for whom it is responsible whether arising out of or in connection with this contract or otherwise; (b) subject to any provision to the contrary in this contract; (c) save to the extent the Contractor is stated to be responsible for or assumed the risk of [or for or to have allowed for such matters; and (d) except to the extent these are covered by the Insurance Table) at clause 84.2":
- At the end of the third bullet point, insert the following:

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<sup>76</sup> Schedule of works packages to be developed pre-contract award and drafting developed if required

<sup>77</sup> Taken from SOJ precedent

“(but only to the extent that such claims, proceedings, compensation and costs relate to interests in land, and not to the extent relating to other matters including the manner in which the Contractor Provides the Works pursuant to that use and occupation),”

<sup>78</sup>Delete the fourth bullet point, and substitute:

“• a fault of the *Employer* or a fault in his design (other than such design for which the *Contractor* has responsibility under this contract).”

Delete the 10<sup>th</sup> to 13<sup>th</sup> bullet points (inclusive) and substitute the following:

“After take-over of the works, damage caused by Others and fair wear and tear (but the latter shall not relieve or diminish the Contractor's obligations or liability with regard to the works complying with this contract).<sup>79</sup>”

Clause 83

Delete and substitute the following:

“83.1

The Contractor indemnifies the Employer against claims, proceedings, compensation and costs due to an event which is at his risk.

83.2

The liability of the Contractor to indemnify the Employer is reduced if events at the Employer's risk contributed to the claims, proceedings, compensation and costs. The reduction is in proportion to the extent that events which were at the other Party's risk contributed, taking into account each Party's responsibilities under this contract.

83.3

The Contractor indemnifies the Employer against losses, damages, expenses, claims, proceedings, compensation and costs payable arising out of a breach by the Contractor of its obligations under this contract or an infringement by the Contractor of the rights of Others, except an infringement which arose out of the use by the Contractor of things provided by the Employer.

83.4

Not used

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<sup>78</sup> Taken from SOJ precedent

“83.5<sup>80</sup>

- (1) The *Contractor* at all times takes reasonable measures to prevent any trespass, public or private nuisance (including, without limitation, any nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on the public highway) or other interference with the rights and activities of any adjoining or neighbouring landowner, tenant or occupier or any statutory undertaker arising out of the carrying out of the *works* or of any obligation under this contract and assists the *Employer* in defending any relevant action or proceedings which may be instituted.
- (2) The *Contractor* is responsible for and indemnifies the *Employer* from and against any and all expenses, liabilities, losses, claims and proceedings whatsoever resulting from any such trespass, nuisance or interference, except only where such trespass, nuisance or interference is the consequence of an instruction of the *Employer* (which is itself not the result of any negligence, default or breach of contract by or on behalf of the *Contractor* or any Subcontractor or supplier) and has not been avoided despite the *Contractor* using all reasonable and practical means to avoid the same.
- (3) The *Employer* issues to the *Contractor* such instructions as he considers necessary if any injunction is granted or court order is made in consequence of any such trespass, nuisance or interference, but (except as described above) the *Contractor* is not entitled to any additional payment (whether by way of an addition to the total of the Prices or otherwise) or to an extension of time by reason of any such instruction.”

“83.6

If either Party becomes aware of any incident likely to give rise to a claim under the indemnities in this contract, he notifies the other Party and both Parties co-operate fully in investigating the incident. A Party claiming a right to be indemnified under this contract uses reasonable endeavours to mitigate the relevant loss or damage which has occurred or may occur.”

“83.7

Neither Party will make any admission of liability, agreement or compromise with any person, body or authority in relation to the potential claim without the prior written consent of the indemnifying Party giving the indemnity (such consent to be given at the indemnifying Party’s sole discretion).”

“83.8

The Party seeking to rely on such indemnity shall take such action as the indemnifying Party may reasonably request to avoid, resist, contest, defend, compromise or remedy the potential claim or the matters which will or are likely to give rise to such claim and in each case on the basis that the indemnifying Party will indemnify the other Party for all reasonable costs incurred as a result of a request by the indemnifying Party.”

“83.9

The *Contractor* acknowledges that Others engaged on the Project are reliant upon the Contractor’s documents being supplied in accordance with the Document Submission Schedule. The *Contractor* indemnifies the *Employer* for any losses that it or its contractors suffer, in the event that the *Contractor*’s

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<sup>80</sup> 83.5 to 83.9 all taken from SOJ precedent

documents are not supplied in accordance with such schedule (other than to the extent that the reasons for such late supply is/are due to an event for which the *Contractor* is entitled to a compensation event).”

Clause 84.1

At the start of the clause, Delete “The” and substitute:

“Without prejudice to its obligation to indemnify the *Employer* under this contract, the”

Clause 84.2<sup>81</sup>

Delete the first sentence and substitute:

“The insurances provide cover for events which are at the *Contractor*’s risk from the *starting date* until the Defects Certificate or a termination certificate has been issued, and are

- with reputable insurers approved by the *Employer*, lawfully carrying on such insurance business in the territory named in the Contract Data, and upon customary and usual terms and conditions prevailing for the time being in the insurance market: those terms and conditions shall not include any term or condition to the effect that any insured must discharge any liability before being entitled to recover from insurers, or any other term or condition which might adversely affect the rights of any person to recover from insurers under any applicable law relating to the rights of any third parties (other than the insured, and including the *Employer*) against insurers; and
- in the joint names of the *Employer*, such other persons as the *Employer* may reasonably require (including the *Employer*’s consultants, any persons who have entered or shall enter into an agreement for the provision of finance in connection with the *works*, and any persons who have acquired or shall acquire any interest in or over the *works* or any part of the *works*), and the *Contractor*, and shall also cover all Subcontractors.”

In the INSURANCE TABLE delete “applicable law” and substitute “Applicable Law”.

After the INSURANCE TABLE, insert:

“In addition to the above insurances the *Contractor* is liable for and indemnifies the *Employer* against any cost expense liability loss claim or proceedings whatsoever arising under any statute or at common law in respect of:

- (a) personal injury to or the death of any person whomsoever arising out of or caused by the provision of the *works*; and
- (b) any injury or damage to property real or personal including but without limitation the property of the *Employer* arising out of or caused by the provision of the *works*.

The *Contractor* shall not (and the *Contractor* shall procure that none of its Subcontractors of any tier shall) take any action, or permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any

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<sup>81</sup> Taken from SOJ precedent

insurance policy in which the Employer is an insured, a co-insured or additional insured person or render an insurance policy void or voidable.”<sup>82</sup>

Clause 84.3

Insert a new clause:

“83.4

Where the insurers purport to cancel, suspend or terminate the Required Insurances, the Contractor shall procure that the insurers shall, as soon as is reasonably practicable, notify the Contractor in writing in the event of any such proposed suspension, cancellation or termination.

Where the Contractor receives such a notification from insurers, the Contractor shall promptly notify the Employer in writing of receipt of such proposed suspension, cancellation or termination. “

Clause 84.4

Insert a new clause:

“84.4

“The Contractor shall promptly notify to insurers any matter arising from or in relation to this contract from which it may be entitled to claim under any of the Required Insurances. Except where the Employer is the claimant party and without limiting the other provisions of this clause, the Contractor shall notify the Employer immediately, (such notification to be accompanied by reasonable particulars of the incident or circumstances giving rise to such claim)”

- a) Of any incident or circumstances which may give rise to any claim amounting to or in excess of [one hundred thousand] pounds (£100.000) in connection with this contract under any of the required insurances.
- b) If the incident or circumstances may give rise to any claim in connection with this contract, which may be in excess of the limits of the required insurances.”

Clause 84.5

Insert a new clause:

“84.5

“Where any insurance is subject to an excess or deductible below which the indemnity from the insurers is excluded, the Contractor shall be liable for such excess or deductible.

The Contractor shall not be entitled to recover from the Employer any sum paid by way of excess or deductible under the insurances whether under the terms of this contract or otherwise.”

Clause 84.6

Insert a new clause;

“84.6

“All insurance proceeds received under the Contractor’s “All Risks” Insurance referred to in the Insurance Table, shall be applied to repair, reinstate and replace

each part or parts of the insured property in respect of which the proceeds were received.”

Clause 84.7

Insert a new clause:

“Neither failure to comply nor full compliance with the insurance provisions of this contract shall limit or relieve the Contractor of its liabilities and obligations under this contract and in particular the Contractor’s obligations in compliance with any indemnity provisions contained in this contract.”

Clause 88<sup>83</sup>

Insert a new clause:

“88

**Professional indemnity insurance**

88.1

If the Contract Data so requires, the *Contractor* maintains professional indemnity insurance

- covering all his liability under this contract in respect of defects or insufficiency in design
- upon customary and usual terms and conditions prevailing for the time being in the insurance market
- with reputable insurers lawfully carrying on such insurance business in the territory named in the Contract Data
- in an amount not less than that, and of the type, required by the Contract Data
- for a period beginning not later than the Contract Date and ending 10 (ten) years (or such other period as is required by the Contract Data) after Completion of the whole of the *works* or the termination of this contract or the termination of the *Contractor’s* employment under this contract for any reason, including breach by the *Employer*, whichever is earlier

provided that such insurance is available generally in the market to design and build contractors at commercially reasonable rates.

88.2

Those terms and conditions shall not include any term or condition to the effect that the *Contractor* must discharge any liability before being entitled to recover from insurers, or any other term or condition which might adversely affect the rights of any person to recover from insurers under any Applicable Law relating to the rights of third parties (other than the insured and including the *Employer*) against insurers.

88.3

The *Contractor* does not, without the prior approval in writing of the *Employer*, settle or compromise with insurers any claim which the *Contractor* may have against insurers and which relates to a claim by the *Employer* against the *Contractor*, or by any act or omission lose or prejudice the *Contractor’s* right to make or proceed with such a claim against insurers.

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<sup>83</sup> Clause 88 all Taken from SOJ precedent

- 88.4 Any increased or additional premium required by insurers by reason of the *Contractor's* claims record or other matters particular to the *Contractor* shall be considered to be within commercially reasonable rates.
- 88.5 The *Contractor* immediately informs the *Employer* if such insurance ceases to be available generally in the market to design and build contractors at commercially reasonable rates, and fully co-operates with any measures reasonably required by the *Employer*, including
- completing any proposals for insurance and associated documents
  - maintaining such insurance at premiums 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.
- 88.8 The *Contractor's* obligations in respect of professional indemnity insurance continue after termination of this contract or the termination of the *Contractor's* employment under this contract for any reason, including breach by the *Employer.*"
- Clause 91.1<sup>84</sup> After "equivalent" insert "or is declared En Désastre, becomes insolvent under the laws of Jersey (that is, unable to pay his/its debts as they fall due) or bankrupt (within the meaning of Article 8 of the Interpretation (Jersey) Law 1954) or is otherwise deemed to be bankrupt or insolvent under the laws of Jersey or any other jurisdiction or any winding up, bankruptcy or insolvency proceedings are commenced in relation to the *Contractor* in Jersey or any other jurisdiction".
- Delete the last bullet point and substitute:
- made an arrangement with its creditors or (additionally in the case of a partnership) each partner has made an arrangement with his or its creditors or is the subject of any other event or proceedings referred to as R1-R10 (R10)."
- Clause 91.2 Delete and substitute:
- "91.2 The *Employer* may terminate if the *Project Manager* has notified the *Employer* and the *Contractor* that the *Contractor* has
- Materially failed to comply with his obligations, and has either not corrected that failure within 4 (four) weeks of being notified of that failure by the *Project Manager*, or, having corrected that failure, has at any

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<sup>84</sup> 91.1 to 91.6 all taken from SOJ precedent SOJ

subsequent time materially failed to comply with his obligations in the same or a similar manner (R11).

- Not provided a bond or guarantee which this contract requires (R12).
- Appointed a Subcontractor for substantial work before the *Project Manager* has accepted that Subcontractor, or assigned any benefit in a part or the whole of this contract (R13)."

Clause 91.3 Delete the first sentence and substitute:

"The *Employer* may terminate if the *Project Manager* has notified the *Employer* and the *Contractor* that the *Contractor* has defaulted in one of the following ways, and has not stopped defaulting within four weeks of being notified of that default by the *Project Manager*."

Clause 91.4 Delete and substitute:

"91.4 The *Contractor* may terminate if the *Employer* (without legal justification) has not paid an amount certified by the *Project Manager* within 11 (eleven) weeks of the date of the certificate and has not paid that amount within 2 (two) weeks of being notified of that default (after the expiry of that 11 (eleven) weeks) by the *Contractor* (R16)."

Clause 91.5 Delete and substitute:

"91.5 Either Party may terminate if the Parties have been released under the *law of the contract* from further performance of the whole or any substantial part of this contract (R17)."

Clause 91.6 Delete and substitute:

"91.6 If the *Project Manager* has instructed the *Contractor* to stop or not to start any substantial work or all work and an instruction allowing the work to re-start or start has not been given within 11 (eleven) weeks,

- the *Employer* may terminate if the instruction was due to a default by the *Contractor* (R18),
- the *Contractor* may terminate if the instruction was due to a default of the *Employer* and an instruction allowing the work to re-start or start is not given within 2 (two) weeks of the *Employer* being notified by the *Contractor* (after the expiry of that 11 (eleven) weeks) that the *Contractor* will terminate if such an instruction is not given (R19),
- the *Employer* may terminate if the instruction was due to any other reason (R20), and
- the *Contractor* may terminate if the instruction was due to any other reason and an instruction allowing the work to re-start or start is not given within 2 (two) weeks of the *Employer* being notified by the *Contractor* (after the expiry of that 11 (eleven) weeks) that the *Contractor* will terminate if such an instruction is not given (R20)."

Clause 92.3 Insert the following as a new clause:

"92.3 Upon expiry or termination of all or any part of the contract, the *Contractor* provides all reasonable co-operation, assistance and information to the *Employer* (and to any

replacement contractor appointed by the Employer) for a period of up to 6 months from the date of expiry or termination if requested, to the extent necessary to effect an orderly assumption of the works by the Employer or the replacement contractor and at no cost to the Employer. “

Clause 92.4 Insert the following as a new clause:

“92.4 Save as otherwise expressly provided in the contract:

- a) termination or expiry of this contract is without prejudice to any rights, remedies or obligations accrued under the contract prior to termination or expiration; and
- b) termination of this contract does not affect the continuing rights, remedies or obligations of the Employer or the Contractor under clause 8 (Risks and insurance) and clause 92 (Procedures on termination) and under any other provision of this Contract which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.”

Clause 92.5 Insert the following as a new clause:

“92.5 On the termination of the contract for any reason, the Contractor:

- a) immediately returns to the Employer all Confidential Information and Intellectual Property (IP) Materials relating to the contract in its possession or in the possession or under the control of any Personnel which was obtained or produced in the course of providing the works;
- b) Hands over to the Project Manager all hard copy and electronic data for the Contractor’s design including material prepared by a Sub-contractor, the Works Information for the Contractor’s design and Site Information obtained so far as prepared at termination. At such termination the Employer has the right to use material for the completion of the works;
- c) immediately delivers, at no cost, 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);
- d) promptly provides all information concerning the works which may reasonably be requested by the Employer for the purposes of adequately understanding the provision of the works or for the purpose of allowing the Employer or any replacement contractor to conduct due diligence;
- e) as soon as reasonably possible, but in any event not more than 2 weeks after the termination certificate, forwards all accumulated records to the Employer for retention; and
- f) takes all reasonable steps to minimise the amount due on termination (i) keeping the Employer fully informed on a daily basis of the steps being taken and the steps that the Contractor intends to take; and (ii) complying with the Employer’s reasonable requests for minimising such costs and liabilities.”

Clause 93.2 Delete “A4 The direct fee percentage applied to any excess of the total of the Prices at the Contract Date over the Price for Work Done to Date” and substitute with the following:

“A4 Not Used”

Clause 93.7 Insert a new clause 93.7:

“93.7 For the avoidance of doubt the Employer will not be liable on termination for any Contractor loss of profits, loss of opportunity or similar losses.”

### Secondary Option Clauses

[S+W DRAFTING NOTE: ADDITIONAL OPTION CLAUSES TO BE DISCUSSED AND INCLUDED AS APPLICABLE]

#### Option X4:<sup>85</sup> Parent company guarantee

Delete clause X4.1 and substitute:

“The *Contractor* gives the *Employer* a guarantee by the *Contractor’s* parent company (identified in the Contract Data) of the *Contractor’s* performance in the form annexed as Schedule B (Parent Company Guarantee). If the guarantee was not given before, it is given to the *Employer* upon, the execution of the Contract Agreement.”

#### Option X7: Delay damages

Insert new clause X7.4:

“X7.4<sup>86</sup> It is expressly agreed that the delay damages do not constitute a penalty and the Parties hereby agree that the delay damages represent a genuine pre-estimate of certain losses likely to be suffered by the *Employer* in the event of a delay. The *Contractor* shall not challenge in any way or to any extent whatsoever as a penalty any liquidated and ascertained damages specified in the contract. In the event of the *Contractor* challenging any liquidated and ascertained damages provision then the following provisions shall apply: (a) the *Contractor* shall indemnify the *Employer* in respect of (i) the costs and expenses of defending any such challenge (whether successful or not); and (ii) in the event of such provision being found to be unenforceable in whole or in part the losses, costs and expenses suffered or incurred by the *Employer* on an indemnity basis (including in respect of the delay or matter in respect of which liquidated damages were agreed to apply); and (b) any limitation stated to apply to such liquidate and ascertained damages or the delay, breach or underlying matter shall be deemed to be deleted. The *Employer* shall be entitled to deduct any liquidate and ascertained damages to which it is entitled or

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<sup>85</sup> Taken from SOJ precedent

<sup>86</sup> Taken from SOJ precedent with additional text.

may levy pursuant to this contract from any payments due to the *Contractor* or may otherwise recover the same as a debt.”

**Option X13:<sup>87</sup> Performance bond**

Delete clause X13.1 and substitute:

“The *Contractor* gives the *Employer* a performance bond, provided by the surety identified in the Contract Data, for the amount stated in the Contract Data and in the form annexed as Schedule A (Performance Bond). If the bond was not given before, it is given to the *Employer* upon, the execution of the Contract Agreement.”

**Option X16:<sup>88</sup> Retention**

Insert a new Option X16.3:

“X16.3 The *Employer* has the full beneficial interest in the amount retained, without any fiduciary obligation; and the relationship of the *Employer* and the *Contractor* with regard to the amount retained is solely that of debtor and unsecured creditor, subject to the terms of this contract.”

**Option Z: Additional conditions of contract<sup>89</sup>**

Insert the following *additional conditions of contract*:

**“Z2 Collateral warranties**

Z2.1 The *Contractor* within 21 (twenty-one) days from receipt of the *Employer’s* notice identifying the relevant subcontractor, delivers a Collateral Warranty duly in favour of the *Employer* executed by the relevant Subcontractor (and *Contractor* as relevant) in the form annexed at Schedule 4 (Subcontractor’s Collateral Warranty), or a similar form reasonably required by the *Employer*, subject to any amendments proposed by any such Subcontractor and approved by the *Contractor* and the *Employer*, such approval not to be unreasonably delayed or withheld.

Z2.2 Within 21 (twenty-one) days of entering into a subcontract in respect of which collateral warranties may be required under this clause Z2, the *Contractor* provides the *Employer* with a certified copy of the relevant subcontract, and does not alter, waive, vary, or depart from any terms of the relevant subcontract without the *Employer’s* prior written consent.

Z2.3 The *Contractor’s* compliance with the provisions of this clause Z2 shall be a condition precedent to any obligation on the part of the *Employer* to make any payment that might otherwise be due under this contract in respect of the relevant

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<sup>87</sup> Taken from SOJ precedent

<sup>88</sup> Taken from SOJ precedent

<sup>89</sup> We have taken these from the SOJ precedent – to be confirmed which are applicable and where amendments are required

Subcontractor's works and the *Contractor* acknowledges that he has no entitlement either to receive payment or to exercise any rights in respect of non-payment arising under this contract in respect of the relevant Subcontractor's works unless and until the *Contractor* has provided any collateral warranties so required under this clause Z2.

Z2.4 The obligations contained in this clause Z2 for the provision of collateral warranties shall continue notwithstanding termination of this contract, or determination of the *Contractor's* employment under it, in either case for any reason whatsoever, including breach by the *Employer*.

### Z3 **Provision of security**

The *Contractor's* compliance with the provisions of clauses X4 and X13 of this contract shall be a condition precedent to any obligation on the part of the *Employer* to make any payment that might otherwise be due under this contract and the *Contractor* acknowledges that he has no entitlement either to receive payment or to exercise any rights in respect of non-payment arising under this contract unless and until the *Contractor* has provided a performance bond and parent company guarantee if so required under clauses X4 and X13 of this contract.

### Z4 **As built information**

Z4.1 The As Built Information comprises full drawings, documents and information as necessary to show and describe the *works* or a section "as built", together with manuals and such other information as is necessary to explain the operation and maintenance of the *works* or a *section*, and includes any other information identified as As Built Information in this contract.

Z4.2 The *Contractor* supplies to the *Employer* the As Built Information within 4 (four) weeks of Completion of the works or relevant section.

Z4.3 The As Built Information is supplied in 3 (three) copies, or in such other number as is stated in this contract, in the form and medium stated in this contract, or approved by the *Employer*.

### Z5 **Preceding work**

Z5.1 The *Contractor*, when appropriate and in good time to avoid or reduce any delay or disruption to the *works*, and prior to executing any substantial works on the *site*, carries out:

- (a) such visual inspections as are reasonable to satisfy himself as to the position, dimensions and suitability of any Preceding Work which might in any way affect the *works* and
- (b) such tests and other inspections as may be set out in the Works Information in respect of Preceding Work.

Z5.2 If any Preceding Work is out of position, wrongly dimensioned or in any other way unsuitable the *Contractor*, prior to commencing the execution of substantial works on the *site*, promptly notifies the Project Manager, providing details of the results of the tests and inspection and his interpretation of the same, as well as a proposal for

corrective action. To the extent the results show that any Preceding Work is out of position, wrongly dimensioned or in any other way unsuitable, the Project Manager gives an instruction directing the *Contractor* how to deal with the matter.

Z5.3 For the purposes of this contract, “Preceding Work” means any previous works or work undertaken by the *Contractor* on the Site and any previous work undertaken on the Site by the *Employer* and/or Others engaged by the *Employer*.

## Z6 **Provisional Sums**

Z6.1 A Provisional Sum is a sum identified in the Provisional Sums Report.

Z6.2 The *Project Manager* may issue instructions for the expenditure of Provisional Sums. They are not otherwise expended.

Z6.3 Subject to clause Z6.4, if a *Project Manager’s* instruction to expend a Provisional Sum is given on or before the relevant latest date for the instruction of that Provisional Sum set out in the Provisional Sums Report, such instruction is a compensation event but does not result in any delay to the Completion Date or to any Key Date.

Z6.4 A *Project Manager’s* instruction to expend the Provisional Sum for any Provisional Sum identified in the Provisional Sums Report as “undefined” is a compensation event.”

## Z7 **Construction Report**

Z7.1 As soon as the *works* are, in the opinion of the *Contractor*, substantially complete and ready for inspection, the *Contractor* notifies the *Project Manager* by means of a construction report. The *Contractor* proposes a programme for such inspection (including the carrying out of any construction tests<sup>90</sup> required at the same time by the Works Information) commencing not sooner than seven days nor later than fourteen days after the date of the notice, unless the *Project Manager* otherwise agrees in writing.

Z7.2 Upon the satisfactory completion of any such inspections and or construction tests, the *Contractor* and the *Project Manager* sign the construction report, with an endorsement stating that the *Contractor* has demonstrated to the *Project Manager* that the *works* are adequately complete and in a condition such that any procedures needed before the *works* are put into operation may safely be carried out. The construction report may include a note of any items requiring completion before the *works* can proceed to take-over.

Z7.3 If the *Project Manager* is not satisfied that the *works* are adequately complete, he endorses the construction report form accordingly, stating in what way the *works* are not in accordance with this contract. The *Contractor* then completes the *works* as necessary and repeats this procedure.

## Z8 **Take Over Procedures**

Z8.1 As soon as the *works* has been demonstrated to be complete, in accordance with the provisions of clause Z7 and the *works* are, in the opinion of the *Contractor*, ready

for the conduct of any of the take-over procedures<sup>91</sup> specified in the Works Information, which may include take-over tests, the *Contractor* notifies the *Project Manager* and specifies a time not sooner than seven days and not later than fourteen days after the date of the notice when the *Contractor* intends to begin to conduct such procedures.

- Z8.2 Unless otherwise agreed between the *Project Manager* and the *Contractor*, the *Contractor* begins take-over procedures at the time so notified, and the *Project Manager* is entitled to attend to observe them being carried out. The *Contractor* gives the *Project Manager* every reasonable facility to satisfy himself as to the results of any take-over tests.
- Z8.3 Unless this contract otherwise provides, or the *Contractor* and the *Project Manager* otherwise agree, the *Contractor* provides all labour, materials and equipment necessary for the proper conduct of the take-over procedures.
- Z8.4 If the *works* fail to pass any of the take-over procedures, then the *Contractor*, after making such adjustments as he considers necessary, repeats such procedures in the presence of the *Project Manager* at a time agreed between the *Contractor* and the *Project Manager*, or notified at least fourteen days in advance by the *Contractor* to the *Project Manager*. If the *Project Manager* is of the opinion that any such adjustments made by the *Contractor* make it desirable to do so, he may require the *Contractor* to repeat any other of the take-over procedures which have already been successfully carried out, and the *Contractor* does so.
- Z8.5 As soon as all items within the construction report have been completed and all the take-over procedures specified by the Works Information have been successfully carried out, the *Project Manager* issues to the *Employer* and to the *Contractor* copies of a certificate of take over. The *Employer* is thereafter responsible for the care, safety, operation, servicing and maintenance of the *works*.
- Z8.6 If *Contractor* supervised performance testing<sup>92</sup> is not required, then the *Project Manager* issues to the *Employer* and to the *Contractor* copies of a certificate of Completion.
- Z9 **Contractor Supervised Performance testing**
- Z9.1 The performance tests are those to be supervised by the *Contractor*.
- Z9.2 The performance tests to be carried out on the *works* are those specified in the Works Information. The performance tests are carried out as soon as is reasonably practicable after the *works* have been taken over by the *Employer*.
- Z9.3 Performance tests are carried out by suitably trained and experienced employees of the *Employer* under the supervision of the *Contractor* and in accordance with the manuals provided by the *Contractor* pursuant to the Works Information and such other instructions as the *Contractor* may give in the course of carrying out such tests. If such instructions conflict in any way with the manuals, the *Contractor* issues

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<sup>91</sup> Drafting note: terminology to be updated as required.

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them in writing in the form of an amendment to the manuals. The performance tests are carried out under the conditions detailed in the Works Information.

- Z9.4 The *Employer* gives the *Contractor* at least fourteen days' notice of his readiness to carry out the performance tests, including a proposal for the time at which the tests should commence. The *Contractor* acknowledges at least seven days before the time proposed by the *Employer*, that he will supervise the tests.
- Z9.5 Every performance test is carried out as specified in the Works Information unless either the *Employer* or the *Project Manager* or the *Contractor* order it to be stopped because its continuance would be unsafe, cause damage to property, or impact on the *Employer's* regulatory compliance.
- Z9.6 If the *works* fail to pass any performance test or if any performance test is stopped before its conclusion, such test is repeated as soon as practicable thereafter. The *Contractor* makes adjustments and modifications to the *works* before the repetition of any performance test. If the *Contractor* requires adjustment, modifications or shut downs they shall be agreed between the *Contractor* and the *Project Manager* prior to commencement.
- Z9.7 The results of the performance tests are compiled and evaluated jointly by the *Employer* or the *Project Manager* and by the *Contractor*. All parameters deemed necessary to demonstrate that the *works* have achieved the performance specified in the Works Information must be measured and recorded throughout the duration of the performance tests.
- Z9.8 As soon as the *works* have passed all of the performance tests, the *Project Manager* obtains the view of the *Employer* with regard to the performance of the *works*. The *Project Manager* certifies Completion.
- Z10 **Interference with existing Plant and Equipment**
- Z10.1 Where the *works* are being undertaken on an operational site the *Contractor* ensures that no work is undertaken which interferes with the existing operations without the express acceptance of the *Project Manager* and any appropriate permit to work being in place.
- Z10.2 The *Contractor* in particular ensures that his work force does not, under any circumstances, operate or adjust any existing valves, Equipment or Plant unless the appropriate permissions have been granted.
- Z10.3 If interference with the existing Plant or Equipment is unavoidable, requests with reasonable advance notice are made to the *Project Manager*.
- Z10.4 This clause has no effect where the *Contractor* takes necessary action in an emergency to avoid danger to life.
- Z11 **Contracts with sub-contractors and suppliers**
- Z11.1 All sub-contracts and orders shall be tendered and reviewed in accordance with the *Employer's* Principles of Procurement.

- Z11.2 Where the *Contractor* enters a sub-contract with a Subcontractor or Supplier for the purpose of executing the *works* a term is included in such sub-contract or purchase agreement requiring that the Subcontractor or Supplier is paid no later than 30 days after each assessment date under this contract.
- Z11.3 Where the *Contractor* enters a sub-contract with a Subcontractor or Supplier for the purposes of executing the *works*, a term is included in such sub-contract or purchase agreement requiring that the assessment interval (or such similar term as may apply to such sub-contract or purchase agreement) is monthly.
- Z11.4 The *Contractor* includes within any sub-contract or supply contract or purchase order clauses which enables the *Project Manager* to accurately audit costs throughout the supply chain.
- Z11.5 The *Contractor* shall promptly pay all amounts due to Subcontractors and Suppliers in accordance with the terms of their respective subcontracts and shall, upon request by the *Employer* from time to time, provide the *Employer* with reasonable proof that the *Contractor* has done so. If the *Contractor* withholds any payment to a Subcontractor or Supplier, then the *Employer* shall be entitled to give notice in writing to the *Contractor* that the *Employer* intends to make such payment direct to the relevant Subcontractor or Supplier. If after 14 (fourteen) days from receipt of that notice, the payment is still withheld, and the *Contractor* has failed to furnish to the *Employer* adequate reason why it should be withheld, the *Employer* may, except in the event of the *Contractor's* insolvency, make such payment to the relevant Subcontractor or Supplier, and such payment shall be a debt due to the *Employer* by the *Contractor*.
- Z11.6 The *Contractor* shall notify the *Project Manager* as to the reasons, and obtain written approval prior to any interim payment application, for withholding any monies due to Island based subcontractors or suppliers, and the *Employer* reserves the right to withhold such monies as determined by the *Project Manager* until the issues are resolved. In the event of non-payment by the *Contractor* without prior approval for any certified payment, the *Employer* will pay directly to the Island based subcontractors or suppliers within 28 days of the notification issued by the *Project Manager* and an equivalent amount will be deducted from the subsequent application for payment.
- Z12 **Accident Reports**
- Z12.1 The *Contractor* informs the *Project Manager*, in writing, on a monthly basis of all accidents, including accidents involving members of the public, which occur when Providing the Works.
- Z12.2 Immediate written notification is made to the *Project Manager* of injuries which result in over 3 day absences, major injuries, fatalities, diseases and dangerous occurrences
- Z14 **Visitors**
- Z14.1 The *Contractor* obtains the written approval of the *Project Manager* before bringing or inviting visitors on to the Site or allowing access by persons to the Site other than those directly employed upon the *works*.

Z14.2 The *Contractor* ascertains from the *Project Manager* any regulations and requirements with which visitors comply and the *Contractor* makes those known to any visitors before their entry on to the Site. Visitors sign an appropriate record as requested and undertake any Site induction briefing as required.

Z15 **Key Performance Indicators**

Z15.1 The *Contractor* provides all information requested by the *Employer* or the *Project Manager* to facilitate the implementation of key performance indicators throughout the duration of the contract.

Z16 **Quality Statement**

Z16.1 The Quality Submission sets out the *Contractor's* proposals for the management and resourcing of the *works*.

Z16.2 The *Contractor* warrants that the Quality Submission does not constitute a qualification to his tender. Should any discrepancy arise between the quality submission and other contractual documents, the Works Information takes precedence.