

APPENDIX 1

FORM OF TENDER

FORM OF TENDER

TO:

THE MANAGING DIRECTOR
CONCEPTSTRUCK ARCHITECTS LTD.
190B, ISALE EKO AVENUE,
DOLPHIN ESTATE, IKOYI,
LAGOS.

Dear Sir,

CONVERSION OF THE FORMER CONSULAR RESIDENCE INTO THE NEW CONSULAR OFFICE AT VICTORIA ISLAND, LAGOS

I/We the undersigned, offer to contract, to perform fully, erect, complete and maintain the whole of the Works required to be done on CONVERSION OF THE FORMER CONSULAR RESIDENCE INTO THE NEW CONSULAR OFFICE AT VICTORIA ISLAND, LAGOS in accordance with the Drawings, Instruction to Tenderers, Conditions of Contract and Bills of Quantities (herein referred to as "Contract Documents") to your entire satisfaction for the sum and within the period stated below:

TENDER FIGURE including Contingencies:

~~₦~~ _____ (_____
.....)-

PERIOD OF COMPLETION: ----- Weeks from the date of handing over of site

PERIOD OF MOBILISATION –Not more than ...2..... Week after official taking over of the site.

VALIDITY PERIOD OF TENDER – ... 180___ days FROM THE DATE OF SUBMISSION.

Signed- _____
For and on behalf of

ADDRESS _____

OCCUPATION _____

DATE _____ Day _____ 2021.

INSTRUCTIONS TO TENDERERS

THESE INSTRUCTIONS MUST BE READ AND UNDERSTOOD PRIOR TO SUBMISSION OF THIS TENDER

INSTRUCTION TO TENDERERS

1. Site

The Tenderers shall visit the site of the Works and obtain for themselves all information necessary for completing their tenders and entering into a contract having regard to the provisions of the Contract conditions, *****.

2. Obligations and Liabilities

Tenderers shall carefully examine and study these documents referred to above and allow for fulfilling all obligations and liabilities required therein and in connection with the successful execution of the contract.

3. Rate

Prices and rates must be quoted for all items in Bills of Quantities where applicable and where no prices or rates are stated the cost of such items will be deemed to have been included in the total tender sum and no additional claim shall be entertained in meeting such obligation.

4. Tender document

All documents forming part of the tender must be completed and signed by a Principal of the firm concerned or authorised representative. All tender documents must be submitted in one of the following ways, at the discretion of the Contractor:

- through the courier service, to the Client and addressed to: 12, Walter Carrington Crescent, Victoria Island, Lagos.
- by hand, from 9:00 a.m to 11:30 a.m with the exception of Saturday, Sunday and public holidays, to the Client's acceptance, which will issue a receipt.

The tender documents shall be addressed as:

“CONFIDENTIAL: THE CONVERSION OF THE FORMER CONSULAR RESIDENCE INTO THE NEW CONSULAR OFFICES AT VICTORIA ISLAND, LAGOS. and shall be submitted not later than 11.00am on the 29th November, 2021.” Tenders received after this date will not be considered.

The employer does not bind himself to accept any or lowest tender nor will he be responsible for the cost incurred by the tenderer in preparing his tender.

5. Doubts

If the tenderer has doubts as to the meaning or intent of any wording contained in the said document he should communicate such in writing to the office of the Quantity Surveyors, Messrs FO.AB Partnership 17, Morris Street, Fola Agoro, Yaba – Lagos and copy the Architect/Project Manager, CONCEPTSTRUCK ARCHITECTS LTD. At House 190B, Isale-Eko Avenue, Dolphin Estate,

Lagos from whom clarification could be sought as to the design, specification and construction details.

6. Plant, Equipment and Technical Staff

The tenderer shall enclose the details of his proposed Plant, Equipment and Technical Staff in his organisation to be dedicated to this project for the entire contract period.

7. Completed and Current Projects

The tenderer shall furnish detail of the project by his firm in the two years preceding the date of this tender and current project under construction.

8. Fluctuations: This is a fixed price contract. All items of works are fixed for the duration of the contract.

As a result of the above, the employer is desirous of making available advance payment not exceeding the percentages of the contract sum as shown for the entire work package for forward purchasing of materials. 20%

The tenderer should provide list of materials he may require to be purchased in advance. The tenderer is to compute the amount required with a list of quantities, units and rates of the materials and submit this with his tender. Non-inclusion of a material will not be accepted as a basis of fluctuation claim in future.

8b. Off Shore Component

Materials with import component should be listed separately with quantities, rates and value. The source of such material should be included.

The exchange rate used at the time of tender in calculating the rates showing the tender should also be stated.

9. Form of Tender

The offer must be made on the FORM OF TENDER provided. The offer shall remain valid for a period of not less than 180 DAYS from the date of the submission of his tender.

10. Computation Errors

Where there are computation errors in the extension of unit rates or in the tender sum, such errors shall be corrected and the tenders considered on the corrected tender sums.

11. Mobilisation

The tenderer shall be expected to fully mobilise equipment and staff onto the site within 1 week after the official handing over of the site to him. (See Form of Tender).

12. Advance Payments

Any advance payment made to the Contractor by the Employer for purchases of approved materials, goods and equipment must be secured by the BOND from a Bank approved by the Employer. The advance payment shall be amortized in three (3) instalments after the first valuation or as may be agreed.

The contractor is also expected to submit a cash flow based on monthly valuation payment.

13. Insurance

The Contractor shall take out a full insurance to cover the whole of the works including Contractor All Risk (CAR) insurance and indemnify the Employer from all claims including third party liability that may arise during the execution of the works.

The tender must take out all insurances as required including insurance for works, fire and adjoining properties and third-party liability in the joint names of the contractor and the Employer.

(See insurance clauses in the contract)

14. Programme of work & Method Statement

The tenderer shall submit with his tender a tentative programme of work in a 'bar – chart' format showing the program he intends to follow in the execution of the work.

A detailed method statement of the manner this project is planned to be executed shall also be included with the tender. This shall include proposed site planning and use including site offices, workshops and sanitary spaces.

15. Tender Drawings

The tenderer shall print a set of the e-copies of the drawings enclosed with this tender. The printed copies shall not be less than A3 sizes and they shall be stamped and signed as tender drawings.

None inclusion of these drawings may invalidate the tender.

CONDITIONS OF CONTRACT

This shall be in accordance with JCT Standard Building Contract 2005 SBC/Q 2005 amended
under seal.

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The Conditions

Part 1 : General

- 1. Interpretation, definitions etc.
- 1.1 Unless otherwise specifically stated a reference in the Articles of Agreement, the Conditions or the Appendix to any clause means that clause of the Conditions.
- 1.2 The Articles of Agreement, the Conditions and the Appendix are to be read as a whole and the effect or operation of any article or clause in the Conditions or item in or entry in the Appendix must therefore unless otherwise specifically stated be read subject to any relevant qualification or modification in any other article or any of the clauses in the Conditions or item in or entry in the Appendix.
- 1.3 Unless the context otherwise requires or the Articles or the Conditions or an item in or entry in the Appendix specifically otherwise provides, the following words and phrases in the Articles of agreement, the Conditions and the Appendix shall have the meanings given below or as ascribed in the article, clause or Appendix item to which reference is made :

| Word or phrase | Meaning |
|------------------------|--|
| 3.3A Quotation : | a Quotation by a Nominated Sub-Contractor pursuant to clause 3.3A of Conditions NSC/C (Conditions of Nominated Sub-Contract) (IF APPLICABLE) |
| 13A Quotation : | see clause 13A.1.1 |
| All Risks Insurance : | see clause 22.2 |
| Analysis : | see clause 42.13 (IF APPLICABLE) |
| Appendix : | the Appendix to the Conditions as completed by the parties. |
| Approximate Quantity : | a quantity in the Contract Bills identified therein as an approximate quantity* |
| Arbitrator : | the person appointed under clause 41 to be the Arbitrator. |
| Project Managers (PM) | Messrs Conceptstruct Architects Ltd or the person entitled to the use of the name 'Project Manager' and named in article of agreement or any successor duly appointed under the article of agreement or otherwise agreed as the person to be the Project |
| Architect(s) : | the person entitled to the use of the name 'Architect' and named in article of agreement or any successor duly appointed under the article of agreement or otherwise agreed as the person to be the Architect |

Footnote

*General Rules 10.1 to 10.6 of the Building & Engineering Standard Method of Measurement (BESMM3) by the NIOS provide :

1

Where work can be described and given in items in accordance with these rules but the quantity of work required cannot be accurately determined, an estimate of the quantity shall be given and identified as an approximate quantity.

2

Where work cannot be described and given in items in accordance with these rules it shall be given as a Provisional Sum and identified as for either defined or undefined work as appropriate.

3

A Provisional Sum for defined work is a sum provided for work which is not completely designed but for which the following information shall be provided :

- (a) The nature and construction of the work
- (b) A statement of how and where the work is fixed to the building and what other work is to be fixed thereto.
- (c) A quantity or quantities which indicate the scope and extent of the work.
- (d) Any specific limitations and the like identified in Section A35

4

Where Provisional Sums are given for defined work the Contractor will be deemed to have made due allowance in programming, planning and pricing of the Preliminaries. Any such allowance will only be subject to adjustment in those circumstances where a variation in respect of other work measured in detail in accordance with the rules would give rise to adjustment.

5

A Provisional Sum for undefined work is a sum provided for work where the information required in accordance with rule 10.3 cannot be given.

6

Where Provisional Sums are given for undefined work the Contractor will be deemed not to have made any allowance in programming, planning and pricing of the Preliminaries.

| Word or phrase | meaning |
|--|--|
| Contract Administrator (CA) | Messrs Conceptstruck Architects Ltd named in the articles of agreement, as the Project Managers or his successor shall perform the role of the Contract Administrator |
| Quantity Surveyors (QS) | Messrs FO.AB Partnership named in the articles of agreement, as the Quantity Surveyors or his successor shall perform the role of the Quantity Surveyors and Cost Consultants |
| Civil & Structural Engineers | the person entitled to the use of the name "Structural Engineer" and named in the articles of agreement, as the Civil and Structural Engineers or his successor shall perform the role of the Civil and Structural Engineering Consultants |
| Mechanical, Electrical & Fire Engineers (MEP&F) | the person(s) entitled to the use of the name 'MEP&F Engineers' and named in article of agreement or any successor duly appointed under the article of agreement or otherwise agreed as the person to be the MEP&F Services Consultants |
| Articles or Articles of Agreement : | the Articles of Agreement to which the Conditions are annexed, and references to any recital are to the recitals set out before the Articles. |
| Base Date : | the date stated in the Appendix. |
| Certificate of Completion of Making Good Defects : | see Clause 17.4 |
| Completion Date : | the Date for Completion as fixed and stated in the Appendix or any date fixed either under clause 25 or in a confirmed acceptance of a 13A Quotation. |
| Conditions : | the clauses 1 to 37, clauses 41 and 42 |
| Contract Bills : | the Bills of Quantities referred to in the First recital which have been prepared by the consultant quantity surveyors, priced by the Contractor and signed by or on behalf of the parties to this Contract. |
| Contract Documents : | the Contract Drawings, the Contract Bills, the Articles of Agreement, the Conditions and the Appendix. |
| Contract Drawings : | the Drawings referred to in the First recital which have been signed by or on behalf of the parties to this Contract. |
| Contract Sum : | the sum stated in article of agreement but subject to clause 15.2. |
| Contractor : | the person named as Contractor in the Articles of Agreement. |
| Contractor's Statement : | Not Applicable |
| Date for Completion : | the date fixed and stated in the Appendix. |
| Date of Possession : | the date stated in the Appendix under the reference to Clause 23.1 |
| Defects Liability Period : | the period named in the Appendix under the reference to Clause 17.2. |
| Domestic Sub-Contractor : | see clause 19.2. |
| Employer : | the person named as Employer in the Articles of Agreement |
| Excepted Risks : | ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radio- active toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds. |
| Final Certificate | the certificate to which clause 30.8 refers. |
| Interim Certificate : | any one of the certificates to which clause 30.1 and 30.7 and the entry in the Appendix under the reference to clause 30.1.3 refer |
| Joint Names Policy : | a policy of insurance which includes the Contractor and the Employer as the Insured. |
| Nominated Sub-Contract: | an Agreement NSC/A (Articles of Nominated Sub-Contract Agreement), the Conditions NSC/C (Conditions of Nominated Sub-Contract) incorporated therein and the documents annexed thereto. |

| <i>Word or phrase</i> | meaning |
|----------------------------------|--|
| Nominated Sub-Contractor: | See Separate Nominated Sub-Contract Conditions (If Applicable) |
| Nominated Supplier : | See Separate Nominated Suppliers-Contract Conditions (If Applicable) |
| Numbered Documents : | the Numbered Documents annexed to Agreement NSC/A (Articles of Nominated Sub-Contract Agreement). |
| Performance Specified Work | All works specified in the contract drawings, Contract bills of quantities, specifications, schedules etc issued under this contract |
| Period of Interim Certificates : | the period named in the Appendix under the reference to clause 30.1.3. |
| Person : | an individual, firm (partnership) or corporate body |
| Practical Completion : | see clause 17.1 |
| Provisional Sum | includes a sum provided for work whether or not identified as being for defined or undefined work and a provisional sum for Performance Specified Work: see clause 42.7. |
| Quantity Surveyor : | FO.AB Partnership or the person named in article of agreement or any successor duly appointed under article of agreement or otherwise agreed as the person to be the Quantity Surveyor. |
| Relevant Event : | any one of the events set out in clause 25.4. |
| Retention : | see clause 30.2. |
| Retention Percentage : | see clause 30.4.1.1. and any entry in the Appendix under the reference to clause 30.4.1.1 |
| Standard Method of Measurement | This shall mean the Building and Engineering standard method of measurement 4th Edition (Revised) (BESMM 4) of the Nigerian Institute of Quantity Surveyors |
| Site Materials : | all unfixed materials and goods delivered to, placed on or adjacent to the Works and intended for incorporation therein. |
| Specified Perils : | tire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion, but excluding Excepted Risks |
| Statutory Requirements : | see clause 6.1.1. |
| Valuation : | see clause 13.4.1.1 |
| Variation : | see clause 13.1 |
| VAT Agreement : | see clause 15.1. |
| Works : | the work briefly described in the First recital and shown upon, described by or referred to in the Contract Documents and including any changes made to these works in accordance with this Contract. |
| Act of Parliament | all laws enacted by the national Assembly, State Assembly and or local authorities applicable to this project. |

1.4

Notwithstanding any obligation of the Contract Administrator/Architect to the Employer and whether or not the Employer appoints a clerk of works, the Contractor shall remain wholly responsible for carrying out and completing the Works, in all respects in accordance with the Conditions, whether or not the Contract Administrator/Architect or the clerk of works, if appointed, at any time goes on to the Works or to any workshop or other place where work is being prepared to inspect the same or otherwise, or the Contract Administrator/Architect includes the value of any work, materials or goods in a certificate for payment or issues the certificate of Practical Completion or the Certificate of Completion of Makina Good defects.

| | | |
|-----|---|--|
| 2 | Contractor's Obligations | |
| 2.1 | Contract Documents | <p>The Contractor shall upon and subject to the Conditions carry out and complete the Works in compliance with the Contract Documents, using materials and workmanship of the quality and standards therein specified, provided that where and to the extent that approval of the quality of materials or of the standards of workmanship is a matter for the opinion of the Contract Administrator/Architect such quality and standards shall be to the reasonable satisfaction of the Contract Administrator/Architect.</p> <p>Insofar as his design of the Works is comprised in the Contractor's Proposals and in what the Contractor is to complete in accordance with the Employer's Requirements and these Conditions (including any further design required to be carried out by the Contractor as a result of a Change), the Contractor shall in respect of any inadequacy in such design have the like liability to the Employer, whether under statute or otherwise, as would an Contract Administrator/Architect or, as the case may be, other appropriate professional designer holding himself out as competent to take on work for such design who, acting independently under a separate contract with the Employer, has supplied such design for or in connection with works to be carried out and completed by a building contractor who is not the supplier of the design.</p> |
| 2.2 | Contract Bills- Relation to Articles, Conditions and Appendix | <p>.1 Nothing contained in the Contract Bills shall override or modify the application or interpretation of that which is contained in the Articles of Agreement, the Conditions or the Appendix.</p> <p>.2 Subject always to clause 2.2.1 :</p> |
| | Preparation of Contract Bills- Errors in Preparation etc. | <p>.1 the Contract Bills (or any addendum bill issued as part of the information referred to in clause 13A.1.1 for the purpose of obtaining a 13A Quotation), unless otherwise specifically stated therein in respect of any specified item or items, are to have been prepared in accordance with Building and Engineering Standard Method of Measurement 4th Edition (Revised) (BESMM 4), published by the Nigerian Institute of Quantity Surveyors.</p> <p>.2 if in the Contract Bills (Or in any addendum bill issued as part of the information referred to in clause 13A.1.1 for the purpose of obtaining a 13A Quotation which Quotation has been accepted by the Employer) there is any departure from the method of preparation referred to in clause 2.2.2.1 or any error in description or in quantity or omission of items (including any error in or omission of information in any item which is the subject of a provisional sum for defined work*) then such departure or error or omission shall not vitiate this Contract but the departure or error or omission shall be corrected; where the description of a provisional sum for defined work* does not provide the information required by General Rule 10.3 in the Standard Method of Measurement 4th Edition (Revised) (BESMM 4) the correction shall be made by correcting the description so that it does provide such information; any such correction under this clause 2.2.2.2 shall be treated as if it were a Variation required by an instruction of the Contract Administrator under clause 13.2.</p> |
| 2.3 | Discrepancies in or divergences between documents | <p>If the Contractor shall find any discrepancy in or divergence between any two or more of the following documents, including a divergence between parts of any one of them or between documents of the same description, namely :</p> <ol style="list-style-type: none"> .1 the Contract Drawings, .2 the Contract Bills, .3 any instruction issued by the Contract Administrator/Architect under the Conditions (save insofar as any such instruction requires a Variation in accordance with the provisions of clause 13.2), .4 any drawings or documents issued by the Architect or the Contract Administrator under clause 5.3.1.1, 5.4 or 7, and .5 the Numbered Documents, <p>he shall immediately give to the Contract Administrator/Architect a written notice specifying the discrepancy or divergence, and the Contract Administrator/Architect shall issue instructions in regard thereto.</p> |
| 2.4 | | <ol style="list-style-type: none"> .1 If the Contractor shall find any discrepancy or divergence between his Statement in respect of Performance Specified Work and any instruction of the Contract Administrator/Architect issued after receipt by the Contract Administrator/Architect of the Contractor's Statement, he shall immediately give to the Contract Administrator/Architect a written notice specifying the discrepancy or divergence, and the Contract Administrator/Architect shall issue instructions in regard thereto. .2 If the Contractor or the Contract Administrator/Architect shall find any discrepancy in the Contractor's Statement, the Contractor shall correct the Statement to remove the discrepancy and inform the Contract Administrator/Architect in writing of the correction made. Such correction shall be at no cost to the Employer. |

Footnote

*See footnote to clause 1.3 (Definitions)

- 3 Contract Sum - additions or deductions - adjustment - Interim Certificates
- Where in the Conditions it is provided that an amount is to be added to or deducted from the Contract Sum or dealt with the adjustment of the Contract Sum then as soon as such amount is ascertained in whole or in part such amount shall be taken into account in the computation of the next Interim Certificate following such whole or partial ascertainment.
- 4 Contract Administrator/ Architect's Instructions
- 4.1 Compliance with Contract Administrator/Architect instructions
- The Contractor shall forthwith comply with all instructions issued to him by the Contract Administrator/Architect in regard to any matter in respect of which the Contract Administrator/Architect is expressly empowered by the Conditions to issue instructions: save that
- .1 .1 where such instruction is one requiring a Variation within the meaning of clause 13.1.2 the Contractor need not comply to the extent that he makes reasonable objection in writing to the Contract Administrator/Architect to such compliance;
- .1 .2 where pursuant to clause 13.2.3 clause 13A applies to an instruction, the Variation to which that instruction refers shall not be carried out until
- the Contract Administrator/Architect has issued to the Contractor a confirmed acceptance of the 13A Quotation
 - or
 - an instruction in respect of the Variation has been issued under clause 13A.4.1.
- .2 If within / days after receipt of a written notice from the Contract Administrator/Architect requiring compliance with an instruction the Contractor does not comply therewith, then the Employer may employ and pay other persons to execute any work whatsoever which may be necessary to give effect to such instruction, and all costs incurred in connection with such employment may be deducted by him from any monies due or to become due to the Contractor under this Contract or may be recoverable from the Contractor by the Employer as a debt.
- 4.2 Provisions Empowering instructions
- Upon receipt of what purports to be an instruction issued to him by the Contract Administrator/Architect the Contractor may request the Contract Administrator/Architect to specify in writing the provision of the Conditions which empowers the issue of the said instruction. The Contract Administrator/Architect shall forthwith comply with any such request, and if the Contractor shall thereafter comply with the said instruction (neither party before such compliance having given to the other a written request to concur in the appointment of an Arbitrator under clause 41 in order that it may be decided whether the provision specified by the Contract Administrator/Architect empowers the issue of the said instruction), then the issue of the same shall be deemed for all the purposes of this Contract to have been empowered by the provision of the Conditions specified by the Contract Administrator/Architect in answer to the Contractor's request
- 4.3 Instructions to be in writing
- .1 All instructions issued by the Contract Administrator/Architect shall be issued in writing.
- Procedure if Instruction given otherwise than in writing
- .2 If the Contract Administrator/Architect purports to issue an instruction otherwise than in writing it shall be of no immediate effect, but shall be confirmed in writing by the Contractor to the Contract Administrator/Architect within seven (7) days, and if not dissented from in writing by the Contract Administrator/Architect to the Contractor within seven (7) days from receipt of the Contractor's confirmation shall take effect as from the expiration of the latter said seven (7) days.
- .2 .1 that if the Contract Administrator/Architect within seven (7) days of giving such an instruction otherwise than in writing shall himself confirm the same in writing, then the Contractor shall not be obliged to confirm as aforesaid, and the said instruction shall take effect as from the date of the Contract Administrator/Architect's confirmation;
- .2 .2 that if neither the Contractor nor the Contract Administrator/Architect shall confirm such an instruction in the manner and at the time aforesaid but the Contractor shall nevertheless comply with the same, then the Contract Administrator/Architect may confirm the same in writing at any time prior to the issue of the Final Certificate, and the said instruction shall thereupon be deemed to have taken effect on the date on which it was issued otherwise than in writing by the Contract

| | | |
|-----|--|--|
| 5 | Contract Documents - other documents - issue of certificates | |
| 5.1 | Custody of Contract Bills and Contract Drawings | The Contract Drawings and the Contract Bills shall remain in the custody of the Contract Administrator/Architect or the Quantity Surveyor so as to be available at all reasonable times for the inspection of the Employer and of the Contractor. |
| 5.2 | Copies of documents | Immediately after the execution of this Contract the Contract Administrator/Architect without charge to the Contractor shall provide him (unless he shall have been previously so provided) with : .1 one copy certified on behalf of the Employer of the Contract Documents; .2 two further copies of the Contract Drawings; and .3 two copies of the Bills of Quantities (priced and unpriced). |
| 5.3 | Descriptive Schedules etc- master programme of Contractor | .1 So soon as is possible after the execution of this Contract : .1 .1 the Contract Administrator/Architect without charge to the Contractor shall provide him (unless he shall have been previously so provided) with two (2) copies of any descriptive schedules or other like documents necessary for use in carrying out the Works; and .1 .2 the Contractor without charge to the Employer shall provide the Contract Administrator/Architect (unless he shall have been previously so provided) with five (5) copies (A1 Format) of his master programme for the execution of the Works and within fourteen (14) days of any decision by the Contract Administrator/Architect under clause 25.3.1 or of the date of issue of a confirmed acceptance of a 13A Quotation with 5 copies of any amendments and revisions to take account of that decision or of that confirmed .2 Nothing contained in the descriptive schedules or other like documents referred to in clause 5.3.1.1) (nor in the master programme for the execution of the works or any amendment to that programme or revision therein referred to in clause 5.3.1.2) shall impose any obligation beyond those imposed by the Contract Documents. [j] |
| 5.3 | | |
| 5.4 | | As and when from time to time may be necessary the Contract Administrator/Architect without charge to the Contractor shall provide him with two (2) copies of such further drawings or details as are reasonably necessary either to explain and amplify the Contract Drawings or to enable the Contractor to carry out and complete the Works in accordance with the Conditions. |
| 5.5 | Availability of Certain documents | The Contractor shall keep on site one copy of the Contract Drawings, one copy of the unpriced Bills of Quantities one copy of the descriptive schedules or other like documents referred to in clause 5.3.1.1, one copy of the master programme referred to in clause 5.3.1.2 (unless clause 5.3.1.2 has been deleted) and one copy of the drawings and details referred to in clause 5.4 upon the site so as to be available to the Contract Administrator/Architect or his representative at all reasonable times. |
| 5.6 | Return of drawings Etc. | Upon final payment under clause 30.8 the Contractor shall if so requested by the Contract Administrator/Architect forthwith return to him all drawings, details, descriptive schedules and other documents of a like nature which bear the name of the Contract Administrator/Architect. |
| 5.7 | Limits to use of documents | None of the documents mentioned in clause 5 shall be used by the Contractor for any purpose other than this Contract, and neither the Employer, the Contract Administrator/Architect nor the Quantity Surveyor shall divulge or use except for the purposes of this Contract any of the rates or prices in the |
| 5.8 | Issue of Contract Administrator/Architect certificates | Except where otherwise specifically so provided any certificate to be issued by the Contract Administrator/Architect under the Conditions shall be issued to the Employer, and immediately upon the issue of any such certificate the Contract Administrator/Architect shall send a duplicate copy thereof to the Contractor |
| 5.9 | Supply of as - built drawings etc. - Performance Specified works | Before the date of Practical Completion the Contractor shall without further charge to the Employer supply to the Employer such drawings and information showing or describing any Performance Specified Works as built, and concerning the maintenance and operation of any Performance Specified Work including any installations forming a part thereof, as may be specified in the Contract Bills or in an instruction on the expenditure of the provisional sum for the Performance Specified Work. |

Footnotes

[h] To be deleted if no master programme is required

[j] Words in parentheses to be deleted if no master programme is required.

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| 6 | | Statutory obligations, notices, fees and charges |
| 6.1 | Statutory Requirements | <p>.1 Subject to clause 6.1.5 the Contractor shall comply with, and give all notices required by, any Act of Parliament, any instrument, rule or order made under any Act of Parliament, or any regulation or bye-law of any local authority or of any statutory undertaker which has any jurisdiction with regard to the Works or with whose systems the same are or will be connected (all requirements to be so complied with being referred to in the conditions as 'the Statutory Requirements).</p> <p>.2 If the Contractor shall find any divergence between the Statutory Requirements and all or any of the documents referred to in clause 2.3 or between the Statutory Requirements and any instruction of the Contract Administrator/Architect requiring a Variation issued in accordance with clause 13.2, he shall immediately give to the Contract Administrator/Architect a written notice specifying the divergence.</p> <p>.3 If the Contractor gives notice under clause 6.1.2 or if the Contract Administrator/Architect shall otherwise discover or receive notice of a divergence between the Statutory Requirements and all or any of the documents referred to in clause 2.3 or between the Statutory Requirements and any instruction requiring a Variation issued in accordance with clause 13.2, the Contract Administrator/Architect shall within seven (7) days of the discovery or receipt of a notice issue instructions in relation to the divergence. If and insofar as the instructions require the Works to be varied, they shall be treated as if they were Contract Administrator/Architect's instructions requiring a Variation issued in accordance with clause 13.2.</p> <p>.4 .1 If in any emergency compliance with clause 6.1.1 requires the Contractor to supply materials or execute work before receiving instructions under clause 6.1.3 the Contractor shall supply such limited materials and execute such limited work as are reasonably necessary to secure immediate compliance with the Statutory Requirements.</p> <p>.4 .2 The Contractor shall forthwith inform the Contract Administrator/Architect of the emergency and of the steps that he is taking under clause 6.1.4.1.</p> <p>.4 .3 Work executed and materials supplied by the Contractor under clause 6.1.4.1 shall be treated as if they had been executed and supplied pursuant to an Contract Administrator/Architect's instruction requiring a Variation issued in accordance with clause 13.2 provided that the emergency arose because of a divergence between the Statutory Requirements and all or any of the documents referred to in clause 2.3 or between the Statutory Requirements and any instruction requiring a Variation issued in accordance with clause 13.2, and the Contractor has complied with clause 6.1.4.2</p> <p>.5 Provided that the Contractor complies with clause 6.1.2, the Contractor shall not be liable to the Employer under this Contract if the Works do not comply with the Statutory Requirements where and to the extent that such non-compliance of the Works results from the Contractor having carried out work in accordance with the documents referred to in clause 2.3 or with any instruction requiring a Variation issued by the Contract Administrator/Architect in accordance with clause 13.2.</p> |
| | Divergence - Statutory requirements and the contractor's Statement | .6 If the Contractor or the Contract Administrator/Architect shall find any divergence between the Statutory Requirements and any Contractor's Statement he shall immediately give the other a written notice specifying the divergence. The Contractor shall inform the Contract Administrator/Architect in writing of his proposed amendment for removing the divergence; and the Contract Administrator/Architect shall issue instructions in regard thereto. The Contractor's compliance with such instructions shall be subject to clause 42.15 and at no cost to the Employer <i>as provided in clause 4.1.7</i> |
| | Change in statutory requirements after base date | .7 If after the Base Date there is a change in the Statutory Requirements which necessitates some alteration or modification to any Performance Specified Works such alteration or modification shall be treated as if it were an instruction of the Contract Administrator/Architect under clause 13.2 requiring a Variation. |
| 6.2 | Fees or charges | <p>The Contractor shall pay and indemnify the Employer against liability in respect of any fees or charges (including any rates or taxes) legally demandable under any Act of Parliament, any instrument, rule or order made under any Act of Parliament, or any regulation or bye-law of any local authority or of any statutory undertaker in respect of the Works. The amount of any such fees or charges (including any rates or taxes other than value added tax) shall be added to the Contract Sum unless they :</p> <p>.1 arise in respect of works executed or materials or goods supplied by a local authority or statutory undertaker as a Nominated Sub-Contractor or as a Nominated Supplier; or</p> |

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| 6.2 | | .2 are priced in the Contract Bills; or |
| | | .3 are stated by way of a provisional sum in the Contract Bills. |
| 6.3 | Exclusion of Provisions on Domestic Sub-Contractors and Nominated Sub-Contractors | The provisions of clauses 19 and 35 shall not apply to the execution of part of the Works by a local Authority or a statutory undertaker executing such work solely in pursuance of its statutory obligations and such bodies shall not be sub-contractors within the terms of this Contract. |
| 7 | | <p>Levels and setting out of the Works</p> <p>The Contract Administrator/Architect shall determine any levels which may be required for the execution of the Works, and shall provide the Contractor by way of accurately dimensioned drawings with such information as shall enable the Contractor to set out the Works at ground level. The Contractor shall be responsible for and shall, at no cost to the Employer, amend any errors arising from his own inaccurate setting out. With the consent of the Employer the Contract Administrator/Architect may instruct that such errors shall not be amended and an appropriate deduction for such errors not required to be amended shall be made from the Contract Sum.</p> |
| 8 | | Work, materials and goods |
| 8.1 | Kinds and standards etc. | .1 All materials and goods shall, so far as procurable, be of the kinds and standards described in the Contract Bills, and also, in regard to any Performance Specified Work, in the Contractor's Statement, provided that materials and goods shall be to the reasonable satisfaction of the Contract Administrator/Architect where and to the extent that this is required in accordance with clause 2.1 |
| | | .2 All workmanship shall be of the standards described in the Contract Bills, and also, in regard to any Performance Specified Work, in the Contractor's Statement, or, to the extent that no such standards are described in the Contract Bills, or, in regard to any Performance Specified Work, in the Contractor's Statement, shall be of a standard appropriate to the Works, provided that workmanship shall be to the reasonable satisfaction of the Contract Administrator/Architect where and to the extent that this is required in accordance with clause 2.1. |
| | | .3 All work shall be carried out in a proper and work-man-like manner and in accordance with health and safety plan. |
| | Substitution of materials or goods - Performance Specified works | .4 The Contractor shall not substitute any materials or goods described in any Contractor's Statement for Performance Specified Work without the Contract Administrator/Architect's consent in writing which consent shall not be unreasonably withheld or delayed. No such consent shall relieve the Contractor of any other be unreasonably withheld or delayed. No such consent shall relieve the Contractor of any other obligation under this Contract. |
| 8.2 | Vouchers – materials and goods | .1 The Contractor shall upon the request of the Contract Administrator/Architect provide him with vouchers to prove that the materials and goods comply with clause 8.1. |
| | Executed works | .2 In respect of any materials, goods or workmanship, as comprised in executed work, which are to be to the reasonable satisfaction of the Contract Administrator/Architect in accordance with clause 2.1, the Contract Administrator/Architect shall express any dissatisfaction within a reasonable time from the execution of the unsatisfactory work. |
| 8.3 | Inspection – tests | The Contract Administrator/Architect may issue instructions requiring the Contractor to open up for inspection any work covered up or to arrange for or carry out any test of any materials or goods (whether or not already incorporated in the Works) or of any executed work, and the cost of such opening up or testing (together with the cost of making good in consequence thereof) shall be added to the Contract Sum unless provided for in the Contract Bills or unless the inspection or test shows that the materials, goods or work are not in accordance with this Contract. |
| 8.4 | Powers of Contract Administrator/Architect - work not in accordance with the contract | If any work, materials or goods are not in accordance with this Contract the Contract Administrator/Architect, without prejudice to the generality of his powers, may : <ul style="list-style-type: none"> .1 issue instructions in regard to the removal from the site of all or any of such work, materials or goods; and/or |

- 8.4 .2 after consultation with the Contractor (who shall immediately consult with any relevant Nominated Sub-Contractor) and with the agreement of the Employer, allow all or any of such work, materials or goods to remain and confirm this in writing to the Contractor (which shall not be construed as a Variation) and where so allowed and confirmed an appropriate deduction shall be made in the adjustment of the Contract Sum; and/or
- 8.4 .3 after consultation with the Contractor (who shall immediately consult with any relevant Nominated Sub-Contractor) issue such instructions requiring a Variation as are reasonably necessary as a consequence of such an instruction under clause 8.4.1 or such confirmation under clause 8.4.2 and to the extent that such instructions are so necessary and notwithstanding clauses 13.4, 25 and 26 no addition to the Contract Sum shall be made and no extension of time shall be given; and/or
- 8.4 .4 having had due regard to the Code of Practice appended to these Conditions (following clause 42), issue such instructions under clause 8.3 to open up for inspection or to test as are reasonable in all the circumstances to establish to the reasonable satisfaction of the Contract Administrator/Architect the likelihood or extent, as appropriate to the circumstances, of any further similar non-compliance. To the extent that such instructions are so reasonable, whatever the results of the opening up for inspection or test, and notwithstanding clauses 8.3 and 26 no addition to the Contract Sum shall be made. Clause 25.4.5.2 shall apply unless as stated therein the inspection or test showed that the work, materials or goods were not in accordance with this Contract
- 8.5 Power of Contract - Administrator/Architect Non-compliance with clause 8.1.3 Where there is any failure to comply with clause 8.1.3 in regard to the carrying out of the work in a proper and work-man-like manner the Contract Administrator/Architect, without prejudice to the generality of his powers, may, after consultation with the Contractor (who shall immediately consult with any relevant Nominated Sub-Contractor), issue such instructions whether requiring a Variation or otherwise as are reasonably necessary as a consequence thereof. To the extent that such instructions are so necessary and notwithstanding clauses 13.4 and 25 and 26 no addition to the Contract Sum shall be made and no extension of time shall be given in respect of compliance by the Contractor with such instruction.
- 8.6 Exclusion from the works of persons employed thereon The Contract Administrator/Architect may (but not unreasonably or vexatiously) issue instructions requiring the exclusion from the site of any person employed thereon.
- 9 Royalties and patent rights
- 9.1 Treatment of royalties etc - indemnity to employer All royalties or other sums payable in respect of the supply and use in carrying out the Works as described by or referred to in the Contract Bills of any patented articles, processes or inventions shall be deemed to have been included in the Contract Sum, and the Contractor shall indemnify the Employer from and against all claims, proceedings, damage, costs and expense which may be brought or made against the Employer or to which he may be put by reason of the Contractor infringing or being held to have infringed any patent rights in relation to any such articles, processes or inventions.
- 9.2 Contract Administrator/Architect's instructions treatment of royalties etc. Provided that where in compliance with Contract Administrator/Architect's instructions the Contractor shall supply and use in carrying out the Works any patented articles, processes or inventions, the Contractor shall not be liable in respect of any infringement or alleged infringement of any patent rights in relation to any such articles, processes or inventions and all royalties damages or other monies which the Contractor may be liable to pay to the persons entitled to such patent rights shall be added to the Contract Sum.
- 10 Person-in-charge
The Contractor shall constantly keep upon the site a competent person-in-charge and any instructions given to him by the Contract Administrator/Architect or directions given to him by the clerk of works in accordance with clause 12 shall be deemed to have been issued to the Contractor.

- 11 Access for Contract Administrator/Architect to the Works
- The Contract Administrator/Architect and his representatives shall at all reasonable times have access to the Works and to the Workshops or other places of the Contractor where work is being prepared for this Contract, and when work is to be so prepared in workshops or other places of a Domestic Sub-Contractor or a Nominated Sub-Contractor the Contractor shall by a term in the sub-contract so far as possible secure a similar right of access to those workshops or places for the Contract Administrator/Architect and his representatives and shall do all things reasonably necessary to make such right effective. Access in accordance with clause 11 may be subject to such reasonable restrictions of the Contractor or any Domestic Sub-Contractor or any Nominated Sub-Contractor as are necessary to protect any proprietary right of the Contractor or of any Domestic or Nominated Sub-Contractor in the work referred to in clause 11.
- 12 Clerk of works
- The Employer shall be entitled to appoint a clerk of works whose duty shall be to act solely as inspector on behalf of the Employer under the directions of the Contract Administrator/Architect and the Contractor shall afford every reasonable facility for the performance of that duty. If any direction is given to the Contractor by the clerk of works the same shall be of no effect unless given in regard to a matter in respect of which the Contract Administrator/Architect is expressly empowered by the Conditions to issue instructions and unless confirmed in writing by the Contract Administrator/Architect within two (2) working days of such direction being given. If any such direction is so given and confirmed then as from the date of issue of that confirmation it shall be deemed to be a Contract Administrator/Architect's instruction.
- 13 Variations and provisional sums
- 13.1 Definition of Variation The term 'Variation' as used in the Conditions means :
- .1 the alteration or modification of the design, quality or quantity of the Works including
 - .1 .1 the addition, omission or substitution of any work,
 - .1 .2 the alteration of the kind or standard of any of the materials or goods to be used in the
 - .1 .3 the removal from the site of any work executed or materials or goods brought thereon by the Contractor for the purposes of the Works other than work, materials or goods which are not in accordance with this Contract;
 - .2 the imposition by the Employer of any obligations or restrictions in regard to the matters set out in clauses 13.1.2.1 to 13.1.2.4 or the addition to or alteration or omission of any such obligations or restrictions so imposed or imposed by the Employer in the Contract Bills in regard to :
 - .2 .1 access to the site or use of any specific parts of the site;
 - .2 .2 limitations of working space;
 - .2 .3 limitations of working hours;
 - .2 .4 the execution or completion of the work in any specific order;
- but excludes
- .3 nomination of a sub-contractor to supply and fix materials or goods or to execute work of which the measured quantities have been set out and priced by the Contractor in the Contract Bills for supply and fixing or execution by the Contractor.
- 13.2 Instructions Requiring a Variation
- .1 The Contract Administrator/Architect may issue instructions requiring a Variation.
 - .2 Any instruction under clause 13.2.1 shall be subject to the Contractor's right of reasonable objection set out in clause 4.1.1.

- 13.2
- 3 The valuation of a variation instructed under clause 13.2.1 shall be in accordance with clause 13.4.1.1 unless the instruction states that the treatment and valuation of the Variation are to be in accordance with clause 13A or unless the Variation is one to which clause 13A.8 applies. Where the instruction so states, clause 13A shall apply unless the Contractor within 7 days (or such other period as may be agreed) of receipt of the instruction states in writing that he disagrees with the application of clause 13A to such instruction. If the Contractor so disagrees, Clause 13A shall not apply to such instruction and the variation shall not be carried out unless and until the Contract Administrator/Architect instructs that the Variations to be carried out and is to be valued pursuant to clause 13.4.1.[i.1]
- 4 The Contract Administrator/Architect may sanction in writing any Variation made by the Contractor otherwise than pursuant to an instruction of the Contract Administrator/Architect
- 5 No Variation required by the Contract Administrator/Architect or subsequently sanctioned by him shall vitiate this Contract.
- 13.3 Instructions on provisional sum
- The Contract Administrator/Architect shall issue instructions in regard to :
- .1 the expenditure of provisional sums included in the Contract Bills: [j] and
- .2 the expenditure of provisional sums included in a Nominated Sub-Contract.
- 13.4 Valuation of Variations and provisional sum work and work covered by an Approximate quantity
- .1 .1 Subject to clause 13.4.1.2
- all Variations required by the Contract Administrator/Architect or subsequently sanctioned by him in writing and all work executed by the Contractor in accordance with instructions by the Contract Administrator/Architect as to the expenditure of provisional sums which are included in the Contract Bills shall be valued by the Quantity Surveyor and
- all work executed by the Contractor for which an Approximate Quantity is included in the Contract Bills shall be measured and valued by the Quantity Surveyor.
- and such valuation (in the Conditions called the valuation) shall, unless otherwise agreed by the Employer and the Contractor or unless the Contract Administrator/Architect has issued to the Contractor a confirmed acceptance of a 13A Quotation for such Variation or it is a Variation to which clause 13A.8 applies, be made in accordance with the provisions of clauses 13.5.1 to 13.5.5 and 13.5.7 and in respect of Performance Specified Work, with the provisions of clauses 13.5.6 and 13.5.7.
- .1 .2 The valuation of Variations to the sub-contract works executed by a Nominated Sub-Contractor in accordance with instructions of the Contract Administrator/Architect and of all Instructions issued under clause 13.3.2 and all work executed by a Nominated Sub-Contractor for which an Approximate Quantity is included in any bills of quantities included in the Numbered Documents shall (unless otherwise agreed by the Contractor and the Nominated Sub-Contractor concerned with the approval of the Employer) be made in accordance with the relevant provisions of Conditions NSC/C (Conditions of Nominated Sub-Contract).
- .2 where under the instruction of the Contract Administrator/Architect as to the expenditure of a provisional sum a prime sum arises and the Contractor under clause 35.2 tenders for the work covered by that prime cost sum cost and that tender is accepted by or on behalf of the Employer, that work shall be valued in accordance with the accepted tender of the Contractor and shall not be included in the of the valuation of the instruction of the Contract Administrator/Architect in regard to the expenditure of the provisional sum.
- 13.5 Valuation rules
- .1 To the extent that the Valuation relates to the execution of additional or substituted work which can properly be valued by measurement or to the execution of work for which an Approximate Quantity is included in the Contract Bills such work shall be measured and shall be valued in accordance with the following rules :
- .1 .1 where the additional or substituted work is of similar character to, is executed under similar conditions as, and does not significantly change the quantity of, work set out in the Contract Bills the rates and prices for the work so set out shall determine the Valuation;

Footnotes

[i.1] A longer period than 7 days may need to be agreed where the Variation involves a major input from sub-contractors

[j] if the Contract Administrator/Architect nominates a sub-contractor or supplier by any instructions under clause 13.3.1, then the provisions of Part 2 of the Conditions apply to such nominations

13.5

continued

- .1 .2 where the additional or substituted work is of similar character to work set out in the Contract Bills but is not executed under similar conditions thereto and/or significantly changes the quantity thereof, the rates and prices for the work so set out shall be the basis for determining the valuation and the valuation shall include a fair allowance for such difference in conditions and/or quantity;
- .1 .3 where the additional or substituted work is not of similar character to work set out in the Contract Bills the work shall be valued at fair rates and prices;
- .1 .4 where the Approximate Quantity is a reasonably accurate forecast of the quantity of work required the rate or price for the Approximate Quantity shall determine the Valuation;
- .1 .5 where the Approximate Quantity is not a reasonably accurate forecast of the quantity of work required the rate or price for that Approximate Quantity shall be the basis for determining the Valuation and the Valuation shall include a fair allowance for such difference in quantity.

Provided that clause 13.5.1.4 and clause 13.5.1.5 shall only apply to the extent that the work has not been altered or modified other than in quantity.

- .2 To the extent that the Valuation relates to the omission of work set out in the Contract Bills the rates and prices for such work therein set out shall determine the valuation of the work omitted.
- .3 In any valuation of work under clauses 13.5.1 and 13.5.2 :
- .3 .1 measurement shall be in accordance with the same principles as those governing the preparation of the Contract Bills as referred to in clause 2.2.2.1;
- .3 .2 allowance shall be made for any percentage or lump sum adjustments in the Contract Bills;
- .3 .3 allowance, where appropriate, shall be made for any addition to or reduction of preliminary items of the type referred to in the Standard Method of Measurement, Section A (Preliminaries & General Conditions); provided that no such allowance shall be made in respect of compliance with an Contract Administrator/Architect's instruction for the expenditure of a provisional sum for defined work.*
- .4 To the extent that the Valuation relates to the execution of additional or substituted work which cannot properly be valued by measurement the Valuation shall comprise :
- .4 .1 the prime cost of such work (calculated in accordance with the Definition of Prime Cost of Day- work carried out under a Building Contract' issued by the Federation of Building and Civil Engineering Contractors of Nigeria which was current at the Base Date) together with percentage additions to each section of the prime cost at the rates set out by the Contractor in the Contract Bills; or
- .4 .2 where the work is within the province of any specialist trade and the said Institution and the appropriate [k] body representing the employers in that trade have agreed and issued a definition of prime cost of daywork, the prime cost of such work calculated in accordance with that definition which was current at the Base Date together with percentage additions on the prime cost at the rates set out by the Contractor in the Contract Bills.

Provided that in any case vouchers specifying the time daily spent upon the work, the workmen's names, the plant and the materials employed shall be delivered for verification to the Contract Administrator/Architect or his authorised representative not later than the end of the week following that in which the work has been executed.

Footnotes

* See footnote to clause 1.3 (Definitions)

[k] Definitions to which clause 13.5.4.2 refers namely those agreed between the Nigerian Society of Engineers (NSE)

13.5

.5 If

compliance with any instruction requiring a Variation or

compliance with any instruction as to the expenditure of a provisional sum for undefined work* or

compliance with any instruction as to the expenditure of a provisional sum for defined work* to the extent that the instruction for that work differs from the description given for such work in the Contract Bills or

the execution of work for which an Approximate Quantity is included in the Contract Bills to such extent as the quantity is more or less than the quantity ascribed to that work in the Contract Bills.

substantially changes the conditions under which any other work is executed, then such other work shall be treated as if it had been the subject of an instruction of the Contract Administrator/Architect requiring a Variation under clause 13.2 which shall be valued in accordance with the provisions of clause 13.

.6 .1 The Valuation of Performance Specified Work shall include allowance for the addition or omission of any relevant work involved in the preparation and production of drawings, schedules or other documents;

.6 .2 the valuation of additional or substituted work relating to Performance Specified Work shall be consistent with the rates and prices of work of a similar character set out in the Contract Bills or the Analysis making due allowance for any changes in the conditions under which the work is carried out and/or any significant change in the quantity of the work set out in the Contract Bills or in the Contractor's Statement. Where there is no work of a similar character set out in the Contract Bills or the Contractor's Statement a fair valuation shall be made.

.6 .3 the Valuation of the omission of work relating to Performance Specified Work shall be in accordance with the rates and prices for such work set out in the Contract Bills or the Analysis;

.6 .4 any valuation of work under clauses 13.5.6.2 and 13.5.6.3 shall include allowance for any necessary addition to or reduction of preliminary items of the type referred to in the Standard Method of Measurement, Section A (Preliminaries/General Conditions);

.6 .5 where an appropriate basis of a fair valuation of additional or substituted work relating to Performance Specified Work is daywork the Valuation shall be in accordance with clauses 13.5.4.1 or 13.5.4.2 and the provision to clause 13.5.4 shall apply;

.6 .6 if

compliance with any instruction clause 42.11 requiring a Variation to Performance Specified Work or

compliance with any instruction as to the expenditure of a provisional sum for Performance Specified Work to the extent that the instruction for that Work differs from the information provided in the Contract Bills pursuant to clause 42.7.2 and /or 42.7.3 for such Performance Specified Work.

substantially changes the conditions under which any other work is executed (including any other Performance Specified Work) then such other work (including any other Performance Specified Work) shall be treated as if it had been the subject of an instruction of the Contract Administrator/Architect requiring a Variation under clause 13.2 or, if relevant, under clause 42.11 which shall be valued in accordance with the provisions of clause 13.5.

Footnote

* See footnote to clause 1.3 (Definitions)

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| 13.5 | | <p>.7 To the extent that the Valuation does not relate to the execution of additional or substituted work or the omission of work or to the extent that the valuation of any work or liabilities directly associated with a Variation cannot reasonably be effected in the Valuation by the application of clauses 13.5.1 to .6 a fair valuation thereof shall be made.</p> <p>Provided that no allowance shall be made under clause 13.5 for any effect upon the regular progress of the Works or for any other direct loss and/or expense for which the Contractor would be reimbursed by payment under any other provision in the Conditions.</p> |
| 13.6 | Contractor's right to be present at measurement | Where it is necessary to measure work for the purpose of the Valuation the Quantity Surveyor shall give to the Contractor an opportunity of being present at the time of such measurement and of taking such notes and measurements as the Contractor may require. |
| 13.7 | Valuations- Employer/Contractor | Effect shall be given to a Valuation under clause 13.5, to an agreement by the Employer and the Contractor to which clause 13.4.1.1 refers, to a 13A Quotation for which the Contract Administrator/Architect has issued to the Contractor a confirmed acceptance and to a valuation pursuant to clause 13A.8 by addition to or deduction from the Contract Sum. |
| 13A | 13A quotation for a variation and variations thereto - addition to or deduction from contract sum | Variation instruction - Contractor's quotation in compliance with the instruction |
| | Contractors to submits his quotation (13A quotation) | Clause 13A shall only apply to an instruction where pursuant to clause 13.2.3 the Contractor has not disagreed with the application of clause 13A to such instruction. |
| 13A.1 | | <p>.1 The instruction to which clause 13A is to apply shall have provided sufficient information [i.2] to enable the Contractor to provide a quotation, which shall comprise the matters set out in clause 13A.2 (a '13A Quotation'), in compliance with the instruction; and in respect of any part of the Variation which relates to the work of any Nominated Sub-Contractor sufficient information to enable the Contractor to obtain a 3.3A Quotation from the Nominated Sub-Contractor in accordance with clause 3.3A.1.2 of the Conditions NSC/C (Conditions of Nominated Sub-Contract). If the Contractor reasonably considers that the information provided is not sufficient, then, not later than 7 days from the receipt of the instruction, he shall request the Contract Administrator/Architect to supply sufficient further information.</p> <p>.2 The Contractor shall submit to the Quantity Surveyor his 13A Quotation in compliance with the instruction and shall include therein 3.3A Quotations in respect of any parts of the Variation which relate to the work of Nominated Sub-Contractors not later than 21 days from</p> <p style="padding-left: 40px;">the date of receipt of the instruction</p> <p>or if applicable, the date of receipt by the Contractor of the sufficient further information to which clause 13A.1.1. refers.</p> <p>whichever date is the later and the 13A Quotation shall remain open for acceptance by the Employer for seven (7) days from its receipt by the Quantity Surveyor.</p> <p>.3 The Variation for which the Contractor has submitted his 13A Quotation shall not be carried out by the Contractor or as relevant by any Nominated Sub-Contractor until receipt by the Contractor of the confirmed acceptance issued by the Contract Administrator/Architect pursuant to clause 13A.3.2.</p> |
| 13A.2 | Content of the contractor's 13A Quotation | <p>The 13A Quotation shall separately comprise:</p> <p>.1 the value of the adjustment to the Contract Sum (other than any amount to which clause 13A.2.3 refers) including therein the effect of the instruction on any other work including that of Nominated Sub-Contractors supported by all necessary calculations by reference, where relevant, to the rates and prices in the Contract Bills and including, where appropriate, allowances for any adjustment of preliminary items;</p> |

Footnote

[i.2] The information provided to the Contractor should normally be in a similar format to that provided at the tender stage; and may be in the form of drawings and/or in an addendum bill of quantities and/or in a specification or otherwise. If an addendum bill is provided see the relevant provisions in clause 2.2.2.

- 13A.2
- .2 any adjustment to the time required for completion of the Works (including where relevant stating an earlier Completion Date than the Date for Completion given in the Appendix) to the extent that such adjustment is not included in any revision of the Completion Date that has been made by the Contract Administrator/Architect under clause 25.3 or in his confirmed acceptance of any other 13A Quotation;
 - .3 the amount to be paid in lieu of any ascertainment under clause 26.1 of direct loss and/or expense not included in any other accepted 13A Quotation or in any previous ascertainment under clause 26;
 - .4 a fair and reasonable amount in respect of the cost of preparing the 13A Quotation;
and, where specifically required by the instruction, shall provide indicative information in statements on
 - .5 the additional resources (if any) required to carry out the Variation; and
 - .6 the method of carrying out the Variation.
- Each part of the 13A Quotation shall contain reasonably sufficient supporting information to enable that part to be evaluated by or on behalf of the Employer.
- 13A.3 Acceptance of 13A Quotation - Contract Administrator/Architect confirmed acceptance
- .1 If the Employer wishes to accept a 13A Quotation the Employer shall so notify the Contractor in writing not later than the last day of the period for acceptance stated in clause 13A.1.2.
 - .2 If the Employer accepts a 13A Quotation the Contract Administrator/Architect shall, immediately upon that acceptance confirm such acceptance by stating in writing to the Contractor (in clause 13A and elsewhere in the Conditions called a 'confirmed acceptance'):
 - .1 that the Contractor is to carry out the Variation;
 - .2 the adjustment of the Contract Sum, including therein any amounts to which clause 13A.2.3 and clause 13A.2.4 refer, to be made for complying with the instruction requiring the Variation;
 - .3 any adjustment to the time required by the Contractor for completion of the Works and the revised Completion Date arising therefrom (which, where relevant, may be a date earlier than the date for Completion given in the Appendix) and, where relevant, any revised period or periods for the completion of the Nominated Sub-Contract work of each Nominated Sub-Contractor, and
 - .4 that the Contractor, pursuant to clause 3.3A.3 of the Conditions NSC/C (Conditions of Nominated Sub-Contract), shall accept any 3.3A Quotation included in the 13A Quotation for which the confirmed acceptance has been issued.
- 13A.4 Contractor's 13A Quotation not accepted
- If the Employer does not accept the 13A Quotation by the expiry of the period for acceptance stated in clause 13A.1.2, the Contract Administrator/Architect shall, on the expiry of that period either
- .1 instruct that the Variation is to be carried out and is to be valued pursuant to clause 13.4.1;
 - or
 - .2 instruct that the Variation is not to be carried out.
- 13A.5 Payment for a 13A Quotation
- If a 13A Quotation is not accepted a fair and reasonable amount shall be added to the Contract Sum in respect of the cost of preparation of the 13A Quotation provided that the 13A Quotation has been prepared on a fair and reasonable basis. The non-acceptance by the Employer of a 13A Quotation shall not of itself be evidence that the Quotation was not prepared on a fair and reasonable basis.
- 13A.6 Restriction on use of 13A Quotation
- If the Contract Administrator/Architect has not, under clause 13A.3.2, issued a confirmed acceptance of a 13A Quotation neither the Employer nor the Contractor may use that 13A Quotation for any purpose whatsoever.

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| 13A.7 | Number of days - clauses 13A.1.1 and/or 13A.1.2 | The Employer and the Contractor may agree to increase or reduce the number of days stated in clause 13A.1.1 and /or in clause 13A.1.2 and any such agreement shall be confirmed in writing by the Employer to the Contractor. Where relevant the Contractor shall notify each Nominated Sub-Contractor of any agreed increase or reduction pursuant to this clause 13A.7. |
| 13A.8 | Variation to work for which a confirmed acceptance of a 13A Quotation has been issued- Valuation | If the Contract Administrator/Architect issues an instruction requiring a Variation to work for which a 13A Quotation has been given and in respect of which the Contract Administrator/Architect has issued a confirmed acceptance to the Contractor such Variation shall not be valued under clause 13.5; but the Quantity Surveyor shall make a valuation of such Variation on a fair and reasonable basis having regard to the content of such 13A Quotation and shall include in that Valuation the direct loss and/or expense, if any, incurred by the Contractor because the regular progress of the Works or any part thereof has been materially affected by compliance with the instruction requiring the Variation. |
| 14 | | Contract Sum |
| 14.1 | Quality and quantity of work included in Contract | The quality and quantity of the work included in the Contract Sum shall be deemed to be that which is set out in the Contract Bills. |
| 14.2 | Contract Sum- Only adjusted under the Conditions-errors In computation | The Contract Sum shall not be adjusted or altered in any way whatsoever otherwise than in accordance with the express provisions of the Conditions, and subject to clause 2.2.2.2 any error whether of arithmetic or not in the computation of the Contract Sum shall be deemed to have been accepted by the parties hereto. |
| 15 | | Value added tax - supplemental provisions |
| 15.1 | Definitions-VAT Agreement | In clause 15 and in the supplemental provisions pursuant hereto (hereinafter called the 'VAT Agreement') 'tax' means the value added tax introduced by the "VALUE ADDED TAX DECREE 102 1993 ACT CAP. V1 L.F.N. 2004" which is under the care and management of Federal Inland Revenue Service "FIRS" |
| 15.2 | Contract Sum - Exclusive of VAT | Any reference in the Conditions to Contract Sum shall be regarded as such sum exclusive of any tax and recovery by the Contractor from the Employer of tax properly chargeable by "FIRS" on the Contractor under or by virtue of the "VALUE ADDED TAX DECREE 102 1993 ACT CAP. V1 L.F.N. 2004" or any amendment or re-enactment thereof on the supply of goods and services under this Contract shall be under the provisions of clause 15 and of the VAT Agreement. Clause 1A of the VAT Agreement shall only apply where so stated in the Appendix. [k] |
| 15.3 | Possible Exemption from VAT | To the extent that after the Base Date the supply of goods and services to the Employer becomes exempt from the tax there shall be paid to the Contractor an amount equal to the loss of credit (input tax) on the supply to the Contractor of goods and services which contribute exclusively to the Works. |
| 16 | | Materials and goods unfixed or off-site |
| 16.1 | Unfixed materials and goods-on site | Unfixed materials and goods delivered to, placed on or adjacent to the Works and intended therefore shall not be removed expect for use upon the Works unless the Contract Administrator/Architect has consented in writing to such removal which consent shall not be unreasonably delayed or withheld. Where the value of any such materials or goods has in accordance with clause 30.2 been included in any Interim Certificate under which the amount properly due to the Contractor has been paid by the Employer, such materials and goods shall become the property of the Employer, but, subject to clause 22B or 22C (if applicable), the Contractor shall remain responsible for loss or damage to the same. |

Footnote

[k] Clause 1A can only apply where the Contractor is satisfied at the date the Contract is entered into that his output tax on all supplies to the Employer under the Contract will be at either a positive or a zero rate of tax.

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| 16.2 | Unfixed materials and goods-off site | Where the value of any materials or goods intended for the Works and stored off-site has in accordance with clause 30.3 been included in any Interim Certificate under which the amount properly due to the Contractor has been paid by the Employer, such materials and goods shall become the property of the Employer and thereafter the Contractor shall not, except for use upon the Works, remove or cause or permit the same to be moved or removed from the premises where they are, but the Contractor shall nevertheless be responsible for any loss thereof or damage thereto and for the cost of storage, handling and insurance of the same until such time as they are delivered to and placed on or adjacent to the Works whereupon the provisions of clause 16.1 (except the words 'Where the value' to the words 'the property of the Employer, but,') shall apply thereto. |
| 17 | | Practical Completion and defects liability |
| 17.1 | Certificate of Practical Completion | When in the opinion of the Contract Administrator/Architect Practical Completion of the works is achieved, and, if relevant, the Contractor has complied with clause 5.9 (Supply of as-built drawings etc. - Performance Specified Work), he shall forthwith issue a certificate to that effect and Practical completion of the Works shall be deemed for all the purposes of this Contract to have taken place on the day named in such certificate. |
| 17.2 | Defects, Shrinkages or other faults | Any defects, shrinkages or other faults which shall appear within the Defects Liability Period and which are due to materials or workmanship not in accordance with this Contract or to frost occurring before Practical Completion of the Works, shall be specified by the Contract Administrator/Architect in a schedule of defects which he shall deliver to the Contractor as an instruction of the Contract Administrator/Architect not later than 14 days after the expiration of the said Defects Liability Period, and within a reasonable time after receipt of such schedule the defects, shrinkages and other faults therein specified shall be made good by the Contractor at no cost to the Employer unless the Contract Administrator/Architect with the consent of the Employer shall otherwise instruct; and if the Contract Administrator/Architect does so otherwise instruct then an appropriate deduction in respect of any such defects, shrinkages or other faults not made good shall be made from the Contract Sum. |
| 17.3 | Defects etc – Contract Administrator/Architect's instructions | Notwithstanding clause 17.2 the Contract Administrator/Architect may whenever he considers it necessary so to do issue instructions requiring any defect, shrinkage or other fault which shall appear within the Defects Liability Period and which is due to materials or workmanship not in accordance with this Contract or to frost occurring before Practical Completion of the Works, to be made good, and the Contractor shall within a reasonable time after receipt of such instructions comply with the same at no cost to the Employer unless the Contract Administrator/Architect with the consent of the Employer shall otherwise instruct; and if the Contract Administrator/Architect does so otherwise instruct then an appropriate deduction in respect of any such defects, shrinkages or other faults not made good shall be made from the Contract Sum. Provided that no such instructions shall be issued after delivery of a schedule of defects or after 14 days from the expiration of the Defects Liability Period. |
| 17.4 | Certificate of Completion of Making Good Defects | When in the opinion of the Contract Administrator/Architect any defects, shrinkages or other faults which he may have required to be made good under clause 17.2 and 17.3 shall have been made good he shall issue a certificate to that effect, and completion of making good defects shall be deemed for all the purposes of this Contract to have taken place on the day named in such certificate (the 'Certificate of Completion of Making Good Defects'). |
| 17.5 | Damage by frost | In no case shall the Contractor be required to make good at his own cost any damage by frost which may appear after Practical Completion, unless the Contract Administrator/Architect shall certify that such damage is due to injury which took place before Practical Completion. |
| 18 | | Practical possession by Employer |
| 18.1 | Employer's wish - Contractor's consent | At any time or times before the date or issue by the Contract Administrator/Architect or the certificate of Practical Completion the Employer wishes to take possession of any part or parts of the Works and the consent of the Contractor (which consent shall not be unreasonably withheld) has been obtained, then, notwithstanding anything expressed or implied elsewhere in this Contract, the Employer may take possession thereof. The Contract Administrator/Architect shall thereupon issue to the Contractor on behalf of the Employer a written statement identifying the part or parts of the Works taken into possession and giving the date when the Employer took possession (in clauses 18, 20.3, 22.3.1 and 22C.1 referred to as 'the relevant part' and 'the relevant date' respectively). |

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| 18.1 | Practical Completion- Relevant part | .1 | For the purposes of clauses 17.2, 17.3, 17.5 and 30.4.1.2 Practical Completion of the relevant part shall be deemed to have occurred and the Defects Liability Period in respect of the relevant part shall be deemed to have commenced on the relevant date. |
| | Defects etc – Relevant part | .2 | When in the opinion of the Contract Administrator/Architect any defects, shrinkages or other faults in the relevant part which he may have required to be made good under clause 17.2 or clause 17.3 shall have been made good he shall issue a certificate to that effect. |
| | Insurance - Relevant part | .3 | As from the relevant date the obligation of the Contractor under clause 22A or of the Employer under clause 22B.1 or clause 22C.2 whichever is applicable to insure shall terminate in respect of the relevant part but not further or otherwise; and where clause 22C applies the obligation of the Employer to insure under clause 22C.1 shall from the relevant date include the relevant part. |
| | Liquidated Damages – relevant part | .4 | In lieu of any sum to be paid or allowed by the Contractor under clause 24 in respect of any period during which the Works may remain incomplete occurring after the relevant date there shall be paid or allowed such sum as bears the same ratio to the sum which would be paid or allowed apart from the provisions of clause 18 as the Contract Sum less the amount contained therein in respect of the relevant part bears to the Contract Sum. |
| 19 | | Assignment and sub-contracts | |
| 19.1 | Assignment | .1 | Neither the Employer nor the Contractor shall, without the written consent of the other, assign this Contract. |
| | | .2 | Where clause 19.1.2 is stated in the Appendix to apply then, in the event of transfer by the Employer of his freehold or leasehold interest in, or of a grant by the Employer of a leasehold interest in, the whole of the premises comprising the Works, the Employer may at any time after Practical Completion of the Works assign to any such transferee or lessee the right to bring proceedings in the name of the Employer (whether by arbitration or litigation) to enforce any of the terms of this Contract made for the benefit of the Employer hereunder. The assignee shall be stopped from disputing any enforceable agreements reached between the Employer and the Contractor and which arise out of and relate to this Contract (whether or not they are or appear to be a derogation from the right assigned) and made prior to the date of any assignment. |
| 19.2 | Sub-letting – Domestic Sub- Contractors Contract Administrator/Architect's consent | .1 | A person to whom the Contractor sub-lets any portion of the Works other than a Nominated Sub-Contractor is in this Contract referred to as a 'Domestic Sub-Contractor'. |
| | | .2 | The Contractor shall not without the written consent of the Contract Administrator/Architect (which consent shall not be unreasonably withheld) sub-let any portion of the Works. The Contractor shall remain wholly responsible for carrying out and completing the Works in all respects in accordance with clause 2.1 notwithstanding the sub-letting of any portion of the |
| 19.3 | Sub-letting – list in Contract Bills | .1 | Where the Contract Bills provide that certain work measured or otherwise described in those Bills and priced by the Contractor must be carried out by persons named in a list in or annexed to the Contract Bills and selected therefrom by and at the sole discretion of the Contractor the provisions of clause 19.3 shall apply in respect of that list. |
| | | .2 | .1 The list referred to in clause 19.3.1 must comprise not less than three persons. Either the Employer (or the Contract Administrator/Architect on his behalf) or the Contractor shall be entitled with the consent of the other, which consent shall not be unreasonably withheld, to add [1] additional persons to the list at any time prior to the execution of a binding sub-contract agreement. |

Footnote

[1] Any such addition must be initialled by or on behalf of the parties.

- 19.3 continued
- .2 .2 If at any time prior to the execution of a binding sub-contract agreement and for whatever reason less than three persons named in the list are able and willing to carry out the relevant work then
- either the Employer and the Contractor shall by agreement (which agreement shall not be unreasonably withheld) add [(I)] the names of other persons so that the list comprises not less than three such persons
- or the work shall be carried out by the Contractor who may sub-let to a Domestic Sub-Contractor in accordance with clause 19.2.
- .3 A person selected by the Contractor under clause 19.3 from the aforesaid list shall be a Domestic Sub-Contractor.
- 19.4 Sub-letting – Conditions of any Sub-letting – It shall be a condition in any sub-letting to which clause 19.2 or 19.3 refers that :
- .1 the employment of the Domestic Sub-Contractor under the sub-contract shall determine immediately upon the determination (for any reason) of the Contractor's employment under this Contract: and
- .2 the sub-contract shall provide that
- .2 .1 Subject to clause 16.1 or these Conditions (in clauses 19.4.2.2 to .4 called the main Contract Conditions), unfixed materials and goods delivered to, placed on or adjacent to the Works by the sub-contractor and intended therefore shall not be removed except for use on the Works unless the Contractor has consented in writing to such removal, which consent shall not be unreasonably withheld.
- .2 .2 Where, in accordance with clause 30.2 of the main Contract Conditions, the value of any such materials or goods shall have been included in any Interim Certificate under which the amount properly due to the Contractor shall have been discharged by the Employer in favour of the Contractor, such materials or goods shall be and become the property of the Employer and the sub-contractor shall not deny that such materials or goods are and have become the property of the Employer.
- .2 .3 Provided that if the Contractor shall pay the sub-contractor for any such materials or goods before the value therefor has, in accordance with clause 30.2 of the Contract Conditions, been included in any Interim certificate under which the amount properly due to the Contractor has been discharged by the Employer in favour of the Contractor, such materials or goods shall upon such payment by the Main Contractor be and become the property of the Contractor.
- .2 .4 The operation of clauses 19.4.2.1 to .3 hereof shall be without prejudice to any property in any materials or goods passing to the Contractor as provided in clause 30.3.5 of the Main Contract Conditions (off-site materials or goods).
- 19.5 Nominated Sub-Contractors .1 The provisions of this Contract relating to Nominated Sub-Contractors are set out in Part 2 of the Conditions. Save as otherwise expressed in the Conditions the Contractor shall remain wholly responsible for carrying out and completing the Works in all respects in accordance with clause 2.1, notwithstanding the nomination of a sub-contractor to supply and fix materials or goods or to execute work.
- .2 Subject to clause 35.2 the contractor is not himself required, unless otherwise agreed, to supply and fix materials or goods or to execute work which is to be carried out by a Nominated Sub-Contractor.
- 20 Injury to persons and property and indemnity to Employer
- 20.1 Liability of Contractor – Personal injury or death Indemnify to Employer The Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings whatsoever arising under any statute or at common law in respect of personal injury to or the death of any person whomsoever arising out of or in the course of or caused by the carrying out of the Works, except to the extent that the same is due to any act or neglect of the Employer or of any person for whom the Employer is responsible including the persons employed or otherwise engaged by the Employer to whom clause 29 refers.

- 20.2 Liability of Contractor – injury or damage to property – Indemnity to Employer
- The Contractor shall, subject to clause 20.3 and, where applicable, clause 22C.1, be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings in respect of any injury or damage whatsoever to any property real or personal in so far as such injury or damage arises out of or in the course of or by reason of the carrying out of the Works, and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor, his servants or agents or of any person employed or engaged upon or in connection with the Works or any part thereof, his servants or agents or of any other person who may properly be on the site upon or in connection with the Works or any part thereof, his servants or agents, other than the Employer or any person employed, engaged or authorised by him or by any local authority or statutory undertaker executing work solely in pursuance of its statutory rights or obligations.
- 20.3 Injury or damage to property exclusion of the works and site materials
- .1 Subject to clause 20.3.2 the reference in clause 20.2 to 'property real or personal' does not include the Works, work executed and/or Site Materials up to and including the date of issue of the certificate of Practical Completion or up to and including the date of determination of the employment of the Contractor (whether or not the validity of that determination is disputed) under clause 27 or clause 28 or clause 28A or, where clause 22C applies, under clause 27 or clause 28 or clause 28A or clause 22C.4.3, whichever is the earlier.
- .2 if clause 18 has been operated then, in respect of the relevant part and as from the relevant date, such relevant part shall not be regarded as 'the Works' or 'work executed' for the purpose of clause 20.3.1.
- 21 Contractors Insurance –
- 21.1 Personal injury or Death – injury or Damage to property
- .1 .1 Without prejudice to his obligation to indemnify the Employer under clause 20 the Contractor shall take out and maintain insurance which shall comply with clause 21.1.1.2 in respect of claims arising out of his liability referred to in clauses 20.1 and 20.2.
- .1 .2 The insurance in respect of claims for personal injury to or the death of any person under a contract of service or apprenticeship with the Contractor, and arising out of and in the course of such person's employment, shall comply with all relevant legislation. For all other claims to which clause 21.1.1.1 applies the insurance cover :
- shall indemnify the Employer in like manner to the Contractor but only to the extent that the Contractor may be liable to indemnify the Employer under the terms of this Contract; and
 - shall be not less than the sum stated in the Appendix [I.1] for any one occurrence or series of occurrences arising out of one event.
- .2 AS and when he is reasonably required to do so by the Employer the Contractor shall send to the Contract Administrator/Architect for inspection by the Employer documentary evidence that the insurances required by clause 21.1.1.1 have been taken out and are being maintained, but at any time the Employer may (but not unreasonably or vexatiously) require to have sent to the Contract Administrator/Architect for inspection by the Employer the relevant policy or policies and the premium receipts therefore.
- .3 If the Contractor defaults in taking out or in maintaining insurance as provided in clause 21.1.1.1 the Employer may himself insure against any liability or expense which he may incur arising out of such default and a sum or sums equivalent to the amount paid or payable by him in respect of premiums therefore may be deducted by him from any monies due or to become due to the Contractor under this Contract or such amount may be recoverable by the Employer from the Contractor as a debt.

Footnote

[I.1] The Contractor may, if he so wishes, insure for a sum greater than that stated in the Appendix.

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| 21.2 | Insurance – Liability etc. of Employer – | <p>.1 Where it is stated in the Appendix that the insurance to which clause 21.2.1 refers may be required by the Employer the Contractor shall, if so instructed by the Contract Administrator/Architect, take out and maintain a Joint Names Policy for such amount of indemnity as is stated in the Appendix in respect of any expense, liability, loss, claim or proceedings which the Employer may incur or sustain by reason of injury or damage to any property other than the Works and Site Materials caused by collapse, subsidence, heave, vibration, weakening or removal of support or lowering of ground water arising out of or in the course of or by reason of the carrying out of the Works excepting injury or damage:</p> <p>.1 .1 for which the Contractor is liable under clause 20.2;</p> <p>.1 .2 attributable to error or omissions in the designing of the Works;</p> <p>.1 .3 which can reasonably be foreseen to be inevitable having regard to the nature of the work to be executed or the manner of its execution;</p> <p>.1 .4 which it is the responsibility of the Employer to insure under clause 22C.1 (if applicable);</p> <p>.1 .5 arising from war risks or the Excepted Risks.</p> <p>.2 Any such insurance as is referred to in clause 21.2.1 shall be placed with insurers to be approved by the Employer, and the Contractor shall send to the Contract Administrator/Architect for deposit with the Employer the policy or policies and the premium receipts therefore.</p> <p>.3 The amounts expended by the Contractor to take out and maintain the insurance referred to in clause 21.2.1 shall be added to the Contract Sum.</p> <p>.4 If the Contractor defaults in taking out or in maintaining the Joint Names Policy as provided in clause 21.2.1 the Employer may himself insure against any risk in respect of which the default shall have occurred.</p> |
| 21.3 | Excepted risks – | Notwithstanding the provisions of clauses 20.1, 20.2 and 21.1.1, the Contractor shall not be liable either to indemnify the Employer or to insure against any personal injury to or the death of any person or any damage, loss or injury caused to the Works or Site Materials, work executed, the site, or any property, by the effect of an Excepted Risk. |
| 22 | | Insurance of the Works [m] |
| 22.1 | Insurance of the works - Alternative clauses | Clause 22A or clause 22B or clause 22C shall apply whichever clause is stated to apply in the Appendix. |
| 22.2 | Definition | <p>In clause 22A, 22B, 22C and, so far as relevant, in other clauses of the Conditions the following phrases shall have the meaning given below :</p> <p>All Risks Insurance: [n] insurance which provides cover against any physical loss or damage to work executed and Site Materials and against the reasonable cost of the removal and disposal of debris and of any shoring and propping of the Works which results from such physical loss or damage but excluding the cost necessary to repair, replace or rectify</p> <p>1 property which is defective due to</p> <p>.1 wear and tear,</p> <p>.2 obsolescence,</p> <p>.3 deterioration, rust or mildew;</p> |

Footnotes

[m] Clause 22A is applicable to the erection of new buildings where the Contractor is required to take out a Joint Names Policy for All Risks Insurance for the Works and clause 22B is applicable where the Employer has elected to take out such Joint Names Policy, Clause 22C is to be used for alterations of or extensions to existing structures under which the Employer is required to take out a Joint Names Policy for All Risks Insurance for the Works and also a Joint Names Policy to insure the existing structures and their contents owned by him or for which he is responsible against loss or damage thereto by the Specified Perils.

[n] The definition of 'All Risks Insurance' in clause 22.2 defines the risks for which insurance is required. Policies issued by insurers are not standardised and there will be some variation in the way the insurance for those risks is expressed. See also Practice Note 22 and Guide, Part A.

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| 22.2 | All Risks Insurance: [m.1] Continued | .2 | any work executed or any Site Materials lost or damaged as a result of its own defect in design, plan, specification, material or workmanship or any other work executed which is lost or damaged in consequence thereof where such work relied for its support or stability on such work which was defective |
| | | .3 | loss or damage caused by or arising from |
| | | .1 | any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation, commandeering, nationalisation or requisition or loss or destruction of or damage to any property by or under the order of any government de jure or de facto or public, municipal or local authority; |
| | | .2 | disappearance or shortage if such disappearance or shortage is only revealed when an inventory is made or is not traceable to an identifiable event; |
| | | .3 | an Excepted Risk (as defined in clause 1.3); |
| | Joint Names Policy | | : a policy of insurance which includes the Employer and the Contractor as the insured and under which the insurers have no right of recourse against any person named as an insured, or, pursuant to clause 22.3, recognised as an insured thereunder. |
| | Terrorism: | | any act of any person acting on behalf of or in connection with any organisation with activities directed towards the overthrowing or influencing of any government de jure or de facto by force or violence |
| | Terrorism cover: | | insurance provided under a Joint Names Policy to which clauses 22A, 22B and 22C refer for physical loss or damage to work executed and Site Materials and to an existing structure and/or its contents due to fire or explosion caused by terrorism |
| 22.3 | Nominated Domestic sub-contractors benefits of joint policies -Specified perils | .1 | The Contractor where clause 22A applies, and the Employer where either clause 22B or clause 22C applies, shall ensure that the Joint Names Policy referred to in clause 22A.1 or clause 22A.3 or the Joint Names Policies referred to in clause 22B.1 or in clauses 22C.1 and 22C.2 shall |
| | | | either provide for recognition of each sub-contractor nominated by the Contract Administrator/Architect as an insured under the relevant Joint Names Policy |
| | | or | include a waiver by the relevant insurers or any right or subrogation which they may have against any such Nominated Sub-Contractor in respect of loss or damage by the Specified Perils to the Works and Site Materials where clause 22A or clause 22B or clause 22C.2 applies and, where clause 22C.1 applies, in respect of loss or damage by the Specified Perils to the existing structures (which shall include from the relevant date any relevant part to which clause 18.1.3 refers) together with the contents thereof owned by the Employer or for which he is responsible; and that this recognition or waiver shall continue up to and including the date of issue of the certificate of practical completion of the sub-contract works (as referred to in clause 2.11 of Conditions NSC/C (Conditions of Nominated Sub-Contract) or the date of determination of the employment of the Contractor (whether or not the validity of that determination is contested) under clause 27 or clause 28 or clause 28A or, where clause 22C applies, under clause 27 or clause 28 or clause 28A or clause 22C.4.3, whichever is the earlier. The provisions of clause 22.3.1 shall apply also in respect of any Joint Names Policy taken out by the Employer under clause 22A.2 or by the Contractor under clause 22B.2 or under clause 22C.3 in respect of a default by the Employer |
| | | .2 | Except in respect of the Joint Names Policy referred to in clause 22C.1 (or the Joint Names Policy referred to in clause 22C.3 in respect of a default by the Employer under clause 22C.1) the provisions of clause 22.3.1 in regard to recognition or waiver shall apply to Domestic Sub-Contractors. Such recognition or waiver for Domestic Sub-Contractors shall continue up to and including the date of issue of any certificate or other document which states that the domestic sub-contract works are practically complete or the date of determination of the employment of the Contractor as referred to in clause 22.3.1, whichever is the earlier |

Footnote

[m.1] In any policy for 'All Risks Insurance' taken out under clauses 22A, 22B or 22C.2 cover should not be reduced by the terms of any exclusion written in the policy beyond the terms of paragraph 2: thus an exclusion in terms 'This Policy excludes all loss of or damage to the property insured due to defective design, plan, specification, materials or workmanship' would not be in accordance with the terms of those clauses and of the definition of 'All Risks Insurance'.

Cover which goes beyond the terms of the exclusion in paragraph 2 may be available though not standard in all policies taken out to meet the obligation in clause 22A, 22B or 22C.2: and leading insurers who under-write 'All Risks' cover for the Works have confirmed that where such improved cover is being given it will not be withdrawn as a consequence of the publication of the terms of the definition in clause 22.2 or 'All Risks Insurance'.

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| 22A | Erection of new buildings - All Risks Insurance of the Works by the Contractor [0.1] |
| 22A.1 | <p>New buildings - Contractors to take out and maintain a joint names policy for all risks insurance</p> <p>The Contractor shall take out and maintain a Joint Names Policy for All Risks Insurance for cover no less than that defined in clause 22.2 [n] [0.1] for the full reinstatement value of the Works (plus the percentage, if any, to cover professional fees stated in the Appendix) and shall (subject to clause 18.1.3) maintain such Joint Names Policy up to and including the date of issue of the certificate of Practical Completion or up to and including the date of determination of the employment of the Contractor under clause 27 or clause 28 or clause 28A (whether or not the validity of that determination is contested), whichever is the earlier.</p> |
| 22A.2 | <p>Single policy - insurers approved by employer- failure by contractor to insure</p> <p>The Joint Names Policy referred to in clause 22A.1 shall be taken out with insurers approved by the Employer and the Contractor shall send to the Contract Administrator/Architect for deposit with the Employer that Policy and the premium receipt therefore and also any relevant endorsement or endorsements thereof as may be required to comply with the obligation to maintain that Policy set out in clause 22A.1 and the premium receipts therefore. If the Contractor defaults in taking out or in maintaining the Joint Names Policy as required by clauses 22A.1 and 22A.2 the Employer may himself take out and maintain a Joint Names Policy against any risk in respect of which the default shall have occurred and a sum or sums equivalent to the amount paid or payable by him in respect of premiums therefore may be deducted by him from any monies due or to become due to the Contractor under this Contract or such amount may be recoverable by the Employer from the Contractor as a debt.</p> |
| 22A.3 | <p>Use of annual policy maintained by contractor- alternative to use of clause 22A.2</p> <p>.1 If the Contractor independently of his obligations under this Contract maintains a policy of insurance which provides (inter alia) All Risks Insurance for cover no less than that defined in clause 22.2 for the full reinstatement value of the Works (plus the percentage, if any, to cover professional fees stated in the Appendix) then the maintenance by the Contractor of such policy shall, if the policy is a Joint Names Policy in respect of the aforesaid Works, be a discharge of the Contractor's obligation to take out and maintain a Joint Names Policy under clause 22A.1. If and so long as the Contractor is able to send to the Contract Administrator/Architect for inspection by the Employer as and when he is reasonably required to do so by the Employer documentary evidence that such a policy is being maintained then the Contractor shall be discharged from his obligation under clause 22A.2 to deposit the policy and the premium receipt with the Employer but on any occasion the Employer may (but not unreasonably or vexatiously) require to have sent to the Contract Administrator/Architect for inspection by the Employer the policy to which clause 22A.3.1 refers and the premium receipts therefore. The annual renewal date, as supplied by the Contractor, of the insurance referred to in clause 22A.3.1 is stated in the Appendix.</p> <p>.2 The provisions of clause 22A.2 shall apply in regard to any default in taking out or in maintaining insurance under clause 22A.3.1.</p> |
| 22A.4 | <p>Loss or damage to works - insurance claims contractor's obligation - use of insurance monies</p> <p>.1 If any loss or damage affecting work executed or any part thereof or any Site Materials is occasioned by any one or more of the risks covered by the Joint Names Policy referred to in clause 22A.1 or clause 22A.2 or clause 22A.3 then, upon discovering the said loss or damage, the Contractor shall forthwith give notice in writing both to the Contract Administrator/Architect and to the Employer of the extent, nature and location thereof.</p> <p>.2 The occurrence of such loss or damage shall be disregarded in computing any amounts payable to the Contractor under or by virtue of this Contract.</p> <p>.3 After any inspection required by the insurers in respect of a claim under the Joint Names Policy referred to in clause 22A.1 or clause 22A.2 or clause 22A.3 has been completed the Contractor with due diligence shall restore such work damaged, replace or repair any such Site Materials which have been lost or damaged, remove and dispose of any debris and proceed with the carrying out and completion of the Works.</p> <p>.4 The Contractor, for himself and for all Nominated and Domestic Sub-Contractors who are, pursuant to clause 22.3, recognised as an insured under the Joint Names Policy referred to in clause 22A.1 or clause 22A.2 or clause 22A.3, shall authorise the insurers to pay all monies from such insurance in respect of the loss or damage referred to in clause 22A.4.1 to the Employer. The Employer shall pay all such monies (less only the percentage, if any, to cover professional fees stated in the Appendix) to the Contractor by instalments under certificates of the Contract Administrator/Architect issued at the Period of Interim Certificates.</p> <p>.5 The Contractor shall not be entitled to any payment in respect of the restoration, replacement or repair of such loss or damage and (when required) the removal and disposal of debris other than the monies received under the aforesaid insurance.</p> |
| 22B | Erection of new buildings - All Risks Insurance of the Works by the Employer (NOT APPLICABLE) |
| 22C | Insurance of existing structures - insurance of Works in or extensions to existing structures (NOT APPLICABLE) |

Footnote

[0.1] In some cases it may not be possible for insurance to be taken out against certain of the risks covered by the definition of 'All Risks Insurance'. This matter should be arranged between the parties prior to entering into the Contract and either the definition of 'All Risks Insurance' given in clause 22.2 amended or the risks actually covered should replace this definition; in the latter case clause 22A.1,

clause 22A.3 or clause 22B.1, whichever is applicable, and other relevant clauses in which the definition 'All Risks Insurance' is used should be amended to include the words used to replace this definition.

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| 23 | | Date of Possession, completion and postponement |
| 23.1 | Date of Possession progress to Completion Date | <p>.1 On the Date of Possession, possession of the site shall be given to the Contractor who shall thereupon begin the Works, and regularly and diligently proceed with the same and shall complete the same on or before the Completion Date.</p> <p>.2 Where clause 23.1.2 is stated in the Appendix to apply the Employer may defer the giving of possession for a period not exceeding six weeks or such lesser period stated in the Appendix calculated from the Date of Possession.</p> |
| 23.2 | Contract Administrator/Architect of Instructions Postponement | The Contract Administrator/Architect may issue instructions in regard to the postponement of any work to be executed under the provisions of this Contract. |
| 23.3 | Possession by contractor - use or occupation by | <p>.1 For the purposes of the Works insurances the Contractor shall retain possession of the site and the Works up to and including the date of issue of the certificate of Practical Completion, and subject to clause 18, the Employer shall not be entitled to take possession of any part or parts of the Works until that date.</p> <p>.2 Notwithstanding the provisions of clause 23.3.1 the Employer may, with the consent in writing of the Contractor, use or occupy the site or the Works or part thereof whether for the purposes of storage of his goods or otherwise before the date of issue of the certificate of Practical Completion by the Contract Administrator/Architect. Before the Contractor shall give his consent to such use or occupation the Contractor or the Employer shall notify the insurers under clause 22A or clause 22B or clause 22C.2 to .4 whichever may be applicable and obtain confirmation that such use or occupation will not prejudice the insurance. Subject to such confirmation the consent of the Contractor shall not be unreasonably withheld.</p> <p>.3 Where clause 22A.1 or clause 22A.3 applies and the insurers in giving the confirmation referred to in clause 23.3.2 have made it a condition of such confirmation that an additional premium is required the Contractor shall notify the Employer of the amount of the additional premium. If the Employer continues to require use or occupation under clause 23.3.2 the additional premium required shall be added to the Contract Sum and the Contractor shall provide the Employer, if so requested, with the additional premium receipt therefore.</p> |
| 24 | | Damages for non-completion |
| 24.1 | Certificate of Contract Administrator/Architect | If the Contractor fails to complete the Works by the Completion Date then the Contract Administrator/Architect shall issue a certificate to that effect. In the event of a new Completion Date being fixed after the issue of such a certificate such fixing shall cancel that certificate and the Contract Administrator/Architect shall issue such further certificate under clause 24.1 as may be necessary. |
| 24.2 | | <p>.1 Subject to the issue of any certificate under clause 24.1 the Contractor shall, as the Employer may require in writing not later than the date of the Final Certificate, pay or allow to the Employer liquidated and ascertained damages at the rate stated in the Appendix (or at such lesser rate as may be specified in writing by the Employer) for the period between the Completion Date and the date of Practical Completion and the Employer may deduct the same from any monies due or to become due to the Contractor under this Contract (including any balance stated as due to the Contractor in the Final Certificate) or the Employer may recover the same from the Contractor as a debt.</p> <p>.2 If, under clause 25.3.3, the Contract Administrator/Architect fixes a later Completion date or a later Completion Date is stated in a confirmed acceptance of a 13A Quotation the Employer shall pay or repay to the Contractor any amounts recovered allowed or paid under clause 24.2.1 for the period up to such later Completion Date.</p> <p>.3 Notwithstanding the issue of any further certificate of the Contract Administrator/Architect under clause 24.1 any requirement of the Employer which has been previously stated in writing in accordance with clause 24.2.1 shall remain effective unless withdrawn by the Employer.</p> |

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| 25 | | Extension of time [p] |
| 25.1 | Interpretation of delay | In clause 25 any reference to delay, notice or extension of time includes further delay, further notice or further extension of time. |
| 25.2 | Notice by Contractor of delay to progress | <p>.1 .1 If and whenever it becomes reasonably apparent that the progress of the Works is being or is likely to be delayed the Contractor shall forthwith give written notice to the Contract Administrator/Architect of the material circumstances including the cause or causes of the delay and identify in such notice any event which in his opinion is a Relevant Event.</p> <p>.1 .2 Where the material circumstances of which written notice has been given under clause 25.2.1 include reference to a Nominated Sub-Contractor, the Contractor shall forthwith send a copy of such written notice to the Nominated Sub-Contractor concerned.</p> <p>.2 In respect of each and every Relevant Event identified in the notice given in accordance with clause 25.2.1.1 the Contractor shall, if practicable in such notice, or otherwise in writing as soon as possible after such notice :</p> <p>.2 .1 give particulars of the expected effects thereof; and</p> <p>.2 .2 estimate the extent, if any, of the expected delay in the completion of the Works beyond the Completion Date resulting therefrom whether or not concurrently with delay resulting from any other Relevant Event and shall give such particulars and estimate to any Nominated Sub-Contractor to whom a copy of any written notice has been given under clause 25.2.1.2.</p> <p>.3 The Contractor shall give such further written notices to the Contract Administrator/Architect, and send a copy to any Nominated Sub-Contractor to whom a copy of any written notice has been given under clause 25.2.1.2, as may be reasonably necessary or as the Contract Administrator/Architect may reasonably require for keeping up-to-date the particulars and estimate referred to in clauses 25.2.2.1 and 25.2.2.2 including any material change in such</p> |
| 25.3 | Fixing Completion Date | <p>.1 If, in the opinion of the Contract Administrator/Architect, upon receipt of any notice, particulars and estimate under clauses 25.2.1.1 and 25.2.2 and 25.2.3</p> <p>.1 .1 any of the events which are stated by the Contractor to be the cause of the delay is Relevant Event and</p> <p>.1 .2 the completion of the Works is likely to be delayed thereby beyond the Completion Date</p> <p>the Contract Administrator/Architect shall in writing to the Contractor give an extension of time by fixing such later date as the Completion Date as he then estimates to be fair and reasonable. The Contract Administrator/Architect shall, in fixing such new Completion Date, state:</p> <p>.1 .3 which of the Relevant Events he has taken into account and</p> <p>.1 .4 the extent, if any, to which he has had regard to any instruction under clause 13.2 requiring as a Variation the omission of any work issued since the fixing of the previous Completion Date,</p> <p>and shall, if reasonably practicable having regard to the sufficiency of the aforesaid notice, particulars and estimates, fix such new Completion date not later than 12 weeks from receipt of the notice and of reasonably sufficient particulars and estimate, or, where the period between receipt thereof and the Completion Date is less than 12 weeks, not later than the Completion Date</p> <p>ii, in the opinion of the Contract Administrator/Architect, upon receipt of any such notice, particulars and estimate, it is not fair and reasonable to fix a later date as a new Completion date, the Contract Administrator/Architect shall if reasonably practicable having regard to the sufficiency of the aforesaid notice, particulars and estimate so notify the Contractor in writing not later than 12 weeks from receipt of the notice, particulars and estimate, or, where the period between receipt thereof and the Completion Date is less than 12 weeks, not later than the</p> |

Footnote

[p] See clauses 38.4.7, 39.5.7 and 40.7 (restriction of fluctuations or price adjustment during period where Contractor is in default over completion)

25.3

- .2 After the first exercise by the Contract Administrator/Architect of his duty under clause 25.3.1 or after any revision to the Completion Date stated by the Contract Administrator/Architect in a confirmed acceptance of a 13A Quotation in respect of a Variation the Contract Administrator/Architect may in writing fix a Completion Date earlier than that previously fixed under clause 25 or than that stated by the Contract Administrator/Architect in a confirmed acceptance of a 13A Quotation if in his opinion the fixing of such earlier Completion Date is fair and reasonable having regard to the omission of any work or obligation instructed or sanctioned by the Contract Administrator/Architect under clause 13 after the last occasion on which the Contract Administrator/Architect fixed a new Completion Date.

Provided that no decision under clause 25.3.2 shall alter the length of any adjustment to the time required by the Contractor for the completion of the Works in respect of a Variation for which a 13A Quotation has been given and which has been stated in a confirmed acceptance of a 13A Quotation

- .3 After the Completion Date, if this occurs before the date of Practical Completion, the Contract Administrator/Architect may, and not later than the expiry of 12 weeks after the date of Practical Completion shall, in writing to the Contractor either
- .3 .1 fix a Completion Date later than that previously fixed if in his opinion the fixing of such later Completion Date is fair and reasonable having regard to any of the Relevant Events, whether upon reviewing a previous decision or otherwise and whether or not the Relevant Event has been specifically notified by the Contractor under clause 25.2.1.1; or
- .3 .2 fix a Completion Date earlier than that previously fixed under clause 25 or stated in a confirmed acceptance of a 13A Quotation if in his opinion the fixing of such earlier Completion Date is fair and reasonable having regard to the omission of any work or obligation instructed or sanctioned by the Contract Administrator/Architect under clause 13 after the last occasion on which the Contract Administrator/Architect fixed a new
- .3 .3 confirm to the Contractor the Completion Date previously fixed or stated in a confirmed acceptance of a 13A Quotation.

Provided that no decision under clause 25.3.3.1 or clause 25.3.3.2 shall alter the length of any adjustment to the time required by the Contractor for the completion of the Works in respect of a Variation for which a 13A Quotation has been given and which has been stated in a confirmed acceptance of a 13A Quotation.

- .4 Provided always that :

- .4 .1 the Contractor shall use constantly his best endeavours to prevent delay in the progress of the Works, howsoever caused, and to prevent the completion of the Works being delayed or further delayed beyond the Completion Date;
- .4 .2 the Contractor shall do all that may reasonably be required to the satisfaction of the Contract Administrator/Architect to proceed with the Works.
- .5 The Contract Administrator/Architect shall notify in writing to every Nominated Sub-Contractor each decision of the Contract Administrator/Architect under clause 25.3 fixing a Completion Date and each revised Completion Date stated in the confirmed acceptance of a 13A Quotation together with, where relevant, any revised period or periods for the completion of the work of each Nominated Sub-Contractor stated in such confirmed acceptance.
- .6 No decision of the Contract Administrator/Architect under clause 25.3.2 or clause 25.3.3.2 shall fix a Completion Date earlier than the Date for Completion stated in the Appendix.

25.4 Relevant Events

The following are the Relevant Events referred to in clause 25 :

- .1 force majeure;
- .2 exceptionally adverse weather conditions;
- .3 loss or damage occasioned by any one or more of the Specified Perils;
- .4 civil commotion, local combination of workmen, strike or lock-out affecting any of the trades employed upon the Works or any of the trades engaged in the preparation, manufacture or transportation of any of the goods or materials required for the Works;

- 25.4
- .5 compliance with the Contract Administrator/Architect's instructions
 - .5 .1 under clauses 2.3, 2.4.1, 13.2 (except for a confirmed acceptance of a 13A Quotation), 13.3 (except compliance with an Contract Administrator/Architect's instruction for the expenditure of a provisional sum for defined work* or of a provisional sum for Performance Specified Work), 13A.4.1, 23.2, 34, 35 or 36; or
 - .5 .2 in regard to the opening up for inspection of any work covered up or the testing of any of the work, materials or goods in accordance with clause 8.3 (including making good in consequence of such opening up or testing) unless the inspection or test showed that the work, materials or goods were not in accordance with this Contract;
 - .6 the Contractor not having received in due time necessary instructions (including those for or in regard to the expenditure of provisional sums), drawings, details or levels from the Contract Administrator/Architect for which he specifically applied in writing provided that such application was made on a date which having regard to the Completion Date was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same;
 - .7 delay on the part of Nominated Sub-Contractors or Nominated Suppliers which the Contractor has taken all practicable steps to avoid or reduce;
 - .8 .1 the execution of work not forming part of this Contract by the Employer himself or by persons employed or otherwise engaged by the Employer as referred to in clause 29 or the failure to execute such work;
 - .8 .2 the supply by the Employer of materials and goods which the Employer has agreed to provide for the Works or the failure so to supply;
 - .9 the exercise after the Base Date by the Federal or State Government or any statutory power which directly affects the execution of the Works by restricting the availability or use of labour which is essential to the proper carrying out of the Works or preventing the Contractor from, or delaying the Contractor in, securing such goods or materials or such fuel or energy as are essential to the proper carrying out of the Works;
 - .10 .1 the Contractor's inability for reasons beyond his control and which he could not reasonably have foreseen at the Base Date to secure such labour as is essential to the proper carrying out of the Works; or
 - .10 .2 the Contractor's inability for reasons beyond his control and which he could not reasonably have foreseen at the Base Date to secure such goods or materials as are essential to the proper carrying out of the Works;
 - .11 the carrying out by a local authority or statutory undertaker of work in pursuance of its statutory obligations in relation to the Works, or the failure to carry out such work;
 - .12 failure of the Employer to give in due time ingress to or egress from the site of the Works or any part thereof through or over any land, buildings, way or passage adjoining or connected with the site and in the possession and control of the Employer, in accordance with the Contract Bills and/or the Contract Drawings, after receipt by the Contract Administrator/Architect of such notice, if any, as the Contractor is required to give, or failure of the Employer to give such ingress or egress as otherwise agreed between the Contract Administrator/Architect and the Contractor;
 - .13 where clause 23.1.2 is stated in the Appendix to apply, the deferment by the Employer of giving possession of the site under clause 23.1.2;
 - .14 by reason of the execution of work for which an Approximate Quantity is included in the Contract Bills which is not a reasonably accurate forecast of the quantity of work required;
 - .15 delay which the Contractor has taken all practicable steps to avoid or reduce consequent upon a change in the Statutory Requirements after the Base Date which necessitates some alteration or modification to any Performance Specified Work;
 - .16 the use or threat of terrorism and/or the activity of the relevant authorities in dealing with such use or threat.

Footnote

* See footnote to clause 1.3 (Definitions).

- 26 Loss and expense caused by matters materially affecting regular progress of the Works
- 26.1 Matters materially Affecting regular Progress of the Works-direct loss and/or expense
- If the Contractor makes written application to the Contract Administrator/Architect stating that he has incurred or is likely to incur direct loss and/or expense in the execution of this Contract for which he would not be reimbursed by a payment under any other provision in this Contract due to deferment of giving possession of the site loss under clause 23.1.2 where clause 23.1.2 is stated in the Appendix to be applicable or because the regular progress of the Works or of any part thereof has been or is likely to be materially affected by any one or more of the matters referred to in clause 26.2; and if and as soon as the Contract Administrator/Architect is of the opinion that the direct loss and/or expense has been incurred or is likely to be incurred due to any such deferment of giving possession or that the regular progress of the Works or of any part thereof has been or is likely to be so materially affected as set out in the application of the Contractor then the Contract Administrator/Architect from time to time thereafter shall ascertain, or shall instruct the Quantity Surveyor to ascertain, the amount of such loss and/or expense which has been or is being incurred by the Contractor; provided always that:
- .1 the Contractor's application shall be made as soon as it has become, or should reasonably have become, apparent to him that the regular progress of the Works or of any part thereof has been or was likely to be affected as aforesaid; and
 - .2 the Contractor shall in support of his application submit to the Contract Administrator/Architect upon request such information as should reasonably enable the Contract Administrator/Architect to form an opinion as aforesaid; and
 - .3 the Contractor shall submit to the Contract Administrator/Architect or to the Quantity Surveyor upon request such details of such loss and/or expense as are reasonably necessary for such ascertainment as aforesaid.
- 26.2 List of matters
- The following are the matters referred to in clause 26.1 :
- .1 the Contractor not having received in due time necessary instructions (including those for or in regard to the expenditure of provisional sums), drawings, details or levels from the Contract Administrator/Architect for which he specifically applied in writing provided that such application was made on a date which having regard to the Completion Date was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same;
 - .2 the opening up for inspection of any work covered up or the testing of any of the work, materials or goods in accordance with clause 8.3 (including making good in consequence of such opening up or testing), unless the inspection or test showed that the work, materials or goods were not in accordance with this Contract;
 - .3 any discrepancy in or divergence between the Contract Drawings and/or the Contract Bills and/or the Numbered Documents;
 - .4 .1 the execution of work not forming part of this Contract by the Employer himself or by persons employed or otherwise engaged by the Employer as referred to in clause 29 or the failure to execute such work;
 - .4 .2 the supply by the Employer of materials and goods which the Employer has agreed to provide for the Works or the failure so to supply;
 - .5 Contract Administrator/Architect's instructions under clause 23.2 issued in regard to the postponement of any work to be executed under the provisions of this Contract;
 - .6 failure of the Employer to give in due time ingress to or egress from the site of the Works or any part thereof through or over any land, buildings, way or passage adjoining or connected with the site and in the possession and control of the Employer, in accordance with the Contract Bills and/or the Contract Drawings, after receipt by the Contract Administrator/Architect of such notice, if any, as the Contractor is required to give, or failure of the Employer to give such ingress or egress as otherwise agreed between the Contract Administrator/Architect and the Contractor;

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| 26.2 | .7 | <p>Contract Administrator/Architect's instructions issued</p> <p style="padding-left: 20px;">under clause 13.2 or clause 13A.4.1 requiring a Variation (except for a Variation for which the Contract Administrator/Architect has given a confirmed acceptance of a 13A Quotation or for a Variation thereto)</p> <p style="padding-left: 20px;">or</p> <p style="padding-left: 20px;">under clause 13.3 in regard to the expenditure of provisional sums (other than instructions to which clause 13.4.2 refers or an instruction for the expenditure of a provisional sum for defined work* or of a provisional sum for Performance Specified Work);</p> <p>.8 the execution of work for which an Approximate Quantity is included in the Contract Bills which is not a reasonably accurate forecast of the Quantity of work required.</p> |
| 26.3 | Relevance of certain extensions of Completion Date | <p>If and to the extent that it is necessary for ascertainment under clause 26.1 of loss and/or expense the Contract Administrator/Architect shall state in writing to the Contractor what extension of time, if any, has been made under clause 25 in respect of the Relevant Event or Events referred to in clause 25.4.5.1 (so far as that clause refers to clauses 2.3, 13.2, 13.3 and 23.2) and in clauses 25.4.5.2, 25.4.6, 25.4.8 and 25.4.12.</p> |
| 26.4 | Nominated sub - Contractors – matters materially affecting regular progress of the Sub Contractor Works direct loss and /or expense | <p>.1 The Contractor upon receipt of a written application properly made by a Nominated Sub-Contractor under clause 4.38.1 of Sub-Contract Conditions NSC/C (Conditions of Nominated Sub-Contract) shall pass to the Contract Administrator/Architect a copy of that written application. If and as soon as the Contract Administrator/Architect is of the opinion that the loss and/or expense to which the said clause 4.38.1 refers has been incurred or is likely to be incurred due to any deferment of the giving of possession where clause 23.1.2 is stated in the Appendix to apply or that the regular progress of the sub-contract works or of any part thereof has been or is likely to be materially affected as referred to in clause 4.38.1 of Sub-Contract Conditions NSC/C (Conditions of Nominated Sub-Contract) and as set out in the application of the Nominated Sub-Contractor then the Contract Administrator/Architect shall himself ascertain, or shall instruct the Quantity Surveyor to ascertain, the amount of loss and/or expense to which the said clause</p> <p>.2 If and to the extent that it is necessary for the ascertainment of such loss and/or expense the Contract Administrator/Architect shall state in writing to the Contractor with a copy to the Nominated Sub-Contractor concerned what was the length of the revision of the period or periods for completion of the subcontract works or of any part thereof to which he gave consent in respect of the Relevant Event or Events set out in clause 2.6.5.1 (so far as that clause refers to clauses 2.3, 13.2, 13.3 and 23.2 of the Main Contract Conditions), 2.6.5.2, 2.6.6, 2.6.8, 2.6.12 and 2.6.15 of Conditions NSC/C (Conditions of Nominated Sub-Contract).</p> |
| 26.5 | Amounts ascertained - added to Contract Sum | <p>Any amount from time to time ascertained under clause 26 shall be added to the Contract Sum.</p> |
| 26.6 | Reservation of Rights and remedies of Contractor | <p>The provisions of clause 26 are without prejudice to any other rights and remedies which the Contractor may possess.</p> |
| 27 | 27 | <p>Determination by Employer</p> |
| 27.1 | Notices under clause 27 | <p>Any notice or further notice to which clauses 27.2.1, 27.2.2, 27.2.3 and 27.3.4 refer shall be in writing and given by actual physical delivery, or by registered post or by recorded delivery. If sent by registered post or recorded delivery the notice or further notice shall, subject to proof to the contrary, be deemed to have been received 48 hours after the date of posting (excluding Saturday and Sunday and public holidays).</p> |
| 27.2 | .1 | <p>If, before the date of Practical Completion, the Contractor shall make a default in any one or more of the following respects :</p> <p>.1 .1 without reasonable cause he wholly or substantially suspends the carrying out of the Works; or</p> <p>.1 .2 he fails to proceed regularly and diligently with the Works; or</p> |

Footnote

* See footnote to clause 1.3 (Definitions)

27.2

continued

- .1 .3 he refuses or neglects to comply with a written notice or instruction from the Contract Administrator/Architect requiring him to remove any work, materials or goods not in accordance with this Contract and by such refusal or neglect the Works are materially affected;
- or
- .1 .4 he fails to comply with the provisions of clause 19.1.1 or clause 19.2.2, the Contract Administrator/Architect may give to the Contractor a notice specifying the default or defaults (the 'specified default or defaults').
- .2 If the Contractor continues a specified default for 14 days from receipt of the notice under clause 27.2.1 then the Employer may on, or within 10 days from, the expiry of that 14 days by a further notice to the Contractor determine the employment of the Contractor under this Contract. Such determination shall take effect on the date of receipt of such further notice.
- .3 If
- the Contractor ends the specified default or defaults, or
- the Employer does not give the further notice referred to in clause 27.2.2
- and the Contractor repeats a specified default (whether previously repeated or not) then, upon or within a reasonable time after such repetition, the Employer may by notice to the Contractor determine the employment of the Contractor under this Contract. Such determination shall take effect on the date of receipt of such notice.
- .4 A notice of determination under clause 27.2.2 or clause 27.2.3 shall not be given unreasonably or vexatiously.

27.3 Insolvency of contractor

- .1 If the Contractor
- makes a composition or arrangement with his creditors, or becomes bankrupt, or
- being a company,
- makes a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement to be approved in accordance with the Companies Act 1985 or the Insolvency Act 1986 as the case may be or any amendment or re-enactment thereof, or
- has a provisional liquidator appointed, or
- has a winding-up order made, or
- passes a resolution for voluntary winding-up (except for the purposes of amalgamation or reconstruction), or
- under the Insolvency Act 1986 or any amendment or re-enactment thereof has an administrator or an administrative receiver appointed
- then :
- .2 the Contractor shall immediately inform the Employer in writing if he has made a composition or arrangement with his creditors, or being a company, has made a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement to be approved in accordance with the Companies Act 1985 or the Insolvency Act 1986 as the case may be or any amendment or re-enactment thereof;
- .3 where a provisional liquidator or trustee in bankruptcy is appointed or a winding-up order is made or the Contractor passes a resolution for voluntary winding-up (except for the purposes of amalgamation or reconstruction) the employment of the Contractor under this Contract shall be forthwith automatically determined but the said employment may be reinstated if the Employer and the Contractor [p.1] shall so agree;

Footnote

[p.1] See JCT Practice Note 24: after certain insolvency events an Insolvency Practitioner acts for the Contractor.

- 27.3 .4 where clause 27.3.3 does not apply the Employer may at any time, unless an agreement to which clause 27.5.2.1 refers has been made, by notice to the Contractor determine the employment of the Contractor under this Contract and such determination shall take effect on the date of receipt of such notice.
- 27.4 Corruption The Employer shall be entitled to determine the employment of the Contractor under this or any other contract, if the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other contract with the Employer, or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract with the Employer, or if the like acts shall have been done by any person employed by the Contractor or acting on his behalf (whether with or without the knowledge of the Contractor), or if in relation to this or any other contract with the Employer the Contractor or any person employed by him or acting on his behalf shall have committed an offence under the Prevention of Corruption Acts 1889 to 1916.
- 27.5 Insolvency of contractor - Option to Employer Clauses 27.5.1 to 27.5.4 are only applicable where clause 27.3.4 applies.
- .1 From the date when, under clause 27.3.4, the Employer could first give notice to determine the employment of the Contractor, the Employer, subject to clause 27.5.3, shall not be bound by any provisions of this Contract to make any further payment thereunder and the Contractor shall not be bound to continue to carry out and complete the Works in compliance with clause 2.1.
- .2 Clause 27.5.1 shall apply until
- either
- .1 the Employer makes an agreement (a '27.5.2.1 agreement') with the Contractor on the continuation or novation or conditional novation of this Contract, in which case this Contract shall be subject to the terms set out in the 27.5.2.1 agreement
- or
- .2 the Employer determines the employment of the Contractor under this Contract in accordance with clause 27.3.4, in which case the provisions of clause 27.6 or clause 27.7 shall apply.
- .3 Notwithstanding clause 27.5.1, in the period before either a 27.5.2.1 agreement is made or the Employer under clause 27.3.4 determines the employment of the Contractor, the Employer and the Contractor may make an interim arrangement for work to be carried out. Subject to clause 27.5.4 any right of set-off which the Employer may have shall not be exercisable in respect of any payment due from the Employer to the Contractor under such interim arrangement.
- .4 From the date when, under clause 27.3.4, the Employer may first determine the employment of the Contractor (but subject to any agreement made pursuant to clause 27.5.2.1 or arrangement made pursuant to clause 27.5.3) the Employer may take reasonable measures to ensure that Site Materials, the site and the works are adequately protected and that site materials are retained in, on the site of or adjacent to the Works as the case may be. The Contractor shall allow and shall in no way hinder or delay the taking of the aforesaid measures. The Employer may deduct the reasonable cost of taking such measures from any monies due or to become due to the Contractor under this Contract (including any amount due under an agreement to which clause 27.5.2.1, or under an interim arrangement to which clause 27.5.3, refers) or may recover the same from the
- 27.6 Consequences of determination under clauses 27.2 to 27.4 In the event of the determination of the employment of the Contractor under clause 27.2.2, 27.2.3, 27.3.3, 27.3.4 or 27.4 and so long as that employment has not been reinstated then :
- .1 the Employer may employ and pay other persons to carry out and complete the Works and to make good defects of the kind referred to in clause 17 and he or they may enter upon the site and the Works and use all temporary buildings, plant, tools, equipment and Site Materials, and may purchase all materials and goods necessary for the carrying out and completion of the Works and for the making good of defects as aforesaid; provided that where the aforesaid temporary buildings, plant, tools, equipment and Site Materials are not owned by the Contractor the consent of the owner thereof to such use is obtained by the Employer;

27.6

- 2 .1 except where an insolvency event listed in clause 27.3.1 (other than the Contractor being a company making a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement to be approved in accordance with the Companies Act 1985 or the insolvency Act 1986 as the case may be or any amendment or re-enactment) has occurred the Contractor shall, if so required by the Employer or by the Contract Administrator/Architect on behalf of the Employer within 14 days of the date of determination, assign to the Employer without payment the benefit of any agreement for the supply of materials or goods and/or for the execution of any work for the purposes of this Contract to the extent that the same is assignable;
- 2 .2 except where the Contractor has a trustee in bankruptcy appointed or being a company has a provisional liquidator appointed or has a petition alleging insolvency filed against it and which is subsisting or passes a resolution for voluntary winding-up (other than for the purposes of amalgamation or reconstruction) which takes effect as a creditors voluntary liquidation the Employer may pay any supplier or sub-contractor for any materials or goods delivered or works executed for the purposes of this Contract before or after the date of determination in so far as the price thereof has not already been discharged by the Contractor. Payments made under clause 27.6.2.2 may be deducted from any sum due or to become due to the Contractor or may be recoverable from the Contractor by the Contractor.
- 3 the Contractor shall, when required in writing by the Contract Administrator/Architect so to do (but not before), remove from the Works any temporary buildings, plant, tools, equipment, goods and materials belonging to him and the Contractor shall have removed by their owner any temporary buildings, plant, tools, equipment, goods and materials not owned by him. If within a reasonable time after such requirement has been made the Contractor has not complied therewith in respect of temporary buildings, plant, tools, equipment, goods and materials belonging to him, then the Employer may (but without being responsible for any loss or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor.
- 4 .1 Subject to clauses 27.5.3 and 27.6.4.2 the provisions of this Contract which require any further payment or any release or further release of Retention to the Contractor shall not apply; provided that clause 27.6.4.1 shall not be construed so as to prevent the enforcement by the Contractor of any rights under this Contract in respect of amounts properly due to be discharged by the Employer to the Contractor which the Employer has unreasonably not discharged and which, where clause 27.3.4 applies, have accrued 28 days or more before the date when under clause 27.3.4 the Employer could first give notice to determine the employment of the Contractor or, where clause 27.3.4 does not apply, which have accrued 28 days or more before the date of determination of the employment of the Contractor.
- 4 .2 Upon the completion of the Works and the making good of defects as referred to in clause 27.6.1 (but subject, where relevant, to the exercise of the right under clause 17.2 and /or clause 17.3 of the Contract Administrator/Architect, with the consent of the Employer, not to require defects of the kind referred to in clause 17 to be made good) then within a reasonable time thereafter an account in respect of the matters referred to in clause 27.6.5 shall be set out either in a statement prepared by the Employer or in a certificate issued by the Contract Administrator/Architect.
- 5 .1 The amount of expenses properly incurred by the Employer including those incurred pursuant to clause 27.6.1 and of any direct loss and/or damage caused to the Employer as a result of the determination;
- 5 .2 the amount of any payment made or otherwise discharged in favour of the Contractor;
- 5 .3 the total amount which would have been payable for the Works in accordance with this Contract.
- 6 If the sum of the amounts stated under clauses 27.6.5.1 and 27.6.5.2 exceeds or is less than the amount stated under clause 27.6.5.3 the difference shall be a debt payable by the Contractor to the Employer or by the Employer to the Contractor as the case may be.

- 27.7 Employer decides not to complete the works
- .1 If the Employer decides after the determination of the employment of the Contractor not to have the Works carried out and completed, he shall so notify the Contractor in writing within 6 months from the date of such determination. Within a reasonable time from the date of such written notification the Employer shall send to the Contractor a statement of account setting out:
- .1 .1 the total value of work properly executed at the date of determination of the employment of the Contractor, such value to be ascertained in accordance with the Conditions as if the employment of the Contractor had not been determined, together with any amounts due to the Contractor under the Conditions not included in such total value;
- .1 .2 the amount of any expenses properly incurred by the Employer and of any direct loss and/or damage caused to the Employer as a result of the determination.
- After taking into account amounts previously paid to or otherwise discharged in favour of the Contractor under this Contract, if the amount stated under clause 27.7.1.2 exceeds or is less than the amount stated under clause 27.7.1.1 the difference shall be a debt payable by the Contractor to the Employer or by the Employer to the Contractor as the case may be.
- .2 If after the expiry of the 6 month period referred to in clause 27.7.1 the Employer has not begun to operate the provisions of clause 27.6.1 and has not given a written notification pursuant to clause 27.7.1 the Contractor may require by notice in writing to the Employer that he states whether clauses 27.6.1 to 27.6.6 are to apply and, if not to apply, require that a statement of account pursuant to clause 27.7.1 be prepared by the Employer for submission to the Contractor.
- 27.8 Other rights and remedies The provisions of clauses 27.2 to 27.7 are without prejudice to any other rights and remedies which the Employer may possess.
- 28 Determination by Contractor
- 28.1 Notice under clause 28 Any notice or further notice to which clauses 28.2.1, 28.2.2, 28.2.3, 28.2.4 and 28.3 refer shall be in writing and given by actual physical delivery or by registered post or by recorded delivery. If sent by registered post or recorded delivery the notice or further notice shall, subject to proof to the contrary, be deemed to have been received 48 hours after the date of posting (excluding Saturday and Sunday and public holidays).
- 28.2 Default by Employer - suspension of uncompleted works
- .1 If the Employer shall make default in any one or more of the following respects :
- .1 .1 he does not discharge in accordance with this Contract the amount properly due to the Contractor in respect of any certificate and/or any VAT due on that amount pursuant to the VAT Agreement; or
- .1 .2 he interferes with or obstructs the issue of any certificate due under this Contract; or
- .1 .3 he fails to comply with the provisions of clause 19.1.1,
- the Contractor may give to the Employer a notice specifying the default or defaults (the 'specified default or defaults').
- .2 If, before the date of Practical Completion, the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for the continuous period of the length stated in the Appendix by reason of one or more of the following events :
- .2 .1 the Contractor not having received in due time necessary instructions, drawings, details or levels from the Contract Administrator/Architect for which he specifically applied in writing provided that such application was made on a date which having regard to the Completion Date was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same; or
- .2 .2 Contract Administrator/Architect's instructions issued under clause 2.3, 13.2 or 23.2 unless caused by reason of some negligence or default of the Contractor, his servants or agents or of any person employed or engaged upon or in connection with the Works or any part thereof, his servants or agents other than a Nominated Sub-Contractor, the Employer or any person employed or engaged by the Employer; or

28.8

continued

- .2 .3 delay in the execution of work not forming part of this Contract by the Employer himself or by persons employed or otherwise engaged by the Employer as referred to in clause 29 or the failure to execute such work or delay in the supply by the Employer of materials and goods which the Employer has agreed to supply for the Works or the failure so to supply; or
- .2 .4 failure of the Employer to give in due time ingress to or egress from the site of the Works or any part thereof through or over any land, buildings, way or passage adjoining or connected with the site and in the possession and control of the Employer, in accordance with the relevant Contract Documents, after receipt by the Contract Administrator/Architect of such notice, if any, as the Contractor is required to give, or failure of the Employer to give such ingress or egress as otherwise agreed between the Contract Administrator/Architect and the Contractor.

the Contractor may give to the Employer a notice specifying the event or events ("the specified suspension event or events").

- .3 If
- the Employer continues a specified default, or
 - a specified suspension event is continued

for 14 days from receipt of the notice under clause 28.2.1 or clause 28.2.2 then the Contractor may on, or within 10 days from, the expiry of that 14 days by a further notice to the Employer determine the employment of the Contractor under this Contract. Such determination shall take effect on the date of receipt of such further notice.

- .4 If
- the Employer ends the specified default or defaults, or
 - the specified suspension event or events cease, or
 - the Contractor does not give the further notice referred to in clause 28.2.3
- and
- the Employer repeats (whether previously repeated or not) a specified default, or
 - a specified suspension event is repeated for whatever period (whether previously repeated or not), whereby the regular progress of the Works is or is likely to be materially affected

then, upon or within a reasonable time after such repetition, the Contractor may by notice to the Employer determine the employment of the Contractor under this Contract. Such determination shall take effect on the date of receipt of such notice.

- .5 A notice of determination under clause 28.2.3 or clause 28.2.4 shall not be given unreasonably or vexatiously.

28.3 Insolvency of employer

- .1 If the Employer [p.2]
- makes a composition or arrangement with his creditors, or becomes bankrupt, or being a company,
 - makes a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement to be approved in accordance with the Companies Act 1985 or the Insolvency Act 1986 as the case may be or any amendment or re-enactment thereof, or
 - has a provisional liquidator appointed, or
 - has a winding-up order made, or

Footnote

[p.2] See JCT Practice Note 24: after certain insolvency events an Insolvency Practitioner acts for the Employer.

- 28.3 .1 continued
- passes a resolution for voluntary winding-up (except for the purposes of amalgamation or reconstruction), or
- under the Insolvency Act 1986 or any amendment or re-enactment thereof has an administrator or an administrative receiver appointed
- then :
- .2 the Employer shall immediately inform the Contractor in writing if he has made a composition or arrangement with his creditors, or, being a company, has made a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement to be approved in accordance with the Companies Act 1985 or the Insolvency Act 1986 or any amendment or re-enactment thereof as the case may be:
- .3 the Contractor may by notice to the Employer determine the employment of the Contractor under this Contract. Such determination shall take effect on the date of receipt of such notice. Provided that after the occurrence of any of the events set out in clause 28.3.1 and before the taking effect of any notice of determination of his employment issued by the Contractor pursuant to clause 28.3.3 the obligation of the Contractor to carry out and complete the Works in compliance with clause 2.1 shall be suspended.
- 28.4 Consequences of determination under clause 28.2 or 28.3
- In the event of the determination of the employment of the Contractor under clauses 28.2.3, 28.2.4 or 28.3.3 and so long as that employment has not been reinstated the provisions of clauses 28.4.1, 28.4.2 and 28.4.3 shall apply; such application shall be without prejudice to the accrued rights or remedies of either party or to any liability of the classes mentioned in clause 20 which may accrue either before the Contractor or any sub-contractors, their servants or agents or others employed on or engaged upon or in connection with the Works or any part thereof other than the Employer or any person employed or engaged by the Employer shall have removed his or their temporary buildings, plant, tools, equipment, goods or materials (including Site Materials) or by reason of his or their so removing the same. Subject to clauses 28.4.2 and 28.4.3 the provisions of this Contract which require any payment or release or further release of Retention to the Contractor shall not apply.
- .1 The Contractor shall with all reasonable dispatch and in such manner and with such precautions as will prevent injury, death or damage of the classes in respect of which before the date of determination he was liable to indemnify the Employer under clause 20 remove from the site all his temporary buildings, plant, tools, equipment, goods and materials (including Site Materials) and shall ensure that his sub-contractors do the same, but subject always to the provisions of clause 28.4.3.5.
- .2 Within 28 days of the determination of the employment of the Contractor the Employer shall pay to the Contractor the Retention deducted by the Employer prior to the determination of the employment of the Contractor but subject to any right of the Employer of deduction therefrom which has accrued before the date of determination of the Contractor's employment.
- .3 The Contractor shall with reasonable dispatch prepare an account setting out the sum of the amounts referred to in clauses 28.4.3.1 to 28.4.3.5 which shall include as relevant amounts in respect of all Nominated Sub-Contractors:
- .3 .1 the total value of work properly executed at the date of determination of the employment of the Contractor, such value to be ascertained in accordance with the Conditions as if the employment of the Contractor had not been determined, together with any amounts due to the Contractor under the Conditions not included in such total value; and
- .3 .2 any sum ascertained in respect of direct loss and/or expense under clauses 26 and 34.3 (whether ascertained before or after the date of determination); and
- .3 .3 the reasonable cost of removal pursuant to clause 28.4.1, and
- .3 .4 any direct loss and/or damage caused to the Contractor by the determination; and
- .3 .5 the cost of materials or goods (including Site Materials) properly ordered for the Works for which the Contractor shall have paid or for which the Contractor is legally bound to pay, and on such payment in full by the Employer such materials or goods shall become the property of the Employer.

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| 28.4 | .3 | continued |
| | | After taking into account amounts previously paid to or otherwise discharged in favour of the Contractor under this Contract the Employer shall pay to the Contractor the amount properly due in respect of this account within 28 days of its submission by the Contractor to the Employer but without any deduction of Retention. |
| 28.5 | Other rights and remedies | The provisions of clauses 28.2 to 28.4 are without prejudice to any other rights and remedies which the Contractor may possess. |
| 28A | | Determination by Employer or Contractor |
| 28A.1 | Grounds for determination of the employment of the contractor | <p>.1 If, before the date of Practical Completion, the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for the relevant continuous period of the length stated in the Appendix by reason of one or more of the following events :</p> <p>.1 .1 force majeure; or</p> <p>.1 .2 loss or damage to the Works occasioned by any one or more of the Specified Perils; or</p> <p>.1 .3 civil commotion; or</p> <p>.1 .4 Contract Administrator/Architect's instructions issued under clause 2.3, 13.2 or 23.2 which have been issued as a result of the negligence or default of any local authority or statutory undertaker executing work solely in pursuance of its statutory obligations; or</p> <p>.1 .5 hostilities involving Nigeria (whether war be declared or not); or</p> <p>.1 .6 terrorist activity</p> <p>then the Employer or the Contractor may upon the expiry of the aforesaid relevant period of suspension give notice in writing to the other by actual physical delivery or by registered post or recorded delivery that unless the suspension is terminated within 7 days after the date of receipt of that notice the employment of the Contractor under this Contract will determine 7 days after the date of receipt of the aforesaid notice; and the employment of the Contractor shall so determine 7 days after receipt of such notice. If sent by registered post or recorded delivery the notice shall, subject to proof to the contrary, be deemed to have been received 48 hours after the date of posting (excluding Saturday and Sunday and public holidays).</p> <p>.2 The Contractor shall not be entitled to give notice under clause 28A.1.1 in respect of the matter referred to in clause 28A.1.1.2 where the loss or damage to the Works occasioned by any one or more of the Specified Perils was caused by some negligence or default of the Contractor, his servants or agents or of any person employed or engaged upon or in connection with the Works or any part thereof, his servants or agents other than the Employer or any person employed or engaged by the Employer or by any local authority or statutory undertaker executing work solely in pursuance of its statutory obligations.</p> <p>.3 A notice of determination under clause 28A.1.1 shall not be given unreasonably or vexatiously.</p> |
| 28A.2 | Consequences of determination under clause 28A.1.1 - clauses 28A.3 to 28A.6 | Upon determination of the employment of the Contractor under clause 28A.1.1 the provisions of this Contract which require any further payment or any release or further release of Retention to the Contractor shall not apply; and the provisions of clauses 28A.3 to 28A.6 shall apply. |
| 28A.3 | | The Contractor shall with all reasonable dispatch and in such manner and with such precautions as will prevent injury, death or damage of the classes in respect of which before the date of determination of his employment he was liable to indemnify the Employer under clause 20, remove from the site all his temporary buildings, plant, tools, equipment, goods and materials (including Site Materials) and shall ensure that his sub-contractors do the same, but subject always to the provisions of clause 28A.5.4. |

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| 28A.4 | | The Employer shall pay to the Contractor one half of the Retention deducted by the Employer prior to the determination of the employment of the Contractor within 28 days of the date of determination of the Contractor's employment and the other half as part of the account to which clause 28A.5 refers but subject to any right of deduction therefrom which has accrued before the date of such determination. |
| 28A.5 | | <p>The Contractor shall, not later than 2 months after the date of the determination of the Contractor's employment, provide the Employer with all documents (including those relating to Nominated Sub-Contractors and Nominated Suppliers) necessary for the preparation of the account to which this clause refers. Subject to due discharge by the Contractor of this obligation the Employer shall with reasonable dispatch prepare an account setting out the sum of the amounts referred to in clauses 28A.5.1 to 28A.5.4 and, if clause 28A.6 applies, clause 28A.5.5, which shall include as relevant amounts in respect of all Nominated Sub-Contractors :</p> <ol style="list-style-type: none"> .1 the total value of work properly executed at the date of determination of the employment of the Contractor, such value to be ascertained in accordance with the Conditions as if the employment of the Contractor had not been determined, together with any amounts due to the Contractor under the Conditions not included in such total value; and .2 any sum ascertained in respect of direct loss and/or expense under clauses 26 and 34.3 (whether ascertained before or after the date of determination); and .3 the reasonable cost of removal under clause 28A.3; and .4 the cost of materials or goods (including Site Materials) properly ordered for the Works for which the Contractor shall have paid or for which the Contractor is legally bound to pay, and on such payment in full by the Employer such materials or goods shall become the property of the Employer; and .5 any direct loss and/or damage caused to the Contractor by the determination. <p>After taking into account amounts previously paid to or otherwise discharged in favour of the Contractor under this Contract the Employer shall pay to the Contractor the amount properly due in respect of this account within 28 days of its submission by the Employer to the Contractor but without deduction of any Retention.</p> |
| 28A.6 | | Where determination of the employment of the Contractor has occurred in respect of the matter referred to in clause 28A.1.1.2 and the loss or damage to the Works occasioned by any one or more of the Specified Perils was caused by some negligence or default of the Employer or of any person for whom the Employer is responsible, then upon such determination of the employment of the Contractor the account prepared under clause 28A.5 shall include the amount, if any, to which clause 28A.5.5 refers. |
| 28A.7 | Amount attributable to any nominated sub-contractor | The Employer shall inform the Contractor in writing which part or parts of the amounts paid or payable under clause 28A.5 is or are fairly and reasonably attributable to any Nominated Sub-Contractor and shall so inform each Nominated Sub-Contractor in writing. |
| 29 | | Works by Employer or persons employed or engaged by Employer |
| 29.1 | Information in contract bills | Where the Contract Bills, in regard to any work not forming part of this Contract and which is to be carried out by the Employer himself or by persons employed or otherwise engaged by him, provide such information as is necessary to enable the Contractor to carry out and complete the Works in accordance with the Conditions, the Contractor shall permit the execution of such work. |
| 29.2 | Information not in contract bills | Where the Contract Bills do not provide the information referred to in clause 29.1 and the Employer requires the execution of work not forming part of this Contract by the Employer himself or by persons employed or otherwise engaged by the Employer, then the Employer may, with the consent of the Contractor (which consent shall not be unreasonably withheld) arrange for the execution of such work. |
| 29.3 | | Every person employed or otherwise engaged by the Employer as referred to in clauses 29.1 and 29.2 shall for the purpose of clause 20 be deemed to be a person for whom the Employer is responsible and not to be a sub-contractor. |

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| 30 | Certificates and payments | |
| 30.1 | Interim certificates and variations - final date for payment interest | <p>.1 .1 The Contract Administrator/Architect shall from time to time as provided in clause 30 issue Interim Certificates stating the amount due to the Contractor from the Employer and the Contractor shall be entitled to payment therefore within Twenty-eight (28) days from the date of issue of each Interim certificate. [q]</p> <p>.1 .2 Notwithstanding the fiduciary interest of the Employer in the retention as stated in clause 30.5.1 the Employer is entitled to exercise any right under this Contract of deduction from monies due or to become due to the Contractor against any amount so due under an Interim Certificate whether or not any Retention is included in that Interim Certificate by the operation of clause 30.4. Such deduction is subject to the restriction set out in clause 35.13.5.3.2.</p> <p>.1 .3 Where the Employer exercises any right under this Contract of deduction from monies due or to become due to the Contractor he shall inform the Contractor in writing within 30 days of receipt of the Contract Administrator/Architect's certificate in clause 30.1.1, stating the reason for that deduction.</p> |
| 30.1 | Interim valuations | <p>.2 Interim valuations shall be made by the Quantity Surveyor on a monthly basis or whenever the Contract Administrator/Architect considers them to be necessary for the purpose of ascertaining the amount to be stated as due in an Interim Certificate. [r]</p> <p>Where the contractor desires, he may submit interim valuation application to the Quantity Surveyor not less than ten (10) days prior to the date due for interim valuation.</p> |
| | Issue of interim valuation | <p>.3 Interim Certificates shall be issued at the Period of Interim Certificates specified in the Appendix up to and including the end of the period during which the Certificate of Practical Completion is issued. Thereafter Interim Certificates shall be issued as and when further amounts are ascertained as payable to the Contractor from the Employer and after the expiration of the Defects Liability Period named in the Appendix or upon the issue of the Certificate of Completion of Making Good Defects (whichever is the later) provided always that the Contract Administrator/Architect shall not be required to issue an Interim Certificate within one calendar month of having issued a previous Interim Certificate.</p> |
| 30.2 | Ascertainment of amounts due in interim certificates | <p>The amount stated as due in an Interim Certificate, subject to any agreement between the parties as to stage payments, shall be the gross valuation as referred to in clause 30.2 less</p> <p style="padding-left: 40px;">any amount which may be deducted and retained by the Employer as provided in clause 30.4 (in the Conditions called 'the Retention') and</p> <p style="padding-left: 40px;">the total amount stated as due in Interim Certificates previously issued under the Conditions.</p> <p>The gross valuation shall be the total of the amounts referred to in clauses 30.2.1 and 30.2.2 less the total of the amounts referred to in clause 30.2.3 and applied up to and including a date not more than seven (7) days before the date of the Interim certificate.</p> <p>.1 There shall be included the following which are subject to Retention :</p> <p>.1 .1 the total value of the work properly executed by the Contractor including any work so executed to which clause 13.5 refers but excluding any restoration, replacement or repair of loss or damage and removal and disposal of debris which in clauses 22B.3.5 and 22C.4.4.2 are treated as if they were a Variation, together with, where applicable, any adjustment of that value under clause 40;</p> <p>.1 .2 the total value of the materials and goods delivered to or adjacent to the Works for incorporation therein by the Contractor but not so incorporated, provided that the value of such materials and goods shall only be included as and from such times as they are reasonably, properly and not prematurely so delivered and are adequately protected against weather and other casualties;</p> <p>.1 .3 the total value of any materials and goods other than those to which clause 30.2.1 refers where the Contract Administrator/Architect in the exercise of his discretion under clause 30.3 has decided that such total value shall be included in the amount stated as due in an Interim Certificate;</p> <p>.1 .4 the amounts referred to in clause 4.17.1 of Conditions NSC/C (Conditions of Nominated Sub-Contract) in respect of each Nominated Sub-Contractor;</p> |

Footnotes

[q] This entitlement is subject to the various rights of deduction given to the Employer in the Conditions including any obligation to deduct under clause 31 and to the obligations of the parties under the VAT Agreement

[r] Where formula adjustment under clause 40 applies see amendment set out in clause 40.2.

30.2

continued

- .1 .5 the profit of the Contractor upon the total of the amounts referred to in clauses 30.2.1.4 and 30.2.2.5 less the total of the amount referred to in clause 30.2.3.2 at the rates included in the Contract Bills, or, in the case where the nomination arises from an instruction as to the expenditure of a provisional sum, at rates related thereto, or, if none, at reasonable rates.
- .2 There shall be included the following which are not subject to Retention :
 - .2 .1 any amounts ascertained under clause 26.1 or 34.3 or in respect of any restoration, replacement or repair of loss or damage and removal and disposal of debris which in clauses 22B.3.5 and 22C.4.4.2 are treated as if they were a Variation;
 - .2 .2 any amounts ascertained under clause 26.1 or 34.3 or in respect of any restoration, replacement or repair of loss or damage and removal and disposal of debris which in clauses 22B.3.5 and 22C.4.4.2 are treated as if they were a Variation;
 - .2 .3 any amount to which clause 35.17 refers;
 - .2 .4 any amount payable to the Contractor under clause 38 or 39, if applicable;
 - .2 .5 the amounts referred to in clause 4.17.2 of Conditions NSC/C (Conditions of Nominated Sub-Contract) in respect of each Nominated Sub-Contractor.
- .3 There shall be deducted the following which are not subject to Retention :
 - .3 .1 any amount deductible under clause 7 or 8.4.2 or 17.2 or 17.3 or any amount allowable by the Contractor to the Employer under clause 38 or 39, if applicable;
 - .3 .2 any amount referred to in clause 4.17.3 of Conditions NSC/C (Conditions of Nominated Sub-Contract) in respect of each Nominated Sub-Contractor.

30.3

The amount stated as due in an Interim Certificate may in the discretion of the Contract Administrator/Architect include the value of any materials or goods before delivery thereof to or adjacent to the Works (in clause 30.3 referred to as 'the materials') provided that :

- .1 the materials are intended for incorporation in the Works;
- .2 nothing remains to be done to the materials to complete the same up to the point of their incorporation in the Works;
- .3 the materials have been and are set apart at the premises where they have been manufactured or assembled or are stored, and have been clearly and visibly marked, individually or in sets, either by letters or figures or by reference to a pre-determined code, so as to identify :
 - .3 .1 the Employer, where they are stored on the premises of the Contractor, and in any other case the person to whose order they are held; and
 - .3 .2 their destination as the Works;
- .4 where the materials were ordered from a supplier by the Contractor or by any sub-contractor, the contract for their supply is in writing and expressly provides that the property therein shall pass unconditionally to the Contractor or the sub-contractor (as the case may be) not later than the happening of the events set out in clauses 30.3.2 and 30.3.3;
- .5 where the materials were ordered from a supplier by any sub-contractor, the relevant sub-contract between the Contractor and the sub-contractor is in writing and expressly provides that on the property in the materials passing to the sub-contractor the same shall immediately thereon pass to the Contractor;
- .6 where the materials were manufactured or assembled by any sub-contractor, the sub-contract is in writing and expressly provides that the property in the materials shall pass unconditionally to the Contractor not later than the happening of the events set out in clauses 30.3.2 and 30.3.3;
- .7 the materials are in accordance with this Contract;

- 30.3 .8 the Contractor provides the Contract Administrator/Architect with reasonable proof that the property in the materials is in him and that the appropriate conditions set out in clauses 30.3.1 to 7 have been complied with;
- 30.3 .9 the Contractor provides the Contract Administrator/Architect with reasonable proof that the materials are insured against loss or damage for their full value under a policy of insurance protecting the interests of the Employer and the Contractor in respect of the Specified Perils, during the period commencing with the transfer of property in the materials to the Contractor until they are delivered to, or adjacent to, the Works.
- 30.4 Retention - rules for ascertainment .1 The Retention which the Employer may deduct and retain as referred to in clause 30.2 shall be such percentage of the total amount included under clause 30.2.1 in any Interim Certificate as arises from the operation of the following rules :
- .1 .1 the percentage (in the Conditions and Appendix called 'the Retention Percentage') deductible under clause 30.4.1.2 shall be 5 per cent (unless a lower rate shall have been agreed between the parties and specified in the Appendix as the Retention Percentage); and the percentage deductible under clause 30.4.1.3 shall be one half of the Retention Percentage; [s]
- .1 .2 [t] the Retention Percentage may be deducted from so much of the said total amount as relates to :
- work which has not reached Practical Completion (as referred to in clauses 17.1, 18.1.1 or 35.16); and
- amounts in respect of the value of materials and goods included under clauses 30.2.1.2, 30.2.1.3 and 30.2.1.4 (so far as that clause relates to materials and goods as referred to in clause 4.17.1 of Conditions NSC/C (Conditions of Nominated Sub-Contract));
- .1 .3 [t] half the Retention Percentage may be deducted from so much of the said total amount as relates to work which has reached Practical Completion (as referred to in clauses 17.1, 18.1.1 or 35.16) but in respect of which a Certificate of Completion of Making Good Defects under clause 17.4 or a certificate under clause 18.1.2 or an Interim Certificate under clause 35.17 has not incorporated been issued.
- .2 The Retention deducted from the value of work executed by the Contractor or any Nominated Sub-Contractor, and from the value of materials and goods intended for incorporation in the Works but not so incorporated, and specified in the statements issued under clause 30.5.2.1, is hereinafter referred to as the 'Contractor's retention' and the 'Nominated Sub-Contract retention' respectively.
- 30.5 Rules on treatment of retention The Retention shall be subject to the following rules :
- 30.5 .1 the Employer's interest in the Retention is fiduciary as trustee for the Contractor and for any Nominated Sub-Contractor (but without obligation to invest);
- 30.5 .2 .1 at the date of each Interim certificate the Contract Administrator/Architect shall prepare, or instruct the Quantity Surveyor to prepare, a statement specifying the Contractor's retention and the Nominated Sub-Contractor retention for each Nominated Sub-Contractor deducted in arriving at the amount stated as due in such Interim Certificate;
- .2 .2 such statement shall be issued by the Contract Administrator/Architect to the Employer, to the Contractor and to each Nominated Sub-Contractor whose work is referred to in the statement.

Footnotes

[s] 5% shall be retained from all payments made to the Contractor up to the practical completion of the contract where 50% of the amount retained shall be released

[t] By the operation of clauses 30.4.1.2 and 30.4.1.3 the Contractor will have released to him by the Employer upon payment of the next Interim Certificate after Practical Completion of the whole or part of the Works approximately one half of the Retention on the whole or the appropriate part; and upon payment of the next Interim Certificate after the expiration of the

Defects Liability Period named in the Appendix, or after the issue of the Certificate of Completion of Making Good Defects, whichever is the later, the balance of the Retention on the whole or the appropriate part. When Retention is so included in Interim certificates it becomes a 'sum due' to the Contractor and therefore subject to the rights of the Employer to deduct therefrom in accordance with the rights of the Employer so to deduct as set out in the Conditions.

- 30.5
- .3 The Employer shall, to the extent that the Employer exercises his right under clause 30.4, if the Contractor or any Nominated Sub-Contractor so requests, at the date of payment under each Interim Certificate place the Retention in a separate banking account (so designated as to identify the amount as the Retention held by the Employer on trust as provided in clause 30.5.1) and certify to the Contract Administrator/Architect with a copy to the Contractor that such amount has been so placed. The Employer with a copy to the Contractor that such amount has been so placed. The Employer shall be entitled to the full beneficial interest in any interest accruing in the separate banking account and shall be under no duty to account for any such interest to the Contractor or any sub-contractor.
- .4 Where the Employer exercises the right to deduct referred to in clause 30.1.1.2 against any Retention he shall inform the Contractor of the amount of that deduction from either the Contractor's retention or the Nominated Sub-Contract retention of any Nominated Sub-Contractor by reference to the latest statement issued under clause 30.5.2.1.
- 30.6 Final adjustment of contracts sum - documents from contractor
- .1 .1 Not later than 6 months after Practical Completion of the Works the Contractor shall provide the Contract Administrator/Architect, or, if so instructed by the Contract Administrator/Architect, the Quantity Surveyor, with all documents necessary for the purposes of the adjustment of the Contract Sum including all documents relating to the accounts of Nominated Sub-Contractors and Nominated Suppliers.
- .1 .2 Not later than 3 months after receipt by the Contract Administrator/Architect or by the Quantity Surveyor of the documents referred to in clause 30.6.1.1.
- .2 .1 the Contract Administrator/Architect, or, if the Contract Administrator/Architect has so instructed, the Quantity Surveyor, shall ascertain (unless previously ascertained) any loss and/or expense under clauses 26.1, 26.4.1 and 34.3, and
- .2 .2 the Quantity Surveyor shall prepare a statement of all adjustments to be made to the Contract Sum as referred to in clause 30.6.2 other than any to which clause 30.6.1.2.1 applies
- and the Contract Administrator/Architect shall forthwith send a copy of any ascertainment to which clause 30.6.1.2.1 refers and of the statement prepared in compliance with clause 30.6.1.2.2 to the Contractor and the relevant extract therefrom to each Nominated Sub-Contractor.
- Items included in adjustment of contract sum .2 The Contract Sum shall be adjusted by :
- the amount of any Valuations agreed by the Employer and the Contractor to which clause 13.4.1.1 refers, and
 - the amounts stated in any 13A Quotations for which the Contract Administrator/Architect has issued to the Contractor a confirmed acceptance pursuant to clause 13A.3.2 and for the amount of any Variations thereto as valued pursuant to clause 13A.8
- and as follows :
- There shall be deducted :
- .2 .1 all prime cost sums, all amounts in respect of sub-contractors named as referred to in clause 35.1, the certified value of any work by a Nominated Sub-Contractor, whose employment has been determined in accordance with clause 35.24, which was not in accordance with the relevant Sub-Contract but which has been paid or otherwise discharged by the Employer, and any Contractor's profit thereon included in the Contract Bills;
- .2 .2 all provisional sums and the value of all work for which an Approximate Quantity is included in the Contract Bills;
- .2 .3 the amount of the valuation under clause 13.5.2 of items omitted in accordance with a Variation required by the Contract Administrator/Architect under clause 13.2, or subsequently sanctioned by him in writing, together with the amount included in the Contract Bills for any other work as referred to in clause 13.5.5 which is to be valued under clause 13.5;
- .2 .4 any amount deducted or deductible under clause 7 or 8.4.2 or 17.2 or 17.3 or any amount allowed or allowable to the Employer under clause 38, 39 or 40, whichever is applicable;

| | | |
|------|--|--|
| 30.6 | continued | |
| | | .2 .5 any other amount which is required by this Contract to be deducted from the Contract Sum; |
| | | There shall be added : |
| | | .2 .6 the amounts of the nominated sub-contract sums or tender sums for all Nominated Sub-Contractors as finally adjusted or ascertained under all relevant provisions of Conditions NSC/C (Conditions of Nominated Sub-Contract); |
| | | .2 .7 tender sum (or such other sum as is appropriate in accordance with the terms of the tender as accepted by or on behalf of the Employer) for any work for which a tender made under clause 35.2 has been accepted; |
| | | .2 .8 any amounts properly chargeable to the Employer in accordance with the nomination instruction of the Contract Administrator/Architect in respect of materials or goods supplied by Nominated Suppliers; such amounts shall not include the discount for cash of 5 per cent referred to in clause 36 but shall exclude any value added tax which is treated, or is capable of being treated, as input tax (as referred to in the Finance Act 1972) by the Contractor; |
| | | .2 .9 the profit of the Contractor upon the amounts referred to in clauses 30.6.2.6, 30.6.2.7 and 30.6.2.8 at the rates included in the Contract Bills or in the cases where the nomination arises from an instruction as to the expenditure of a provisional sum at rates related thereto or if none at reasonable rates; |
| | | .2 .10 any amounts paid or payable by the Employer to the Contractor as a result of payments made or costs incurred by the Contractor under clauses 6.2, 8.3, 9.2 and 21.2.3; |
| | | .2 .11 the amount of the Valuation under clause 13.5 of any variation, including the valuation of other work as referred to in clause 13.5.5, other than the amount of the valuation of any omission under clause 13.5.2; |
| | | .2 .12 the amount of the Valuation of work executed by, or the amount of any disbursements by, the Contractor in accordance with instructions of the Contract Administrator/Architect as to the expenditure of provisional sums included in the Contract Bills and of all work for which an Approximate Quantity is included in the Contract Bills; |
| | | .2 .13 any amount ascertained under clause 26.1 or 34.3; |
| | | .2 .14 any amount paid by the Contractor under clause 22B or clause 22C which the Contractor is entitled to have added to the Contract Sum; |
| | | .2 .15 any amount paid or payable to the Contractor under clause 38, 39 or 40, whichever is applicable; |
| | | .2 .16 any other amount which is required by this Contract to be added to the Contract Sum. |
| 30.7 | Interim certificate - final adjustment or ascertainment of nominated sub-contract sums | So soon as is practicable but not less than 28 days before the date of issue of the Final Certificate referred to in clause 30.8 and notwithstanding that a period of one month may not have elapsed since the issue of the previous Interim Certificate, the Contract Administrator/Architect shall issue an Interim Certificate the gross valuation for which shall include the amounts of the sub-contract sums for all Nominated Sub-Contracts as finally adjusted or ascertained under all relevant provisions of Conditions NSC/C (Conditions of Nominated Sub-Contract). |
| 30.8 | Issue of final Certificate | The Contract Administrator/Architect shall issue the Final Certificate (and inform each Nominated Sub-Contractor of the date of its issue) not later than 2 months after whichever of the following occurs last : the end of the Defects Liability Period; the date of issue of the Certificate of Completion of Making Good Defects under clause 17.4; the date on which the Contract Administrator/Architect sent a copy to the Contractor of any ascertainment to which clause 30.6.1.2.1 refers and of the statement prepared in compliance with clause 30.6.1.2.2. |

- The Final certificate shall state :
- 30.8
- .1 the sum of the amounts already stated as due in Interim Certificates, and
 - .2 the Contract Sum adjusted as necessary in accordance with clause 30.6.2
- and the difference (if any) between the two sums shall (without prejudice to the rights of the Contractor in respect of any Interim Certificates which have not been paid by the Employer) be expressed in the said certificate as a balance due to the Contractor from the Employer or to the Employer from the Contractor as the case may be, and, subject to any deductions authorised by the Conditions, the said balance shall as from the 28th day after the date of the said Certificate be a debt payable as the case may be by the Employer to the Contractor or by the Contractor to the Employer.
- 30.9 Effect of final Certificate
- .1 Except as provided in clauses 30.9.2 and 30.9.3 (and save in respect of fraud), the Final Certificate shall have effect in any proceedings arising out of or in connection with this Contract (whether by arbitration under article 5 or otherwise) as
 - .1 .1 conclusive evidence that where and to the extent that any of the particular qualities of any materials or goods or any particular standard of an item of workmanship was described expressly in the Contract Drawings or the Contract Bills, or in any Specification included in any of the Numbered Documents, or in any instruction issued by the Contract Administrator/Architect under the Conditions, or in any drawings or documents issued by the Contract Administrator/Architect under clause 5.3.1.1 or 5.4 or 7, to be for the approval of the Contract Administrator/Architect, the particular quality or standard was to the reasonable satisfaction of the Contract Administrator/Architect, but such Certificate shall not be conclusive evidence that such or any other materials or goods or workmanship comply or complies with any other requirement or term of this contract, and
 - .1 .2 conclusive evidence that any necessary effect has been given to all the terms of this Contract which require that an amount is to be added to or deducted from the Contract Sum or an adjustment is to be made of the Contract Sum save where there has been any accidental inclusion or exclusion of any work, materials, goods or figure in any computation or any arithmetical error in any computation, in which event the Final Certificate shall have effect as conclusive evidence as to all other computations, and
 - .1 .3 conclusive evidence that all and only such extensions of time, if any, as are due under clause 25 have been given, and
 - .1 .4 conclusive evidence that the reimbursement of direct loss and/or expense, if any, to the Contractor pursuant to clause 26.1 is in final settlement of all and any claims which the Contractor has or may have arising out of the occurrence of any of the matters referred to in clause 26.2 whether such claim be for breach of contract, duty of care, statutory duty or otherwise.
 - .2 If any arbitration or other proceedings have been commenced by either party before the Final Certificate has been issued the Final Certificate shall have effect as conclusive evidence as provided in clause 30.9.1 after either
 - .2 .1 such proceedings have been concluded, whereupon the Final Certificate shall be subject to the terms of any award or judgement in or settlement of such proceedings, or
 - .2 .2 a period of twelve (12) months during which neither party has taken any further step in such proceedings, whereupon the Final Certificate shall be subject to any terms agreed in partial settlement,

whichever shall be the earlier.
 - .3 If any arbitration or other proceedings have been commenced by either party within twenty-eight (28) days after the Final Certificate has been issued, the Final Certificate shall have effect as conclusive evidence as provided in clause 30.9.1 save only in respect of all matters to which those proceedings relate.
- 30.10 Effect of certificates other than final Certificate
- Save as aforesaid no certificate of the Contract Administrator/Architect shall of itself be conclusive evidence that
- .1 any works, materials or goods
- or
- .2 any Performance Specified Work
- to which it relates are in accordance with this Contract.

| | | | |
|------|---|---|---|
| 31 | | [NUMBER NOT USED] | |
| 32 | | [NUMBER NOT USED] | |
| 33 | | [NUMBER NOT USED] | |
| 34 | | Antiquities | |
| 34.1 | Effect of find of antiquities | All fossils, antiquities and other objects of interest or value which may be found on the site or in excavating the same during the progress of the Works shall become the property of the Employer and upon discovery of such an object the Contractor shall forthwith: | |
| 34.1 | | .1 use his best endeavours not to disturb the object and shall cease work if and insofar as the continuance of work would endanger the object or prevent or impede its excavation or its removal; | |
| 34.1 | | .2 take all steps which may be necessary to preserve the object in the exact position and condition in which it was found; and | |
| 34.1 | | .3 inform the Contract Administrator/Architect or the clerk of works of the discovery and precise location of the object. | |
| 34.2 | Contract Administrator/Architect's instruction on antiquities found | The Contract Administrator/Architect shall issue instructions in regard to what is to be done concerning an object reported by the Contractor under clause 34.1, and (without prejudice to the generality of his power) such instructions may require the Contractor to permit the examination, excavation or removal of the object by a third party. Any such third party shall for the purposes of clause 20 be deemed to be a person for whom the Employer is responsible and not to be a sub- | |
| 34.3 | Direct loss and / or expense | .1 If in the opinion of the Contract Administrator/Architect compliance with the provisions of clause 34.1 or with an instruction issued under clause 34.2 has involved the Contractor in direct loss and/or expense for which he would not be reimbursed by a payment made under any other provision of this Contract then the Contract Administrator/Architect shall himself ascertain or shall instruct the Quantity Surveyor to ascertain the amount of such loss and/or expense. | |
| 34.3 | | .2 If and to the extent that it is necessary for the ascertainment of such loss and/or expense the Contract Administrator/Architect shall state in writing to the Contractor what extension of time, if any, has been made under clause 25 in respect of the Relevant Event referred to in clause 25.4.5.1 so far as that clause refers to clause 34. | |
| 34.3 | | .3 Any amount from time to time so ascertained shall be added to the Contract Sum. | |
| 35 | Nominated Sub-cobtractors | | See Part 2 Separate Document (NOT APPLICABLE) |
| 36 | Nominated Supplier | | See Part 2 Separate Document (NOT APPLICABLE) |

Footnote

[u] Not used.

Part 3: Fluctuations (NOT APPLICABLE)

Clause 37

FIXED PRICE NOT FLUCTUATION CONTRACT

Fluctuations shall be dealt with in accordance with the following

This is a fixed price not fluctuation contract, all items of work are fixed for the duration of the contract except the following:

Paint

Labour

As a result of the above, the contractor shall submit for verification and approval a list containing the quantities, units and rates of materials he intends to procure and be paid for in advance in compliance with this clause.

Material

The contractor shall submit basic pricelist of the material(s) listed above for which fluctuation claim may be made in future and shall submit with his claim the revised published price list current at the point of purchase. The differences between these two price lists shall form the basis of calculation of fluctuation for such material. The amount of fluctuation shall be based on the quantities of such materials as may reasonably be expected to be required for the work bearing in mind the quantum of work to be carried out.

Labour

Labour fluctuation claim shall be based on the differences between the Federal Government approved rates for labour work force in the construction industry at the time of tender and any change in such labour basic rates of labour at such times that the contractor may be making such claim. To this end the contractor shall keep on site labour work force record on a daily basis and shall submit for verification and signature to the Contract Administrator/Architect on a weekly basis. The signed record shall be copied and sent to the Quantity Surveyor.

The contractor shall make available his workforce payroll to the Quantity Surveyor for ascertainment of his claim.

Part 4: Settlement of disputes - Arbitration

- 41.1 When the Employer or the Contractor requires a dispute or difference as referred to in article 5 including :
- any matter or thing left by this Contract to the discretion of the Contract Administrator/Architect, or
 - the withholding by the Contract Administrator/Architect of any certificate to which the Contractor may claim to be entitled, or
 - the adjustment of the Contract Sum under clause 30.6.2, or
 - the rights and liabilities of the parties under clause 27 or 28, or unreasonable withholding of consent or agreement by the Employer or the Contract Administrator/Architect on his behalf or by the Contractor
- to be referred to arbitration then either the Employer or the Contractor shall give written notice to the other to such effect and such dispute or difference shall be referred to the arbitration and final decision of a person to be agreed between the parties as the Arbitrator, or, upon failure so to agree within fourteen (14) days after the date of the aforesaid written notice, of a person to be appointed as the Arbitrator on the request of either the Employer or the Contractor by the person named in the Appendix.
- 41.2 .1 Provided that if the dispute or difference to be referred to arbitration under this Contract raises issues which are substantially the same as or connected with issues raised in a related dispute between :
- the Employer and Nominated Sub-Contractor under Agreement NSC/W (*Employer/Nominated Sub-Contractor Agreement*), or
 - the Contractor and any Nominated Sub-Contractor under a Nominated Sub-Contract, or
 - the Contractor and/or the Employer and any Nominated Supplier whose contract of sale with the Contractor provides for the matters referred to in clause 36.4.8.2,
- and if the related dispute has already been referred for determination to an Arbitrator, the Employer and the Contractor hereby agree
- that the dispute or difference under this Contract shall be referred to the Arbitrator appointed to determine the related dispute;
 - that the JCT Arbitration Rules applicable to the related dispute shall apply to the dispute under this Contract;
 - that such Arbitrator shall have power to make such directions and all necessary awards in the same way as if the procedure of the High Court as to joining one or more defendants or joining co-defendants or third parties was available to the parties and to him; and
 - that the agreement and consent referred to in clause 41.6 on appeals or applications to the High Court on any question of law shall apply to any question of law arising out of the awards of such Arbitrator in respect of all related disputes referred to him or arising in the course of reference of all the related disputes referred to him;
- .2 save that the Employer or the Contractor may require the dispute or difference under this Contract to be referred to a different Arbitrator (to be appointed under this Contract) if either of them reasonably considers that the Arbitrator appointed to determine the related dispute is not appropriately qualified to determine the dispute or difference under this Contract.
- .3 Clauses 41.2.1 and 41.2.2 shall apply unless in the Appendix the words 'clauses 41.2.1 and 41.2.2 apply' have been deleted.
- Such reference, except
- .1 on article 3 or article 4; or
 - .2 on the questions

- 41.3 whether or not the issue of an instruction is empowered by the Conditions; or whether or not a certificate has been improperly withheld; or whether a certificate is not in accordance with the Conditions; or whether a determination under clause 22C.4.3.1 will be just and equitable; or
- .3 on any dispute or difference under clause 4.1 in regard to a reasonable objection by the Contractor, under clause 8.4, under clause 8.5, under clause 18.1 or under clause 23.3.2 in regard to withholding of consent by the Contractor, or under clause 25,
- shall not be opened until after Practical Completion or alleged Practical Completion of the Works or termination or alleged termination of the Contractor's employment under this Contract or abandonment of the Works, unless with the written consent of the Employer or the Contract Administrator/Architect on his behalf and the Contractor.
- 41.4 Subject to the provisions of clauses 4.2, 30.9, 38.4.3, 39.5.3 and 40.5 the Arbitrator shall, without prejudice to the generality of his powers, have power to rectify this Contract so that it accurately reflects the true agreement made by the Employer and the Contractor, to direct such measurements and/or valuations as may in his opinion be desirable in order to determine the rights of the parties and to ascertain and award any sum which ought to have been the subject of or included in any certificate and to open up, review and revise any certificate, opinion, decision (except, where clause 8.4 is relevant, a decision of the Contract Administrator/Architect to issue instructions pursuant to clause 8.4.1), requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice had been given.
- 41.5 Subject to clause 41.6 the award of such Arbitrator shall be final and binding on the parties.
- 41.6 The parties hereby agree and consent pursuant to Sections 1(3)(a) and 2(1)(b) of the Arbitration Act, 1979, that either party
- .1 may appeal to the High Court on any question of law arising out of an award made in an arbitration under this Arbitration Agreement; and
- .2 may apply to the High Court to determine any question of law arising in the course of the reference;
- and the parties agree that the High Court should have jurisdiction to determine any such question of law.
- 41.7 Whatever the nationality, residence or domicile of the Employer, the Contractor, any sub-contractor or supplier or the Arbitrator, and wherever the Works or any part thereof are situated, the law of Nigeria shall be the proper law of this Contract and in particular (but not so as to derogate from the generality of the foregoing) the provisions of the Arbitration Acts 1950 (notwithstanding anything in S.34 thereof) to 1979 shall apply to any arbitration under this Contract wherever the same, or any part of it, shall be conducted. [y.2]
- 41.8 If before making his final award the Arbitrator dies or otherwise ceases to act as the Arbitrator, the Employer and the Contractor shall forthwith appoint a further Arbitrator, or, upon failure so to appoint within fourteen (14) days of any such death or cessation, then either the Employer or the Contractor may request the person named in the Appendix to appoint such further Arbitrator. Provided that no such further Arbitrator shall be entitled to disregard any direction of the previous Arbitrator or to vary or revise any award of the previous Arbitrator except to the extent that the previous Arbitrator had power so to do under the JCT Arbitration Rules and/or with the agreement of the parties and/or by the operation of law.
- 41.9 The arbitration shall be conducted in accordance with the JCT Arbitration Rules current at the Base Date. [y.3] Provided that if any amendments to the Rules so current have been issued by the Joint Contracts Tribunal after the Base Date the Employer and the Contractor may, by a joint notice in writing to the Arbitrator, state that they wish the arbitration to be conducted in accordance with the JCT Arbitration Rules as so amended.

Footnote

[y.2] Where the parties do not wish the proper law of the Contract to be the law of Nigeria appropriate amendments to clause 41.7 should be made.

[y.3] The JCT Arbitration Rules contain stricter time limits than those prescribed by some arbitration rules or those frequently observed in practice. The parties should note that a failure by a party or the agent of a party to comply with the time limits incorporated in these Rules may have adverse consequences.

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| | | Part 5: Performance Specified Work [ee] |
| 42.1 | Meaning of performance specified work | <p>The term 'Performance Specified Work' means work :</p> <ol style="list-style-type: none"> .1 identified in the Appendix, and .2 which is to be provided by the Contractor, and .3 for which certain requirements have been predetermined and are shown on the Contract Drawings, and .4 in respect of which the performance which the Employer requires from such work and which the Contractor, by this Contract and subject to the Conditions, is required to achieve has been stated in the Contract Bills and these Bills have included <ul style="list-style-type: none"> either information relating thereto sufficient to have enabled the Contractor to price such Performance Specified Work or a provisional sum in respect of the Performance Specified Work together with the information relating thereto as referred to in clause 42.7. |
| 42.2 | Contractor's statement | Before carrying out any Performance Specified Work, the Contractor shall provide the Contract Administrator/Architect with a document or set of documents, referred to in these Conditions as the 'Contractor's Statement', and, subject to the Conditions, the Contractor shall carry out the Performance Specified Work in accordance with that Statement. |
| 42.3 | Content's of contractor's statement | The Contractor's Statement shall be sufficient in form and detail adequately to explain the Contractor's proposals for the execution of the Performance Specified Work. It shall include any information which is required to be included therein by the Contract Bills or, where there is a provisional sum for the Performance Specified Work, by the instruction of the Contract Administrator/Architect on the expenditure of that sum; and may include information in drawn or scheduled form and a statement of |
| 42.4 | Time for contractor's statement | <p>The Contractor's Statement shall be provided to the Contract Administrator/Architect :</p> <ul style="list-style-type: none"> - by any date for its provision given in the Contract Bills or - by any reasonable date for its provision given in the instruction by the Contract Administrator/Architect on the expenditure of a provisional sum for Performance Specified Work. <p>If no such date is given it shall be provided at a reasonable time before the Contractor intends to carry out the Performance Specified Work.</p> |
| 42.5 | Contract Administrator/Architect's notice to amend contractor's statement | Within fourteen (14) days after receipt of the Contractor's Statement the Contract Administrator/Architect may, if he is of the opinion that such Statement is deficient in form and/or detail adequately to explain the Contractor's proposals for the execution of the Performance Specified Work, by notice in writing require the Contractor to amend such Statement so that it is in the opinion of the Contract Administrator/Architect not deficient. Whether or not an amendment is required by the Contract Administrator/Architect, the Contractor is responsible in accordance with the Conditions for any deficiency in such Statement and for the Performance Specified Work to which such Statement |
| 42.6 | Contract Administrator/Architect's notice of deficiency in contractor's statement | If the Contract Administrator/Architect shall find anything in the Contractor's Statement which appears to the Contract Administrator/Architect to be a deficiency which would adversely affect the performance required by the Employer from the relevant Performance Specified Work, he shall immediately give notice to the Contractor specifying the deficiency. Whether or not a notice is given by the Contract Administrator/Architect, the Contractor is responsible in accordance with the Conditions for the Performance Specified Work. |
| 42.7 | Definition of provisional sum for performance specified work | A provisional sum for Performance Specified Work means a sum provided in the Contract Bills for Performance Specified Work where the following information has been provided in the Contract Bills: |

Footnote

[ee] See practice Note 25 'Performance Specified Work' paragraphs 2.6 to 2.8 for a description of work which is not to be treated as Performance Specified Work.

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| 42.7 | | <p>.1 the performance which the Employer requires from such work;</p> <p>.2 the location of such Performance Specified Work in the building;</p> <p>.3 information relating thereto sufficient to have enabled the Contractor to have made due allowance in programming for the execution of such Performance Specified Work and for pricing all preliminary items relevant to such Performance Specified Work.</p> |
| 42.8 | Instructions of the Contract Administrator/Architect on other provisional sums | No instruction of the Contract Administrator/Architect pursuant to clause 13.3.1 on the expenditure of provisional sums included in the Contract Bills shall require Performance Specified Work except an instruction on the expenditure of a provisional sum included in the Contract Bills for Performance Specified Work. |
| 42.9 | Preparation of contract bills | The inclusion of Performance Specified Work in the Contract Bills shall not be regarded as a departure from the method of preparation of these Bills referred to in clause 2.2.2.1. |
| 42.10 | Provisional sum for performance specified work - errors or omissions in contract bills | If in the Contract Bills there is any error or omission in the information which, pursuant to clause 42.7.2 and/or 42.7.3, is to be included in the Contract Bills in respect of a provisional sum for Performance Specified Work such error or omission shall be corrected so that it does provide such information; and any such correction shall be treated as if it were a Variation required by an instruction of the Contract Administrator/Architect under clause 13.2. |
| 42.11 | Variation in respect of performance specified work | Subject to clause 42.12 the Contract Administrator/Architect may issue instructions under clause 13.2 requiring a Variation to Performance Specified Work. |
| 42.12 | Agreement for additional performance specified work | No instruction of the Contract Administrator/Architect under clause 13.2 may require as a Variation the provision by the Contractor of Performance Specified Work additional to that which has been identified in the Appendix unless the Employer and the Contractor otherwise agree. |
| 42.13 | Analysis | Where the Contract Bills do not provide an analysis of the portion of the Contract Sum which relates to any Performance Specified Work the Contractor shall provide such an analysis ('the Analysis') within 14 days of being required to do so by the Contract Administrator/Architect. |
| 42.14 | Integration of performance specified work | The Contract Administrator/Architect shall, within a reasonable time before the Contractor intends to carry out the Performance Specified Work, give any instructions necessary for the integration of such Performance Specified Work with the design of the Works. The Contractor shall, subject to clause 42.15, comply with any such instruction. |
| 42.15 | Compliance with Contract Administrator's instructions - contractor's notice of injurious affection | If the Contractor is of the opinion that compliance with any instruction of the Contract Administrator/Architect injuriously affects the efficacy of the Performance Specified Work, he shall within seven (7) days of receipt of the relevant instruction specify by notice in writing to the Contract Administrator/Architect such injurious affection. Except where the Contract Administrator/Architect amends the instruction to remove such injurious affection, the instruction shall not have effect without the written consent of the Contractor which consent shall not be unreasonably withheld or delayed. |
| 42.16 | Delay by contractor in providing the contractor's statement | Except for any extension of time in respect of the Relevant Event stated in clause 25.4.15 an extension of time shall not be given under clause 25.3 and clauses 26.1 and 28.2.2 shall not have effect where and to the extent that the cause of the progress of the Works having been delayed, affected or suspended is that the Contract Administrator/Architect has not received the Contractor's Statement by the time referred to in clause 42.4 or any amendment to the Contractor's Statement pursuant to clause 42.5. |
| 42.17 | Performance specified work - Contractor's obligation | <p>.1 The Contractor shall exercise reasonable skill and care in the provision of Performance Specified Work provided that :</p> <p>.1 .1 clause 42.17 shall not be construed so as to affect the obligations of the Contractor under this Contract in regard to the supply of workmanship, materials and goods; and</p> <p>.1 .2 nothing in this Contract shall operate as a guarantee of fitness for purpose of the Performance Specified Work.</p> <p>.2 The Contractor's obligation under clause 42.17.1 shall in no way be modified by any service in respect of any Performance Specified Work which he has obtained from others and, in particular, the Contractor shall be responsible for any such service as if such services had been undertaken by the Contractor himself.</p> |
| 42.18 | Nomination excluded | Performance Specified Work pursuant to clause 42 shall not be provided by a Nominated Sub-Contractor under a Nominated Sub-Contract or by a Nominated Supplier under a contract of sale to which clause 36 refers. |

Code of Practice: referred to in clause 8.4.4

- 1 This is the Code of Practice referred to in clause 8.4.4. The purpose of the Code is to help in the fair and reasonable operation of the requirements of clause 8.4.4.
- 2 The Contract Administrator/Architect and the Contractor should endeavour to agree the amount and method of opening up or testing but in any case in issuing his instructions pursuant to clause 8.4.4 the Contract Administrator/Architect is required to consider the following criteria :
 - .1 the need in the event of non-compliance to demonstrate at no cost to the Employer either that it is unique and not likely to occur in similar elements of the Works or alternatively the extent of any similar non-compliance in the Works already constructed or still to be constructed;
 - .2 the need to discover whether any non-compliance in a primary structural element is a failure of workmanship and/or materials such that rigorous testing of similar elements must take place; or where the non-compliance is in a less significant element whether it is such as is to be statistically expected and can be simply repaired; or whether the non-compliance indicates an inherent weakness such as can only be found by selective testing the extent of which must depend upon the importance of any detail concerned;
 - .3 the significance of the non-compliance having regard to the nature of the work in which it has occurred;
 - .4 the consequence of any similar non-compliance on the safety of the building, its effect on users, adjoining property, the public, and compliance with any statutory Requirements;
 - .5 the level and standard of supervision and control of the Works by the Contractor;
 - .6 the relevant records of the Contractor and where relevant of any sub-contractor resulting from the supervision and control referred to in paragraph 2.5 above or otherwise;
 - .7 any Codes of Practice or similar advice issued by a responsible body which are applicable to the non-complying work, materials or goods;
 - .8 any failure by the Contractor to carry out, or to secure the carrying out of, any tests specified in the Contract Documents or in an instruction of the Contract Administrator/Architect;
 - .9 the reason for the non-compliance when this has been established;
 - 10 any technical advice that the Contractor has obtained in respect of the non-complying work, materials or goods;
 - .11 current recognised testing procedures;
 - .12 the practicability of progressive testing in establishing whether any similar non-compliance is reasonably likely;
 - .13 if alternative testing methods are available, the time required for and the consequential costs of such alternative testing methods;
 - .14 any proposals of the Contractor;
 - .15 any other relevant matters.

Schedules 1 Contract's Design Submission Procedure

- 1 The Contractor shall prepare and submit two copies of each of the Contractor's Design Documents to the Employer in such format as is stated in the Employer's Requirements or the Contractor's Proposals and in sufficient time to allow any comments of the Employer to be incorporated prior to the relevant Contractor's Design Document being used for procurement and/or in the carrying out of the Works.
- 2 Within 14 days from the date of receipt of any Contractor's Design Document, or (if later) 14 days from either the date or expiry of the period for submission of the same stated in the Contract Documents, the Employer shall return one copy of that Contractor's Design Document to the Contractor marked 'A', 'B' or 'C' provided that a document shall be marked 'B' or 'C' only where the Employer considers that it is not in accordance with this Contract
- 3 If the Employer does not respond to a Contractor's Design Document in the time stated in paragraph 2, it shall be regarded as marked 'A'.
- 4 Where the Employer marks a Contractor's Design Document 'B' or 'C', he shall identify by means of a written comment why he considers that it is not in accordance with this Contract.
- 5 When a Contractor's Design Document is returned by the Employer:
 - 1 if it is marked 'A', the Contractor shall carry out the Works in strict accordance with that document;
 - 2 if it is marked 'B', the Contractor may carry out the Works in accordance with that document, provided that the Employer's comments are incorporated into it and an amended copy of it is promptly submitted to the Employer; or
 - 3 if it is marked 'C', the Contractor shall take due account of the Employer's comments on it and shall either forthwith re-submit it to the Employer in amended form for comment in accordance with paragraph 1 or notify the Employer under paragraph 7.
- 6 The Contractor shall not carry out any work in accordance with a Contractor's Design Document marked 'C' and the Employer shall not be liable to pay for any work within the Works executed otherwise than in accordance with Contractor's Design Documents marked 'A' or 'B'.
- 7 If the Contractor disagrees with a comment of the Employer and considers that the Contractor's Design Document in question is in accordance with this Contract, he shall within 7 days of receipt of the comment notify the Employer in writing that he considers that compliance with the comment would give rise to a Change. Such notification shall be accompanied by a statement setting out the Contractor's reasons. Upon receipt of such a notification the Employer shall within 7 days either confirm or withdraw the comment and, where the comment is confirmed, the Contractor shall amend and resubmit the document accordingly.
- 8 Provided always that:
 - 1 confirmation or withdrawal of a comment in accordance with paragraph 7 shall not signify acceptance by the Employer that the relevant Contractor's Design Document or amended document is in accordance with this Contract or that compliance with the Employer's comment would give rise to a Change;
 - 2 where in relation to a comment by the Employer the Contractor does not notify him in accordance with paragraph 7, the comment in question shall not be treated as giving rise to a Change; and
 - 3 neither compliance with the design submission procedure in this Schedule nor with the Employer's comments shall diminish the Contractor's obligations to ensure that the Contractor's Design Documents and Works are in accordance with this Contract

Part 2: Nominated Sub-Contractors and Nominated Suppliers

Nominated Sub-Contractors

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| 35 | | General |
| 35 | .1 | Where |
| 35.1 | .1 | in the Contract Bills; or |
| 35.1 | .2 | in any instruction of the Contract Administrator under clause 13.3 on the expenditure of a provisional sum included in the Contract Bills; or |
| 35.1 | .3 | in any instruction of the Contract Administrator under clause 13.2 requiring a variation to the extent, but not further or otherwise, |
| | .3 | .1 that it consist of work additional to that shown upon the Contract Drawings and described by or referred to in the Contract Bill and |
| | .3 | .2 that any supply and fixing of materials or goods or any execution of the work by a nominated Sub-Contractor in connection with such additional work is of a similar kind to any supply and fixing of materials or the execution of work for which the Contract Bills provided that the Contract Administrator would nominate a sub-contractor; or |
| 35.1 | .4 | by agreement (which agreement shall not be unreasonably withheld) between the Contractor and the Contract Administrator on behalf of the Employer |
| | | the Contract Administrator has, whether by use of a prime cost sum or by naming a sub-contractor, reserved to himself the final selection and approval of the sub-contractor to the Contractor who shall supply and fix any materials or goods or execute work, the sub-contractor so named or to be selected and approved shall be nominated in accordance with the provisions of clause 35 and a sub-contractor so nominated shall be a Nominated Sub-Contractor for all the purposes of this Contract. The provisions of clause 35.1 shall apply notwithstanding the requirement of rule 1A51 of the Building and Engineering Standard Method of Measurement, 3rd edition, for a PC sum to be included in the Bills of Quantities in respect of Nominated Sub-Contractors; where however such sum is included in the Contract Bills the provisions of the aforesaid rule 1A51 shall apply in respect thereof. |
| 35.2 | .1 | Where the Contractor in the ordinary course of this business directly carried out works included in the Contract Bills and to which clause 35 applies, and where items of such works are set out in the Appendix and the Contract Administrator is prepared to receive tenders from the contractors for such items, then Employers right to reject the lowest or any tender shall apply. If the Contractor's tender is accepted, he shall not sub-let the work to a Domestic Sub-contractor without the consent of the Contract Administrator. Provided that where an item for which the Contract Administrator intends to nominate a sub-contractor is included in Contract Administrator's instructions issued under clause 13.3 it shall be deemed for the purposes of clause 35.2.1. to have been included in the Contract Bills and the item of work to which it relates shall likewise be deemed to have been set out in the Appendix. |
| 35.2 | .2 | It shall be a condition of any tender accepted under clause 35.2 that clause 13 shall apply in respect of the items of work included in the tender as if for the reference therein to the Contract Drawings and the Contract Bills there were references to the equivalent documents included in or referred to in the tender submitted under clause 35.2. |
| 35.2 | .3 | None of the provisions of clause 35 other than clause 35.2 shall apply to works for which a tender of the Contractor is accepted under clause 35.2. |

PROCEDURE FOR NOMINATION OF A SUB –CONTRACTOR

The nomination of a sub-contractor to which clause 35.1 applies shall be effected in accordance with clause 35.4 to 35.9 inclusive.

The following documents relating to Nominated Sub-contractors are issued by the Joint Contracts Tribunal for the Standard Form of Building Contract and are referred to in the Conditions and in those documents either by the name or of the identification term:

Name of Document

The Standard Form of Nominated Sub-contract Tender
1991 Edition, which comprises:

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| Part 1: The Contract Administrator's Invitation to Tender to a Sub-contractor | - Part 1 |
| Part 2: Tender to a Sub-contractor | - Part 2 |
| Part 3: Particular Conditions (to be agreed by a Contractor and a Sub-Contractor nominated under clause 35.6) | - Part 3 |
| The Standard Form of Articles of Nominated Sub-Contract Agreement between a Contractor a Nominated Sub-contractor, 1991 Edition. | Agreement NSC/A |
| The Standard Condition of Nominated Sub-Contract, 1991 Edition, incorporated by reference into Agreement NSC/A | Condition NSC/C |
| The Standard Form of Employer/Nominated Sub-Contractor Agreement NSC/W Agreement, 1991 Edition | Agreement NSC/W |
| The Standard Form of Nominated Instruction for a Sub-Contractor Nomination SC/N Agreement, 1991 Edition | Nomination SC/N |

- 35.5 .1 No person against whom the Contractor makes a reasonable objection shall be a Nominated Sub-Contractor. The Contractor shall make such reasonable objection in writing at the earliest practicable moment but in any case not later than seven (7) working days from receipt of the instruction of the Contract Administrator under clause 35.6 nominating the sub-contractor.
- 35.5 .2 Where such reasonable objection is made the Contract Administrator may either issue further instructions to remove the objection so that the Contractor can then comply with clause 35.7 in respect of such nomination instruction or cancel such nomination instruction and issue an instruction either under clause 13.2 omitting the work which was the subject of that nomination instruction under clause 35.6 nominating another sub-contractor therefore. A copy of any instruction issued under clause 35.5.2 shall be sent by the Contract Administrator to the sub-contractor.
- 35.6 .1 The Contract Administrator shall issue an instruction to the Contractor on Nomination NSC/N nominating the sub-contract which shall be accompanied by:
NSC/T Part 1 (Invitation to Tender) completed by the Contract Administrator and NSC/T Part 2 (Tender by a Sub-Contractor) completed and signed by the sub-contractor and signed by or on behalf of the Employer as 'approved' together with a copy of the numbered tender documents listed in and enclosed with NSC/T Part 1 together with any additional documents and/or amendments thereto as have been approved by the Contract Administrator;

- 35.6 .2 a copy of the completed Agreement NSC/W (*Employer/Nominated Sub-Contractor Agreement*) entered into between the Employer and the sub-contractor; and
- 35.6 .3 confirmation of any alterations to the information given in NSC/T Part 1 (*Invitation to Tender*)
- items 7: obligations or restrictions imposed by the Employer
 items 8: order of works: Employer's requirements
 items 9: type and location of access
- A copy of the instruction shall be sent by the Contract Administrator to the sub-contractor together with a copy of the completed Appendix for the Main Contractor.
- 35.7 The Contractor shall forthwith upon receipt of such instruction:
- 35.7 .1 complete in agreement with the sub-contractor NSC/T Part three (3) (*Particular Conditions*) and have that completed NSC/T Part three (3) signed by or on behalf of the Contractor and by or on behalf of the sub-contractor; and
- 35.7 .2 execute Agreement NSC/A (Articles of Nominated Sub-contract Agreement) with the sub-contractor and thereupon shall sent a copy of the completed Agreement NSC/A and of the agreed and signed NSC/T Part three (3) (but not the other Annexure to Agreement NSC/A) to the Contract Administrator.
- 35.8 If the Contractor, having used his best endeavours, has not, within ten (10) working days from receipt of such instruction, complied with clause 35.7, the Contractor shall thereupon by a notice in writing inform the Contract Administrator
- Either
- 35.8 .1 of the date by which he expected to have complied with clause 35.7
- or
- 35.8 .2 that the non-compliance is due to other matters identified in the Contractor's notice.
- 35.9 Within a reasonable time after receipt of a notice under clause 35.8 the Contract Administrator shall:
- 35.9 .1 where clause 35.8.1 applies, after consultation with the Contractor and so far as he considers it reasonable, fix a later date by which the Contractor shall have complied with clause 35.7;
- 35.9 .2 where clause 35.8.2 applies, inform the Contractor in writing either that he does not consider that the matters identified in the notice justify non-compliance by the Contractor with such nomination instruction in which case the Contract Administrator shall either issued further instructions so that the Contractor can then comply with clause 35.7 in respect of such nomination instruction or cancel such nomination and the nomination either under clause 13.2 omitting the work which was the subject of the nomination instruction or under clause 35.6 nominating another sub-contractor therefor. A copy of any instruction issued under clause 35.9.2 shall be sent by the Contract Administrator to the sub-contractor.
- 35.10 [Number not used]
 35.11 [Number not used]
 35.12 [Number not used]

- 35.13 PAYMENT OF NOMINATED SUB-CONTRACTOR
- 35.13 .1 The Contract Administrator shall on the issue of each Interim Certificate:
- .1 .1 direct the Contractor as to the amount of each interim or final payment to Nominated Sub-Contractors which is included in the amount stated as due in Interim Certificates and the amount of such interim or final payment shall be computed by the Contract Administrator in accordance with the relevant provisions of Conditions NSC/C (Conditions of Nominated Sub-Contract); and
- .1 .2 forthwith inform each Nominated Sub-Contractor of the amount of any interim or final payment directed in accordance with clause 35.13.1.1
- 35.13 .2 Each payment directed under clause 35.13.1.1 shall be duly discharged by the Contractor in accordance with Conditions NSC/C (Conditions of Nominated Sub-Contract).
- 35.13 .3 Before the issue of each Interim Certificate (other than the first Interim Certificate) and of the Final Certificate the Contractor pursuant to clause 35.13.2.
- 35.13 .4 If the Contractor is unable to provide the reasonable proof referred to in clause 35.13.3 because of some failure or omission of the Nominated Sub-Contractor to provide any document or other evidence to the Contractor which the Contractor may reasonably require and the Contract Administrator is reasonably satisfied that this is the sole reason why reasonable proof is not furnished by the Contractor, the provisions of clause 35.13.5 shall not apply and the provisions of clause 35.13.3 shall be regarded as having been satisfied.
- 35.13 .5 .1 If the Contractor fails to provide reasonable proof under clause 35.13.3, the Contract Administrator shall issue a certificate to that effect stating the amount in respect of which the Contractor has failed to provide such proof, and the Contract Administrator shall issue a copy of the certificate to the Nominated Sub-Contractor concerned.
- .5 .2 Provided that the Contract Administrator has issued the certificate under clause 35.13.5.1 and subject to clause 35.13.5.3, the amount of any future payment otherwise due to the Contractor under this Contract (after deducting any amounts due to Employer from Contractor under this shall be reduced by any amounts due to Nominated Sub-Contractors which the Contractor has failed to discharge (together with the amount of any value added tax which would have been due to the Nominated Sub-Contractor) and the Employer shall himself pay the same to the Nominated Sub-Contractor concerned. Provided that the Employer shall in no circumstances be obliged to pay amounts to Nominated Sub-Contractors in excess of amounts available for reduction as aforesaid.
- .5 .3 The operation of clause 35.13.5.2 shall be subject to the following:
- .3 .1 where the Contractor would otherwise be entitled to payment of an amount stated as due in an interim certificate under clause 30, the reduction and payment to the same time as the Employer pays the Sub-Contractor balance due under clause 30 or, if there is no such balance, not later than the expiry of the period of fourteen (14) days within which the Contractor would otherwise be entitled to payment;
- .3 .3 where the sum due to the Contractor is the Retention or any part thereof, the reduction and payment to the Nominated subcontractor referred to in clause 35.13.5.2 shall not exceed any part of the Contractor's retention (as defined in clause 30.4.2) which would otherwise be due for payment to the Contractor;

- .3 .3 where the Employer has to pay two or more Nominated Sub-Contractors but the amount due or to become due to the Contractor is insufficient to enable the Employer to pay the Nominated Sub-contractor in full, the Employer, shall apply the amount available pro-rata to the amounts from time to the time remaining unpaid by the Contractor or adopt such other method of apportionment as may appear to the Employer to be fair and reasonable having regard to all the relevant circumstances;
- .3 .4 clause 13.5.2 shall cease to have effect absolutely if at the date when the reduction and payment to the Nominated Sub-Contractor referred to in clause 35.13.5.2 would otherwise be made there is in existence
- either a Petition, which has been presented to the Court for the winding up of the Contractor
- or a resolution properly passed for the winding up of the Contractor other than for the purposes of amalgamation or reconstruction
- whichever shall have first occurred. [v]
- 35.13 .6 Where, in accordance with clause 2.2 of Agreement NSC/W (Employer/Nominated Sub-Contractor Agreement), the Employer, before the date of issue of an instruction nominating a sub-contractor, has paid to him an amount in respect of design work and/or materials or goods and/or fabrication which is/are included in the subject of the sub-contract sum or tender sum:
- .6 .1 the Employer shall send to the Contractor the written statement of the Nominated Sub-Contractor of the amount to be credited to the Contractor, and
- .6 .2 the Employer may make deductions up to the amount of such credit from the amounts stated as due to the Contractor in any of the Interim Certificates which include amounts of Interim or final payment to the Nominated Sub-Contractor; provided that the amount so deducted from that stated as due in any one Interim Certificate shall not exceed the amount of payment to the Nominated Sub-Contractor included therein as directed by the Contract Administrator.
- 35.14 EXTENSION OF PERIOD OR PERIODS FOR COMPLETION OF NOMINATED SUB-CONTRACT WORKS
- 35.14 .1 The Contractor shall not grant to any Nominated Sub-Contract any extension of the period or periods within which the sub-contract works (or where the sub-contract works are to be completed in parts any part thereof) are to be completed except in accordance with the relevant provisions of Conditions NSC/C (Conditions of Nominated Sub-Contract) which require the written consent of the Contract Administrator to any such grant.
- 35.14 .2 The Contract Administrator shall operate the relevant provisions of Conditions NSC/C (Conditions of Nominated Sub-Contract) upon receiving any notice, particulars and estimate and a request from the Contractor and any Nominated Sub-Contractor for his written consent to an extension of the period or periods for the completion of the sub-contract works or any part thereof as referred to in clause 2.3 of Conditions NSC/C (Conditions of Nominated Sub-Contract).

Footnote *[v] Where the Contractor is a person subject to bankruptcy laws and not the law relating to the insolvency of a company, clause 35.13.5.3.4 will require amendment to refer to the events on the happening of which bankruptcy occurs.*

- 35.15 FAILURE TO COMPLETE NOMINATED SUBCONTRACT WORKS
- 35.15 .1 If any Nominated Sub-Contractor fails to complete the sub-contract works (or where the sub-contract works are to be completed in parts any part thereof) within the period specified in the Nominated Sub-Contract or within any extended time granted by the Contractor with the writing consent of the Contract Administrator, and the Contractor so notifies the Contract Administrator with a copy to the Nominated Sub-Contractor,
- then, provided that the Contract Administrator is satisfied that clause 35.14 has been properly applied, the Contract Administrator shall so certify in writing to the Contractor. Immediately upon the issued of such a certificate the Contract Administrator shall send a duplicate thereof to the Nominated Sub-Contractor.
- 35.15 .2 The certificate of the Contract Administrator under clause 35.15.1 shall be issued not later than two (2) months from the date of notification to the Contract Administrator that the Nominated Sub-Contractor has failed to complete the sub-contract works or any part thereof.
- 35.16 PRACTICAL COMPLETION OF NOMINATED SUB-CONTRACT WORKS
- When in the opinion of the Contract Administrator practical completion of the works executed by a Nominated Sub-Contractor is achieved he shall forthwith issue a certificate to that and practical completion of such works shall be deemed to have taken place on the day named in such certificate, a duplicate copy of which shall be sent by the Contract Administrator to the Nominated Sub-Contractor; where clause 18 applies practical completion of works executed by a Nominated Sub-Contractor in a relevant part shall be deemed to have occurred on the relevant date to which clause 18.1 refers and the Contract Administrator shall sent to the Nominated Sub-Contractor copy of the written statement which he has issued pursuant to clause 18.1.
- 35.17 EARLY FINAL PAYMENT OF NOMINATED SUB-CONTRACTORS
- 35.17 Provided clause 5 of Agreement NSC/W (Employer/Nominated Sub-Contractor Agreement) remains in force unaltered, then at any time after the day named in the certificate issued under clause 35.16 the Contract Administrator may, and on the expiry of twelve (12) months from the aforesaid day shall, issue an Interim Certificate the gross valuation for which shall include the amount of the relevant sub-contract sum or ascertained final sub-contract sum as finally adjusted or ascertained under the relevant provisions of Conditions NSC/C (Conditions of Nominated Sub-Contract); provided always that the Nominated Sub-Contract:
- 35.17 .1 has in the opinion of the Contract Administrator and the Contract remedied any defects, shrinkages or other faults which have appeared and which the Nominated Sub-Contractor is bound to remedy under the Nominated Sub-Contract; and
- 35.17 .2 has sent through the Contractor to the Contract Administrator or the Quantity Surveyor all documents necessary for the final adjustment of the sub-contract sum or the computation of the ascertained final sub-contract sum referred to in clause 35.17 Upon due discharge by the Contractor to the Nominated Sub-Contractor ('the original sub-contractor') of the amount certified under clause 35.17 then:
- 35.18 .1 .1 if the original sub-contractor fails to rectify any defect, shrinkage or other fault in the sub-contract works which he is bound to remedy under the Nominated Sub-Contract and which appears before the issue of the Final Certificate under clause 30.8 the Contract Administrator shall issue an instruction nominating a person ('the substituted sub-contractor') to carry out such rectification work and all the provisions relating to Nominated Sub-Contractors in clause 35 shall apply to such further nomination;

- .1 .2 the Employer shall take such steps as may be reasonable to recover, under the Agreement NSC/W (Employer/Nominated Sub-Contractor Agreement), from the original sub-contractor a sum equal to the Employer any difference between the amount so recovered by the Employer and the sub-contract price of the substituted sub-contractor provided that, before the further nomination has been made, the Contractor has agreed (which agreement shall not be unreasonably withheld to the sub-contract price to be charged by the substituted sub-contractor).
- 35.18 .2 Nothing in clause 35.18 shall override or modify the provisions of clause 35.21.
- 35.18 Notwithstanding any final payment to a Nominated Sub-Contractor under the provisions of clause 35:
- 35.19 .1 until the date of Practical Completion of the Works or the date when the Employer takes possession of works, whichever first occurs, the Contractor shall be responsible for loss or damage to the sub-contract works for which a payment to which clause 35.17 refers has been made to the extent but not further or otherwise than he is responsible for that part of the works which a payment as aforesaid has not been made;
- 35.19 .2 the provisions of clause 22A or 22B or 22C whichever is applicable shall remain in full force and effect.

POSITION OF EMPLOYER IN RELATION TO NOMINATED SUB-CONTRACTOR

- 35.20 Neither the existence nor the exercise of the powers in clause 35 nor anything else contained in the Conditions shall render the Employer in any way liable to any Nominated Sub-Contractor except by way and in the terms of the Agreement NSC/W (Employer/Nominated Sub-Contract Agreement).
- 35.21 **CLAUSE 2.1 OF AGREEMENT NSC/W – POSITION OF CONTRACTOR**
Whether or not a Nominated Sub-Contractor is responsible to the Employer in the Terms set out in clause 2.1 of Agreement NSC/W (Employer/Nominated Sub-Contract Agreement) the Contractor shall not be responsible to the Employer in respect of any nominated sub-contract works for anything to which such relate. Nothing in clause 35.21 shall be construed so as to affect the obligations of the Contractor under this Contract in regard to the supply of workmanship, materials and goods.
- 35.22 **RESTRICTIONS IN CONTRACTS OF SALE ETC. – LIMITATION OF LIABILITY OF NOMINATED SUB-CONTRACTORS**
Where any liability of the Nominated Sub-Contractor to the Contractor is limited under the provisions of clause 1.7 of Conditions NSC/C (Conditions of Nominated Sub-Contract) the liability of the Contractor to the Employer shall be limited to the same extent.
- 35.23 [Number not used]

CIRCUMSTANCES WHERE RE-NOMINATION NECESSARY

- 35.24 .1 If in respect of any Nominated Sub-Contract:
 the Contractor informs the Contract Administrator that in the opinion of the Contractor the Nominated Sub-Contractor has made default in respect of any one or of the matters referred to in clauses 7.1.1.1 to 7.1.1.4 of Conditions NSC/C (Conditions of Nominated Sub-Contract) and the Contractor has passed to the Contract Administrator any observations of the Nominated Sub-Contractor in regard to the matters on which the Contractor considers the Nominated Sub-Contractor is default; and the Contract Administrator is reasonably of the opinion that the Nominated Sub-Contractor has made default; or
- 35.24 .2 the Contractor informs the Contract Administrator that one of the insolvency events referred to in clause 7.2.1 of Conditions NSC/C (Insolvency of Nominated Sub-Contractor) has occurred and either that under clause 7.2.3 of the aforesaid Conditions the employment of the Nominated Sub-Contractor has been automatically determined; or under clause 7.2.4 of those conditions, the Contractor has an option, with the written consent of the Contract Administrator, to determine the employment of the Nominated Sub-Contractor or;
- 35.24 .3 the Nominated Sub-Contractor determines his employment under clause 7.7 of Conditions NSC/C (Conditions of Nominated Sub-Contract); or
- 35.24 .4 the contractor has been required by the Employer to determine the employment of the Nominated Sub-Contractor; or
- 35.24 .5 work properly executed or materials or goods properly fixed or supplied by the Nominated Sub-Contractor have to be taken down and/or re-executed or re-supplied ('work to be re-executed') as a result of compliance by the Contractor or by any other Nominated Sub-Contractor with any instruction or other exercise of a power of the Contract Administrator under clauses 7 or 8.4 or 17.2 or 17.3 and the Nominated Sub-Contractor cannot be required under the Nominated Sub-Contract and does not agree to carry out the work to be re-executed;
- then:
- 35.24 .6 Where clause 35.24.1 applies:
- .6 .1 the Contract Administrator shall issue an instruction to the Contractor to give to the Nominated Sub-Contractor the notice specifying the default or defaults to which clause 7.1.1 of Conditions NSC/C (Conditions of Nominated Sub-Contract) refers; and may in that instruction state the Contractor must obtain a further instruction of the Contract Administrator before determining the employment of the Nominated Sub-Contractor under clause 7.1.2 of 7.1.3 of Conditions (Conditions of Nominated Sub-Contract); and
- .6 .2 the Contractor shall inform the Contract Administrator whether, following the giving of that notice for the which the Contract Administrator has issued an instruction under clause 35.24.6.1, the employment of the Nominated Sub-Contractor has been determined by the Contractor under clause 7.1.2 of 7.1.3 of Conditions NSC/C (Conditions of Nominated Sub-Contract); or where the further instruction referred to in clause 35.24.6.1 has been given by the Contract Administrator, the Contractor shall confirm that the employment of the Nominated Sub-Contractor has been determined; then

- .6 .3 if the Contractor informs or confirm the Contract Administrator that the employment of the Nominated Sub-Contractor has been so determined the Contract Administrator shall make such further nomination of a sub-contractor in accordance with clause 35 as may be necessary to supply and fix the materials or goods or to execute the work and to make good or re-supply or re-execute as necessary any work executed by or any materials or goods supplied by the Nominated Sub-Contractor whose employment has been determined which were not in accordance with the relevant Nominated Sub-Contract.
- 35.24 .7 .1 Where clause 35.24.2 applies and the Contractor has an option under clause 7.2.4 of Conditions NSC/C (Insolvency of Nominated Sub-Contractor) to determine the employment of the Nominated Sub-Contractor, clause 35.24.7.2 shall apply in respect of the written consent of the Contract Administrator to any determination of the employment of Nominated Sub-Contractor.
- .7 .2 Where
the administrator or the administrative receiver of the Nominated Sub-Contractor, or

the Nominated Sub-Contractor after making a composition or arrangement with his creditor or, being a company, after making a voluntary arrangement for a composition of debts or a scheme of arrangement approved in accordance with the Companies Act 1985 or the Insolvency Act 1986 or any amendment or re-enactment thereof as case may be

is, to the reasonable satisfaction of the Contractor and the Contract Administrator, prepared and able to continue to carry out the relevant Nominated Sub-Contract and to meet the liabilities there under, the Contract Administrator may withheld his consent. Where continuation on such terms does not apply the Contract Administrator shall give his consent to a determination by the Contractor of the employment of the Nominated Sub-Contractor unless the Employer and the Contractor otherwise agree.
- .7 .3 Where the written consent of the Contract Administrator to the determination of the employment of the Nominated Sub-contractor has been given and the Contractor has determined that employment or where, under clause 7.2.3 of the Conditions NSC/C (Conditions of Nominated Sub-Contract), the employment of the Nominated Subcontractor has been automatically determined the following shall apply. The Contract Administrator shall make such further nomination of a sub-Contractor in accordance with clause 35 as may be necessary to supply and fix the materials or goods or to execute the work and to make good or re-supply or re-execute as necessary any work executed by or any materials or goods supplied by the Nominated Sub-Contractor whose employment has been determined which were not in accordance with the relevant Nominated Sub-Contract.
- .7 .4 Where clause 35.24.2 applies the Contract Administrator shall make such further nomination of a sub-contractor in accordance with clause 35 as may be necessary to supply and fix the materials or goods or to execute the work and to make good or re-supply or re-execute as necessary any work executed by or any materials or goods supplied by the Nominated Sub-Contractor whose employment has been determined which were not in accordance with the relevant Nominated Sub-Contract.
- 35.24 .8 .1 Where clause 35.24.2 applies the Contract Administrator shall make such further nomination of a sub-contractor in accordance with clause 35 as may be necessary to supply and fix the materials or goods or to execute the work and to make good or re-supply or re-execute as necessary any work executed by or any materials or goods supplied by the Nominated Sub-Contractor who has determined his employment which were not in accordance with the relevant Nominated Sub-Contract.

- .8 .2 Where clause 35.24.2 applies the Contract Administrator shall make such further nomination of a sub-contractor in accordance with clause 35 as may be necessary to carry out the work to be re-executed referred to in clause 35.24.5

- 35.24 .9 The amount properly payable to the Nominated Sub-Contractor under the Nominated Sub-Contract resulting from such further nomination under clause 36.24.6.3 or 35.24.7.3 or 35.24.7.4 shall be included in the amount stated as due in Interim Certificates and added to the Contract Sum. Where clauses 35.24.3 and 35.24.8.1 apply any extra amount, payable by the Employer in respect of the sub-contractor nominated under the further nomination over the price of the Nominated Sub-Contractor who has validly determined his employment under his Nominated Sub-Contract, and where clauses 35.24.5 and 35.24.8.2 apply the amount payable by the Employer, resulting from such further nomination may at the time or any time after such amount is certified in respect of the sub-contractor nominated under the further nomination be deducted by the Employer from monies due or to become due to the Contractor under this Contract or may be recoverable from the Contractor by the Employer as a debt.
- 35.24 .1 The Contract Administrator shall make the further nomination of sub-contractor as referred to in clause 35.24.6.3, 35.24.7, 35.24.8.1 and 35.24.8.2 within a reasonable time, having regard to all the circumstances, after the obligation to make such further nomination has arisen.
- DETERMINATION OR DETERMINATION OF EMPLOYMENT OF NOMINATED SUB-CONTRACTOR – CONTRACT ADMINISTRATOR'S INSTRUCTIONS
- 35.25 The Contractor shall not determine any Nominated Sub-Contract by virtue of any right to which he may be or may become entitled without an instruction from the Contract Administrator so to do.
- 35.25 .1 Where the Employment of the Nominated Sub-Contractor is determined under clauses 7.1 to 7.5 of Conditions NSC/C (Condition of Nominated Sub-Contract) the Contract Administrator shall provide the Contractor with the information and with the direction in an Interim Certificate to enable the Contractor to comply with clause 7.5.2 of Conditions NSC/C; namely the amount of expenses properly incurred by the Employer and the amount of direct loss and/or damage caused to the Employer by the determination of the employment of the Nominated Sub-Contract; and shall, pursuant to clause 35.13.1, issue an Interim Certificate which certifies the value of any work executed or goods and material supplied by the Nominated Sub-Contractor to the extent that such value has not been included in previous Interim Certificates.
- 35.25 .2 Where the Employment of the Nominated Sub-Contractor is determined under clauses 7.7 of Conditions NSC/C (Condition of Nominated Sub-Contract) and clause 7.8 of those Conditions applies, the Contract Administrator shall, pursuant to clause 35.13.1, issued and interim Certificate which certifies the value of any work executed or goods and materials supplied by the Nominated Sub-Contractor to the extent that such value has not been included in previous Interim Certificate.

- 36 **Nominated Suppliers**
- 36.1 .1 In the Conditions 'Nominated Supplier' means a supplier to the Contractor who is nominated by the Contract Administrator in one of the following ways to supply materials or goods which are to be fixed by the Contractor:
- .1 .1 where a prime cost sum is included in the Contract Bills in respect of those materials or goods and the supplier is either named in the Contract Bills or subsequently named by the Contract Administrator in an instruction issued under clause 36.2;
- .1 .2 where a provisional sum is included in the Contract Bills in any instruction by the Contract Administrator in regard to the expenditure of such sum the supply materials or goods is made the subject of the a prime cost sum and the supplier is named by the Contract Administrator in that instruction or in an instruction issued under clause 36.2;
- .1 .3 where a provisional sum is included in the Contract Bills and in any instruction by the Contract Administrator in regard to the expenditure of such a sum for materials or goods are specified for which there is a sole source of supply in that there is only one supplier from whom the Contractor can obtain them, in which case the supply of materials or goods shall be made the subject of the a prime cost sum in the instructions issued by the Contract Administrator in regard to the expenditure of the provisional sum and the sole supplier shall be deemed to have been nominated by the Contract Administrator;
- .1 .4 where the Contract Administrator requires under clause 13.2, or subsequently sanctions, a Variation and specifies materials or goods for which there is a sole supplier as referred in clause 36.1.1.3, in which case the supply of the materials and goods shall be made the subject of prime cost sum in the instruction or written sanction issued by the Contract Administrator under clause 13.2 and the sole supplier shall be deemed to have been nominated by the Contract Administrator.
- 36.1 .2 In the Conditions the expression "Nominated Supplier" shall not apply to a supplier of materials or goods which are specified in the Contract Bills to be fixed by the Contractor unless such materials or goods are the subject of a prime cost sum in the Contract Bills, notwithstanding that the supplier has been named in the Contract Bills or that there is a sole supplier of such materials or goods as defined in clause 36.1.1.3
- 36.2 The Contract Administrator shall issue instructions for the purpose of nominating a supplier for any materials or goods in respect of which a prime cost sum is defined in the Contract Bills or arises under clause 36.1
- 36.3 .1 For the purposes of clause 30.6.2.8 the amounts 'properly chargeable to the Employer in accordance with the nomination instruction of the Contract Administrator' shall include the total amount paid or payable in respect of the materials or goods less any discount other than the discount referred to in clause 36.4.4, properly so chargeable to the Employer and shall include where applicable:
- .1 .1 any tax (other than any value added tax which is treated, or is capable of being treated, as input tax (as referred to in the Finance Act 1972) by the Contractor) or duly not otherwise recoverable under this Contract by whomsoever payable which is payable under or by virtue of any Act of Parliament on the import, purchase, sale, appropriation, processing, alteration, adapting for sale or use of the materials or goods to be supplied; and
- .1 .2 the net cost of appropriate packing, carriage and delivery after allowing for any credit for return of any packing to the supplier; and

- .1 .3 the amount of any price adjustment properly paid or payable to, or allowed or allowable by, the supplier less any discount other than a cash discount for payment in full within thirty (30) days of the end of the month during which delivery is made.

- 36.3 .2 Where in the opinion of the Contract Administrator the Contractor properly incurs expense, which would not be reimbursed under clause 36.3.1 or otherwise under this Contract, in obtaining the materials or goods from the Nominated Supplier such expense shall be added to the Contract Sum.
- 36.4 Save where the Contract Administrator and the Contractor shall otherwise agree, the Contract Administrator shall only nominate as a supplier a person who will enter into a contract of sale with the Contractor which provides, inter alia:
- 36.4 .1 that the materials or goods to be supplied shall be of quality and standard specified provided that where and to the extent that approval of the quality of materials or of the standards of workmanship is a matter for the opinion of the Contract Administrator such quality and standard shall be to the reasonable satisfaction of the Contract Administrator;
- 36.4 .2 that the Nominated Suppliers shall make good by replacement or otherwise any defects in the materials or goods supplied which appears up to and including the last or of the Defects Liability Period under this Contract and shall bear any expenses reasonably incurred by the Contractor as a direct consequence of such defects provided that:
- .2 .1 such defects are due solely to defective workmanship or materials in the materials or goods supplied and shall not have been caused by improper storage by the Contractor or by misuse or by any act or neglect of
- either the Contractor, the Contract Administrator or the employer or by any person or persons for whom they may be responsible or by any other for whom the Nominated Supplier is responsible;
- 36.4 .3 that delivery of the materials or goods supplied shall be commenced, carried out and completed in accordance with a delivery programme to be agreed between the Contractor and the Nominated Supplier including, to the extent agreed, the following grounds on which that programme may be varied:
- force majeure; or
- civil commotion, local combination of workmen, strike or lock-out; or
- any instruction of the Contract Administrator under clause 13.2 (Variations) or clause 13.3 (provisional Sums); or
- failure of the Contract Administrator to supply to the Nominated Supplier within due time any necessary information for which he has specifically applied in writing on a date which was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same; or exceptionally adverse weather conditions
- or, if no such programme is agreed, delivery shall be commenced, carried out and completed in accordance with the reasonable directions of the Contractor;
- 36.4 .4 that the Nominated Supplier shall not allow the Contractor a discount for cash of 5 per cent on all payments if the Contractor makes payment in full within thirty (30) days of the end of the month during which delivery is made;
- 36.4 .5 that Nominated Supplier shall not be obliged to make any delivery of materials or goods (except any which may have been paid for in full less only any discount for cash) after the determination (for any reason) of the Contractor's employment under this Contract;
- 36.4 .6 that full discharge by the Contract in respect of payments for materials or goods supplied by the nominated Supplier shall be effected within thirty (30) days of the end of the month during which delivery is made less only a discount for cash of 5 per cent if so paid;

- 36.4 .7 that the ownership of materials or goods shall pass to the Contractor upon delivery by the Nominated Supplier to or the order of the Contractor, whether or not payment has been made in full;
- 36.4 .8 .1 that in any dispute or difference between the Contractor and the Nominated Supplier which is referred to arbitration the Contractor and the Nominated Supplier agree and consent pursuant to Sections 1(3)(a) and 2(1)(b) of the Arbitration Act 1979 that either the Contractor or the Nominated Supplier
- may appeal to the High Court on any question of law arising out of an award made in the arbitration and
- may apply to the High Court to determine any question of law arising in the course of the arbitration;
- and that the Contractor and the Nominated Supplier agree that the High Court should have jurisdiction to determine any such question of law;
- .8 .2 that if any dispute or difference between the Contractor and the Nominated Supplier raises issues which are substantially the same as or are connected with issues raised in a related dispute between the Employer and the Contractor under this Contract then, where clauses 41.2.1 and 41.2.2 apply, such dispute or difference shall be referred to the Arbitrator to be appointed pursuant to clause 41; that the arbitrator shall have power to make such directions and all necessary awards in the same way as if the procedure of the high Court as to joining one or more defendants or joining co-defendants or third parties was available to the parties; that the agreement and consent referred to in clause 36.4.8.1 on appeals or applications to the High Court on any question of law shall apply to any question of law arising out of the awards of such arbitrator in respect of all related disputes referred to him or arising in the course of the reference of all the related disputes referred to him, and that in any case, subjectch the said clause 4.38.1 refers.tain, or shall instruct the Quantity Surveyor to ascertain, the amount of such loss and/
- 36.4 .9 that no provision in the contract of sale shall override, modify or affect in any way whatsoever the provisions in the contract of sale which are included therein to give effect to clauses 36.4.1 to 36.4.9 inclusive.
- 36.5 .1 Subject to clauses 36.5.2 and 36.5.3, where the said contract of sale between the Contractor and the Nominated Supplier in any way restricts, limits or excludes the liability of the Nominated Supplier to the Contractor in respect of materials or goods or to be supplied, and the Contract Administrator has specifically approved in writing the said restrictions, limitations or exclusions, the liability of the Contractor to the Employer in respect of the said materials and goods shall be restricted, limited or excluded to the same extent.
- 36.5 .2 The Contractor shall not be obliged to enter into a contract with the Nominated Supplier until the Contract Administrator has specifically approved in writing the said restrictions, limitations or exclusion.
- 36.5 .3 Nothing in clause 35.5 shall be construed as enabling the Contract Administrator to nominate a supplier otherwise than in accordance with the provisions stated in clause 36.4.

APPENDIX 1 - CONDITIONS OF CONTRACT

| | | | |
|-------|---|-------|--|
| i) | <i>Defect Liability Period</i> | 17,18 | <i>To include one complete rainy season and not less than twelve (12) months from the date named in the Certificate of Practical Completion of the Works, whichever is the greater.</i> |
| ii) | <i>Percentage to cover professional fees</i> | 21 | <i>--12% of the accepted contract figure.</i> |
| (iii) | <i>Insurance</i> | 22B | <i>NOT APPLICABLE (All insurance by Main Contractor)</i> |
| iv) | <i>Date for Possession</i> | 23 | |
| v) | <i>Date for Completion</i> | 23 | |
| vi) | <i>Liquidated and Ascertained Damages</i> | 24 | <i>..... per week or part of a week (week equals seven (7) days) to a Limit of 5% of the contract sum</i> |
| | <i>Beneficial Occupation Damages</i> | | <i>To Be Agreed</i> |
| vii) | <i>Period of Delay</i> | 25 | |
| | <i>(i) by reason of loss or damage caused by any one of the contingencies referred to in Clause 21(A)</i> | | <i>Three (3)months</i> |
| | <i>(ii) for any other reason</i> | | <i>One (1) month</i> |
| viii) | <i>Prime Cost Sums for which the Contractor desires to tender</i> | 35 | <i>See Form of Tender</i> |
| ix) | <i>Period of Interim Certificate</i> | 30 | <i>Milestone Valuation</i> |
| x) | <i>Retention Percentage</i> | 30 | <i>5% of Measured works</i> |
| xi) | <i>Period of Final Measurement and Valuation</i> | 30 | <i>One (1) Year from the date named in the Certificate of Practical Completion of the Works.</i> |
| i) | <i>Interpretations, definitions etc</i> | 1.3 | <i>wherever the word or phrase "Contract administrator (C.A)" occurs, shall mean "FO.AB PARTNERSHIP "</i> |
| ii) | <i>Variations & Provisional Sums</i> | 13 | <i>All Variations/change orders must be regulated through the Change management protocol introduced by the Contract Administrator/Architect.</i> |
| | | | <i>All instructions issued by the Architect shall be deemed to have been Issued by the CA</i> |
| iii) | <i>Nominated Subcontractors</i> | 35 | <i>All Subcontractors shall be deemed to be Named Subcontractors. The Principal Contractor shall have sole responsibility for their performance. Any other appointment not so named shall be treated as direct subcontract and the Principal Contractor will bear no responsibility.</i> |

CONDITIONS OF CONTRACT

APPENDIX 2– MAJOR CLAUSES

The form of contract for this project is the JCT standard form of building contract with quantities 1998 Edition 2002 Revision but amended to suit its use in Nigeria and this particular contract.

The following are some of the major changes effected. Whilst the tenderer is advised to read carefully the whole Contract form and avail him or her of the requirements and responsibilities, this appendix is given to highlight major areas that have been varied.

It is believed that the tenderer is familiar with the conditions and operation of this standard form of contract but should there be need to sight or inspect the full form, copy shall be available for inspection in the offices of the Consultant Quantity Surveyors

Messrs FO.AB PARTNERSHIP 17, MORRIS STREET, ABULE IJESHA, YABA, LAGOS.

No claim will be entertained for ignorance or lack of understanding of any of the clauses therein and the contractual implications.

- 1 ALTERATIONS AND SPECIAL CONDITIONS
IN RESPECT OF CONTRACT CONDITIONS
- 2 SCHEDULE OF DRAWINGS REFERRED TO AS “CONTRACT
DRAWINGS” AND UPON
WHICH THE BILLS OF QUANTITIES ARE BASED.
- 3 REPRESENTATIVES OF THE PARTIES
- 4 SAFETY
- 5 QUALITY ASSURANCE
- 6 IRREVOCABLE BANK GUARANTEE

ALTERATIONS AND SPECIAL CONDITIONS

(NOTE: For information contained in the Appendix to the Contract see Preliminaries and General Conditions Clause A20/110 - Page 2/9 - 2/10)

ALTERATIONS AND SPECIAL CONDITIONS IN RESPECT OF MAIN CONTRACT CONDITIONS.

GENERALLY

1 All references to Performance Specified Work are to be deleted.

CLAUSE 2 Contractors Obligations

2.2.2.1. The Bills of Quantities are measured in accordance with The NIQS BESMM 4 Revised (4th Edition) 2017 with some departure. The basis of quantities is an abbreviated method of measurement excluding labours which are deemed to be included in each unit rate for each measured item.

2.2.2.2. The departure from BESMM 4 Revised (4th Edition) will not be treated as a variation. The Contractor will be held to have understood all the implications of the method of measurement used and have allowed in his prices for meeting the requirement of such departure from the BESMM 4 Revised (4th Edition).

CLAUSE 6. Statutory Obligations etc.

6.2. "Act of Parliament" to read "Act of the Federal Republic of Nigeria" or, "Decree issued by any past or future legal Government in Nigeria".

6.2.1.3 The amount of fees and charges (including rates and taxes, Community surcharge, Construction permits) will not be specifically allowed for in the Bills of Quantities. The Contractor is to allow in his preliminary items for all such fees and charges (including Federal, States and Local Governments rates and taxes).

CLAUSE 13 Variations and Provisional Sums

13.5.4.1. For the " Royal Institution of Chartered Surveyors and the Building Employers Confederation " to read " The Nigerian Institute of Quantity Surveyors or Federation of Building and Civil Engineering Contractors in Nigeria " as may be appropriate

13.5.6.1-7 Not relevant to this Contract.

CLAUSE 14 Contract Sum.

14.2. Clause 2.2.2.2. Has been revised (see above). Departures from BESMM 4 Revised (4th Edition) shall not be treated as variation required by the CA.

CLAUSE 15 Value added tax.

15.1. To be revised to read "In clause 15 'tax' means the value added tax imposed by the Federal Government of Nigeria by Act 102 of 1993 which is under the care of the Federal Inland Revenue Service (hereinafter called 'the FIRS'.)".

15.2. For "Commissioners " read " FIRS " .

Delete reference to "Finance Act 1997" and add "Decree 102 of 1993".

"V.A.T. agreement" does not apply to this Contract. But Employer / Contractor to comply with Decree 102 issued 1 December 1993 and as may be amended.

CLAUSE 16 Materials and goods unfixed or off - site.

16.1. The Employer will require a "Certificate of ownership "to be issued by the Contractor for all unfixed materials for which advance payment has been made and those included in an interim Payment valuation and Certificate.

16.2 The Employer, at his sole discretion, may pay for materials and goods off-site (see clause 30. 3).

CLAUSE 17 Practical Completion and defects Liability.

17.1. Delete reference to clause 5.9. and performance specified work.

17.2. Delete the words " ----- or to frost -----" and add " ----- or to exposure to sun and weather ----".

17.3. Ditto.

17.5. Delete "----- frost -----" and add "sun and weather -----".

CLAUSE 25 Extension of Time

25.4.5.2 This clause will apply only if the Contractor can prove that such opening up directly affected the remainder of the ongoing work

25.4.9 For the " ----- United Kingdom Government -----" read the " ---- Federal Government of Nigeria or any future legal Government-- --".

25.4.10.1 & 10.2. Delete these sub-clauses.

25.4.12 Delete this sub-clause.

25.4.13 Ditto.

25.4.14 Ditto.

25.4.15 Ditto.

CLAUSE 26 Loss and Expenses Caused by Matters Affecting Regular Progress

- 26.2.2 This clause to be modified as 25.4.5.2
- 26.2.6 Delete this sub-clause.
- 26.2.8 Delete this sub-clause.
- 26.4.1 Delete all reference to NSC/C.
- 26.5 It should be noted that the client has no contractual obligation to pay for any extended preliminaries due to granting of extension of time by the contractor but any claim for loss and or expense must be substantiated and the Quantity Surveyor is at liberty to assess such claim by any justifiable means and may calculate such loss and expense claim recommendation using the allowances in Bill No 1 – Preliminaries (Time Related Running Cost Only) as basis of determining recommended payment to be made for extension of contract period granted the contractor by the CA. Such payments will be in full and final settlement of all claims of the Contractor.

CLAUSE 27 Determination by Employer

- 27.1 The notice or further notice of determination will be given by actual delivery only i.e. by hand.
- Delete "----- or by registered post ----- (excluding Saturday and Sunday and public holidays).
- 27.3.2. For "----Companies Act. 1985 and the Insolvency Act 1986 ----" read "---Companies and Allied Matters Decree 1990---".
- 27.4 Delete "---an offence under the Prevention of Corruption Acts 1989 to 1996." and insert "---corrupt practices Act or any similar Acts."

CLAUSE 28 Determination by Contractor

- 28.1 The notice or further notice of determination will be given by actual delivery only i.e. by hand.
- Delete "----- or by registered post ----- (excluding Saturdays and Sundays and public holidays).
- 28.1.1 Delete " ---- the VAT agreement ----- " and add the words " ---- --- Decree 102 of 1993 ----".
- 28.3.1 For "----Companies Act 1993 or the Insolvency Act 1986 -- --" read "---Companies and Allied Matters Decree 1990---".

CLAUSE 28A Determination by Employer or Contractor

28A.1.1.5. For “---the United Kingdom--” read “—Nigeria--”.

28.A.1. Closing paragraph: Delivery of all notices to be by actual delivery i.e. by hand. Delete all other forms of delivery and references thereto.

CLAUSE 30. Certificate and payments.

Additional: A Performance Bond for 10% of the Contract value shall be issued as an Irrevocable Bank Guarantee upon the signing of the Contract (See Appendix relating to this requirement). Upon the issuing of the Certificate of Practical Completion the Bank Guarantee is to be reduced to 20% of the Performance Bond issued at the time (adjusted in accordance with the Conditions of Contract), and to be left in place for the whole of the Defects Liability Period (See A20/Appendix to the Contract/Clause 17.2 - 12 months)

An advance payment will be made to secure the Fixed Price or limited fluctuation nature of the Contract. The Advance will be made against an Irrevocable Bank Guarantee only. The Guarantee will be from a reputable Bank acceptable to the Employer. The Bank Guarantee is to remain in force until the issuing of the Certificate of Practical Completion and Certificate of making good defects (See Appendix relating to this requirement). The Advance will be amortised in six instalments from the first interim valuation as the work proceeds or as may be agreed by the parties.

30.1.1.1 The Contractor shall be entitled to payment within twenty-eight (28) days from the date of issue of the Certificate.

Before sub-clause 30.3.1 add the following proviso: -

“The Contractor has provided the Employer with a Certificate of Ownership of the materials expressly providing that the property therein shall pass unconditionally to the Employer but, subject to Clause 22C of these Conditions, the Contractor shall remain responsible and place adequate insurance for loss or damage to the same;”

30.3.8 “---set out in clauses 30.3.1 to 7---”is to include reference to the above, additional, proviso.

30.4.1.1 The Retention Percentage shall be 5%. There will be no limit of retention.

30.5.3 Delete this sub-clause.

30.6.2.8 Delete the reference to “---the discount for cash of 5% referred to in clause 36----”.

For “—the Finance Act 1972---”read “—Decree 102 of 1993—”.

CLAUSE 31. Finance (No. 2) Act 1975 - statutory tax deduction scheme

Re-title this clause "WITHHOLDING TAX".

The Employer is not bound to make payment of money to the Contractor and will not make deductions of Withholding Tax to the FIRS.

CLAUSE 37-40 Fluctuations

The Contract will be Limited Fluctuation Contract Price – (See Instruction to Tenderer) Delete these clauses in their entirety.

CLAUSE 41. Settlement of Disputes - Arbitration

Delete the whole clause and add:

- Provided always that in case any dispute or difference shall arise between the Employer or the Contract Administrator (CA) / Quantity Surveyor (QS) on his behalf and the Contractor, either during the progress or after the completion or abandonment of the Works, as to the construction of this contract or as to any matter or thing of whatsoever nature arising thereunder or in connection therewith, which cannot be settled amicably between the parties, then such dispute or difference shall be and is hereby referred to arbitration

- Each party involved in the difference or dispute shall nominate an arbitrator (who shall be a registered Quantity Surveyor or registered Architect in practice) within thirty (30) days of the demand by one party for arbitration and the arbitrators thus appointed shall, within thirty (30) days of their appointment appoint an impartial arbitrator who shall be a registered Fellow of either The Nigerian Institute of Quantity Surveyors (NIQS), The Nigerian Institute of Architects (NIA) or The Nigerian Society of Engineers (NSE) resident in Nigeria and the originally appointed arbitrators by the parties shall have the same qualifications. These arbitrators so appointed shall be certified fit to perform such role by the President of their respective professional associations.

41.2 and if the arbitrators do not agree on the appointment of such impartial arbitrator, or if any party fails to appoint an arbitrator such arbitrators will be appointed by the President of The Nigerian Institute of Quantity Surveyors (NIQS). Once appointed, the impartial arbitrator shall convene meetings of the arbitration panel, act as Chairman thereof and decide the difference or dispute should the arbitrators fail to reach a unanimous decision.

- 41.3 When an arbitrator refuses or neglects to act or is incapable of acting or dies, a new arbitrator shall be appointed in his place and the above provisions of appointing arbitrators shall, 'mutatis mutandis', govern the appointment of any such new arbitrator or arbitrators
- 41.4 The parties hereby further agree and consent pursuant to Sections 29(1)(2) and 30 of the Arbitration and Conciliation Act Cap 19,, Laws of the Federal Republic of Nigeria, that either party:
- 1 may appeal to the High Court on any question of law arising out of an award made in an arbitration under this agreement; and
- 2 may apply to the High Court to determine and question of law arising in the course of the reference;
- and the parties agree that the High Court should have jurisdiction to determine any such question of law
- 41.5 Save as aforesaid the Arbitration and Arbitration Act Cap 19, under the Laws of the Federal Republic of Nigeria shall apply. The venue of the Arbitration shall be as may be determined by the Chairman of the arbitration panel but shall be in Lagos, Nigeria.

CLAUSE 42 Performance Specified Work

Clause deleted in its entirety

APPENDIX 3 TO CONDITIONS OF CONTRACT

SCHEDULE OF DRAWINGS ETC.

ARCHITECTURAL DRAWINGS

STRUCTURAL DRAWINGS

SEE 'CD' of copies of drawings enclosed for the LIST.

APPENDIX 4 TO CONDITIONS OF CONTRACT AND THE CONSTRUCTION (DESIGN AND MANAGEMENT) DOCUMENT

SAFETY

The Contractor should supply a copy of his Safety Policy where it concerns work to be carried out on a building site and in off site workshops, etc. See Preliminaries Clause A30/551 and 570 and Clause A34/120.

The Contractor should state below the name of his Safety Officer responsible for seeing that the Contractor's Safety Policy is operating on and off site at all times.

The Contractor should be prepared to adopt any additional safety items should CA, the employer or his representative propose such..

Name of Safety Officer

Mr/Ms/Mrs.....
(This will be a FULL TIME requirement)

Basic C.V. of Safety Officer:-

The Contractor will be required to maintain a safety system. A Safety Policy/Plan will be required to be tender by the contractor prior to commencement of the project.

APPENDIX 5 TO CONDITIONS OF CONTRACT AND THE CONSTRUCTION (DESIGN AND MANAGEMENT) DOCUMENT

QUALITY ASSURANCE

The Contractor should supply a copy of his Quality Assurance where this concerns work to be carried out on a building site and in off site workshops, etc. See Preliminaries Clause A30/540.

The Contractor should state below the name of his Quality Assurance Officer responsible for seeing that the Contractor's Quality Assurance Policy is operating on and off site at all times.

The Contractor will adopt BS EN ISO 9000 (1994) - or Employer approved equivalent - and should be prepared to adopt any additional items should ITALIAN CONSULATE GENERAL propose such.

Name of Quality Assurance Officer:

Mr.....

Basic C.V. of Quality Assurance Officer: -

The Contractor will be required to maintain a Quality Assurance system. A Quality Assurance Policy/Plan will also be required to be tender prior to commencement of work on site.

The Contractor should address all relevant sections of the attached Quality Assurance requirements

APPENDIX 6 TO CONDITIONS OF CONTRACT

SAMPLE OF IRREVOCABLE BANK GUARANTEE REQUIRED FOR ANY ADVANCE PAYMENT

An Irrevocable Bank Guarantee covering 10% of the Contract value should be obtained, in the format provided, from a reputable Bank acceptable to the Employer.

This equally applies to the provision of an Irrevocable Bank Guarantee for the Advance Payment.

BANK GUARANTEE

THIS BOND is made this day of 2021, BETWEEN.whose registered office is at (hereinafter called 'the Contractor') which expression shall include its successors in title and assigns) of the one part and whose registered office is at (hereinafter called 'the Surety') which expression shall where the context so admits include its successors and assigns) of the second part, and ITALIAN CONSULATE GENERAL company incorporated under the laws of the Federal Republic of Nigeria and having its registered office at WALTER CARRINGTON CRESENT, VICTORIA ISLAND, LAGOS which expression shall where the context so admits include its successors in title and assigns) of the third part.

A. WHEREAS:

By an agreement with reference number Dated the day of in the sum of For the construction of THE PROPOSED CONVERSION OF THE FORMER CONSULAR RESIDENCE INTO THE NEW CONSULAR OFFICE AT WALTER CARRINGTON CRESENT, VICTORIA ISLAND, LAGOS STATE made between the Contractor and the Employer (hereinafter called 'the Contract') the Contractor contracted with the Employer to execute and perform the Works therein mentioned in the manner and by the time therein specified and subject to such terms, provisions and stipulations as in the Contract are particularly set forth.

This Bond is supplemental to the Contract and is intended that it shall be construed as one with the Contract.

B. BOND:

The Surety and the Contractor irrevocably and unconditionally bind themselves jointly and severally to the Employer in the manner hereinafter appearing:

The Surety shall pay to the Employer upon the Employer's first demand received in writing at the Surety's office within the period of validity of this Bond, accompanied by a written confirmation that the Contractor has failed to perform or fulfil any of its obligations under the Contract, as determined by the Employer in its absolute judgement and notwithstanding any objection by the Contractor, all losses, costs, expenses and damages sustained by the Employer up to the amount of =N=..... being 10% of the Contract Sum.

- 2) Any question or dispute as to whether the Works or obligations performed by the Contractor or any part thereof is defective or faulty or as to the amount of any such losses, damages, costs, expenses thereby sustained shall be determined by the Employer in its absolute judgement and its decision thereon shall be final and binding.
- 3) This Bond shall have full force and effect at all times notwithstanding that the Contract has been assigned or determined and/or that there has been a change in the name or the constitution of the Surety or the Contractor, or the Employer. The Surety hereby waives all need for notices that would otherwise be required.

No alteration of the terms of the Contract or in the extent or the nature of the Works to be performed thereunder or any further agreement or arrangement between the Contractor and the Employer and no extension of time by the Employer for the performance of the Contract or anything therein mentioned or contained on the part of the Contractor to be performed or fulfilled or any other forgiveness or forbearance on the part of the Employer shall in any way release the Surety from the surety's liabilities under this Bond, and the surety hereby waives notice of any such alteration, agreement, arrangement, extensions, or forbearance.

5) The extension of time by the Employer or the neglect or forbearance by the Employer in enforcing the Surety's obligations, liabilities and/or responsibilities under this Bond or any of the Contractor's obligations, liabilities and/or responsibilities under the Contract or any other indulgence shall not in any way prejudice the right of the Employer under this Bond.

This Bond shall be irrevocable for the duration of the Contract or any extension thereof.

This Bond shall be discharged if the Contractor shall perform and fulfil all the terms and conditions on its part to be performed and observed, contained or mentioned in the Contract to the satisfaction of the Employer in its absolute judgement. The Employer shall then return the Bond to the Surety.

This Bond shall be governed by and construed in accordance to the laws of the Federal Republic of Nigeria.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

SIGNED, SEALED AND DELIVERED
by the said CONTRACTOR :
stamp to be impressed here

.....
.....

In the presence of

Name

Address

Description

SIGNED, SEALED AND DELIVERED

by the said SURETY :
stamp to be impressed here

.....
.....

In the presence of

Name

Address

Description