



**Defence
Infrastructure
Organisation**

Ministry of Defence

Contract Number: DIOCB3/086

**Queen Elizabeth Class (QEC) Capital Dredging Project at
Her Majesty's Naval Base (HMNB) Portsmouth**

Conditions of Contract

THIS DOCUMENT IS THE PROPERTY OF HER BRITANNIC MAJESTY'S GOVERNMENT and is issued for the information of such persons as need to know its contents in the course of their official duties. Any person finding this document should hand it to a British forces unit or to a police station for its safe return to the Ministry of Defence, DMOD Sy, London SW1A 2HB, with particulars of how and where found. THE UNAUTHORISED RETENTION OR DESTRUCTION OF THE DOCUMENT IS AN OFFENCE UNDER THE OFFICIAL SECRETS ACTS OF 1911-1989. (When released to persons outside Government service, this document is issued on a personal basis and the recipient to whom it is entrusted in confidence, within the provisions of the Official Secrets Acts 1911-1989, is personally responsible for its safe custody and for seeing that its contents are disclosed only to authorised persons).

Contents

1	Definitions and interpretation	4
1.1	Definitions	4
1.2	Interpretation	16
1.3	Resolution of discrepancies.....	16
1.4	Copies of contract documents	18
1.5	Communications in writing.....	18
1.6	Standard forms	19
1.7	Waiver	19
1.8	Rights of third parties.....	19
1.9	Disclosure of Information	19
2	DIO PM's powers and co-operation	22
2.1	DIO PM's Directions and Change Orders.....	22
2.2	Co-operation.....	22
3	Contractor's obligations	23
3.1	Resources, Key Personnel and use of Supply Chain	23
3.2	Quality assurance	24
3.3	Responsibility for design.....	24
3.4	Contractor's Design	24
3.5	The Works	27
3.6	Ozone-depleting substances	28
3.7	Use of documents, information and communication with the media.....	29
3.8	Statutory obligations and security provisions	29
3.9	Technical Guidance	29
3.10	Proposed Changes	29
3.11	Fraud Prevention	29
3.12	Compliance Audit	29
3.13	Photographs	30
3.14	Negative Covenants	30
3.15	General Contractor Warranties.....	30
3.16	Commercial Exploitation.....	31
4	Payment	31
4.1	Adjustment of the Contract Sum.....	31
4.2	Progress Payments	31
4.3	Certification of Progress Payments	31
4.4	Completion Payment(s) and Retention Payment(s)	32
4.5	Payment Notices	33
4.6	Default Payment Notices	34
4.7	Payment Due Date	34
4.8	Final Date for Payment.....	35
4.9	Pay Less Notices	35
4.10	Payment under P2P	36
4.11	Recovery of sums due.....	36
4.12	Interest on late payment	36
5	Allocation of Risk	37
5.1	Conditions affecting the Works	37
5.2	Authority's Risks	40
5.3	Risk Register and Management	42
5.4	Contractor's risks	43
5.5	Loss or Damage	43
5.6	Insurance.....	44
6	Provisions as to time	46

6.1	Commencement of the Contractor's Design.....	46
6.2	Possession of the Site and completion.....	46
6.3	Programme.....	46
6.4	Acceleration.....	47
6.5	Certification of completion of the Works or any Section	47
6.6	Extensions of time	47
7	Assignment, subcontracting and Strategic Business Partner (SBP).....	47
7.1	Assignment.....	47
7.2	Subcontracting.....	47
7.3	Strategic Business Partner	49
8	Suspension and termination	49
8.1	Suspension of performance.....	49
8.2	Termination.....	50
9	Resolution of disputes.....	53
10	Amendments.....	53
11	Transition to War	54
12	Decoupling – Sub-Contracting with the Crown	54
13	Child Labour and Employment	54
	Schedule 1 (Site Waste Management Plan)	55
	Schedule 2 (Provisions relating to the carrying out of the Works)	56
	Schedule 3 (Compliance with statutory and other obligations)	70
	Schedule 4 (Change Control).....	75
	Schedule 5 (Provisions relating to payment)	80
	Schedule 6 (Security Provisions)	86
	Schedule 7 (Consequences of Termination)	89
	Schedule 8 (Resolution of disputes)	93
	Schedule 9 (Supplementary Conditions)	101
	Appendix 1 Fraud Prevention Manual	103
	Appendix 2 MOD Policy Statement on Fraud & Theft.....	108
	Appendix 3 Additional security measures.....	113
	Appendix 4 Trust Deed	116
	Appendix 5 Required Insurances	128
	Appendix 6 Contractor Commercially Sensitive Information	132
	Appendix 7 Risk Register	133
	Appendix 8 Obstruction Strategy	134
	Appendix 9 Form of Payment Notices.....	137
	Appendix 10 Commercial Exploitation Agreement	142

1 Definitions and interpretation

1.1 Definitions

In these Conditions of Contract the following words and expressions shall have the following meanings:-

“Adjudicator” means the person (if any) so designated in the Agreement or the person appointed in accordance with paragraph 3.7 (Adjudication) of Schedule 8 (Resolution of disputes) (as the case may be);

“Affiliate” means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company and "holding company" and "subsidiary" shall have the meaning given to such terms in section 1159 of the Companies Act 2006.

“Agreement” means the form of agreement signed by or on behalf of the Authority and the Contractor which incorporates by reference these Conditions of Contract;

“Authority” means the Secretary of State for Defence;

“Authority’s Accounts” means the Authority’s accounts department or agency which is responsible for the payment of all invoices on behalf of the Authority under the Contract, whose address is set out in the Agreement;

“Authority’s Risk(s)” means the risks set out in condition 5.2 (Authority’s Risks) and the Risk Register;

“BACS” means the Bankers’ Automated Clearing Services transfer system;

“Business Day” means any day excluding:

- (a) Saturdays, Sundays and any statutory or public holiday in England and Wales; and/or
- (b) privilege days notified in writing by the DIO PM to the Contractor at least ten Business Days in advance; and/or
- (c) such other periods of holiday closure of the Contractor’s premises notified in writing by the Contractor to the DIO PM at least ten Business Days in advance;

“CDM Co-ordinator” shall have the same meanings ascribed to it in the CDM Regulations;

“CDM Regulations” means the Construction (Design and Management) Regulations 2007;

“Certificate(s) of Completion” means the certificate or certificates of completion of the Works as a whole or any Section issued by the DIO PM in accordance with paragraph 14 (Certification of completion of the Works or any Section) of Schedule 2 (Provisions relating to the carrying out of the Works), in the relevant standard form;

“CESMM4” means the Civil Engineering Standard Method of Measurement (Fourth Edition) and all subsequent amendments, as published by the Institution of Civil Engineers;

“Change” means the occurrence of an Authority’s Risk or any alteration of, or addition to, or omission from, the Specification or any change in the design, quality or quantity of the Works agreed with, or authorised by, the Authority by the issue of an appropriate Change Order;

“Change Control” means the procedure as detailed in Schedule 4 (Change Control);

“Change Notification” means a notification (in the standard form) of the occurrence of any one or more of the Authority’s Risks;

“Change Order” means an order (in the standard form) to authorise and/or confirm a Change, either with the agreement of any lump sum price or saving and/or extension of time for the Change;

“Change Proposal” means a proposal (in the standard form) for any alteration of, or addition to, or omission from, the Specification or any change in the design, quality or quantity of the Works put forward by the Contractor or the Commercial Officer;

“Change Quotation” means a quotation from the Contractor (in the standard form) giving details of the price or saving for any Change, together with details of any effect of the Change on the Date or Dates for Completion and/or the Progress Payment Forecast;

“Commercial Officer” means the person so designated in the Agreement or such other person appointed from time to time by the Authority and notified as such to the Contractor;

“Commercial Representative” means the person so designated in the Agreement or such other person so appointed from time to time by the Authority and notified as such to the DIO PM. The Commercial Representative shall be of a more senior rank or grade than the Commercial Officer;

“Company Insolvency Event” has the meaning in condition 8.2.6.4 (Termination);

“Completion Documents” means the documents listed in paragraph 18 (Completion Documents) of Schedule 2 (Provisions relating to the carrying out of the Works) of these Conditions of Contract;

“Completion Payment(s)” means, in relation to:-

- (a) the completion of the Works as a whole, the final balance of the Contract Sum due to the Contractor and,
- (b) the completion of any Section, the final balance of the Contract Sum payable in respect of the Section,

in each case when the DIO PM has issued a Certificate of Completion and in accordance with condition 4.4 (Completion Payment(s) and Retention Payments);

“Consents” means all permissions, consents, approvals, certificates, permits, licenses and authorisations of:

- (a) a Relevant Authority required for the performance of any of the Contractor's obligations under the Contract; and/or
 - (b) any adjoining owners whose consent is necessary in connection with the Works,
- including for the avoidance of doubt all Environmental Permits and planning consents;

“Configuration Control” means the process of monitoring and recording in writing the evolution of all design relating to the Contractor’s Designed Works;

“Construction Phase Plan” shall have the same meaning ascribed to it under the CDM Regulations;

“Contamination” means all or any pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour) and for the avoidance of doubt can include Dredged Material classified as contaminated under the Contaminated Sediment Decision Framework of the Marine Management Organisation or by any other Relevant Authority;

“Contract” comprises the documents defined as such in the Agreement and any reference to the date of the Contract shall refer to the date of the Agreement;

“Contractor” means the person or persons, firm or company named in the Agreement whose tender has been accepted by the Authority and includes the Contractor’s legal personal representatives or permitted assigns;

“Contractor Commercially Sensitive Information” means the information listed in Appendix 6 (Contractor Commercially Sensitive Information), being information notified by the Contractor to the Authority which is acknowledged by the Authority as being commercially sensitive information;

“Contractor Related Party” means the Supply Chain, the Contractor’s agents and its or their sub-contractors of any tier and its or their directors, officers, employees and workmen in relation to the Works and any person on or at the Site at the express or implied invitation of the Contractor (other than the Authority);

“Contractor’s Design” means the design of a portion of the Works (the **“Contractor’s Designed Works”**) for which the Contractor is entirely responsible in accordance with the Specification and these Conditions of Contract which shall include any Contractor’s Design Proposals and Contractor’s Design Documents;

“Contractor’s Designed Works” has the meaning given to it in the definition of “Contractor’s Design”;

“Contractor’s Design Documents” means any plan, model, sketch, drawing, calculation, specification or any other document whatsoever prepared by or on behalf of the Contractor in the performance of the Contract in accordance with condition 3.4.3 (Contractor’s Design);

“Contractor’s Design Proposals” means all or any designs, plans, models, sketches, drawings, calculations, specifications and any other documents whatsoever submitted by the Contractor as part of its tender or during the course of the Contract detailing how it proposes to implement the Specification in accordance with the Specification, including but not limited to the Contractor’s Project Brief and the Contractor’s Project Execution Plan;

“Contractor’s Project Brief” means the project brief prepared by the Contractor providing details of how the Contractor will meet the requirements of the Specification and attached to the Agreement at Part A (Project Brief) of Annex 2 (Contractor’s Design Proposals);

“Contractor’s Project Execution Plan” means the execution plan prepared by the Contractor providing details of the major design requirements and constraints of the Project and how these will be managed through the life of the Agreement and attached to the Agreement at Part B (Project Execution Plan) of Annex 2 (Contractor’s Design Proposals);

“Contract Sum” means the sum payable to the Contractor for the performance of its obligations under the Contract and calculated in accordance with the Pricing Document and as adjusted from time to time in accordance with these Conditions of Contract, but excluding Provisional Sums until such time as a Provisional Sum may be added to the Contract Sum pursuant to a Change Order;

“Controlled Copy” means a copy of the most recent document produced via a recognised quality assurance system for the control and monitoring of the document in question;

“Crown Estate Consent” means the Crown Estate permission to extract material from the seabed or extract and reuse;

“Date(s) for Completion” means the date specified in the Agreement for completion of the Works or the dates specified in the Agreement for completion of individual Sections and, where extensions of time have been awarded or acceleration agreed, such date or dates as adjusted by such extensions of time or acceleration agreements;

“Debris” means a man-made or natural object, material, substance, fixture, structure, or part of such object, fixture or structure that is encountered during the Works and which is recoverable using the dredging equipment being employed for the Works at the time and location that the object, material, substance, fixture or structure is encountered, irrespective of weight;

“Default Payment Notice” means the notice given by the Contractor to the Authority in the standard form at Appendix 9 (Form of Payment Notices) duly completed in accordance with condition 4.6 (Default Payment Notices);

“Defects Rectification Period” means (if the Works or any Section include Engineered Slope Protection Works) the period of 12 months following the issue of the Certificate of Completion for the Works or the relevant Section in respect of Engineered Slope Protection Works only for the rectification of defects in accordance with paragraph 16 (Defects Rectification of Engineered Slope Protection Works)) of Schedule 2 (Provisions relating to the carrying out of the Works);

“Defects Rectification Period Completion Certificate” means (if the Works or any Section include Engineered Slope Protection Works) the certificate of the completion of the Defects Rectification Period for the Works or the relevant Section in respect of Engineered Slope Protection Works only issued by the DIO PM in accordance with paragraph 16 (Defects Rectification of Engineered Slope Protection Works) of Schedule 2 (Provisions relating to the carrying out of the Works);

“Defence Infrastructure Organisation (DIO)” shall have the same meaning as the ‘Authority’;

“DEFFORM 30 Agreement” means the Electronic Transactions Agreement between the Authority and the Contractor attached to the Agreement at Annex 9 (DEFFORM 30 Agreement);

“Designer” shall have the same meaning ascribed in the CDM Regulations;

“DIO PM” means the person or persons so designated in the Agreement or such other person or persons as may be appointed in the capacity of DIO Project Manager for the time being by the Authority and notified as such to the Contractor;

“DIO PM’s Direction” means an instruction (in the standard form) issued by the DIO PM in the exercise of its express powers under the Contract which would not necessarily result in or implement a Change Order;

“DIO PM’s Representative” means the representative(s) appointed by the DIO PM in accordance with paragraph 2.36 (Facilities on Equipment and Attendance to DIO PM) of the Specification to observe and record dredging operations on board the Contractor’s plant;

“Dredged Material” means any material or substance removed from or under the seabed as part of the Works or during a Defects Rectification Period by the Contractor or a Contractor Related Party;

“EI Regulations” means the Environmental Information Regulations 2004;

“Engineered Slope Protection Works” means the design and construction of side slope engineered protection to the boundaries of relevant dredge areas to achieve the lines and levels defined in the drawings listed at paragraph 1.4 (Drawings) of the Specification;

“Environment” means air (including air within buildings and air within other natural or man-made structures above or below ground), water (including marine and freshwater, territorial and coastal and inland waters, groundwater and water in drains and sewers) and land (including soil and sub-soil and land under any water) and any organisms including human beings or eco-systems supported by the air, water or land;

“Environmental Law” means all European Community, national, state, federal, regional or local laws, common law, statutes, ordinances, directives, regulations, notices, standards having force of law, relevant clean-up standards, judgements, decrees or orders, codes of practice, the requirements and conditions of all EHS Permits, both express and implied covenants, agreements, circulars, guidance notes (statutory or otherwise), judicial and administrative interpretations of each of the foregoing concerning (without limitation) the protection of human health or the Environment or the conditions of the work place and process safety, or the generation, transportation, storage, treatment or disposal of any Hazardous Substance, as enacted, amended, replaced or supplemented from time to time.

“Environmental Liabilities” means any liabilities, responsibilities, claims, losses, costs including remedial, removal, abatement, clean up, investigative and all monitoring costs and other related costs and expenses, damages, settlements, claims, expenses, penalties, fines, legal fees and costs which are incurred, asserted or imposed as a result of or in connection with:

- (a) any failure by the Contractor or Contractor Related Party to comply with Environmental Law or the conditions of any Environmental Permit in performing its obligations under the Contract;
- (b) any Remedial Action;
- (c) any actual or anticipated Environmental Proceedings; and
- (d) any reasonably incurred expenditure that is necessary to comply with any enforceable requirement from a Relevant Authority or third party in relation to nuisances emanating from the Site;

“Environmental Permit” means the Marine Management Organisation Licence and any other any permits, consents, licences, certificates, notices, filings, lodgements, agreements, directions, declarations, exemptions, variations, renewals and amendments and other

authorisations and approvals required or provided under Environmental Law which is required in order to carry out the Works;

“Environmental Proceedings” means any civil, criminal or regulatory suit, arbitration, notice or proceedings brought or threatened by any Relevant Authority or third party under or alleging any breach of Environmental Law in respect of any actual or alleged Contamination at, on, in, under or migrating from the Site or any Release of Contamination;

“Equality Act” means the Equality Act 2010, as amended from time to time, including all regulations made under it and all relevant statutory codes of practice;

“Final Date for Payment” means the date by which the Authority must pay the amount specified in the Payment Notice, Pay Less Notice or Default Payment Notice (as the case may be) in accordance with condition 4.8 (Final Date for Payment);

“FOIA” means Freedom of Information Act 2000;

“Fraudulent Breach” means all fraud whether civil or criminal and shall include, but not be limited to:

- (a) committing any offence under any Law creating offences in respect of fraudulent acts, including but not limited to any offence under the Bribery Act 2010;
- (b) committing any offence at common law in respect of fraudulent acts in relation to this Contract, or any other contract with the Authority;
- (c) any act or failure to act which is fraudulent at common law or in equity; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Authority;

“Good Industry Practice” means the all the reasonable skill, care and diligence to be expected of appropriately qualified and experienced contractor undertaking and experienced in carrying out design services, construction of works and other duties in relation to works similar in type, nature, size, scope and complexity to the Project;

“Group Undertaking” means the Contractor and any undertaking which is from time to time a parent undertaking of the Contractor or a subsidiary undertaking of either the Contractor or such parent undertaking within the meaning of section 1159 of the Companies Act 2006;

“Hazardous Substance” means any natural or artificial substance (whether in solid or liquid form or in the form of a gas or vapour) or organism (including genetically modified organisms) whether alone or in combination with any other substance capable of causing harm to man or any other living organism supported by the Environment or which restricts or makes more costly the use, development, ownership or occupation of the Site or is capable of damaging the Environment or human health or welfare including but not limited to asbestos or any controlled, special, hazardous, toxic or dangerous chemical, substance or waste;

“Health and Safety Adviser” means the person so designated in the Agreement or such other person so appointed from time to time by the Authority and notified as such to the Contractor;

“Health and Safety Executive” means the body so named and established and constituted pursuant to section 10 of the Health and Safety at Work Act 1974;

“Health and Safety File(s)” shall have the same meaning ascribed to it in the CDM Regulations;

“Health and Safety Management System” means the system produced by the Contractor as required under the Management of Health & Safety at Work Regulations 1999 (as amended by the Management of Health & Safety at Work (Amendment) Regulations 2006);

“HM Naval Base Portsmouth Health and Safety Policy” means the policy produced by or on behalf of the Authority in respect of health and safety at HM Naval Base Portsmouth as varied from time to time;

“HMRC” means Her Majesty’s Revenue and Customs;

“Incorporated Entity” means a separate legal entity managed by the SBP into which the delivery function of the current Defence Infrastructure Organisation may be transferred, and which may be granted responsibility by the Authority for managing this Contract, pursuant to the Authority’s transformation programme;

“Individual Insolvency Event” has the meaning in condition 8.2.6.3 (Termination);

“Intellectual Property Rights” has the meaning given to it in paragraph 5.1 (Intellectual Property Rights) of Schedule 3 (Compliance with statutory and other obligations);

“Interim Retention Payment” has the meaning in condition 4.4.1.2.1 (Completion Payment(s) and Retention Payment(s));

“Key Personnel” means the personnel of the Contractor named as key personnel in the Agreement;

“Large Obstruction” means an Obstruction the Authority certifies as being a Large Obstruction pursuant to condition 5.1.6 (Conditions affecting the Works) and which cannot be removed by the Standing Recovery Plant;

“Law” means any law in force in England including any applicable statutes or proclamation or any delegated or sub-ordinate legislation and any applicable judgement of a relevant court of law which constitutes binding precedent in England;

“Loss or Damage” means:-

- (a) loss or damage to property;
- (b) personal injury to, or the sickness or death of, any person;
- (c) loss or damage to the Works or to any Things on the Site;
- (d) nuisance or inconvenience to the owners, tenants or occupiers of other properties or to the public; and
- (e) pollution, silting or erosion of any river, stream or waterway;

“Marine Management Organisation Licence” or **“Marine Licence”** means the licence issued by the Marine Management Organisation (**“MMO”**) on behalf of the Secretary of State

to HMNB Portsmouth to carry out Capital Dredging and Disposal of Dredged Material within the area defined in paragraph 2.4 of the Marine Licence as annexed at [Annex B] to the Specification at;

“MOD Health and Safety Policy” means the Authority’s Health and Safety Policy as set out in the Authority’s Health and Safety Handbook JSP 375 or as may be varied or replaced by the Authority from time to time;

“Obstruction” means a man-made or natural object, material, substance, fixture, structure, or part of such object, fixture or structure, encountered above or below the surface of the ground, excluding any Contamination, that cannot be recovered using the dredging equipment being employed for the Works at the time and location that the object, material, substance, fixture or structure is encountered, irrespective of weight;

“Obstruction Strategy” means the strategy set out in Appendix 8 (Obstruction Strategy);

“P2P” means the Authority’s ordering, receipting and purchase to payment system based on standard Oracle Commercial Off The Shelf (COTS) software;

“P2P Invoice” means an electronic invoice containing a P2P unique order identifier submitted by the Contractor to the Authority in accordance with condition 4.10 (Payment under P2P) and using a properly prepared message structure and format for an invoice in accordance with the arrangements in the DEFFORM 30 Agreement between the Authority and the Contractor;

“P2P Purchase Order” means an electronic payment order submitted by the Authority to the Contractor in accordance with condition 4.10 (Payment under P2P) and containing a P2P unique order identifier to enable the Contractor to issue a P2P Invoice;

“Pay Less Notice” means a notice given by the Authority (in the standard form at Part 3 of Appendix 9 (Form of Payment Notices)) in accordance with condition 4.9 (Pay Less Notices);

“Payment Approval” means receipting by the Authority of a P2P Invoice on the Authority’s ordering receipting and payment system (DECS P2P);

“Payment Due Date” means the date on which a payment (including a Progress Payment) becomes due to the Contractor in accordance with condition 4.7 (Payment Due Date);

“Payment Notice” means the notice given by the Authority to the Contractor (in the standard form at Appendix 9 (Form of Payment Notices)) duly completed in respect of any payment (including a Progress Payment) due under the Contract in accordance with condition 4.5 (Payment Notices);

“Payment Request” means a request for payment pursuant to condition 4.4.4.2 or 4.4.6 (Completion Payment(s) and Retention Payment(s));

“Pre Construction Information Pack” shall have the meanings ascribed to it under the CDM Regulations;

“Pricing Document” means the bill of quantities prepared or completed by the Contractor in accordance with CESMM4 and submitted by the Contractor as part of its tender in support of the Contract Sum (incorporating any amendments agreed by the parties prior to award of the Contract), a copy of which is attached to the Agreement at Annex 4 (Pricing Document);

“Principal Contractor” shall have the same meaning as ascribed under the CDM Regulations;

“Programme” means the latest programme for the performance of the Contractor’s obligations under the Contract prepared and operated in accordance with paragraph 9 (Programme) of Schedule 2 (Provisions relating to the carrying out of the Works) and attached to the Agreement at Annex 5 (The Programme);

“Progress Payment” means a monthly advance payment on the Contract Sum calculated in accordance with condition 4.2 (Progress Payments);

“Progress Payment Certificate” has the meaning in condition 4.3 (Certification of Progress Payments);

“Progress Payment Forecast” means the projected Progress Payments to be made each month which the Contractor submitted as part of its tender and attached to the Agreement at Annex 3 (Progress Payment Forecast);

“Prohibited Act” means to:

- (a) offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward:-
 - (1) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this Contract or any other contract with the Crown; or
 - (2) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Crown;
- (b) enter into this or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge unless, before this or any other contract with the Crown is made, particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority; or
- (c) commit any Fraudulent Breach;

“Project” means the provision of dredging design and works to modify the alignment and depth of the existing approach channel and inner harbour area and create a deeper berth pocket to ensure that the Queen Elizabeth Class aircraft carriers can safely enter, berth and exit HMNB Portsmouth;

“Project Bank Account” means the bank account opened and managed in relation to payments made under this Contract pursuant to paragraph 4 (Trust Deed and Project Bank Account) of Schedule 5 (Provisions relating to payment);

“Provisional Sum” means any bill item stated as being a provisional sum at paragraph 2 (Provisional Sums – Defined Work) of Part 3 (Rate Only and Provisional Sums) of the Pricing Document and which may be added to the Contract Sum pursuant to a Change Order;

“Quality Plan” means the quality plan to be produced by the Contractor in accordance with paragraph 10 (Quality Plan) of Schedule 2 (Provisions relating to the carrying out of the Works) and attached to the Agreement at Annex 2A (Quality Plan);

“Release” means as a result of the Works or during a Defects Rectification Period any release, spillage, emission, leakage, pumping, injection, deposit, disposal, discharge, leeching or migration into the Environment or into or out of any property including the movement of Contamination through the Environment other than in full compliance with Environmental Law;

“Relevant Authority” means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;

“Remedial Action” means all actions required to:

- (a) clean up, remove, treat or in any other way adjust or manage Contamination at, on, in, under or migrating from the Site;
- (b) prevent the Release of Contamination;
- (c) perform pre-remedial studies and investigations and post-remedial monitoring and care in relation to Contamination at, on, in, under or migrating from the Site or the Release of Contamination; and
- (d) undertake any remedial measures (including primary, complementary or compensatory remediation) that may be required pursuant to the Environmental Damage (Prevention and Remediation) Regulations 2009 (as may be amended or replaced from time to time) in relation to Contamination at, on, in, under or migrating from the Site or the Release of Contamination;

“Required Insurances” means the policies of insurance set out in Appendix 5 (Required Insurances) and any insurances as may be required by law;

“Requirements” means those objectives and requirements identified as such within the Specification that the Contractor is required to achieve;

“Retention Amount” means the aggregate amount deducted from Progress Payments in accordance with condition 4.2.1.2.2 (Progress Payments);

“Retention Balance Payment” means the Retention Amount less the Interim Retention Payment;

“Risk Register” means the document attached to these Conditions as Appendix 7 (Risk Register) (as may be updated in accordance with Condition 5.3.1 (Risk Management)) which sets out:

- (a) potential risks relating to the delivery of the Works, the occurrence of which are capable of adversely affecting the time for completion, cost or quality of the Works and which are Authority Risks;
- (b) the probability of these risks occurring;
- (c) an estimate of the most likely consequences of each risk occurring; and

- (d) those risks that are best mitigated by the Authority or the Contractor or any other organisation engaged in relation to the Works;

“Schedule of Supply Chain Members” means the document so headed submitted by the Contractor, a copy of which is attached to the Agreement at Annex 8 (Schedule of Supply Chain Members);

“Secret Matter” means any matter connected with the Contract or its performance which is designated in writing by the Authority as ‘Top Secret’, ‘Secret’, or ‘Confidential’ and shall include any information concerning the context of such matter and anything which contains or may reveal that matter;

“Section” means any Zone which has a specified or ascertainable Date for Completion in accordance with paragraph 2.22 (Sectional Completion) of the Specification, being Zone B (Harbour Entrance) and Zone E (Berth Pocket), and **“Sections”** shall be construed accordingly;

“Site” means the place or places specified in the Specification and/or the Agreement or agreed from time to time with the Authority as the place or places to be used for the carrying out of the Works and more particularly set out in drawing number B11200-G0- (Site Layout) at paragraph 1.4 (Drawings) and paragraphs 2.1 (Site Area) and 2.2 (On-shore Facilities) of the Specification;

“Site Parties” means the following parties:

- (a) Queen’s Harbour Master;
- (b) the Marine Management Organisation; and
- (c) British Telecom;

“Site Waste Management Plan” means the plan required for regulating and controlling the economic use of construction materials and methods to minimise waste that is produced by the reuse, recycle or recovery in other ways prior to disposal and restricting the opportunities for illegal disposal by ensuring compliance with legal controls by providing a full audit trail for all waste that is removed from the Site;

“SBP” means a strategic business partner appointed by the Authority as part of its current transformation programme to manage the delivery function of the current Defence Infrastructure Organisation;

“Small Obstruction” means an Obstruction which can be removed by the Standing Recovery Plant;

“Specification” means the documents and/or drawings which set out the Works and the Contractor’s Design that the Contractor shall carry out, as identified in the Agreement;

“Standing Recovery Plant” has the meaning in Appendix 8 (Obstruction Strategy);

“Supplementary Conditions” means the supplementary conditions set out in Schedule 9 (Supplementary Conditions);

“Supply Chain” means the individuals and organisations that will be responsible for any of the design and/or construction of the Works as set out in the Schedule of Supply Chain Members;

"Supply Chain Contracts" means Contracts entered into between the Contractor and its Supply Chain and or between members of its Supply Chain;

"Technical Guidance" means any guidance published by the Authority or any other Government department. Technical Guidance of relevance to the Works and Contractor's Design shall be listed in, or appended to, the Specification or otherwise notified to the Contractor. Any reference to 'relevant Technical Guidance' shall be construed accordingly;

"TeCSA" means the Technology and Construction Solicitors Association;

"Things" means goods and/or materials and shall include software forming part of or necessary for the operation of any such goods or materials. Things comprise **"Things for incorporation"**, which means Things intended to form part of the completed Works, and **"Things not for incorporation"** which means Things provided or used to facilitate the carrying out of the Works but not intended for incorporation in the Works;

"Transparency Information" means the content of this Contract in its entirety, including from time to time agreed Changes to the Contract and details of any payments made by the Authority to the Contractor under the Contract;

"Trust Deed" means a deed entered into between the Authority, the Contractor and **[insert relevant key sub-contractors]** on the date of signature of the form attached at Appendix 4 (Trust Deed);

"Unsuitable Third Party" means any person:

- (a) whose activities, do in the reasonable opinion of the Authority, pose or could pose a threat to national security, or are incompatible with any operations or activities carried out by the Authority for the purposes contemplated by this Contract or any other of the Authority's legal duties or other functions; or
- (b) who is, in the reasonable opinion of the Authority, inappropriate because the Authority has received specific information from the Crown, the Serious Fraud Office or the Crown Prosecution Service about the suitability of the person who has acquired or is proposed to acquire control of the Contractor.

"VAT" means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994;

"Works" means the Works as described or shown in the Specification and the Contractor's Design Proposals including all modified or additional Works to be carried out in accordance with the Contract;

"Works Commencement Date" means the date on which the Contractor commences the Works;

"Works Completion Date(s)" means the date of the completion of the Works as set out in the last Certificate of Completion or, in respect of each Section, the date or dates of completion of the relevant Section as set out in the relevant Certificates of Completion;

"Works Period" means the period from the Works Commencement Date to the date of completion of the Works as certified in accordance with paragraph 14 (Certification of completion of the Works or any Section) of Schedule 2 (Provisions relating to the carrying out of the Works); and

“**Zone**” means any part of the Works specified as a zone in the Specification and more particularly set out in the drawings listed at paragraph 1.4 (Drawings) of the Specification, and “**Zones**” shall be construed accordingly.

1.2 Interpretation

- 1.2.1 The headings to these Conditions of Contract are included for ease of reference only and shall not affect the interpretation or construction of these Conditions of Contract.
- 1.2.2 References to condition numbers are references to the appropriate condition in these Conditions of Contract and references to paragraph numbers are references to the appropriate paragraph in the appropriate Schedule to these Conditions of Contract except where stated otherwise.
- 1.2.3 Except in relation to the Date or Dates for Completion, any period of time in these Conditions of Contract, within which the Authority or the Contractor, are required to take any action or make any decision, determination or calculation, may be extended by agreement in writing, notwithstanding that the period of time has expired.
- 1.2.4 Any reference to any statute or any section of any statute includes any statutory extension, amendment, modification, consolidation or re-enactment and any statutory instrument order or regulation made under any statute for the time being in force.
- 1.2.5 Words importing one gender include all other genders and words importing the singular include the plural and vice versa.
- 1.2.6 Any periods of time referred to in these Conditions of Contract and expressed in days shall refer to calendar days.
- 1.2.7 Where any act is required to be done within a specified period after or from a specified date:-
 - 1.2.7.1 the period begins immediately after that date; and
 - 1.2.7.2 where the specified period would include Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales or, as the case may be, in Scotland or in Northern Ireland, that day shall be excluded.
- 1.2.8 All defined terms, headings, references, paragraphs and note numbers in the Pricing Document are to the CESMM4 and not to these Conditions of Contract, unless stated otherwise.

1.3 Resolution of discrepancies

- 1.3.1 *Discrepancies between these Conditions of Contract and other documents forming part of the Contract*

In the case of any discrepancy between these Conditions of Contract and other documents forming part of the Contract, these Conditions of Contract shall prevail.
- 1.3.2 *Discrepancies between any Requirements and the Contractor's Design Proposals or any Contractor's Design Documents*

In the case of any discrepancy between any Requirements and the Contractor's Design Proposals or any Contractor's Design Documents, the Requirements shall prevail without adjustment to the Contract Sum or to the Date or Dates for Completion.

1.3.3 *Discrepancies between any Requirements and any statutory requirements*

- 1.3.3.1 In the case of any discrepancy between any Requirements and or any statutory requirement, or any requirement of Health and Safety or Consents current at the date of the Contract, the Contractor shall immediately notify the Authority of the discrepancy by the issue of a Change Notification to the Commercial Officer (copied to the DIO PM) and shall indicate what measures (if any) it recommends to resolve the discrepancy.
- 1.3.3.2 On receipt of a Change Notification in accordance with condition 1.3.3.1, the Authority shall determine whether a discrepancy exists. If the Authority determines that such a discrepancy exists, the discrepancy shall be resolved, by the Authority, in accordance with the principles applied in the following order:-
 - 1.3.3.2.1 the relevant statutory provision, Health and Safety or Consents shall prevail;
 - 1.3.3.2.2 the Authority shall resolve the discrepancy by reference to the purpose or purposes of the Works and (if relevant) of the Contractor's Design;
 - 1.3.3.2.3 where it is possible to reconcile the discrepancy by waiving one or more of the discrepant items, the DIO PM shall advise the Commercial Officer to waive one or more of the discrepant items by the issue of a Change Order. No such Change Order shall be deemed to relieve the Contractor of any of its obligations under the Contract to any greater extent than is expressly referred to in the relevant DIO PM's Direction. No such Change Order shall entitle the Contractor to any adjustment of the Contract Sum or to the Date or Dates for Completion;
 - 1.3.3.2.4 the Authority shall not issue a Change Order in accordance with condition 1.3.3.2.3 where such a Change Order would render the Works and/or the Contractor's Design unsuitable or unfit for the purpose or purposes described in the Specification;
 - 1.3.3.2.5 where the issue of a Change Order in accordance with condition 1.3.3.2.3 is not appropriate for the reasons set out in condition 1.3.3.2.4, the Authority shall resolve the discrepancy by advising the Commercial Officer to issue an appropriate Change Order that will entitle the Contractor to seek any consequential adjustment of the Contract Sum or to the Date or Dates for Completion in accordance with Schedule 4 (Change control); and
 - 1.3.3.2.6 the Authority shall act fairly and impartially in the operation of conditions 1.3.3.2.2 to 1.3.3.2.5.

1.3.4 *Discrepancies within or between the Contractor's Design Proposals and any Contractor's Design Documents*

1.3.4.1 In the case of any discrepancy within the Contractor's Design Proposals the Authority may choose between discrepant items or agree any proposal from the Contractor to resolve the discrepancy and there shall be no increase in the Contract Sum or adjustment to the Date or Dates for Completion. If the Authority's choice between discrepant items will produce a saving to the Contractor, the Contractor shall account to the Authority for the amount of the saving in such way as shall be agreed with the Authority. In the absence of agreement, or in the event that agreement is reached that the Contract Sum shall be reduced, either party may issue a Change Proposal in accordance with Schedule 4 (Change control).

1.3.4.2 In case of any discrepancy between the Contractor's Design Proposals and a Contractor's Design Document, the Contractor's Design Proposals shall prevail without adjustment to the Contract Sum or to the Date or Dates for Completion.

1.3.5 *Discrepancies between dimensions specified on drawings and scaled dimensions*

Dimensions specified on any drawings shall be followed in preference to the scale or scaled dimensions.

1.4 Copies of contract documents

1.4.1 The Contractor shall keep one copy of the Specification, any Contractor's Design Proposals and any Contractor's Design Documents on the Site and the DIO PM or its representatives shall at all reasonable times have access to these documents.

1.4.2 The Specification, any Contractor's Design Proposals and any Contractor's Design Documents shall remain the property of the Authority and shall not, without the consent of the Authority, be used or copied except to such extent as may be strictly necessary for the performance of the Contract.

1.5 Communications in writing

1.5.1 Any notices, quotations, orders, consents, waivers, DIO PM's Directions, or certificates to be given under the Contract shall be in writing. Subject to condition 1.5.3, all communications required by the Contract to be in writing (including any communication in accordance with condition 1.6 (Standard forms)) may be hand-written, typed or printed and may be sent by post or email or hand-delivered to the address of the recipient referred to in the Agreement or to such other address as may from time to time be notified in writing to the other party as being the address for the service of notices under the Contract.

1.5.2 Any communication shall have effect when it is delivered to the last known address of the recipient. Delivery shall be deemed to have been made when in the ordinary course of the method of delivery the communication would have been received. In the case of service by email, delivery shall be deemed to have been made upon transmission provided transmission takes place within the hours of 9.00am and 5.00pm on a Business Day (excluding weekends and any days referred to in condition 1.2.7.2 (Interpretation)). Transmission outside such time will be deemed to have been made on the next Business Day.

- 1.5.3 Communications required by Conditions 2 (DIO PM's powers and co-operation), 4 (Payment), 5.1 (Conditions affecting the Works), 5.6 (Insurance), 8 (Suspension and Termination) or 9 (Resolution of disputes) or Schedule 5 (Provisions relating to Payment) or 8 (Resolution of disputes) or Appendix 3 (Additional security measures) to be in writing may not be sent by email.

1.6 Standard forms

- 1.6.1 Where the use of a standard form is referred to in, and/or specified by, the Contract, only the relevant standard form shall be used.
- 1.6.2 The Authority will, from time to time, advise the Contractor of the publication of any amended or subsequent versions of any relevant standard forms. Following receipt by the Contractor of any such advice (which receipt shall be deemed to have occurred in accordance with condition 1.5 (Communications in writing)) all references to the original standard form shall be deemed to be to the latest amended or subsequent version (as the case may be).
- 1.6.3 Where reference is made to numbered payment forms, the relevant reference shall be deemed to include any amended or subsequent versions of such payment forms and to any alternative versions of such forms used by different agencies or departments of the Authority from time to time.

1.7 Waiver

Failure by the Authority at any time to enforce any provision of the Contract or to require performance by the Contractor of any of the provisions of the Contract shall not be construed as a waiver of any such provision and shall not affect the validity of the Contract or any part of it or create any estoppel or in any other way affect the right of the Authority to enforce any provision in accordance with its terms.

1.8 Rights of third parties

The Contract is not intended to confer any benefit on any third party nor are its terms intended to be enforced by any third party and the provisions of the Contracts (Rights to Third Parties) Act 1999 shall accordingly not apply.

1.9 Disclosure of Information

- 1.9.1 **“Information”** means any information in any written or other tangible form disclosed to one party by or on behalf of the other party under or in connection with this Contract, including information provided in the tender or dialogues which precede the award of the Contract.
- 1.9.2 Subject to conditions 1.9.5, 1.9.6 and 1.9.7, each party:
- 1.9.2.1 shall treat in confidence all Information it receives from the other;
 - 1.9.2.2 shall not disclose any of that Information to any third party without the prior written consent of the other party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of this Contract;

- 1.9.2.3 shall not use any of that Information otherwise than for the purpose of this Contract; and
 - 1.9.2.4 shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under this Contract.
 - 1.9.3 The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with this Contract:
 - 1.9.3.1 is disclosed to its employees and subcontractors, only to the extent necessary for the performance of this Contract; and
 - 1.9.3.2 is treated in confidence by its employees and subcontractors and not disclosed except with prior written consent or used otherwise than for the purpose of performing work or having work performed for the Authority under this Contract or any subcontract under it.
 - 1.9.4 The Contractor shall ensure that its employees are aware of its arrangements for discharging the obligations at conditions 1.9.2 and 1.9.3 before its employees receive Information and take such steps as may be reasonably practical to enforce such arrangements.
 - 1.9.5 Conditions 1.9.2 and 1.9.3 shall not apply to any Information to the extent that either party:
 - 1.9.5.1 exercises rights of use or disclosure granted otherwise than in consequence of, or under, this Contract;
 - 1.9.5.2 has the right to use or disclose the Information in accordance with other conditions of this Contract; or
 - 1.9.5.3 can show:
 - 1.9.5.3.1 that the Information was or has become published or publicly available for use otherwise than in breach of any provision of this Contract or any other agreement between the parties;
 - 1.9.5.3.2 that the Information was already known to it (without restrictions on disclosure or use) prior to receiving it under or in connection with this Contract;
 - 1.9.5.3.3 that the Information was received without restriction on further disclosure from a third party who lawfully acquired it and who is himself under no obligation restricting its disclosure; or
 - 1.9.5.3.4 from its records that the same information was derived independently of that received under or in connection with this Contract;
- provided the relationship to any other Information is not revealed.
- 1.9.6 Neither party shall be in breach of this condition where it can show that any disclosure of Information was made solely and to the extent necessary to comply with

a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the parties under this condition.

1.9.7 The Authority may disclose the Information:

- 1.9.7.1 on a confidential basis to any central government body for any proper purpose of the Authority or of the relevant central government body, which shall include: disclosure to the Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross-Government procurement processes including value for money and related purposes;
- 1.9.7.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 1.9.7.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 1.9.7.4 on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities defined in DEFCON 501 (including benchmarking organisation) for any purpose relating to or connected with this Contract;
- 1.9.7.5 on a confidential basis for the purpose of the exercise of its rights under the Contract; or
- 1.9.7.6 on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract;

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Condition.

- 1.9.8 Before sharing any Information in accordance with Clause 1.9.7 above, the Authority may redact the Information. Any decision to redact information made by the Authority shall be final.
- 1.9.9 The Authority shall not be in breach of this Contract where it can show that any disclosure of Information was made solely and to the extent necessary to comply with its obligations under the FOIA and the EI Regulations. To the extent permitted by the time for compliance under the FOIA or the EI Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the FOIA or the EI Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the FOIA or EI Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the FOIA or the EI Regulations. For the avoidance of doubt, nothing in this condition shall affect the Contractor's rights in law.

- 1.9.10 Nothing in this Condition shall affect the parties' obligations of confidentiality where Information is disclosed orally in confidence.

2 DIO PM's powers and co-operation

2.1 DIO PM's Directions and Change Orders

- 2.1.1 The DIO PM may issue DIO PM's Directions as it considers appropriate or necessary from time to time. Change Orders shall be issued by the Commercial Officer in accordance with the procedures set out in Schedule 4 (Change Control).
- 2.1.2 The Contractor shall comply promptly with any DIO PM's Directions. A DIO PM's Direction shall not necessarily give rise to any adjustment to the Contract Sum or to the Date or Dates for Completion.
- 2.1.3 The Contractor shall comply promptly with any Change Order. A Change Order may give rise to an adjustment to the Contract Sum and/or to the Date or Dates for Completion in accordance with Schedule 4 (Change Control). In addition, a DIO PM's Direction may be superseded by the issue of a Change Order.
- 2.1.4 If the Contractor considers that any DIO PM's Direction, issued by the DIO PM, represents a Change and should have been issued as a Change Order, the Contractor shall immediately refer the matter to the Commercial Officer (copied to the DIO PM), giving the reasons why it considers that there is a Change and shall provide the Commercial Officer with an appropriate Change Proposal or Change Notification together with (in either case) a Change Quotation. If the Commercial Officer does not agree that the DIO PM's Direction should be re-issued as a Change Order, the Commercial Officer shall inform the Contractor who shall be bound by the Commercial Officer's decision unless, within 14 days of receiving notification of the Commercial Officer's decision, the Contractor refers the matter for a decision of the Commercial Representative in accordance with paragraph 1 (Referrals to the Commercial Representative) of Schedule 8 (Resolution of disputes) or else refers the question to adjudication in accordance with paragraph 3 (Adjudication) of Schedule 8 (Resolution of disputes).
- 2.1.5 If, after receipt of a notice from the Commercial Officer requiring compliance with any DIO PM's Direction or Change Order within a period specified in the notice, the Contractor fails to comply, the Authority may, without prejudice to the exercise of the Authority's powers to terminate the Contract, do anything necessary or make any arrangements necessary to give effect to that DIO PM's Direction or Change Order including making arrangements for another contractor to carry out the DIO PM's Direction or the Change Order. Any additional cost, loss and/or expense incurred by the Authority by reason of the Contractor's failure to comply with that DIO PM's Direction or Change Order shall be ascertained by the Commercial Officer and shall be recoverable from or payable by the Contractor in accordance with condition 4.11 (Recovery of sums due).

2.2 Co-operation

The Authority and the Contractor agree to work together with each other and any others engaged in relation to the design and/or construction of the Works in a spirit of mutual trust and co-operation. To this end the parties will each give to, and welcome from, the other and from others involved with the design and/or construction of the Works, feedback on

performance and will draw each other's attention to any difficulties and will share information openly, at the earliest practicable time.

3 Contractor's obligations

3.1 Resources, Key Personnel and use of Supply Chain

3.1.1 *Generally*

The Contractor shall provide sufficient resources at all times to enable it to perform its obligations under the Contract.

3.1.2 *Key Personnel*

- 3.1.2.1 The Contractor shall employ or engage the Key Personnel in connection with the performance of the Contract.
- 3.1.2.2 The Contractor shall not make alterations in the Key Personnel without the prior consent of the Authority (which shall not be unreasonably withheld). Any replacements of Key Personnel shall be with persons of a similar ability, experience and qualification.
- 3.1.2.3 If alterations to Key Personnel take place for reasons outside the Contractor's control, the Contractor may engage temporary replacements pending approval in accordance with condition 3.1.2.2, provided that such temporary replacements are of similar ability, experience and qualification.

3.1.3 *Replacement of Contractor's employees*

- 3.1.3.1 The Authority may at any time require the Contractor immediately to cease to employ or engage in connection with the performance of the Contract any person (including any of the Key Personnel) whose continued employment or engagement is in the opinion of the Authority undesirable. The Contractor shall replace any such person with a person of suitable ability, experience and qualification.
- 3.1.3.2 Any decision of the Authority under condition 3.1.3.1 shall be final and conclusive.

3.1.4 *Use of Supply Chain*

- 3.1.4.1 In carrying out the design and/or construction of the Works the Contractor shall engage the members of its Supply Chain in relation to each member's respective areas of expertise as set out in the Schedule of Supply Chain members and shall not replace any of the members named without the approval of the Authority (such approval not to be unreasonably withheld). Any replacement member shall be no less qualified to perform the relevant role than the person replaced.
- 3.1.4.2 In carrying out the design and construction of the Works, the Contractor shall work together with, and fully involve, all appropriate members of the Supply Chain at the earliest appropriate time to obtain the benefit of such members' input in relation to the design and proposed method of construction of the Works and in all risk and whole life cost analysis carried out in connection with the design and/or construction of the Works.

3.2 Quality assurance

- 3.2.1 The Contractor shall maintain, for the duration of the Contract, the relevant quality assurance accreditation specified in the Agreement.
- 3.2.2 The Contractor shall prepare and implement a Quality Plan in respect of its obligations under the Contract in accordance with paragraph 10 (Quality Plan) of Schedule 2 (Provisions relating to the carrying out of the Works).

3.3 Responsibility for design

- 3.3.1 In all cases the Contractor shall be responsible for the entirety of the design of the Contractor's Designed Works and in particular, but without prejudice to, the generality of the foregoing:-
 - 3.3.1.1 the Contractor shall be responsible for any design that relates to the Contractor's Designed Works set out in or implicit from the Specification; and
 - 3.3.1.2 the Contractor shall be responsible for the development and detailing of the design that relates to the Contractor's Designed Works set out in, or implicit from, the Specification to whatever level is necessary to enable the Contractor's Designed Works to be carried out.
- 3.3.2 The Contractor shall be responsible for the co-ordination of all design of the Contractor's Designed Works.
- 3.3.3 The Contractor shall comply with all Requirements set out in the Specification.
- 3.3.4 *Compliance with Health and Safety obligations*

In relation to any design and/or construction of the Works carried out by the Contractor, the Contractor shall take all steps to ensure that the CDM Regulations are fully complied with where applicable and, in particular, that:-

- 3.3.4.1 its responsibilities as a "designer" in accordance with the CDM Regulations are satisfied;
- 3.3.4.2 any person who carries out any design, or the review of any design, has the necessary competence and resources to do so;
- 3.3.4.3 the Contractor shall co-operate with the CDM Co-ordinator and any other designers to enable the CDM Co-ordinator and any other designers to fulfil their respective statutory duties; and
- 3.3.4.4 all relevant information is given to the CDM Co-ordinator for the inclusion in the Health and Safety File and is passed or otherwise communicated to all persons involved in the design and/or construction of the Works who requires such information to safeguard the health and safety of the persons carrying out construction or maintenance of the Works or who may be affected by the works of such persons.

3.4 Contractor's Design

- 3.4.1 *Carrying out of the Contractor's Design*

- 3.4.1.1 The Contractor shall carry out and complete the Contractor's Design:-
- 3.4.1.1.1 in accordance with the Specification;
 - 3.4.1.1.2 in accordance with the Contractor's Design Proposals;
 - 3.4.1.1.3 so as to ensure that it is physically and legally possible to implement the Contractor's Design in accordance with the Specification;
 - 3.4.1.1.4 so as to produce a design for the Contractor's Designed Works that can physically and legally be carried out;
 - 3.4.1.1.5 in accordance with Good Industry Practice;
 - 3.4.1.1.6 so as to ensure that all Things for incorporation conform with the standards specified in the Specification or, where no such standards are specified, with the appropriate standards and/or relevant standard codes of practice;
 - 3.4.1.1.7 in the most cost effective manner having regard to paragraph 1 (Site Waste Management Plan) of Schedule 1 (Site Waste Management Plan);
 - 3.4.1.1.8 so that construction of the Works causes minimum disruption to the Authority's or any third party's activities on the Site and elsewhere.

The Contractor shall be deemed to have satisfied itself as to its ability to carry out and complete the Contractor's Design in accordance with condition 3.4.1.1.

3.4.2 *Independent Certification*

- 3.4.2.1 In accordance with paragraph 3.2 (Contractor's Designer) of the Specification the Contractor will appoint an independent third party to certify the Contractor's drawings, designs, calculations and specifications.
- 3.4.2.2 Any proposed appointment of such independent third party referred to above, must be approved by the Authority and the Authority reserves the right in its sole discretion to reject the proposed appointment and require the Contractor to appoint a different independent third party.
- 3.4.2.3 Any report published or produced by such independent third party shall be made available to the Authority and the Contractor shall ensure that the terms of appointment of such third party provide that the Authority shall be entitled to rely such report.

3.4.3 *Design comment*

- 3.4.3.1 The Contractor shall produce the Contractor's Design Documents in accordance with this condition 3.4.3 and paragraph 3 (Design) of the Specification and submit the Contractor's Design Documents to the Authority for comment in accordance with paragraph 3.4 (DIO PM Review and Comment) of the Specification.

- 3.4.3.2 The Contractor shall prepare all Contractor's Design Documents necessary for the complete and efficient execution of the Contractor's Design.
- 3.4.3.3 The Contractor shall provide to the Authority two copies of all Contractor's Design Documents of the type and/or nature which the Specification expressly requires the Contractor to provide.
- 3.4.3.4 The Contractor's Design Documents provided in accordance with condition 3.4.3.3 above shall be provided as required by the Specification or otherwise in a format that can be reproduced.
- 3.4.3.5 The Contractor shall keep, on the Site, one copy of each Contractor's Design Document to which the Authority shall have access at all reasonable times.

3.4.4 *Configuration Control*

- 3.4.4.1 The Contractor shall operate a system of Configuration Control in respect of all the design relating to the Contractor's Designed Works which shall:-
 - 3.4.4.1.1 demonstrate the evolution of the design, from Specification to the completed Contractor's Design, including refinement of the design principles and concepts;
 - 3.4.4.1.2 record any amendments in the above design which occur and the reasons for the amendments; and
 - 3.4.4.1.3 identify the person or persons responsible for initiating and authorising such amendments.
- 3.4.4.2 Upon completion of the Contractor's Design, the Contractor shall provide a report on the Configuration Control which demonstrates:-
 - 3.4.4.2.1 how the design has evolved, taking into account time factors, budgetary constraints, the Specification and any other matters; and
 - 3.4.4.2.2 that the design and all or any specifications meet the Specification.

3.4.5 *Design rights*

- 3.4.5.1 The copyright in all drawings, reports, models, specifications, bills of quantities, calculations and other documents and information provided by the Contractor in connection with the Works (together referred to in this condition as "**copyright documents**") shall remain vested in the Contractor (or as may be otherwise provided by the Contractor), but the Authority and its appointees shall have a licence to copy and use and have copied and used copyright documents, and to reproduce the designs contained in such copyright documents, for any purpose related to the Works including the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, repair and extension of the Works provided that the Contractor shall not be liable for any use by the

Authority of such copyright documents for any purpose other than that for which the same were prepared by or on behalf of the Contractor.

- 3.4.5.2 On or before the Works Completion Date the Contractor shall supply to the Authority, free of charge, copies of all reports on ground and sub-soil investigations which have been undertaken by or on behalf of the Contractor, any Supply Chain members or any of the Contractor's other Supply Chain member in connection with the performance of the Contract.

3.4.6 *Design warranty*

The Contractor hereby represents and warrants for the benefit of the Authority that the elements of the Works designed by the Contractor satisfy and meet the design life requirements as specified in paragraph 3.3 (Design Life and Maintenance) of the Specification.

3.4.7 *Effect of collateral warranties from Supply Chain members or suppliers*

The Contractor's liability for any Contractor's Design shall not be affected by any warranty the Authority may obtain from any Supply Chain member or supplier of the Contractor.

3.4.8 *Statutory requirements (including MOD Health and Safety Policy and CDM Regulations) and Consents*

The Contractor shall comply with its obligations in paragraph 1 (Statutory obligations and Consents) of Schedule 3 (Compliance with statutory and other obligations)

3.5 The Works

3.5.1 *Carrying out of the Works*

- 3.5.1.1 The Contractor shall carry out and complete the Works:-

- 3.5.1.1.1 in accordance with the Specification and the Contractor's Design;
- 3.5.1.1.2 with diligence;
- 3.5.1.1.3 in a good and workmanlike manner;
- 3.5.1.1.4 in accordance with Good Industry Practice;
- 3.5.1.1.5 in accordance with the Quality Plan and any relevant quality control or assurance system, standard or procedure required by the Contract; and
- 3.5.1.1.6 on or before the Date or Dates for Completion.

- 3.5.1.2 The Contractor shall be deemed to have satisfied itself as to its competency and ability to carry out and complete the Works in accordance with condition 3.5.1.1.

- 3.5.1.3 All Things for incorporation and workmanship comprised in the Works shall be of good quality and in exact conformity with the Requirements and the Contractor's Design. Furthermore (and without prejudice to the

Contractor's implied obligations at common law) any Things for incorporation which the Contractor is required to choose or select shall be fit for the purpose of such Things in the Works.

- 3.5.1.4 The Contractor shall provide such samples of Things for incorporation and/or standards of workmanship as are expressly specified in the Requirements. Such samples shall be provided in sufficient time to allow a reasonable period for examination and comment before the start of the Works to which the samples relate. The Contractor shall ensure that all relevant Things for incorporation and/or standards of workmanship are of a standard equivalent to the sample provided.
- 3.5.1.5 The Contractor shall be responsible for the adequacy, stability and safety of all site operations and methods of construction.

3.5.2 *Competent Site personnel*

Whether as part of the provision of the Key Personnel or not, the Contractor shall employ or engage a competent person or persons with authority to receive and action any DIO PM's Directions or Change Orders during the period of carrying out the Works. Such person or persons shall be in attendance at the Site during all working hours. Any DIO PM's Direction or Change Order given to the person or persons so appointed shall be deemed to have been given to the Contractor.

3.5.3 *CDM Regulations*

The Contractor shall, in relation to the Works, perform the roles of the 'Principal Contractor' and the 'CDM Co-ordinator' in accordance with the CDM Regulations.

3.5.4 *Compliance with operational requirements*

- 3.5.4.1 In carrying out the Works, the Contractor shall liaise with any persons responsible for the operation of the HM Naval Base Portsmouth which includes the Site to check whether there are any operational requirements that may affect the carrying out of the Works on the Site. The Contractor shall comply with any such operational requirements.
- 3.5.4.2 The Contractor shall carry out the Works so as to cause minimum disruption to the Authority's activities on the HM Naval Base Portsmouth and elsewhere. If the Contractor anticipates any such disruption, the Contractor will notify the Authority in writing to enable the Authority to plan in advance, if necessary, for such disruption.

3.5.5 *Compliance with Schedule 2*

In carrying out the Works, the Contractor will comply with Schedule 2 (Provisions relating to the carrying out of the Works).

3.6 Ozone-depleting substances

The Contractor shall not, without the prior written consent of the Authority, specify in the Contractor's Design or use in the carrying out of the Works any products or other ozone-depleting substances referred to in The Montreal Protocol on Substances That Deplete the Ozone Layer (a protocol to the Vienna Convention for the Protection of the Ozone Layer) as adopted on 16 September 1987 and as amended and updated from time to time.

3.7 Use of documents, information and communication with the media

3.7.1 Any specifications, plans, drawings, or any other documents issued by or on behalf of the Authority for the purposes of the Works shall remain the property of the Authority and shall be returned to the Authority on the Date of Completion of the Works.

3.7.2 The Contractor shall not communicate, directly or indirectly, with representatives of the general and/or technical press, radio, television or any other communications media about the Contract, or any matter arising from the Contract, without the prior approval of the Authority.

3.8 Statutory obligations and security provisions

In carrying out its obligations under the Contract, the Contractor shall comply with Schedule 3 (Compliance with statutory and other obligations), Schedule 6 (Security provisions) and paragraph 6.4 (Security) of the Specification.

3.9 Technical Guidance

3.9.1 The Contractor shall ensure that the Contractor's Design and the Works comply with any relevant Technical Guidance.

3.9.2 The Contractor shall check that all Technical Guidance of relevance to the Works is in fact listed in, or appended to, the Specification and shall notify the DIO PM of any omissions which the Contractor believes has, or may have, been made.

3.9.3 The Contractor shall submit any queries regarding any Technical Guidance to the DIO PM and the DIO PM shall resolve any such queries.

3.10 Proposed Changes

The Authority or the Contractor may, at any time during the Contract, propose an alteration of, or addition to, or omission from, the Specification or any change in the design, quality or quantity of the Works in accordance with Schedule 4 (Change Control).

3.11 Fraud Prevention

3.11.1 The Contractor shall comply, and shall ensure that all members of its Supply Chain comply, with:-

3.11.1.1 the Contractor's policy for the prevention and detection of fraud as submitted in accordance with its tender for the Contract;

3.11.1.2 the fraud prevention manual attached to these Conditions of Contract as Appendix 1 (Fraud Prevention Manual); and

3.11.1.3 MOD Policy Statement on Fraud & Theft for Construction Industry Suppliers attached to these Conditions of Contract at Appendix 2 (MOD Policy Statement on Fraud & Theft).

3.12 Compliance Audit

Upon the request of the Authority, the Contractor shall carry out an internal audit and an audit of the members of its Supply Chain in relation to its and such members' respective compliance with condition 3.11.1 (Fraud Prevention) above and shall report to the Authority on the result of such audit.

3.13 Photographs

3.13.1 The Contractor shall not, at any time, take any photograph or other visual record of the Site or the Works or any part of the Site or the Works without the prior consent of the Authority. The Contractor shall take all reasonable steps to ensure that no such photographs or other visual records shall at any time be taken or published or otherwise circulated by any person employed or engaged by it, unless the Contractor has obtained the prior consent of the Authority.

3.13.2 For the avoidance of doubt, the Authority consents to the taking of photographs and other visual records pursuant to paragraphs 2.35 (Safety Adjacent Structures, Services and Works) and 2.37 (Archaeological Supervision – Protocol for Archaeological Finds Reporting) of the Specification.

3.14 Negative Covenants

3.14.1 Unless the Contractor shall have obtained the prior written consent of the Authority, the Contractor shall not (or, to the extent the same is within his control, shall not permit any person to):

- 3.14.1.1 create, incur, assume or permit to exist any lien upon the HM Naval Base Portsmouth or any part thereof, or upon any property of the Authority;
- 3.14.1.2 sell, lease, assign, transfer or otherwise dispose of any of the Authority's property (including all property owned, hired or used by the Authority);
- 3.14.1.3 cause the Authority to be, or to become, responsible or liable for obligations of any other person; or
- 3.14.1.4 settle or compromise any action or claim or institute any proceedings, suits or litigation for or on behalf of the Authority.

3.15 General Contractor Warranties

3.15.1 The Contractor hereby represents and warrants for the benefit of the Authority as follows:

- 3.15.1.1 the Contractor is a company validly existing and is authorised to conduct its business under the laws of England. The Contractor has the power and authority to enter into this Contract, and to perform his obligations hereunder;
- 3.15.1.2 no Individual Insolvency Event or Company Insolvency Event has occurred and no claim is presently being assessed and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against it or any of its assets which will or might have a materially adverse effect on the ability of the Contractor to perform his obligations under this Contract;
- 3.15.1.3 the Contractor has and will maintain the necessary training, experience and capability to perform all of his obligations under this Contract;
- 3.15.1.4 the Contractor shall notify the Authority if there is any change in the Schedule of Supply Chain Members; and

- 3.15.1.5 the Contractor shall immediately notify the Authority at the address specified in this Contract of any change in its credit rating (for example, Dun & Bradstreet (D&B), Moody's, Standard & Poor (S&P) or Fitch IBCA) from that existing at the time of Contract placement. Notification by the Contractor of such information shall not prejudice any rights of the Authority or the Contractor under this Contract.

3.15.2 The warranties listed in conditions 3.15.1.1 to 3.15.1.3 above shall survive expiry or early termination of this Contract.

3.16 Commercial Exploitation

The Contractor shall not to persons other than the Authority, use, sell, dispose or otherwise exploit for commercial gain any work or design undertaken or produced under or in connection with this Contract without the prior written consent of the Authority. In the event of such consent, which shall not be unreasonably withheld, the Contractor shall first agree with the Authority, in the form set out in Appendix 10 (Commercial Exploitation Agreement), the sum or sums which shall reasonably be paid to the Authority having regard to the amounts paid or payable to the Contractor by the Authority under this Contract. The Contractor shall procure that its Supply Chain shall also enter into similar agreements under their Supply Chain Contracts in appropriate circumstances.

4 Payment

4.1 Adjustment of the Contract Sum

4.1.1 The Contract Sum shall provide for the carrying out of the Contractor's Design and the Works and/or all things necessary for the full and proper performance of the Contractor's obligations in accordance with the Contract and to include for all work necessary during the period of the Contract.

4.1.2 The Contract Sum can only be adjusted as the result of a Change in accordance with Schedule 4 (Change Control).

4.2 Progress Payments

4.2.1 At the end of each month the Contractor shall:

4.2.1.1 undertake an interim survey in accordance with paragraph 4.8 (Dredging Surveys and Setting Out) of the Specification to ascertain the actual amount of Dredged Material removed during the preceding month; and

4.2.1.2 submit a claim for a Progress Payment to the Authority showing:

4.2.1.2.1 the amount to which the Contractor considers itself entitled based on the value of Works completed in the preceding month calculated using applicable rates in the Pricing Document; less

4.2.1.2.2 a retention of 5%.

4.2.2 The Authority may at any time request, and the Contractor shall provide, an updated Progress Payment Forecast.

4.3 Certification of Progress Payments

- 4.3.1 Claims for Progress Payments under condition 4.2.1 (Progress Payments) shall be accompanied by a certificate by the Contractor that the amounts claimed are not more than those payable in accordance with the above conditions, the rate of VAT being that applicable at the date when the claim is issued (the “**Progress Payment Certificate**”). The claims will show clearly the total expenditure to date under each of the items in the Pricing Document, the aggregate amount (exclusive of VAT) of all payments already made by the Authority under condition 4.2 (Progress Payments) in respect of the Contract and the cumulative Retention Amount.
- 4.3.2 The Authority reserves the right to verify the Progress Payment Certificate by examination of the Contractor's books and to reduce the Contractor's claims in the event of it considering any of the items of expenditure to be excessive.
- 4.3.3 Any Progress Payment will be made at the sole discretion of the Authority and, if the Authority considers that the Contractor has failed to perform any of its obligations under the Contract the Authority may, wholly or in part, give a Pay Less Notice in accordance with condition 4.9 (Pay Less Notices) or recover from the Contractor any Progress Payment (including the addition in respect of VAT) already made, or both.
- 4.3.4 The making of any Progress Payment shall in no way reduce the liability of the Contractor to carry out its obligations under the Contract.

4.4 Completion Payment(s) and Retention Payment(s)

- 4.4.1 Within 3 months from the date that the DIO PM has issued a Certificate of Completion in relation to the Works as a whole or any Section the Contractor shall forward to the DIO PM one copy of the Contractor's draft calculation of:
 - 4.4.1.1 the relevant Completion Payment due to the Contractor; and
 - 4.4.1.2 if the Certificate of Completion is in relation to the Works as a whole and:
 - 4.4.1.2.1 the Works or any Section include Engineered Slope Protection Works, 50% of the Retention Amount (an “**Interim Retention Payment**”); or
 - 4.4.1.2.2 the Works or any Section do not include Engineered Slope Protection Works, 100% of the Retention Amount,

(each a “**Retention Payment at Completion**”).

If the Contractor fails to do so within the 3 months from the date the DIO PM issued a Certificate of Completion, the DIO PM may forward to the Contractor its own calculation of the relevant Completion Payment and the Retention Payment at Completion (if applicable).

- 4.4.2 The DIO PM shall, within 3 months of receipt of a draft calculation from the Contractor, notify the Contractor of its agreement or disagreement with such draft calculation. If the DIO PM disagrees, it shall specify its reasons for disagreement and its own calculation of the relevant Completion Payment and the Retention Payment at Completion (if applicable).
- 4.4.3 The DIO PM shall determine the amount of the relevant Completion Payment and Retention Payment at Completion (if applicable) taking into account any reasons for

disagreement and/or the Contractor's calculation put forward in accordance with condition 4.4.1 above.

- 4.4.4 Once the relevant Completion Payment and Retention Payment at Completion (if applicable) have been calculated and agreed or, in default of agreement, have been determined by reference to the Commercial Representative, mediation, adjudication or arbitration in accordance with Schedule 8 (Resolution of disputes):
- 4.4.4.1 if the total amount previously paid to the Contractor exceeds the amount due to the Contractor (taking into account the relevant Completion Payment and Retention Payment at Completion (if applicable) but excluding any Retention Balance Payment), the Contractor shall repay the excess to the Authority, together with interest at the rate set out in Condition 4.12.1.2 (Interest on late payment);
 - 4.4.4.2 if the total amount due to the Contractor (taking into account the relevant Completion Payment and Retention Payment at Completion (if applicable) but excluding any Retention Balance Payment) exceeds the amount previously paid to the Contractor, the Contractor shall as soon as possible thereafter provide the Authority with a Payment Request for payment of such excess and the payment procedure and provisions set out in conditions 4.5 (Payment Notices) to 4.12 (Interest on late payment) shall apply and the Authority shall pay the amount of such excess subject to:
 - 4.4.4.2.1 (in the case of the last Completion Payment following completion of the Works as a whole) the prior receipt by the Authority of the schedule of documents and the as-built drawings and other information in accordance with paragraphs 17 (Provision of information by the Contractor) and 18 (Completion Documents) of Schedule 2 (Provisions relating to the carrying out of the Works); and
 - 4.4.4.2.2 (in the case of the Completion Payment following completion of any Section), the prior receipt by the Authority of the as-built drawings and other information in relation to that Section in accordance with paragraph 17 (Provision of information by the Contractor) of Schedule 2 (Provisions relating to the carrying out of the Works).
- 4.4.5 In operating this condition, the DIO PM shall act fairly and impartially.
- 4.4.6 If the Works or any Section include Engineered Slope Protection Works and the DIO PM has issued a Defects Rectification Period Completion Certificate in relation to the Works as a whole, then the Contractor shall as soon as possible thereafter provide the Authority with a Payment Request for the Retention Balance Payment and the payment procedure and provisions set out in conditions 4.5 (Payment Notices) to 4.12 (Interest on late payment) shall apply in respect of the payment of the Retention Balance Payment.

4.5 Payment Notices

- 4.5.1 In relation to every payment provided for by this Contract, the Authority shall give a Payment Notice to the Contractor not later than 5 days after the Payment Due Date. Such Payment Notice shall:

- 4.5.1.1 be in the standard form as shown as Appendix 9 (Form of Payment Notices);
- 4.5.1.2 be clearly marked "Payment Notice";
- 4.5.1.3 specify the amount that the Authority considers to be or to have been due at the Payment Due Date (even if that amount is zero); and
- 4.5.1.4 specify the basis on which that amount is calculated.

4.6 Default Payment Notices

- 4.6.1 Where a Payment Notice is not given by the Authority in accordance with condition 4.5.1, the Contractor may give the Authority a Default Payment Notice which complies with the condition below at any time after the date on which such Payment Notice is required by this Contract to be given.
- 4.6.2 Such Default Payment Notice shall:
 - 4.6.2.1 be the standard form as shown at Appendix 9 (Form of Payment Notices);
 - 4.6.2.2 be clearly marked "Default Payment Notice";
 - 4.6.2.3 specify the amount that the Contractor considers to be or to have been due at the Payment Due Date;
 - 4.6.2.4 specify the basis on which that amount is calculated; and
 - 4.6.2.5 not, in any circumstances, exceed the amount stated as being due in the Payment Request or Progress Payment Certificate (as applicable).
- 4.6.3 Where the Contractor is entitled to give a Default Payment Notice in accordance with condition 4.6.1 but has failed to do so:
 - 4.6.3.1 the Contractor shall not be entitled to suspend any or all of its obligations under this Contract; and
 - 4.6.3.2 the Authority shall be under no obligation to make any payment otherwise due to the Contractor.

4.7 Payment Due Date

- 4.7.1 The Payment Due Date shall be 7 days after:
 - 4.7.1.1 (in the case of Progress Payments) the date of issue of the relevant Progress Payment Certificate in accordance with condition 4.3 (Certification of Progress Payments).
 - 4.7.1.2 (in the case of payment of the Retention Balance Payment) the date of issue of the Payment Request by the Contractor in accordance with condition 4.4.6 (Completion Payment(s) and Retention Payment(s)); or
 - 4.7.1.3 (in the case of payment of a Completion Payment or Retention Payment at Completion) the date of issue of the Payment Request by the Contractor in accordance with condition 4.4.4.2 (Completion Payment(s) and Retention Payment(s)).

4.8 Final Date for Payment

4.8.1 Subject to condition 4.8.2, and unless the Authority has served a Pay-Less Notice pursuant to condition 4.9.1 (Pay Less Notices), the Authority shall pay the Contractor, in accordance with Conditions 4.10 (Payment under P2P) to 4.12 (Interest on late payment), the amount referred to in:

4.8.1.1 the Payment Notice given by the Authority under condition 4.5 (Payment Notices);

4.8.1.2 (where the Authority has given a Pay Less Notice under condition 4.9.1 (Pay Less Notice)) the Pay Less Notice; or

4.8.1.3 (if the Authority has not given a Payment Notice) the Default Payment Notice given by the Contractor under condition 4.6.1 (Default Payment Notices),

no later than 20 days after the relevant Payment Due Date (the “**Final Date for Payment**”).

4.8.2 Where the Contractor gives a Default Payment Notice under condition 4.6.1 (Default Payment Notices), the Final Date for Payment of the amount specified in the Default Payment Notice shall be deferred by the same number of days between the date by which the Payment Notice should have been given under condition 4.5.1 (Payment Notices) and the date on which the Default Payment Notice is given by the Contractor.

4.8.3 Notwithstanding condition 4.8.1 and condition 4.9.1 (Pay Less Notices), if any of the events referred to in condition 8.2.6.3 and/or 8.2.6.4 (Termination) occur not less than ten (10) days before the Final Date for Payment, the Authority shall not be required to pay the Contractor the amount set out in the Payment Notice or Default Payment Notice (or any other amount) and shall not be required to serve any Pay Less Notice.

4.9 Pay Less Notices

4.9.1 Not less than ten (10) days before the Final Date for Payment (the "Prescribed Period") the Authority may give the Contractor a written notice that it intends to pay less than the amount set out in the Payment Notice or Default Payment Notice (a “**Pay Less Notice**”). The Pay-Less Notice shall:

4.9.1.1 be the standard form as shown at Appendix 9 (Form of Payment Notices);

4.9.1.2 be clearly marked "Pay-Less Notice";

4.9.1.3 specify the amount that the Authority considers is due on the date the Pay-Less Notice is served (even if that amount is zero); and

4.9.1.4 specify the basis on which that amount is calculated.

4.9.2 Where a Pay Less Notice is given, the payment to be made on or before the Final Date for Payment shall not be less than the amount stated as due in the Pay-Less Notice.

4.9.3 Where the ground or grounds for serving a Pay-Less Notice are referred to adjudication under paragraph 3 (Adjudication) of Schedule 8 (Resolution of Disputes)

and the Adjudicator decides that an amount greater than that set out in the Pay-Less Notice should be paid, payment shall be made not later than:

4.9.3.1 seven (7) days from the date of the decision; or

4.9.3.2 the date which, apart from the Pay-Less Notice in condition 4.8.1 (Final Date for Payment), would have been the Final Date for Payment,

whichever is the later.

4.10 Payment under P2P

4.10.1 The Authority shall, not less than nine (9) days before the Final Date for Payment, submit a P2P Purchase Order for the amount stated in;

4.10.1.1 the Payment Notice;

4.10.1.2 the Pay Less Notice (if given under condition 4.9 (Pay Less Notices)); or

4.10.1.3 the Default Payment Notice (if given under condition 4.6 (Default Payment Notices)).

4.10.2 Within 2 Business Days of submission of the P2P Purchase Order, the Contractor shall submit a P2P Invoice for the amount stated in the Purchase Order.

4.10.3 The DIO PM shall confirm Payment Approval for the amount in the P2P Invoice to enable payment to be made by the Authority's Accounts by the Final Date for Payment.

4.10.4 Payment Approval shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations under the Contract nor as a waiver of its rights and remedies either under the Contract or otherwise.

4.10.5 All valid and properly completed P2P Invoices for which Payment Approval has been given will be paid by BACS into the Project Bank Account.

4.10.6 To facilitate payment by BACS, the Contractor shall be required to advise the Authority's Accounts in advance of submission of a P2P Invoice (if the Contractor has not already done so) of details of the name and address of the bank, sort code and account number of the Project Bank Account. The Contractor shall confirm the accuracy of this information with the Authority's Accounts on an annual basis.

4.11 Recovery of sums due

4.11.1 Without prejudice to any other rights of the Authority, whenever under the Contract any sum of money shall be recoverable from, or payable by, the Contractor, such sum may be deducted from the amount of any sum or sums then due, or which at any time afterwards may become due to the Contractor under, or in respect of, the Contract or any other contract with the Authority or with any department or office of the Crown.

4.12 Interest on late payment

4.12.1 Where and to the extent that non-payment by the Authority of an amount properly due to the Contractor pursuant to this condition 4 by the Final Date for Payment

would otherwise be a “qualifying debt” under the Late Payment of Commercial Debts (Interest) Act 1998 (the “**LPCD Act**”):

- 4.12.1.1 the interest provided for in this condition is a contractual remedy and is not statutory interest. To the extent permissible by law, the provisions of the LPCD Act relating to statutory interest shall not apply to the Contract;
 - 4.12.1.2 from the Final Date for Payment and thereafter until payment is made, simple interest at a rate calculated in accordance with condition 4.12.1.3 may be claimed by the Contractor on the value of all valid P2P Invoices (or unpaid parts thereof);
 - 4.12.1.3 without prejudice to condition 4.12.1.1, the rate of interest referred to in condition 4.12.1.2 shall be the prevailing rate of statutory interest (as defined in the LPCD Act) on the Final Date for Payment;
 - 4.12.1.4 no interest shall be payable for any period of delay attributable to the conduct of the Contractor (including but not limited to failure to submit or delay in submission of a P2P Invoice pursuant to condition 4.10.2 (Payment under P2P));
 - 4.12.1.5 all claims for interest made pursuant to this condition 4.12 shall be notified in writing to the DIO Commercial Officer; and
 - 4.12.1.6 any interest pursuant to this condition 4.12 shall not form part of the Contract Sum and, as a remedy for late payment, shall not be subject to VAT.
- 4.12.2 If and to the extent that any term of this condition 4.12 shall be held to be, or to cause the condition or Contract to be, void invalid unlawful or unenforceable, such term shall, to that extent, be omitted from this condition and the rest of the condition shall stand.
- 4.12.3 The parties acknowledge that the Authority’s liability under this condition 4.12 is a substantial remedy for the purposes of section 9(1) of the LPCD Act.

5 Allocation of Risk

5.1 Conditions affecting the Works

- 5.1.1 Where the Authority has made available to the Contractor, before submission of its tender, factual information relevant to the execution of the Works, including hydrological, sub-water surface and sub-bottom conditions, and environmental aspects obtained by, or on behalf of, the Authority in relation to the Site (including factual information relating to the existence of any Obstructions and Debris) the Authority does not warrant the accuracy or completeness of such information and the Contractor acknowledges that such information is provided for information purposes only and that it is solely responsible for verifying or interpreting such information.
- 5.1.2 The Contractor shall not be entitled to rely on any interpretation contained in, or forming part of, any such factual information provided in accordance with condition 5.1.1 above. The Contractor shall be responsible for the interpretation of all such factual information for the purposes of carrying out the Contractor’s Design and completing the Works.

- 5.1.3 The Contractor shall obtain all further necessary information and shall conduct all further necessary investigations required for the purposes of carrying out the Contractor's Design and completing the Works save where the Authority's security or operational requirements prevent the giving of access for the Contractor to carry out its own surveys and investigations. In such circumstances, in the absence of any express provision in the Specification, the Contractor shall discuss with the Authority what further necessary information the Contractor considers it requires for the purposes of carrying out the Works. At the Authority's discretion, the Authority will arrange for the carrying out of such further investigations as the Authority considers necessary, at the Authority's cost.
- 5.1.4 The Contractor shall, in relation to the Site, be deemed to have satisfied himself as to:-
- 5.1.4.1 the existing roads, railways and other means of communication with or access to it;
 - 5.1.4.2 its contours and boundaries;
 - 5.1.4.3 the risk of damage by reason of any work to any property adjacent to the Works and injury to occupiers of that property;
 - 5.1.4.4 the nature of the ground and sub-soil;
 - 5.1.4.5 the conditions under which the Works will have to be carried out, including precautions to prevent nuisance and pollution;
 - 5.1.4.6 the supply of and conditions affecting labour or plant necessary to carry out the Contractor's Design and/or the Works;
 - 5.1.4.7 the availability of any Things, whether or not for incorporation; and
 - 5.1.4.8 any other matters or information affecting or likely to affect the carrying out of the Contractor's Design and/or the Works and/or the Contract Sum,
- and shall not be entitled to claim any additional payment or extension of the Date or Dates for Completion by reason of any misunderstanding or misinterpretation of any of the matters listed in this condition 5.1.4.
- 5.1.5 If, during the carrying out of the Works, the Contractor becomes aware of any:
- 5.1.5.1 Debris or Small Obstruction, the Contractor shall immediately deal with the Small Obstruction or Debris in accordance with the Obstruction Strategy; or
 - 5.1.5.2 Obstruction which it considers from investigations cannot be removed by the Standing Recovery Plant, the Contractor shall immediately:-
 - 5.1.5.2.1 inform the Commercial Officer (copied to the DIO PM) by the issue of a Change Notification of the Obstruction;
 - 5.1.5.2.2 use its best endeavours to continue to carry out the Works and perform its obligations under the Contract in accordance with Good Industry Practice, including redeployment its equipment elsewhere on the Site in order to progress the Works; and

5.1.5.2.3 after a decision has been made by the Commercial Officer has made a decision as to whether an Obstruction is a Large Obstruction pursuant to condition 5.1.6, deal with the Obstruction in accordance with the Obstruction Strategy.

5.1.6 If the Commercial Officer agrees that an Obstruction notified to it pursuant to condition 5.1.5.2 cannot be removed by the Standing Recovery Plant, the Commercial Officer shall certify that Obstruction to be a Large Obstruction. The Commercial Officer shall notify the Contractor of its decision within 5 days of receipt of the Contractor's Change Notification under condition 5.1.5.2. The Contractor shall make available all records of necessary information and/or necessary investigations obtained or conducted under condition 5.1.3. The Commercial Officer shall consider these records when making its decision.

5.1.7 *Environmental Matters*

5.1.7.1 The parties agree that any responsibility or liability arising from or in connection with taking any Remedial Action or dealing with Contamination or dealing with any Environmental Liabilities or complying with any Environmental Laws to the extent caused, or contributed to, by any act, default or omission on the part of the Contractor, shall be borne solely by the Contractor.

5.1.7.2 The Contractor agrees to indemnify and keep indemnified and hold-harmless the Authority, on demand from and against and to reimburse on a full indemnity basis all Environmental Liabilities which may be incurred, sustained or suffered by the Authority to the extent such Environmental Liabilities are caused, or contributed to, by any act, default or omission on the part of the Contractor.

5.1.7.3 This is an "Agreement" for the purposes of paragraph D.38 of the Annex 3 of the Statutory Guidance contained in DEFRA Circular 01/2006 on the Environmental Protection Act 1990 Part 2A (Contaminated Land) as may be amended for time to time. Each party consents to the provisions of this Agreement being disclosed to any Environmental Authority under Part IIA of the Environmental Protection Act 1990 or a similar or substituted or amended Environmental Law. The Contractor and the Authority agree not to challenge the validity, existence or application of the Agreement for Liabilities in relation to any disclosure pursuant to this Condition.

5.1.7.4 *Trigger Condition*

The Authority shall not be entitled to be paid in respect of any Remedial Action pursuant to the indemnity in condition 5.1.7.2 (referred to in this condition as the "**Indemnity**") unless one or more of the following events takes place in respect of the matters which form the basis of the Remedial Action under the Indemnity:

5.1.7.4.1 a Relevant Authority or third party has commenced or threatened in writing Environmental Proceedings against the Contractor or the Authority; or

5.1.7.4.2 it is reasonable, having regard to the relevant facts and circumstances, to consider that it is more likely than not that such Environmental Proceedings would be brought if the

Relevant Authority or third party were aware of the full facts and circumstances of the matter requiring Remedial Action.

5.2 Authority's Risks

5.2.1 In addition to those risks identified in the Risk Register the Authority's Risks are:-

- 5.2.1.1 any alteration of, addition to or omission from the Specification or the Works or any alteration in the design, quality or quantity of the Works confirmed or authorised by the Authority in accordance with condition 1.3.3.2.5 (Resolution of discrepancies);
- 5.2.1.2 an omission or default of the Authority or any employee, contractor or agent of the Authority (including: (a) any errors or omissions in description or in quantity in any draft Pricing Document in accordance with paragraph 1 (The Pricing Document) of Schedule 5 (Provisions relating to payment)); or (b) any Loss or Damage to the Works caused by the Authority in accordance with paragraph 8.3 (other works and co-operation with others) of Schedule 2 (Provisions relating to the carrying out of the Works));
- 5.2.1.3 any delay by the Authority in providing any information in accordance with the date or dates for the provision of such information set out in the Programme or any delay in giving decisions, confirmations or consents which the Authority is obliged to provide or give under the Contract, save to the extent that any such delay is caused, or contributed to, by any act, default or omission on the part of the Contractor;
- 5.2.1.4 the failure of the Authority to comply with any time limit specified in the Contract or, where the parties agree to vary any such time limit, that time limit as varied, save to the extent that any such failure to comply is caused, or contributed to, by any act, default or omission on the part of the Contractor;
- 5.2.1.5 any delay in the carrying out of any work or the supply of any Thing undertaken by the Authority or ordered by the Authority from a person other than the Contractor unless, and to the extent that, any such delay is caused, or contributed to, by any act, default or omission on the part of the Contractor or the Contractor has accepted a particular risk pursuant to paragraphs 2.16, (Co-operation with other Contractors), 2.17 (General Interfaces) or 2.18 (Co-operation with other Harbour Users) of the Specification;
- 5.2.1.6 Loss or Damage to the Works or to any Things owned by the Contractor or on the Site for the Contractor's use which is due to any act, omission or default of the Authority or its employees or agents or any other contractor of the Authority engaged in relation to the Works or any part of the Works or its employees or agents;
- 5.2.1.7 any change in any relevant statutory requirements (other than in relation to taxation) after the date of the Contract which affects the Contractor's carrying out of the Contractor's Design and/or the Works and which was not reasonably foreseeable at the date of the Contract by a reasonable and prudent contractor undertaking or proposing to undertake the Works;

- 5.2.1.8 any delay in being given possession of the Site or part of it by the relevant date(s) for possession specified in the Agreement;
 - 5.2.1.9 any Obstruction which the DIO PM has certified as a Large Obstruction pursuant to condition 5.1.6 (Conditions affecting the Works), as further detailed in the Risk Register;
 - 5.2.1.10 the opening up, or carrying out any test or investigation on any work or Things which reveals that the work or Things in question conform with the Contract in accordance with paragraph 5.5 (Inspection of the Works and Things for incorporation) of Schedule 2 (Provisions relating to the carrying out of the Works) but excluding the undertaking of additional surveys by the Contractor if specifically instructed by the Authority pursuant to paragraph 4.8 (Dredging Surveys and Setting Out) of the Specification;
 - 5.2.1.11 any delay in the progress of the Works directly caused by the actions or omissions of the Authority and/or any Site Parties (save as a result of any instructions of the Queen's Harbour Master which the Contractor is obliged to comply with in accordance with paragraph 8.4 (Other works and co-operation with others) of Schedule 2 (Provisions relating to the carrying out of the Works)) unless, and to the extent that the Contractor has accepted obligations or is deemed to be aware of a particular risk pursuant to paragraphs 2.16 (Co-operation with other Contractors), 2.17 (General Interfaces) or 2.18 (Co-operation with other Harbour Users) of the Specification;
 - 5.2.1.12 loss of use or damage to the Works resulting from pressure waves caused by the speed of aircraft or other aerial devices travelling at sonic or supersonic speeds;
 - 5.2.1.13 ionising radiations or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel;
 - 5.2.1.14 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly (including any nuclear component);
 - 5.2.1.15 riot, war, invasion, act of foreign enemies or hostilities (whether war be declared or not); and
 - 5.2.1.16 civil war, rebellion, revolution, insurrection or military or usurped power.
- 5.2.2 Subject to condition 5.2.3, if an event constituting one of the Authority's Risks shall occur which the Contractor reasonably believes will have, or has had, an effect on the cost of carrying out the Works and/or the Contractor's ability to complete the carrying out of the Works by the Date or Dates for completion, the Contractor shall submit a Change Notification to the Authority via the Commercial Officer (copied to the DIO PM) within 14 days of the occurrence of the event constituting an Authority's Risk, and shall further submit a Change Quotation in accordance with Schedule 4 (Change Control). If the Contractor fails to submit a Change Notification within the 14 day period, the Contractor shall not be entitled to apply for any extension of time or any additional payment in respect of the relevant event. The Authority may nevertheless award an extension of time in accordance with paragraph 10 (Extensions of time) of Schedule 4 (Change Control) if it considers that an act, omission, or default of the Authority has caused a delay which will prevent, or has prevented, completion of the Works or any relevant section by the relevant Date for Completion.

- 5.2.3 Any Change Notification relating to the Authority's Risks set out in conditions 5.2.1.12 to 5.2.1.16 may give rise to an extension of time for the completion of the Works or any relevant Section in accordance with paragraph 10 (Extensions of time) of Schedule 4 (Change Control) but shall not give rise to any adjustment to the Contract Sum.
- 5.2.4 The Contractor shall at all times take all necessary steps to prevent and/or to minimise any delay and to do all that may be reasonably required to proceed with the Contractor's Design and/or the Works. The Contractor shall not be entitled to an extension of time where the delay or likely delay is, or would be, attributable to the negligence, default, improper conduct or lack of endeavour on the part of the Contractor.

5.3 Risk Register and Management

- 5.3.1 The Contractor shall take all reasonable steps to minimise the Authority's exposure to all risks throughout the performance of the Contract that could have an adverse effect on the cost, Programme or quality of the Works and shall report to the DIO PM at, or before, each progress meeting (see paragraph 11 (Progress meetings) of Schedule 2 (Provisions relating to the carrying out of the Works)) on the nature, likelihood and possible effects of such areas of potential risk.
- 5.3.2 The Contractor shall immediately notify the Authority on his becoming aware of a potential risk arising which is included within the Risk Register.
- 5.3.3 The Contractor agrees and acknowledges that the issuing by the Authority of any Risk Register prior to or at any time after the date of this Contract and any risk assessment carried out for the purpose of or by reference to which any Risk Register has been or shall be compiled including but not limited to any identification or failure to identify:

5.3.3.1 particular risks and their impact; or

5.3.3.2 risk reduction measures, contingency plans and remedial actions,

shall not in any way limit or exclude the Contractor's obligations under this Contract and shall be entirely without prejudice to the Authority's rights, privileges and powers under this Contract. The risks identified as a result of any risk assessment process generally remain the risks of the Contractor and are not assumed by the Authority except to the extent that the Authority expressly and unequivocally accepts those risks under this Contract. Any risk assessment questionnaire released was or will be issued by the Authority solely on this basis.

- 5.3.4 The Authority shall be responsible for the updating and amendment of the Risk Register and may seek the assistance of the Contractor and any other organisations engaged in relation to the Works as considered appropriate. The Authority may also arrange regular meetings with the Contractor and any other organisations engaged in relation to the Works as considered appropriate to review and update the risk register and to consider:-

5.3.4.1 any new risks that have arisen since the date of the last review;

5.3.4.2 the steps taken to prevent/mitigate previously identified risks;

- 5.3.4.3 risks which have been successfully prevented/mitigated (which can be removed from the risk register); and
- 5.3.4.4 prioritisation of all continuing risks and agreement of an action plan in respect of, and risk owners for, all risks prioritised as serious risks.
- 5.3.5 The Authority shall provide a copy of the latest version of the Risk Register to the Contractor at, or before, each progress meeting (see paragraph 11 (Progress meetings) of Schedule 2 (Provisions relating to the carrying out of the Works)).

5.4 Contractor's risks

- 5.4.1 All risks that are not Authority's Risks shall be risks of the Contractor.

5.5 Loss or Damage

- 5.5.1 Subject to condition 5.5.2, in respect of any Loss or Damage which arises out of, or is in any way connected with, the carrying out, or the purported carrying out, of the Contractor's Design or the Works, the Contractor shall, unless the Loss or Damage results from one or more of the Authority's Risks, be responsible for, and make good to the Authority:-
 - 5.5.1.1 all costs and expenses reasonably and properly incurred by the Authority; and/or
 - 5.5.1.2 any damages awarded against the Authority in connection with any claims or proceedings made or brought against the Authority,in accordance with the provisions of condition 5.5.3.
- 5.5.2 Neither party shall be liable to the other party for loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other party in connection with the Contract, save that any claims or proceedings made or brought against the Authority by a third party for loss of profit, loss of any contract or for any indirect or consequential loss or damage in connection with the Contract shall be a direct loss of the Authority.
- 5.5.3 In the event of any Loss or Damage arising in accordance with condition 5.5.1, the Contractor shall, without delay and at its own cost rectify, reinstate, replace or make good to the satisfaction of the Authority, or if the Authority agrees, indemnify the Authority in respect of any such Loss or Damage.
- 5.5.4 The DIO PM shall notify the Contractor as soon as possible of any claim made, or proceedings brought, against the Authority in respect of any Loss or Damage arising in accordance with condition 5.5.1.
- 5.5.5 Neither Party limits its liability for:
 - 5.5.5.1 death or personal injury caused by its negligence, or that of its employees;
 - 5.5.5.2 fraud or fraudulent misrepresentation by it or its employees; or
 - 5.5.5.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

5.5.6 Subject to condition 5.5.5, the Contractor's total aggregate liability in respect of all indemnities, claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Contract for Uninsured Amounts, other than paragraph 4 (Personal Data) of Schedule 3 (Compliance with statutory and other obligations), shall in no event exceed an amount equivalent to twenty percent (20%) of the Contract Sum. For the purpose of this condition 5.5.6, "**Uninsured Amounts**" means the amounts payable by the Contractor in respect of its obligations under this Contract, other than amounts which are:

5.5.6.1 covered by the Required Insurances; and/or

5.5.6.2 required to be insured by any Required Insurances.

For the avoidance of doubt, any excess or deductible payable under the Required Insurances, will not be an Uninsured Amount for the purpose of this condition 5.5.6 and shall not count towards the limitation of liability set out above.

5.6 Insurance

5.6.1 *Requirement to maintain*

5.6.1.1 Without prejudice to its obligation to indemnify the Authority under this Contract, the Contractor shall, from the date of the Contract, take out and maintain or procure the taking out and maintenance in full force and effect insurances in accordance with the requirements specified in Appendix 5 (Required Insurances) and any other insurances as may be required by law (together the "**Required Insurances**").

5.6.1.2 The Contractor shall ensure that the Required Insurances are effective in each case not later than the date on which the relevant risk commences.

5.6.2 *Quality of the insurances*

The Required Insurances referred to in condition 5.6.1 shall be taken out and maintained with insurers who (in the reasonable opinion of the Authority) are of good financial standing and of good repute in the marine and United Kingdom insurance markets.

5.6.3 *Non invalidation obligations*

The Contractor shall not (and the Contractor shall procure that none of its Supply Chain members of any tier shall) take any action, or permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person.

5.6.4 *Requirements of the Contractor*

The Contractor shall promptly notify the insurers of any material increase in any risk insured under any Required Insurances in connection with the Contract of which the Contractor is or becomes aware of.

5.6.5 *Evidence of the Required Insurances*

- 5.6.5.1 The Contractor shall provide, on request, to the Authority:
- 5.6.5.1.1 evidence of the Required Insurances, in a form satisfactory to the Authority; and
 - 5.6.5.1.2 evidence, in a form satisfactory to the Authority, that the premiums payable under the Required Insurances have been paid and that the insurances are in full force and effect and meet the insurance requirements of the Contractor in respect thereof.
- 5.6.5.2 Neither inspection, nor receipt of such evidence, shall constitute acceptance by the Authority of the terms thereof, nor be a waiver of the Contractor's liability under this Contract.

5.6.6 Cancellation

- 5.6.6.1 Where the insurers purport to cancel, suspend or terminate the Required Insurances, the Contractor shall procure that the insurers shall, as soon as is reasonably practicable, notify the Contractor in writing in the event of any such proposed suspension, cancellation or termination.
- 5.6.6.2 Where the Contractor receives notification from insurers pursuant to condition 5.6.6.1, the Contractor shall promptly notify the Authority in writing of receipt of such proposed suspension, cancellation or termination.

5.6.7 Insurance claims

- 5.6.7.1 The Contractor shall promptly notify to insurers any matter arising from or in relation to this Contract from which it may be entitled to claim under any of the Required Insurances.
- 5.6.7.2 Except where the Authority is the claimant party and without limiting the other provisions of this contract condition, the Contractor shall notify the Authority immediately, (such notification to be accompanied by reasonable particulars of the incident or circumstances giving rise to such claim):
- 5.6.7.2.1 of any incident or circumstances which may give rise to any claim amounting to or in excess of one hundred thousand pounds (£100,000) in connection with this Contract under any of the Required Insurances; and/or
 - 5.6.7.2.2 if the incident or circumstances may give rise to any claim in connection with this Contract, which may be in excess of the limits of the Required Insurances.

5.6.8 Failure to insure

If the Contractor is in breach of condition 5.6.1 the Authority may pay (at its option) any premiums required to keep such insurance in force or itself procure such insurance, and in either case, recover such amounts from the Contractor on written demand, together with all reasonable expenses incurred in procuring such insurance.

5.6.9 *Premiums*

Where any policy requires the payment of a premium, the Contractor shall be liable for such premium.

5.6.10 *Deductibles or excess*

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

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

5.6.11 *Compliance*

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

6 Provisions as to time

6.1 Commencement of the Contractor's Design

With effect from the date of the Contract, the Contractor shall commence the Contractor's Design and shall proceed with the Contractor's Design with diligence.

6.2 Possession of the Site and completion

6.2.1 The Contractor shall not commence any Works on Site unless and until it has prepared or developed a Health and Safety Plan in respect of the Works that is compliant with regulation 23(1)(a) of the CDM Regulations.

6.2.2 Possession of the Site shall be given to the Contractor on the date or dates for possession of the Site specified in the Agreement, and (without prejudice to the Contractor's obligations under condition 6.2.1) on such date or dates the Contractor shall take possession of the Site and shall forthwith proceed with the Works in accordance with the Contract. The Contractor shall proceed expeditiously and with diligence so that the whole of the Works or any Section shall be completed in accordance with the Contract by the relevant Date or Dates for Completion.

6.3 Programme

6.3.1 The draft Programme submitted in accordance with the Conditions of Tender for the Contract shall be updated to incorporate any amendment necessary to meet the Requirements and any amendments agreed between the Contractor and the Authority between the time of the Contractor's tender and the date of the Contract and shall become the Programme upon the date of the Contract.

6.3.2 The Contractor shall prepare and maintain the Programme in accordance with paragraph 9 (Programme) of Schedule 2 (Provisions relating to the carrying out of the

Works) and shall carry out and complete the Works in accordance with the Programme.

6.4 Acceleration

The Authority may at any time or from time to time seek to accelerate the completion of the Works in accordance with paragraph 13 (Acceleration) of Schedule 2 (Provisions relating to the carrying out of the Works).

6.5 Certification of completion of the Works or any Section

The DIO PM shall certify the completion of the Works or any Section in accordance with paragraph 14.4 (Certification of completion of the Works or any Section) of Schedule 2 (Provisions relating to the carrying out of the Works).

6.6 Extensions of time

The Date or Dates for Completion may only be extended by the grant of an extension of time in relation to a Change in accordance with paragraph 10 (Extensions of time) of Schedule 4 (Change Control).

7 Assignment, subcontracting and Strategic Business Partner (SBP)

7.1 Assignment

The Contractor shall not, without the prior consent of the Authority, assign the Contract, or any part, share, interest or benefit in or under the Contract. The Contractor shall not assign the right to receive any monies due under the Contract to any person without the prior consent of the Authority. No sum of money to become payable under the Contract shall be payable to any person other than the Contractor unless the consent of the Authority to the assignment of such money to such person is produced when such payment is claimed as due.

7.2 Subcontracting

7.2.1 The Contractor shall not subcontract the whole of the Contract.

7.2.2 The Contractor shall not subcontract any part of the Contract without the prior consent of the Authority save that the Contractor shall be deemed to have received the Authority's consent to subcontract that part, or those parts, of the Contractor's Design and/or the Works to the relevant member of the Supply Chain as set out in the Schedule of Supply Chain members. The Contractor shall provide such details of any additional Supply Chain members it wishes to engage as the Authority may reasonably require.

7.2.3 The Contractor shall take all necessary steps to ensure that each subcontract entered into will enable it to fulfil its obligations under the Contract. The Contractor shall ensure that any subcontract it enters into in connection with the performance of its obligations under the Contract shall require the Supply Chain member to assume towards the Contractor the obligations and responsibilities which the Contractor owes to the Authority under the Contract and shall give the Contractor rights, remedies and redress against the Supply Chain member equivalent to those given to the Authority against the Contractor under the Contract. In particular any subcontract shall include:-

- 7.2.3.1 power to terminate the subcontract as a consequence of termination of the Contract under condition 8.2 (Termination);
 - 7.2.3.2 a provision to the effect that, from the commencement to the completion of the subcontract, all Things for incorporation belonging to the person who enters into the subcontract which are brought on the Site in connection with the subcontract shall vest in the Contractor subject to any right of the Contractor to reject the same;
 - 7.2.3.3 such provisions as may be necessary to enable the Contractor to fulfil its obligations to the Authority under the Contract;
 - 7.2.3.4 such provisions as will impose on the person who enters into the subcontract, liabilities similar to those imposed on the Contractor under the Contract;
 - 7.2.3.5 a provision to the effect that no part of the subcontract work shall be further subcontracted without the consent of the Contractor;
 - 7.2.3.6 similar provisions to those set out in paragraph 17 (Provision of information by the Contractor) of Schedule 2 (Provisions relating to the carrying out of the Works), paragraph 6 (Corrupt Gifts and Payments of Commission) of Schedule 3 (Compliance with statutory and other obligations) and Schedule 6 (Security Provisions);
 - 7.2.3.7 a provision to the effect that payment shall be made to any supplier or Supply Chain member within 30 days of the date when payment becomes due under the relevant subcontract;
 - 7.2.3.8 provisions in the terms of paragraph 4 (Trust Deed and Project Bank Account) of Schedule 5 (Provisions relating to payment);and
 - 7.2.3.9 a provision requiring the Supply Chain member to comply with the Contractor's policy for the prevention and detection of fraud and the Authority's fraud prevention manual attached as Appendix 1 (Fraud Prevention Manual) to these Conditions of Contract.
- 7.2.4 The Contractor shall take all reasonable steps to secure the due observance and performance by any Supply Chain member of its obligations in accordance with condition 7.2.3 and shall, whenever so requested by the Authority, take such action as shall be necessary to ensure that a person who has entered into a subcontract with the Contractor complies with and performs all obligations imposed upon it.
- 7.2.5 Where for any reason a subcontract is terminated or assigned because of the act, omission or default of the Supply Chain member, the Contractor shall, at its own expense, secure completion of the subcontract.
- 7.2.6 The Contractor shall be wholly responsible for any Supply Chain member or supplier employed or engaged by it in connection with the Contractor's Design and/or the Works.
- 7.2.7 The Contractor shall make good any loss suffered and/or expense reasonably and properly incurred by the Authority by reason of any default or failure, whether total or partial, on the part of any Supply Chain member or supplier.

7.3 Strategic Business Partner

7.3.1 The Authority reserves the right at any time to:

7.3.1.1 appoint a third party to act as the Authority's SBP, which role shall include managing the delivery function of the Authority; and

7.3.1.2 transfer the Authority's delivery function to the Incorporated Entity, in which case the Incorporated Entity may be made responsible for managing this Contract.

7.3.2 In the event of any of the above circumstances, the Authority shall notify the Contractor of the identity of the SBP or Incorporated Entity and the scope of the SBP or Incorporated Entity's authority to act.

8 Suspension and termination

8.1 Suspension of performance

8.1.1 The Contractor may, subject to giving notice in accordance with condition 8.1.2, suspend performance of the Works and its other obligations under the Contract when, subject to condition 4.6.3 (Default Payment Notices), the Authority fails to pay the amount referred to in:-

8.1.1.1 the Payment Notice given under condition 4.5 (Payment Notices); or

8.1.1.2 (where the Authority has given a Pay Less Notice under condition 4.9 (Pay Less Notices) the Pay Less Notice,

by the Final Date for Payment.

8.1.2 It shall be a condition precedent to suspending performance of the Works and other obligations under the Contract that the Contractor gives not less than 21 days' notice of its intention to suspend performance to the DIO PM, and stating in the notice:-

8.1.2.1 the ground or grounds on which it is intended to suspend performance; and

8.1.2.2 the date from which it is intended to suspend performance.

8.1.3 If the Contractor suspends performance in accordance with this condition it shall, within 5 days of receipt of payment in full (which shall be deemed to have been made when, in the ordinary course of the method of delivery, payment would have been received), recommence performance of its obligations under the Contract.

8.1.4 The suspension of performance by the Contractor in accordance with this condition shall be a default of the Authority under condition 5.2.1.2 (Authority's Risks). For the purposes of an extension of time under paragraph 10 (Extensions of time) of Schedule 4 (Change Control) the period for extension of time shall be the period from the date from which it was intended to suspend performance in accordance with the notice issued under condition 8.1.2 to the date 5 days after the Contractor received, in accordance with condition 8.1.3, full payment of the amount due.

8.1.5 In the event of a suspension in accordance with condition 8.1.1, the Authority shall pay the Contractor:-

- 8.1.5.1 a reasonable amount in respect of costs and expenses reasonably incurred by the Contractor as a result of any exercise of its rights referred to in condition 8.1.1; and
- 8.1.5.2 (taking into account any amount paid under condition 8.1.5.1) any adjustment to the relevant Progress Payment due (as the case may be) under condition 4.2 (Progress Payments),

and such payment shall be the Contractor's sole compensation for suspension of the Works and other obligations under this Contract.

8.2 Termination

- 8.2.1 Without prejudice to any other power of termination on the part of the Authority, the Authority may at any time terminate the Contract in full or in part by notice to the Contractor. Upon receipt by the Contractor of such notice, the Contract shall be terminated forthwith.
- 8.2.2 The Authority shall specify in any notice of termination which, if any, of the grounds mentioned in condition 8.2.6 apply.
- 8.2.3 Notwithstanding the termination of the Contract under condition 8.2.1 the DIO PM may issue DIO PM's Directions or recommend the Commercial Officer to issue a Change Order as appropriate in relation to the performance or completion of any work and any other matters connected with the Works, the Site and any other contract or subcontract.
- 8.2.4 Any DIO PM's Directions or Change Orders issued under condition 8.2.3 shall be given not later than 3 months from the date of the notice of termination under condition 8.2.1 or the Works Completion Date for the Works as a whole, whichever is the earlier.
- 8.2.5 Upon receipt of notice of termination in accordance with condition 8.2.1, the Contractor shall promptly pass to the Authority all of the Contractor's Design Documents that have been prepared or are in the process of being prepared together with all records, documents and other information in the possession of the Contractor within the ambit of paragraph 17 (Provision of information by the Contractor) of Schedule 2 (Provisions relating to the carrying out of the Works).
- 8.2.6 Paragraph 2 (Consequences of termination for default) of Schedule 7 (Consequences of Termination) shall have effect where notice of termination is given for any of the following reasons:-
 - 8.2.6.1 any serious breach or succession of minor breaches of the Contract or the failure of the Contractor to comply with a DIO PM's Direction or a Change Order within a reasonable period of its issue;
 - 8.2.6.2 the failure of the Contractor to proceed diligently with, or complete, the Contractor's Design and/or the Works in an efficient, workmanlike or proper manner or in accordance with Good Industry Practice, the failure of the Contractor to comply with condition 6.3.2 (Programme) or the suspension by the Contractor of the carrying out of the Contractor's Design and/or the Works (otherwise than in accordance with condition 8.1 (Suspension of performance)), so that in the opinion of the Authority the Contractor has not completed, or will be unable to secure the completion

of, the Works or any relevant Section by the relevant Date or Dates for Completion;

- 8.2.6.3 where the Contractor is an individual, the insolvency of that individual, or, where the Contractor is a partnership, the insolvency of any partner or the partnership. For the purposes of this condition insolvency shall include, in the case of individuals, the making of any voluntary arrangement under Part VIII, and the presentation of any bankruptcy petition under Part IX, of the Insolvency Act 1986, or the application by the individual or any partner in any partnership for an interim order in accordance with section 253 of the Insolvency Act 1986 or the court making an interim order under section 252 of that Act or the making of any conveyance or assignment for the benefit of creditors; in the case of a partnership, insolvency shall include the making of any voluntary arrangement under Part VIII and the presentation of any bankruptcy petition under Part IX of the Insolvency Act 1986 in relation to any individual partner or partners (unless it is withdrawn within 3 Business Days from the date on which the Contractor is notified of the presentation) and shall also include the making of any voluntary arrangement under Part II, and the presentation of any administration petition under Part III or the presentation of any bankruptcy petition under Part IV of the Insolvent Partnerships Order 1994 or the making of any conveyance or assignment for the benefit of creditors,

each an “**Individual Insolvency Event**”;

- 8.2.6.4 where the Contractor is a company:-

- 8.2.6.4.1 if any meeting of creditors of the Contractor is held or if any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangements as defined in the Insolvency Act 1986) is proposed or entered into by the Contractor;
- 8.2.6.4.2 if a supervisor, receiver, administrator, administrative receiver or other encumbrance takes possession or is appointed over or any distress, execution or other process is levied or enforced upon the whole or any part of the assets of the Contractor;
- 8.2.6.4.3 if the Contractor ceases or threatens to cease to carry on business or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
- 8.2.6.4.4 if a petition is presented or a meeting is convened for the purpose of considering the resolution for the making of an administration order, the winding up, whether voluntary or compulsory (save for the purpose of amalgamation or restructuring) bankruptcy or dissolution of the Contractor;
- 8.2.6.4.5 if the Contractor shall suffer any similar event to any of the foregoing in any jurisdiction in which the Contractor is incorporated or resident; or
- 8.2.6.4.6 if any party providing the Authority with a guarantee and/or indemnity in respect of the Contractor's obligations and liabilities under this Contract shall suffer any of the foregoing,

each a “**Company Insolvency Event**”;

- 8.2.6.5 any breach by the Contractor of paragraph 6 (Corrupt Gifts and Payments of Commission) of Schedule 3 (Compliance with statutory and other obligations);
- 8.2.6.6 the failure of the Contractor to comply with Schedule 6 (Security Provisions) where the Authority determines that such failure is prejudicial to the interests of the Authority;
- 8.2.6.7 the Contractor has undergone a Change of Control to an Unsuitable Third Party or is otherwise in breach of paragraph 4 (Change of Control of Contractor) of Schedule 9 (Supplementary Conditions);
- 8.2.6.8 the failure of the Contractor to comply with the provisions of the Authority’s Fraud Prevention Manual set out in Appendix 1 (Fraud Prevention Manual) after allowing any period for rectification of this failure in accordance with this manual; or
- 8.2.6.9 the Authority is entitled to terminate this Agreement pursuant to paragraph 5.6 (Tax Compliance) of Schedule 5 (Tax Compliance);
- 8.2.7 Paragraph 3 (Consequences of no default termination) of Schedule 7 (Consequences of Termination) shall have effect where notice of termination is given for any reason not mentioned in condition 8.2.6.
- 8.2.8 All Things not for incorporation which are brought onto the Site at the Contractor's expense shall (whether damaged or not) revert in and be removed by the Contractor as and when such Things cease to be required in connection with the Works as the result of the issue of any DIO PM's Directions or Change Orders in accordance with condition 8.2.3.
- 8.2.9 From the date of termination, the Authority shall be under no liability to the Contractor in respect of any loss or damage to any Things referred to in condition 8.2.8 caused by any of the events under conditions 5.2.1.12 to 5.2.1.16 (Authority's Risks).
- 8.2.10 Any decisions of the Authority under conditions 8.2.6.5, 8.2.6.6 or 8.2.6.6 shall be final and conclusive.

Step-in

- 8.2.11 The Contractor shall procure that if the Authority terminates the Contract for any reason mentioned in condition 8.2.6 the Supply Chain will, if so required by notice in writing given by the Authority and subject to condition 8.2.14, accept the instructions of the Authority or its appointee to the exclusion of the Contractor in respect of the Works upon the terms and conditions of the Supply Chain Contracts with the Contractor. The Contractor acknowledges that the Supply Chain shall be entitled to rely on a notice given to the Supply Chain by the Authority under this condition 8.2.11 as conclusive evidence for the purpose of this Contract of the determination of this Contract by the Authority; and further acknowledges that such acceptance of the instructions of the Authority to the exclusion of the Contractor shall not constitute any breach of the Supply Chain's obligations to the Contractor under the Supply Chain Contracts.

8.2.12 The Contractor shall make it a term of its Supply Chain Contracts that its Supply Chain shall not exercise any right of termination of their Supply Chain Contracts without having first:

8.2.12.1 copied to the Authority any written notices required to be sent prior to there being an entitlement to terminate such Supply Chain Contract(s); and

8.2.12.2 given to the Authority 20 Business Days prior written notice that they have the right under their Supply Chain Contracts to terminate the same.

8.2.13 The Authority may not later than the expiry of the relevant notice period under condition 8.2.12 require the relevant member of the Supply Chain by notice in writing to accept the instructions of the Authority or its appointee to the exclusion of the Contractor in respect of the Works upon the terms and conditions of the Supply Chain Contracts. The Contractor acknowledges that the Supply Chain shall be entitled to rely on a notice given to the Supply Chain by the Authority under this condition 8.2.13 and that acceptance by the Supply Chain of the instruction of the Authority to the exclusion of the Contractor shall not constitute any breach of the Supply Chain's obligations to the Contractor under the Supply Chain Contracts, provided always that, subject to condition 8.2.14 nothing shall relieve the Supply Chain of any liability that they may have to the Contractor for any breach by the Supply Chain of the Supply Chain Contracts or where the Supply Chain have wrongfully served notice to terminate under the Supply Chain Contracts or have wrongfully treated the Supply Chain Contracts as having been repudiated by the Contractor.

8.2.14 It shall be a condition of any notice given by the Authority under condition 8.2.13 that the Authority or its appointee accepts liability for payment of the sums certified as properly due to the Supply Chain under the Supply Chain Contracts and for performance of the Contractor's obligations thereunder including payment of any sums outstanding at the date of such notice. Upon the issue of any notice by the Authority, the Supply Chain Contracts shall continue in full force and effect as if no right of termination under the Supply Chain Contracts, nor any right of the Supply Chain to treat the Supply Chain Contracts as having been repudiated by the Contractor, had arisen and the Supply Chain shall be liable to the Authority and its appointee under the Supply Chain Contracts in lieu of their liability to the Contractor.

9 Resolution of disputes

9.1 Any dispute, difference or question between the parties to the Contract with respect to any matter or thing arising under or in relation to the Contract may, by notice, be referred to the Commercial Representative (by either party), to mediation (by either party with the agreement of the other), to adjudication (by either party) or to arbitration (by either party) in accordance with Schedule 8 (Resolution of disputes).

9.2 The right of either party to refer to adjudication shall only apply if the Contract is one to which section 108 of the Housing Grants, Construction and Regeneration Act 1996 applies.

10 Amendments

10.1 The Agreement may not be amended except by the written agreement of the Commercial Officer and the duly authorised representative of the Contractor.

10.2 The written agreement shall be obtained by:

- 10.1.1 a serially numbered amendment letter being issued to the Contractor by the Authority. The amendment shall come into force only when the Contractor has dispatched to the Authority on a DEFFORM 10B an unqualified acceptance of the Authority's offer; or
- 10.1.2 the dispatch by the Authority of a serially numbered amendment letter as an unqualified acceptance of an offer from the Contractor.

11 Transition to War

In the event of tension, hostilities or emergency the Authority will advise the Contractor of any necessary alterations to this Contract and will negotiate a suitable adjustment to its terms and conditions in appropriate circumstances.

12 Decoupling – Sub-Contracting with the Crown

If the Contractor enters into any other contract with the Crown relating in any way to the subject matter of this Contract, then no breach by the Crown of that other contract nor any other act or omission nor any written or oral statement nor any representation whatsoever of or by the Crown its servants or agents or other contractors relating to or connected with any other contracts as aforesaid shall, regardless of any negligence on its part or their part, give the Contractor any right under this Contract to an extension of time or additional payment or damages or any other relief or remedy whatsoever against the Authority; or affect, modify, reduce or extinguish either the obligations of the Contractor or the rights or remedies of the Authority; or be taken to amend, add to, delete or waive any term or condition of this Contract.

13 Child Labour and Employment

- 13.1 In this Condition, "Child Labour Legislation" means those International Labour Law Conventions concerning economic exploitation of children through the performance of work which is likely to be hazardous or to interfere with a child's health or development, including but not limited to slavery, trafficking, debt bondage or forced labour, which are ratified and enacted into domestic law and directly applicable to the Contractor in the jurisdiction(s) in which it performs the Contract.
- 13.2 The Contractor shall comply in all material respects with Child Labour Legislation and applicable employment legislation of those jurisdiction(s) where the Contract is being performed.
- 13.3 The Contractor agrees to take reasonable efforts to reflect this Condition in any subcontract that it enters into to satisfy the requirements of the Contract and to require its subcontractors to reflect this Condition in their subcontracts that they enter into to satisfy the requirements of the Contract.

Schedule 1
(Site Waste Management Plan)

1 Site Waste Management Plan (SWMP)

- 1.1 The Contractor shall ensure that it complies with the Site Waste Management Plan (SWMP) Regulations 2008. The Contractor shall improve material resource efficiency by promoting the economic use of construction materials and methods so that waste is minimised and any waste that is produced can be reused, recycled or recovered in other ways before disposal options are explored.
- 1.2 The Contractor shall implement the SWMP and update it as the Works proceed. All waste transactions must be recorded or referenced in the SWMP to prevent fly-tipping.
- 1.3 The Contractor shall ensure the SWMP records the forecast of how much of each type of waste will be produced and how it will be managed, how much of each type of waste was actually produced and how it was managed. The Contractor shall ensure that the SWMP identifies the following:-
 - 1.3.1 details of the Authority, the Contractor and who drafted the plan;
 - 1.3.2 the location of the Site and cost of the Works;
 - 1.3.3 a description of each waste type and quantity expected to be produced and details of how it is to be managed (including re-use, recycling, other types of recovery and disposal);
 - 1.3.4 details of person(s) removing waste, the type of waste and where it is being taken; and
 - 1.3.5 details of actual waste managements actions.
- 1.4 The Contractor shall ensure that its employees and its Supply Chain Members on the Site are made aware of the SWMP and co-operate with it. This shall include the provision of suitable Site induction, information and training to ensure that any waste management objectives in the SWMP are understood and achieved.
- 1.5 On or before completion of the Works, the Contractor shall finalise the SWMP, reconciling what was planned with what actually happened during the Works, together with recording the reason for any deviation(s). The Contractor shall keep the SWMP for a minimum of 12 years after completion of the Works.

Schedule 2
(Provisions relating to the carrying out of the Works)

1 Health and safety

- 1.1 The Contractor shall throughout the period of carrying out the Works have full and proper regard to the safety and health of all persons entitled to enter upon the Site and shall keep the Site in such a manner so as to keep to a minimum any danger and/or hazard to such person including any health and safety and/or environmental risks to such persons.
- 1.2 In the event of a breach of this paragraph 1 the Contractor shall fully indemnify the Authority against all claims, losses, demands, costs, expenses and damages, be it by way of a criminal or civil action.
- 1.3 The Contractor and Supply Chain members engaged by the Contractor, shall comply with all relevant Health and Safety Legislation, MOD Health and Safety Policy and the requirements of the HM Naval Base Portsmouth Health and Safety Policy(ies) including but not limited to the policies set out in Appendix K (Port Operations Guide) and Appendix N (Dockyard Diving Regulations) to the Specification.
- 1.4 The Contractor shall hold on site, and maintain, a Controlled Copy of its organisation's Health and Safety Management System.
- 1.5 The Contractor shall monitor the activities of its own staff and Supply Chain members engaged by it, to ensure compliance with both legislative and MOD Health and Safety Policy requirements. The Contractor is to keep records to demonstrate that this is being carried out and shall permit the Authority access to such records at all times.
- 1.6 The Contractor shall carry out such checks that are necessary to ensure that its own staff and all Supply Chain members engaged by it are competent and capable of carrying out their duties. A record of all pre-contract assessments of all staff and sub-contractors and consultants is to be kept readily available for inspection by the Authority.
- 1.7 The Contractor shall provide suitable induction training for its own staff and Supply Chain members with regard to the health and safety requirements of HM Naval Base Portsmouth and ensure that all staff and Supply Chain members are made aware of any potential hazards and of the procedures relating to the safe management of the Site.
- 1.8 The Contractor shall ensure that all staff and Supply Chain members are provided with health and safety information relevant to HM Naval Base Portsmouth(s) activities and information on activities and information on activities being carried out by others that may affect employees of the Contractor or Supply Chain members.
- 1.9 The Contractor shall record all accidents involving its staff and any of its Supply Chain members. Records shall be kept that are readily available on site and reported to the DIO PM at Progress Meetings. Serious accidents, incidents and ill health, reportable under the Reporting of Injuries Diseases and Dangerous Occurrences Regulations (RIDDOR), must be notified to the DIO PM at the first available opportunity.
- 1.10 The Contractor shall ensure that all accidents and incidents involving its staff and any Supply Chain members on Site are properly investigated and corrective actions are taken. A copy of the investigation report of a serious injury or a fatal accident is to be submitted to the DIO PM. In addition, the Authority's Health and Safety Adviser must be notified of any fatalities to the Contractor's staff and its Supply Chain members.

- 1.11 The Contractor shall notify the DIO PM and the Authority's Health and Safety Adviser at the first available opportunity of:-
 - 1.11.1 any accident or incident that involves the attendance of the Health and Safety Executive, and
 - 1.11.2 any enforcement action taken by the Health and Safety Executive against the Contractor, or any of its staff and Supply Chain members.
- 1.12 The Contractor shall provide the DIO PM with a suitable report, at each Progress Meeting, on the fulfilment of its responsibilities arising from the health and safety aspects of the Works.
- 1.13 All Works shall be subject to random site inspections, at short notice, by the Authority. The Contractor shall ensure that full access to the Site, and any relevant documents and all records, are made available to the Authority's representatives.
- 1.14 The Authority appoints the Contractor organisation as Principal Contractor, CDM Co-ordinator and Designer for the Works in accordance with the CDM Regulations. The Principal Contractor, CDM Co-ordinator and Designer roles, in accordance with the CDM Regulations, shall be independent of the management chain directly responsible for the delivery of the Works. The Contractor shall ensure that all relevant requirements of the CDM Regulations are complied with.
- 1.15 The Contractor shall be responsible for developing the Pre Construction Information Pack for the Works into a suitable Construction Phase Plan before commencing Works on site.
- 1.16 The Contractor, as CDM Co-ordinator, shall ensure that the Health and Safety File(s) (as required by the CDM Regulations) is available for inspection, and, on completion of the Works is handed over to the Authority.
- 1.17 The Contractor shall ensure:-
 - 1.17.1 that any designers appointed by it shall have suitable competence and resources to undertake the duties as specified in the CDM Regulations;
 - 1.17.2 designers fully implement the principles of prevention of any design work;
 - 1.17.3 adequate information is provided on risks that remain which have not been eliminated by design; and
 - 1.17.4 suitable co-ordination between designers and any design work.
- 1.18 The Contractor shall ensure that a copy of the notification given to the Health and Safety Executive (Form F10) is displayed in a readable condition in a position where it can be read by any person who works on or visits the site.
- 1.19 The Contractor shall co-operate with any other contractors working at HM Naval Base Portsmouth.
- 1.20 The Contractor shall ensure that its staff and its Supply Chain members staff complies with the relevant requirements of the Construction Phase Plan.
- 1.21 The Contractor shall ensure that only authorised persons are allowed into any part of the Site, or premises where a construction work is being carried out.

2 Setting out

- 2.1 The Contractor shall set out the Works in accordance with the Specification and the Contractor's Design, and shall provide all the instruments, profiles, templates, rods, stakes and other equipment necessary for that purpose. The Contractor shall be solely responsible for the correctness of the setting out.
- 2.2 The Contractor shall provide, fix and be responsible for the maintenance of all stakes, profiles, templates, level marks, points and any other setting out apparatus which is required in the setting out of the Works and the Contractor shall take all necessary precautions to prevent the removal, alteration or disturbance of such items and shall be liable for the consequences of such removal, alteration or disturbance and for the efficient reinstatement of such items.

3 Protection of the Works

- 3.1 The Contractor shall be solely responsible for, and shall take all measures and precautions necessary for, the protection and preservation of the Site and the Works and all Things on the Site during the carrying out of the Works. The Contractor shall be deemed to have custody of all Things on Site for the purposes of this paragraph.
- 3.2 The Contractor shall be solely responsible for, and shall take all reasonable and proper steps for protecting, securing, lighting and watching all places on or about the Works and the Site which may be dangerous to its workpeople or to any other person.
- 3.3 The Contractor shall comply with any statutory regulations (whether or not binding on the Authority) which govern the storage and/or use of all Things which are brought on to the Site in connection with the Works.

4 Care of the Site

The Contractor shall take full responsibility for the care of the Works during the Works Period. The Contractor shall, at all times, keep the Site tidy and free from debris, litter, and rubbish and shall, not later than the Works Completion Date for the Works as a whole or any relevant Section, remove from the Site all Things for incorporation in the Works or the relevant Section which are unused, together with all Things not for incorporation. The Contractor shall, by the Works Completion Date for the Works as a whole, clear and remove all rubbish and deliver up the Site, in all respects, in accordance with the Contract. The Contractor shall comply at its own cost with any DIO PM's Direction relating to the removal of any Things and rubbish.

5 Inspection of the Works and Things for incorporation

- 5.1 The Authority shall have the power at any time to inspect and examine any part of the Works and any Things for incorporation either on the Site or at any factory or workshop or other place where any such part or Things are being constructed or manufactured or at any place where such part or Things are lying or from which such part or Things are being obtained, and the Contractor shall give all such facilities as the Authority may reasonably require to be given for such inspection and examination.
- 5.2 The Authority may reject any work or Things for incorporation which are not in accordance with the Contract.
- 5.3 Where any work or Things for incorporation have been rejected, the DIO PM shall issue a DIO PM's Direction for the demolition or removal of such work or Things and for the

reconstruction, rectification or replacement of such work or Things in accordance with the Contract and the Contractor shall, at its own cost, demolish, remove, replace, reinstate, rectify or reconstruct:-

- 5.3.1 the Works, or any part of such Works, which do not conform with the Contract; and
 - 5.3.2 any Things for incorporation which do not conform with the Contract and which have been rejected by the DIO PM.
- 5.4 The DIO PM may issue a DIO PM's Direction requiring the Contractor to open up for inspection any work or to arrange to carry out any test or investigation on any work or Things (whether or not incorporated into the Works), and for the postponement of the relevant work until the results of the inspection, test or investigation are known. If the inspection, test or investigation discloses that the work or Things in question are not in accordance with the Contract the costs incurred shall be borne by the Contractor and there shall be no consequential adjustment to the Contract Sum or to the Date or Dates for Completion.
- 5.5 Where the results of an inspection, test or investigation conducted in accordance with this paragraph reveal that the work or Things in question conform with the Contract the Contractor shall submit a Change Notification and Change Quotation to the Commercial Officer in respect of the costs of such opening up or carrying out of any such test or investigation together with the effect (if any) on the Date or Dates for Completion in accordance with paragraph 10 (Extensions of time) of Schedule 4 (Change Control) and the DIO PM shall recommend the Commercial Officer to issue a Change Order to cancel and supersede the DIO PM's Direction issued in accordance with paragraph 5.4 above.

6 Damage to public roads

- 6.1 The Contractor shall be responsible for and shall indemnify and keep indemnified the Authority against any liability costs claims and expenses in respect of any damage to highways, roads or bridges communicating with, or on the routes to, the Site, including any mains, pipes or cables under such highways, roads or bridges, caused by any traffic of the Contractor or a Supply Chain member or supplier in connection with the Works.
- 6.2 The Contractor shall take all reasonable steps to prevent the highways, roads and bridges communicating with, or on the routes to, the Site from being subjected to damage by traffic or otherwise in connection with the Works and in particular, but without prejudice to the generality of the foregoing, shall select routes, choose and use vehicles and restrict and distribute loads so that any such traffic shall be limited so far as is reasonably practicable and, where necessary, shall agree the route with the local highway authority and/or the police.
- 6.3 The Contractor shall, without prejudice to its obligations under paragraph 6.2 above, comply with any DIO PM's Directions regarding the matters referred to in paragraph 6.2 above as may be given to it from time to time.

7 Emergency work

- 7.1 In this paragraph, “**emergency work**” means any work required during the performance of the Contract to:-
 - 7.1.1 prevent or alleviate the effects of any accident, failure or other like event in connection with the carrying out of the Works;

- 7.1.2 secure and/or to make safe the Works, the Site or any adjoining property from Loss or Damage; or
- 7.1.3 without prejudice to the Contractor's liability for Loss or Damage set out in condition 5.5 (Loss or Damage), repair any damaged or dangerous part of the Works.
- 7.2 If the Contractor does not comply promptly with a DIO PM's Direction issued to it in respect of any emergency work, the Authority may do anything necessary or make necessary arrangements for that work to be carried out. If the work so carried out by or on behalf of the Authority is such that the Contractor is liable under the Contract to carry out that work at its own expense, then the Contractor shall reimburse:-
 - 7.2.1 any costs and/or expenses incurred by the Authority in connection with such emergency work; and
 - 7.2.2 any loss suffered by the Authority because the Contractor has not carried out the work.

8 Other works and co-operation with others

- 8.1 The Authority may at any time carry out other works at HM Naval Base Portsmouth ("**Other Works**").
- 8.2 The Contractor shall not be responsible for Loss or Damage to Other Works except to the extent that such Loss or Damage has been caused by the act, omission or default of the Contractor, its Supply Chain members or suppliers.
- 8.3 Any Loss or Damage to the Works or any Things on Site or any delay to the completion of the Works wholly resulting from the carrying out of the Other Works shall for the purposes of condition 5.2 (Authority's risk) be deemed to be Loss or Damage caused by the act, omission or default of the Authority under condition 5.2.1.2.
- 8.4 The Contractor shall comply with any requirements of the Queen's Harbour Master. The parties acknowledge and agree that compliance with this paragraph shall be a risk of the Contractor for the purposes of condition 5.4 (Contractor's Risk).
- 8.5 The Contractor and its Supply Chain shall expeditiously take all necessary steps required by the Authority to prevent unauthorised persons being admitted to the HM Naval Base Portsmouth. If the Authority gives notice that any person is not to be admitted to the HM Naval Base Portsmouth, the Contractor shall take all appropriate steps immediately to comply.
- 8.6 Within 10 Business Days of the date of the Contract, the Contractor shall give to the Authority a list of names and addresses of all persons who the Contractor anticipates are likely to visit the HM Naval Base Portsmouth, specifying the capacities in which they may or will be so concerned and giving such other particulars as the Authority may reasonably require. Such lists shall be updated on a monthly basis throughout the duration of the Works.
- 8.7 The decision of the Authority as to whether any person is to be admitted to the HM Naval Base Portsmouth shall be final and conclusive and shall not be capable of being referred to dispute resolution in accordance with Schedule 8 (Resolution of disputes).

9 Programme

- 9.1 The Contractor shall ensure that the Programme shows at least the level of detail to identify the sub-elements and Zones of the Works to be carried out on the Site.
- 9.2 The Contractor shall ensure that the Programme shows the sequence in which the Contractor proposes to carry out its obligations under the Contract (taking account of the programme constraints identified in paragraph 2.21 (Programme Constraints) of the Specification), the day or days on which possession of the Site is required, details of any temporary Works, method of work, labour and plant proposed to be employed, and events which, in its opinion, are critical to the satisfactory completion of the Works. The Programme shall also show the Date or Dates for Completion. The Contractor shall take all reasonable steps to ensure that the Programme permits effective monitoring of progress and allows the periods of time in accordance with condition 3.4.3 (Contractor's Design) for examination by the DIO PM of the Contractor's Design Documents and of any samples required to be provided in accordance with condition 3.5.1.4 (The Works).
- 9.3 As part of the Programme, the Contractor shall provide all necessary information in support of the predicted duration of the activities shown in the Programme.
- 9.4 The Contractor may, at any time, amend the Programme provided that the prior consent of the Authority shall be obtained in relation to any proposed change that will or may affect the Date or Dates for Completion or will or may have an impact upon any of the Requirements. The Contractor shall notify the Authority of all amendments to the Programme as soon as such amendments are made.
- 9.5 Nothing stated in, or implied from, paragraphs 9.1 to 9.4 above shall relieve the Contractor from any of its obligations or liabilities under the Contract.

10 Quality Plan

- 10.1 The Contractor shall prepare and implement a Quality Plan to cover the performance of all the Contractor's obligations under the Contract which shall set out the specific quality practices, procedures, resources, methods of operation and sequence of activities that are identified by the Contractor to satisfy all Requirements relating to quality. The Quality Plan shall relate the generic requirements of the Contractor's quality assurance accreditation to the specific quality requirements of the Contract. The Quality Plan shall satisfy the requirements of ISO 9001:2000.
- 10.2 The Quality Plan shall define:-
- 10.2.1 how the Requirements relating to quality are to be attained;
 - 10.2.2 the specific allocation of responsibilities, authority and resources during the period of the Contract and the specific documented procedures and instructions to be applied;
 - 10.2.3 suitable testing, inspection, examination and audit programmes at appropriate stages;
 - 10.2.4 a documented procedure for alterations and modifications to the Quality Plan as the Works and the Contractor's Design proceed;
 - 10.2.5 a method for measuring the achievement of the Requirements relating to quality; and

10.2.6 other actions necessary to meet the Requirements relating to quality.

10.3 In addition, the Quality Plan shall define the content and performance criteria to be achieved for the following:-

10.3.1 risk management strategy (see condition 5.3 (Risk management));

10.3.2 commissioning plan (see paragraph 10.7 (Commissioning plan) below; and

10.3.3 Site Waste Management Plan (see paragraph 1 (Site Waste Management Plan) of Schedule 1 (Site Waste Management Plan)).

10.4 The Quality Plan shall be submitted to the Authority within 4 weeks of the date of the Contract and shall be prepared and maintained throughout the period of the Contract as a separate document.

10.5 The contents of the Quality Plan shall be consistent with all other requirements of the Contractor's quality assurance system and shall seek to ensure that the Requirements relating to quality are met.

10.6 The Contractor shall also evaluate the quality plans of its Supply Chain members and with a view to ensuring such Supply Chain members' compliance and compatibility with its Quality Plan.

10.7 Commissioning plan

As part of the Quality Plan, the Contractor shall be responsible for the preparation and implementation of a commissioning plan, being a strategy document describing the procedures, sequences, performance requirements, and deliverables associated with all aspects of the testing, commissioning and proving of processes demonstrating achievement of the Requirements.

11 Progress meetings

11.1 The Contractor's competent person or persons who is or are performing the role envisaged in condition 3.5.2 (The Works) shall attend regular progress meetings to assess the progress of the Contractor's Design and of the Works or any Section and to facilitate the due and satisfactory completion of the Contractor's Design, Works or any Section by the Date or Dates for Completion.

11.2 A progress meeting shall be held on the Site each month, in accommodation provided by the Contractor, subject to any DIO PM's Direction to the contrary. The DIO PM shall specify the time and date of progress meetings.

11.3 The Contractor shall submit to the DIO PM, 5 days before each progress meeting, a written report which shall:-

11.3.1 specify all outstanding requests by the Contractor for additional information and/or clarification;

11.3.2 describe the progress of the Contractor's Design and/or of the Works by reference to the Programme, and any relevant Change Orders including, where necessary, updating Configuration Control document;

- 11.3.3 explain any new circumstances arising since the previous meeting which in its opinion have delayed, or may delay, completion of the Contractor's Design and/or the Works or any Section;
- 11.3.4 refer to any request for an extension of time under paragraph 10 (Extensions of time) of Schedule 4 (Change Control) submitted since the previous meeting;
- 11.3.5 set out any re-programming proposals to enable completion of the Works or any Section to be achieved by the relevant Date or Dates for Completion, including any updates to the Progress Payment Forecast;
- 11.3.6 report on health and safety advising on the implications of the Health and Safety Plan (as required by the CDM Regulations) the findings of the monitoring activities, any changes in risk assessments affecting health and safety (particularly as a result of any design changes) any training requirements and reporting any notifiable accidents or incidents and any other significant safety related incidents;
- 11.3.7 provide an update to the Risk Register for the Works together with a financial reconciliation between current and previous risk assessments in accordance with condition 5.3 (Risk management);
- 11.3.8 notification to the DIO PM of the anticipated date of completion of the Works as a whole or of any Section in accordance with Condition 6 (Provisions as to time);
- 11.3.9 provide an update on Site Waste Management Plan matters in accordance with Schedule 1 (Site Waste Management Plan);
- 11.3.10 report on any environmental issues;
- 11.3.11 report on any security issues; and
- 11.3.12 include any other issue of concern to the Contractor.
- 11.4 The Contractor shall, within 5 Business Days after each progress meeting, provide minutes of the relevant progress meeting to the DIO PM.
- 11.5 The DIO PM shall, within 7 days after each progress meeting, give the Contractor a written response to the issues raised in accordance with paragraph 11.3 above and raise any other issue of concern to the Authority.

12 Vesting of Things

12.1 Vesting of Things brought onto the Site

- 12.1.1 Any Things for incorporation brought onto the Site in connection with the Contract which are owned by the Contractor or by any Group Undertaking, or which vest or will vest in the Contractor under any contract, shall become the property of and vest in the Authority, subject to the Authority's right of rejection of any Things for incorporation not in accordance with the Contract (under paragraph 5.2 (Inspection of the Works and Things for incorporation) of this Schedule).
- 12.1.2 Subject to condition 5.2 (Authority's Risks) and paragraph 8 (Other works and cooperation with others) of this Schedule, the Authority shall not be responsible or chargeable for any Things lost, stolen, damaged, destroyed or removed from the Site or which are in any way unfit or unsuitable for the purpose of such Things.

- 12.1.3 No Things for incorporation shall be removed from the Site before the Works Completion Date for the Works as a whole without the consent of the Authority. The Authority may direct or permit the Contractor at any time during the carrying out of the Works to remove from the Site any Things for incorporation which are unused or which have been rejected by the DIO PM and the Contractor shall at its own expense forthwith remove such Things. Once removed from the Site the Things for incorporation shall re-vest in the Contractor.

12.2 Vesting of Things held off-Site

- 12.2.1 The provisions of this paragraph 12.2 shall apply only in relation to any Things held off-Site which are notified by the Authority to the Contractor as being Things that shall vest in accordance with this paragraph.
- 12.2.2 For the purpose of this paragraph 12.2, “**Things**” shall mean any Things for incorporation which are manufactured, assembled or constructed off the Site and which the Authority considers are in accordance with the Contract and substantially ready for incorporation in the Works.
- 12.2.3 In order to transfer the property in Things the Contractor shall:-
- 12.2.3.1 ensure that the Things in question have been properly and securely set aside at the factory or workshop or other place where any such Things have been manufactured, assembled or constructed or at any place where such Things are lying or from which such Things are being obtained;
 - 12.2.3.2 ensure that the Things in question have been suitably marked or otherwise identified so as to show that such Things’ destination is the Site, that such Things are the property of the Authority and, where relevant, to whose order such Things are held; and
 - 12.2.3.3 provide to the Commercial Officer documentary evidence that the property in the Things in question has vested unconditionally in the Contractor.
- 12.2.4 Upon the DIO PM confirming that the Contractor has complied with the requirements of paragraph 12.2.3 above, the Contractor shall transfer to the Authority the property in the Things. Upon the DIO PM approving the transfer, the Things shall vest in and become the absolute property of the Authority. The Things shall thenceforth remain in the possession of the Contractor for the sole purpose of the performance of the Contract and delivering the completed Things to the Site for inclusion in the Works, and shall not be within the ownership or disposition of the Contractor.
- 12.2.5 Approval by the DIO PM for the purposes of this paragraph shall be without prejudice to the power of the Authority to reject any Things in accordance with paragraph 2 (Inspection of the Works and Things for incorporation) of this Schedule 2. In the event of any Things being rejected by the DIO PM in accordance with paragraph 5.2 (Inspection of the Works and Things for incorporation) of this Schedule, such Things shall re-vest in the Contractor.
- 12.2.6 The Contractor shall be solely responsible for, and shall take all reasonable and proper steps for protecting, preserving and securing any Things held away from the Site.

- 12.2.7 The Contractor shall comply with any statutory regulations (whether or not binding on the Authority) which govern the storage and use of all Things held away from the Site.
- 12.2.8 The Contractor shall be responsible for, and shall make good to the Authority, all costs and expenses reasonably and properly incurred by, and any damages awarded against, the Authority in connection with any claims or proceedings made or brought against the Authority in respect of any Loss or Damage which arises out of, or is in any way connected with, the manufacture, assembly, construction, storage or transportation of any Things.
- 12.2.9 In the event of termination of the Contract by the Authority in accordance with condition 8.2 (Termination) any Things which have not been delivered to the Site, shall re-vest in the Contractor on the expiration of 30 days from the date on which such termination takes effect unless the Authority shall have given the Contractor, before the expiration of such period, notice that the Authority elects to retain the property in such Things.
- 12.2.10 Where the Authority elects to retain the property in any Things under paragraph 12.2.9 above:-
- 12.2.10.1 the Contractor shall hand over to the Authority the Things, and if the Contractor fails to do so, the Authority may enter any premises owned or occupied by the Contractor and remove the said Things and recover the cost of doing so from the Contractor; and
- 12.2.10.2 the Authority shall pay a fair and reasonable price for the Things which are handed over to it by the Contractor or otherwise come into its possession.
- 12.2.11 Any payment made by the Authority in respect of any Things which re-vest in the Contractor under paragraphs 12.2.5 or 12.2.9 of this Schedule 2 shall be a sum recoverable in accordance with condition 4.11 (Recovery of sums due).
- 12.2.12 The Contractor shall incorporate provisions equivalent to those provided in this paragraph in every subcontract in which provision is to be made for the manufacture, assembly or construction of Things off the Site.

12.3 Liens on Things for incorporation

Neither the Contractor nor any member of the Supply Chain nor any other third party shall have a lien on any part of the Things for incorporation which have vested in the Authority under paragraphs 12.1.1 or 12.2.4 of this Schedule above for any sum due to the Contractor, any member of the Supply Chain or other third party. The Contractor shall take all such steps as may be reasonably necessary to ensure that the title of the Authority, and the exclusion of any such lien, are brought to the notice of all members of the Supply Chain and other third parties dealing with any such part of the Works or with the aforesaid Things for incorporation.

13 Acceleration

- 13.1 If the Authority wishes to achieve completion of the Works or any relevant Section before the relevant Date or Dates for Completion, the Commercial Officer may issue a Change Proposal requiring the Contractor to submit to the Commercial Officer:-

- 13.1.1 a Change Quotation for achieving the accelerated completion date and any consequential amendments to the Programme; and
 - 13.1.2 the Programme amended to show the effect of the proposed acceleration; or
 - 13.1.3 the Contractor's explanation as to why it is unable to achieve the accelerated completion date.
- 13.2 Any Change Quotation referred to in paragraph 13.1.1 above shall give credit for any amount or amounts previously paid to the Contractor in respect of any disruption to, or prolongation of, the Works resulting from any extension of time previously granted in respect of the whole or part of the period covered by the proposed acceleration.
- 13.3 If the Commercial Officer accepts the Change Quotation the Commercial Officer shall issue a Change Order accordingly specifying:-
- 13.3.1 the accelerated Date or Dates for Completion of the Works and any relevant Section;
 - 13.3.2 the amount by which the Contract Sum shall be adjusted;
 - 13.3.3 (if appropriate) a revised Progress Payment Forecast; and
 - 13.3.4 the amended Programme.
- 13.4 The Contractor may at any time during the Contract submit to the Commercial Officer (copied to the DIO PM) a proposed revision to the Programme showing completion of the Works or any relevant Section, before the Date or Dates for Completion and enclosing the additional information set out in paragraphs 13.1.1 and 13.1.2 of this Schedule.

14 Certification of completion of the Works or any Section

- 14.1 The Contractor and the DIO PM shall carry out and record surveys pursuant to paragraph 4.8 (Dredging Surveys and Setting Out) of the Specification.
- 14.2 When the Contractor considers the Works, or any Section, to be complete in accordance with the Contract, it shall apply to the DIO PM for the issue of a Certificate of Completion in respect of the Works or the relevant completed Section and provide the DIO PM with documentary evidence that all Dredged Material has been disposed of in a legal and responsible manner pursuant to paragraph 5.13 (Ownership and Disposal of Dredged material) of the Specification.
- 14.3 Before certifying the Works or any Section as complete the DIO PM and Contractor shall jointly inspect the Works. If, in the opinion of the DIO PM,
- 14.3.1 the Works or any Section are or is not complete; or
 - 14.3.2 the documentary evidence provided pursuant to paragraph 15.2 (DIO PM's Representative) does not prove that all the Dredged Material has been disposed of in a legal and responsible manner,

the DIO PM shall not issue a Certificate of Completion and the Contractor shall do whatever is necessary to complete the Works or the relevant Section or obtain further documentary evidence (as the case may be).

- 14.4 The certification procedure set out in paragraph 14.3 above shall be repeated as often as is necessary until the issue by the DIO PM of a Certificate of Completion in respect of the Works or the relevant Section (as the case may be).
- 14.5 The DIO PM shall, within 12 Business Days of agreeing that the Works or any Section are complete, certify the date when the Works or any Section has been completed in accordance with the Contract by the issue of a Certificate of Completion.
- 14.6 If the Works or any Section include Engineered Slope Protection Works, with effect from the date of completion of the Works or any Section in accordance with paragraph 14.5 above, the relevant Defects Rectification Period in relation to the Works or the relevant Section shall commence and the provisions of paragraph 16 (Defects rectification of engineered slope protection works) of this Schedule shall apply accordingly. In the case of the completion of a Section, the relevant Defects Rectification Period shall be the Defects Rectification Period applicable to that Section or, for the remainder of the Works, the Defects Rectification Period applicable to the Works as a whole.

15 DIO PM's Representative

- 15.1 The DIO PM shall appoint a DIO PM's Representative to observe and record dredging operations on board the Contractor's equipment at all times.
- 15.2 The Contractor shall cooperate fully with the DIO PM's Representative and provide all facilities necessary to enable the DIO PM's Representative in accordance with paragraph 2.36 (Facilities on Equipment and Attendance to DIO PM) of the Specification.

16 Defects Rectification of Engineered Slope Protection Works

- 16.1 The DIO PM may at any time during any Defects Rectification Period issue DIO PM's Directions requiring the Contractor to make good any defects, omissions or other faults in the Works or any Section in respect of Engineered Slope Protection Works only which are, or may become, apparent during the relevant Defects Rectification Period.
- 16.2 The Contractor shall without delay and at its own cost rectify, reinstate, replace or otherwise make good any defects, omissions or other faults notified to it in accordance with paragraph 16.1 above. The Contractor shall make good all defects, omissions or other faults in accordance with the Specification. All making good shall take place on the Site; however if equipment has to be repaired elsewhere, the Contractor shall, free of charge, loan similar equipment to meet the Requirements in relation to the Works as a whole whilst the original equipment is repaired. The making good of all defects, omissions or other faults shall be carried out in accordance with current health and safety guidelines. If there is a lead-in time for the replacement of any defective equipment that exceeds the timescales for making good referred to earlier in this paragraph, the Contractor shall notify the Authority in writing of the predicted timescale for making good with supporting evidence of the predicted timescale.
- 16.3 Throughout any Defects Rectification Period, the DIO PM shall continue to exercise the powers conferred by paragraph 5 (Inspection of the Works and Things for incorporation) of this Schedule.
- 16.4 In the case of any defects, omissions or other faults which have been made good under this paragraph the relevant Defects Rectification Period shall apply to the remedial Works in full from the date of making good.

- 16.5 At the end of the Defects Rectification Period in relation to the Works as a whole or any Section in respect of Engineered Slope Protection Works only, the DIO PM shall issue a Defects Rectification Period Completion Certificate accordingly.
- 16.6 The issue of the final Defects Rectification Period Completion Certificate shall discharge the Contractor from any obligation to attend the Site in order to make good any defects in the Works in accordance with this paragraph. However, the issue of the final Defects Rectification Period Completion Certificate shall be without prejudice to any other rights of the Authority with regard to defects in the Works regardless of whether such defects are discovered prior to, or subsequent to, the issue of the final Defects Rectification Period Completion Certificate.

17 Provision of information by the Contractor

17.1 Records and assistance

- 17.1.1 The Contractor shall provide the DIO PM with a return, in such form as the Authority shall direct, of the quantity and description of labour and plant engaged or employed each day in carrying out the Works and the Contractor's Design.
- 17.1.2 The Contractor shall keep such records as may be necessary for the Authority to calculate or verify any claims, demands or applications made, or to be made, by the Contractor or any sums to be paid to the Contractor under or in connection with the Contract.
- 17.1.3 The Contractor shall afford the Authority and/or the DIO PM's Representative access to the records referred to in paragraph 17.1.2 above and shall supply any information the Authority may reasonably require in connection with such records.
- 17.1.4 The Contractor shall, at all times during the course of the Contract and for a period of 12 years after final payment of all sums due under the Contract, maintain the originals or complete copies of all documents, drawings, specifications, correspondence and the like which relate to the Works in its custody and shall make all such documents available to the Authority as soon as possible after receipt of a request from the Authority so to do.
- 17.1.5 The Contractor shall, within 7 days after the date of the issue of the last Certificate of Completion or, if the Works or any Section include Engineered Slope Protection Works, the last Defects Rectification Period Completion Certificate, forward to the DIO PM a schedule of all the documents held by the Contractor and any of its Supply Chain members in accordance with paragraph 17.1.4 above together with details of where the documents are being held. Upon request, the Contractor shall obtain (where not already held) and forward to the Authority copies of all or any documents listed in such schedule of documents, the Authority being responsible for the reasonable costs of providing such copies.
- 17.1.6 The Contractor grants to the Authority the right to take possession of all documents held in accordance with paragraph 17.1.4 above in the event that the Contractor for any reason ceases to trade or suffers any of the circumstances described in conditions 8.2.6.3 or 8.2.6.4 (Termination).
- 17.1.7 For the avoidance of doubt, the right for the DIO PM's Representative to keep records pursuant to paragraph 15 (DIO PM's Representative) of this Schedule 2 shall not be deemed to relieve the Contractor of any of its obligations under this paragraph 17.

17.2 As-built drawings and other information

- 17.2.1 Not later than the period or periods stated in clause 12 (As-Built Drawings and Other Information) of the Agreement following the issue of any Certificate of Completion, the Contractor shall submit to the DIO PM, at no extra charge, full drawings, calculations and other documents as necessary to show and describe the Works or relevant Section as built, together with such other information as may be required by the Contract or is otherwise necessary to explain the operation and maintenance of the Works or relevant Section. These drawings, documents and other information shall be subject to the approval of the Authority, which shall not be unreasonably withheld.
- 17.2.2 When the DIO PM has given approval in accordance with paragraph 17.2.1 above the Contractor shall supply to the DIO PM, at no extra charge, two sets of the approved drawings, documents and other information in a reproducible format.

17.3 Retention of records

- 17.3.1 In addition to and without prejudice to paragraph 17.2 above, to deliver to the Authority the Completion Documents within the time period specified in clause 14 of the Agreement, or if no time period is stipulated therein, on or before payment of the Completion Payment.
- 17.3.2 The Contractor is responsible for assembling and maintaining, for a period of 12 years, after final payment of all sums due under the Contract, the originals or complete copies of all documents prepared by it and/or within its custody.

18 Completion Documents

- 18.1 Immediately after agreement and/or before payment of the last payment due under the Contract, the Contractor shall provide to the Authority copies of the following documents:-
- 18.1.1 all as-built drawings and all drawings and/or documents, including Health and Safety Files, necessary to explain the operation and maintenance of the Works in accordance with the relevant Technical Guidance; and
- 18.1.2 a Final Report in accordance with paragraph 7.5 (Reporting) of the Specification.

Schedule 3
(Compliance with statutory and other obligations)

1 Statutory obligations and Consents

- 1.1 The Contractor shall ensure that the Works are carried out in accordance with; fully comply with the requirements of; and give all notices required by any:
- 1.1.1 Acts of Parliament;
 - 1.1.2 Consents;
 - 1.1.3 instruments, rules, or orders made under any Act of Parliament;
 - 1.1.4 regulations (including CDM Regulations) or bye-laws made under any applicable laws or made by any local authority or statutory undertaker which has jurisdiction in relation to the Works; and/or
 - 1.1.5 relevant published codes of practice, British Standards or similar requirements,
- in force at the time the work is undertaken whether or not the same are binding on the Authority.
- 1.2 The Contractor shall be responsible for co-ordinating the submission of all applications for, and the obtaining of, all Consents that may be required for the carrying out of the Works (including, but not limited to, the disposal of Debris and Obstructions pursuant to Appendix 8 (Obstruction Strategy)) to the extent that:
- 1.2.1 such Consents have not already been obtained by the Authority; and/or
 - 1.2.2 the Contractor has caused any Consents already obtained by the Authority to be withdrawn.
- At the date of the Contract the parties agree that the Authority has already obtained the Marine Licence and Crown Estate Consent.
- 1.3 The Contractor shall pay all fees, licence fees or charges required to be paid under any Act of Parliament, Consent, instrument, rule, order, regulation or bye-law in respect of the Works and shall supply all drawings and plans required in connection with any such notices.
- 1.4 The Contractor shall be responsible for, and shall make good to the Authority, all costs and expenses reasonably and properly incurred by, and any damages awarded against, the Authority in connection with any claims or proceedings made or brought against the Authority by any person in respect of any fees, licence fees or charges legally demandable in connection with any Act of Parliament, Consent, instrument, rule, order, regulation or bye-law as referred to in paragraph 1.3 above.
- 1.5 Subject to paragraph 1.6 below, the Contract Sum shall be deemed to include the amount of any fee, licence fee or charge incurred in accordance with paragraph 1.3 above.
- 1.6 The Authority shall reimburse to the Contractor (as part of the lump sum price for the relevant Change) the amount of any fee, licence fee, or charge properly incurred in accordance with paragraph 1.3 above which:-
- 1.6.1 was necessarily incurred in order to comply with a Change Order; and

- 1.6.2 was not reasonably contemplated by the parties or provided for by or under the Contract.

2 Nuisance and pollution

- 2.1 The Contractor shall take all reasonable precautions to prevent a nuisance or inconvenience to the owners, tenants or occupiers of other properties and to the general public and shall be responsible for, and shall make good to the Authority, all costs and expenses reasonably and properly incurred by, and any damages awarded against, the Authority in connection with any claims or proceedings made or brought against the Authority for nuisance relating to or arising out of the carrying out of the Works.
- 2.2 The Contractor shall comply with all legislation and the requirements of any statutory authority relating to the protection of the environment or human health (including, without limitation, the Environmental Protection Act 1990, the Water Resources Act 1991 and the Environment Act 1995) whether or not such legislation or requirements are binding on the Authority.

3 Personal Data

- 3.1 In this paragraph, the expressions “**Data Controller**” and “**Personal Data**” shall have the same meanings as in the Data Protection Act 1998 (the “**1998 Act**”) in which these expressions are defined in section 1 but used in lower case letters.
- 3.2 In the performance of the Contract, both parties shall comply with the parties’ obligations as Data Controller under the 1998 Act.
- 3.3 The Contract shall not be amended to add a requirement for the Contractor to process Personal Data on behalf of the Authority.
- 3.4 The Contractor shall be responsible for, and shall make good to the Authority, all costs and expenses reasonably and properly incurred by, and any damages awarded against, the Authority in connection with any claims or proceedings made or brought against the Authority by any person in respect of any damage caused, or distress suffered, by reason of:-
- 3.4.1 the loss or destruction of Personal Data;
- 3.4.2 the disclosure of, or access to, Personal Data; or
- 3.4.3 any other breach of the 1998 Act,
- in the circumstances mentioned in paragraph 3.5 below.
- 3.5 Paragraph 3.4 above shall apply where:-
- 3.5.1 Personal Data has been lost or (without the consent of the Authority) destroyed by the Contractor, its employees or agents; or
- 3.5.2 the Contractor, its employees or agents, have disclosed, or allowed access to, Personal Data to or by any other person.

4 Equality and Non Discrimination

- 4.1 The Contractor shall not:-

- 4.1.1 engage in any prohibited conduct as defined in part 2 chapter 2 Equality Act in relation to any protected characteristic (as defined in section 4 Equality Act) where this would contravene any provisions of the Equality Act, including (without limitation) part 3 (goods and services) and part 5 (employment); or
- 4.1.2 do (or omit to do) anything else that would amount to a contravention of the Equality Act including (without limitation) part 8 (prohibited conduct: ancillary) and chapter 3 part 5 (equality of terms).
- 4.2 In the management of its affairs and the development of its equality and diversity policies, the Contractor shall co-operate with the Authority in light of the Authority's obligations to comply with its statutory equality duties under part 11 Equality Act. The Contractor shall take such steps as the Authority considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age.
- 4.3 The Contractor shall notify the Authority immediately of any investigation of or proceedings against the Contractor, whether under the Equality Act or any discrimination legislation which it replaces and repeals, and shall cooperate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested. Notification by the Contractor of any information shall not prejudice any rights of the Authority or the Contractor under the Contract.
- 4.4 In addition to its obligations under this paragraph 5 relating to the Equality Act, the Contractor shall ensure that it complies with all other current employment legislation including, without limitation, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002.
- 4.5 The Contractor shall take all reasonable steps (at its own expense) to ensure that any servants, employees or agents of the Contractor and any Supply Chain members employed in the provision of the Works pursuant to this Contract comply with such person's respective obligations under the Equality Act.
- 4.6 The Contractor shall indemnify the Authority against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Authority arising out of or in connection with any investigation conducted or any proceedings brought under the Equality Act due directly or indirectly to any act or omission by the Contractor, its agents, employees, sub-contractors or Supply Chain members, or any breach of this paragraph 4.
- 4.7 Where in connection with the Contract, the Contractor is required to carry out work on the Authority's premises or alongside the Authority's employees on any other premises in a manner which any third party might reasonably assume to be a role which is being undertaken by an employee of the Authority, the Contractor shall comply with the reasonable directions of the Authority in order to enable the Authority to fulfil its duties under the Equality Act.
- 4.8 The Contractor shall impose on any sub-contractors and Supply Chain members obligations substantially similar to those imposed on the Contractor by this paragraph 4.

5 Intellectual Property Rights

- 5.1 The Contractor shall pay any royalty, licence fee or other expense for, or in connection with, the supply or use of any copyright, patent, process, drawing, model, plan, design, invention

or information used or necessary for, or in connection with, the performance of the Contract (“**Intellectual Property Rights**”).

- 5.2 The Contractor shall be responsible for, and shall make good to the Authority, all costs and expenses reasonably and properly incurred by, and any damages awarded against, the Authority in connection with any claims or proceedings made or brought against the Authority relating to the use, supply or infringement or alleged use, supply or infringement of any Intellectual Property Rights and the Contractor undertakes to be responsible for dealing with and settling at its own expense any such claim, or proceedings.
- 5.3 Subject to paragraph 5.6 below, the Contract Sum shall be deemed to include the amount of any royalty, licence fee or other expense incurred in accordance with paragraph 5.1 above.
- 5.4 The Contractor shall inform the Authority as soon as it becomes aware of the need to make payment for use of any Intellectual Property Rights.
- 5.5 The Contractor shall not settle any claim for use of any Intellectual Property Rights without the agreement of the Authority.
- 5.6 The Authority shall reimburse to the Contractor (as part of the lump sum price for the relevant Change) the amount of any royalty, licence fee or other expense properly incurred in accordance with paragraph 5.1 above which:-
 - 5.6.1 was necessarily incurred in order to comply with a Change Order; and
 - 5.6.2 was not reasonably contemplated by the parties or provided for by or under the Contract.

6 Corrupt Gifts and Payments of Commission

- 6.1 The Contractor shall not and shall procure that the members of the Supply Chain and any of the Affiliates employees or agents of it or of such Supply Chain members shall not commit or carry out and warrants that in entering into this Contract neither it nor any of the foregoing has committed or carried out any of the Prohibited Acts.
- 6.2 The Contractor shall not have entered into the Contract having:-
 - 6.2.1 communicated any figures or other information indicating the Contractor’s tender prices to any third party before the return of its tender for the Contract (other than in connection with the obtaining of insurance quotations, provided any such information was given in strict confidence);
 - 6.2.2 obtained, or attempted to obtain, any information in connection with any other tender before the time set for the return of tenders for the Contract; or
 - 6.2.3 made or discussed any arrangement with any third party regarding whether or not the Contractor and/or such third party should tender, or about the tender of the Contractor and/or such third party or any other party’s tender for the Contract.
- 6.3 If the Contractor or its employees or agents or Supply Chain members (or anyone acting on its or their behalf or any of its or their employees) has done or does any of the Prohibited Acts or has committed or commits any offence under sub-sections 108-109 of the Anti-Terrorism Crime and Security Act 2001 before that Act or sub-sections are repealed or an offence under the Bribery Act 2010 with or without the knowledge or authority of the

Contractor in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:-

- 6.3.1 to terminate the Contract in accordance with condition 8.2 (Termination);
 - 6.3.2 to recover from the Contractor the amount or value of any such gift, consideration or commission; and
 - 6.3.3 to recover from the Contractor any other loss sustained in consequence of any breach of this paragraph 6, where the Contract has not been terminated.
- 6.4 In exercising its rights or remedies under this paragraph 6, the Authority shall:-
- 6.4.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the Prohibited Act; and
 - 6.4.2 give all due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):-
 - 6.4.2.1. requiring the Contractor to procure the termination of a subcontract where the Prohibited Act is that of a subcontractor or anyone acting on its or the subcontractor's behalf; and
 - 6.4.2.2. requiring the Contractor to procure the dismissal of an employee (whether its own or that of a subcontractor or anyone acting on its behalf) where the Prohibited Act is that of such employee.
- 6.5 Any termination under paragraph 6.3.1 above shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Authority.
- 6.6 Any dispute, difference or question arising in respect of:-
- 6.6.1 the right of the Authority to terminate the Contract;
 - 6.6.2 any of the amounts recoverable from the Contractor under paragraph 6.3 above, or
 - 6.6.3 the interpretation of this paragraph 6,
- shall be decided by the Authority, whose decision shall be final and conclusive.
- 6.7 Recovery action taken against any person in the service of the Crown shall be without prejudice to any recovery action taken against the Contractor under this paragraph.
- 6.8 The Contractor shall impose on all Supply Chain members obligations substantially similar to those imposed on the Contractor by paragraphs 6.1 and 6.2 above.

Schedule 4
(Change Control)

1 Proposed Changes

The Commercial Officer (either on its own initiative or in response to a recommendation from the DIO PM) or the Contractor may propose a Change. The Commercial Officer shall submit a Change Proposal to the Contractor or the Contractor shall submit a Change Proposal to the Commercial Officer. Either Change Proposal must be dated on the day that it was sent.

2 Notification of Changes

Where the Contractor wishes to notify the occurrence of one of the Authority's Risks, the Contractor shall issue a Change Notification to the Commercial Officer (copied to the DIO PM) dated with the date on which it was sent.

3 Requirement for the Contractor to provide a Change Quotation

- 3.1 If the Commercial Officer proposes a Change by the issue of a Change Proposal the Contractor shall submit a Change Quotation not later than 14 days from the receipt of the Change Proposal.
- 3.2 If the Contractor proposes a Change by the issue of a Change Proposal it shall submit a Change Quotation with its Change Proposal to the Commercial Officer. If the Contractor notifies a Change by the issue of a Change Notification, the Contractor shall submit a Change Quotation within 14 days from the date of its Change Notification to the Commercial Officer.
- 3.3 The Change Quotation shall :-
 - 3.3.1 (if relevant) state the price of any disruption to, or prolongation of, the Works directly consequential upon the Change; and
 - 3.3.2 indicate how the lump sum price or saving is calculated by showing, separately, the amounts attributable to:-
 - 3.3.2.1 the direct price of, or the direct saving from, the Change; and
 - 3.3.2.2 the price (if any) of any disruption to, or prolongation of, the Works, or the saving (if any), directly consequential upon the Change.
- 3.4 The Change Quotation shall further provide a breakdown, itemised on the basis of the Pricing Document and broken down into the same parts and classes of items set out in the Pricing Document as far as is practicable (including any relevant Provisional Sum), showing how the price or saving referred to in paragraph 3.3 above is arrived at and shall indicate what alteration (if any) is required to the Progress Payment Forecast. For the avoidance of doubt, any costs for prolongation of the Works shall be calculated using rate-only item [A419] in the Pricing Document for prolongation which shall be deemed to cover all and every cost associated with an extension of time granted under the Contract.
- 3.5 The Change Quotation shall give details of any effect of the Change on the Date or Dates for Completion and provide information in support of any proposed alteration to such Date or Dates.

4 Royalties, licence fees, fees, charges or other expense

Where appropriate, the lump sum price or saving for a Change shall include the amount of any royalty, licence fee, fee, charge or other expense properly incurred by the Contractor in accordance with paragraphs 1.6 (Statutory obligations) or 5.6 (Intellectual property rights) of Schedule 3 (Compliance with statutory and other obligations).

5 Agreed lump sum price or saving for Changes

In respect of any Change for which the lump sum price or saving is agreed, the Commercial Officer shall issue a Change Order in accordance with paragraph 8 (The issue of Change Orders) of this Schedule.

6 Calculation of lump sum price or saving where not agreed

6.1 If either:-

6.1.1 the Contractor fails to provide a Change Quotation in accordance with paragraph 3 (Requirement for the Contractor to provide a Change Quotation) of this Schedule; or

6.1.2 for any other reason, no lump sum price or saving in respect of the Change has been agreed within 21 days from the date of the relevant Change Proposal or Change Notification (as the case may be),

the Commercial Officer shall notify the Contractor within 21 days from the date of the relevant Change Proposal or Change Notification (as the case may be) either:-

6.1.3 that the proposed Change referred to in any Change Proposal is withdrawn; or

6.1.4 that the Commercial Officer will carry out its own calculation of the lump sum payment or saving for the Change calculated in accordance with paragraph 6.2 below.

6.2 The Commercial Officer's calculation of the lump sum price or saving for a Change shall be made by reference to:-

6.2.1 the rates and prices included within, or deduced or extrapolated from, the Pricing Document for work of a similar character, making allowance where necessary for any Provisional Sums and significant differences in quantity and/or any change in the circumstances under which the work is carried out as a result of the Change, or

6.2.2 if this is not possible, by fair rates and prices,

and, in either case, taking into account the price (if any) of any disruption to, or prolongation of, the Works, or the saving (if any), directly consequential upon the Change. For the avoidance of doubt, any costs for prolongation of the Works shall be calculated using rate-only item [A419] in the Pricing Document for prolongation which shall be deemed to cover all and every cost associated with an extension of time granted under the Contract.

6.3 The Commercial Officer shall carry out its calculation of the lump sum price or saving for a Change in accordance with paragraph 6.2 above and shall notify the Contractor of its calculation within the period of 14 days from the date of its notification in accordance with paragraph 6.1.4 above subject to extension of this period in accordance with paragraph 6.4 below.

- 6.4 The Contractor shall supply the Commercial Officer with any information reasonably requested by the Authority to enable the Commercial Officer (with the assistance of the DIO PM) to assess the amount of any lump sum price or saving in accordance with paragraph 6.2 above. The period of 14 days referred to in paragraph 6.3 above shall be deemed to be extended by the period between the date of receipt (or deemed receipt) of the later of the Authority's request under this paragraph 6.4 and the date of the Commercial Officer's receipt of all the information requested.
- 6.5 In relation to Changes constituting the occurrence of Authority's Risks (but not in relation to any other Changes) the Commercial Officer may issue Change Orders referring to a provisional price or saving. The Commercial Officer shall keep any such provisional prices or savings under review until the Commercial Officer is satisfied that it can agree or assess a final price or saving.

7 Contractor's disagreement with the calculation of any lump sum price or saving

- 7.1 If the Contractor disagrees any final lump sum price or saving calculated or re-calculated under paragraph 6.2 (Calculation of lump sum price or saving where not agreed) of this Schedule, the Contractor shall, within 14 days of receipt of the relevant Change Order, notify the Commercial Officer of its reasons for disagreement and of its calculation of the appropriate lump sum price or saving. If the Contractor does not so notify the Commercial Officer of its disagreement, the Contractor shall be regarded as having accepted the lump sum price or saving set out in the relevant Change Order.
- 7.2 Where the Contractor has notified the Commercial Officer in accordance with paragraph 7.1 above that it disagrees with any calculation made by the Commercial Officer in accordance with paragraph 6.2 (Calculation of lump sum price or saving where not agreed) of this Schedule, the Commercial Officer shall consider the Contractor's calculation and supporting evidence and shall, within 14 days of receipt of the Contractor's calculation and supporting evidence:-
- 7.2.1 confirm its original calculation;
 - 7.2.2 agree the Contractor's calculation; or
 - 7.2.3 agree some other sum as a result of negotiation with the Contractor.
- 7.3 If, within 35 days from the date of the Contractor's receipt of the relevant Change Order, the Commercial Officer and Contractor cannot agree the amount of the Change, the Contractor may (subject to the right of either party to refer the matter to adjudication in accordance with paragraph 3 (Adjudication) of Schedule 8 (Resolution of disputes)) refer the matter to the Commercial Representative for a decision in accordance with paragraph 1 (Referrals to the Commercial Representative) of Schedule 8 (Resolution of disputes).
- 7.4 If the Contractor has not referred any such matter in dispute either to adjudication or to the Commercial Representative within 42 days from the date of the Contractor's receipt of the relevant Change Order, the Contractor shall be regarded as having accepted the lump sum price or saving referred to in the relevant Change Order.

8 The issue of Change Orders

- 8.1 The Contract Sum can only be increased or reduced by the issue of a Change Order.
- 8.2 Change Order(s) can only be issued by the Commercial Officer.

- 8.3 The Commercial Officer shall issue one or more Change Orders in respect of the lump sum price or saving for a Change agreed, calculated or determined in accordance with paragraphs 5 (Agreed lump sum price or saving for Changes), 6 (Calculation of lump sum price or saving where not agreed) or 7 (Contractor's disagreement with the calculation of any lump sum price or saving) of this Schedule respectively.

9 Amendment of the Progress Payment Forecast

- 9.1 If, as a result of a Change Order, the Contract Sum is increased or decreased, the Progress Payment Forecast shall be amended to reflect such change.

10 Extensions of time

- 10.1 Where the Commercial Officer:-

- 10.1.1 receives a Change Quotation from the Contractor which requests an extension of time to the Date or Dates for Completion (which shall include the grounds for its request);
- 10.1.2 where a Change Proposal or a Change Notification has been issued and the Commercial Officer considers that there has been or is likely to be a delay which will prevent, or has prevented, completion of the Works or any relevant Section by the relevant Date for Completion; or
- 10.1.3 considers that any act, omission or default of the Authority has caused a delay which will prevent, or has prevented, completion of the Works or any relevant Section by the relevant Date for Completion,

the Commercial Officer shall assess the extension of time (if any) that should be made to the Date or Dates for Completion provided that no extension of time shall be granted:-

- 10.1.4 to the extent that the Contractor has failed to take reasonable steps to avoid or reduce the relevant delay; or
 - 10.1.5 in respect of any period of delay which had arisen prior to the relevant Change, for which the Contractor was not entitled to any extension of time.
- 10.2 The Commercial Officer shall, as soon as possible, and in any event within 21 days from the date of the relevant Change Proposal or Change Notification, notify the Contractor of the Commercial Officer's decision regarding the award of an extension of time for completion of the Works or relevant Section and whether its decision is provisional or final. The Commercial Officer shall keep all provisional decisions under review until it is satisfied from the information available to it that it can give a final decision. The Commercial Officer shall notify the Contractor of any extensions of time by the issue of an appropriate Change Order.
- 10.3 If the Contractor is dissatisfied with a final decision under paragraph 10.2 above, it shall, not later than 14 days from receipt of the decision, submit a claim to the Commercial Officer specifying the grounds which in its view entitle it to an extension or further extension of time.
- 10.4 The Commercial Officer shall, within 14 days of the receipt of such a claim under paragraph 10.3 above, notify the Contractor whether the disputed decision has been amended. If the Contractor is still dissatisfied it may (subject to the right of either party to refer the matter to adjudication in accordance with paragraph 3 (Adjudication) of Schedule 8 (Resolution of disputes)) refer the matter to the Commercial Representative for a decision in accordance with paragraph 1 (Referrals to the Commercial Representative) of Schedule 8 (Resolution of

disputes). If the Contractor has not referred any such matter in dispute either to adjudication or to the Commercial Representative within 14 days of receipt of the Commercial Officer's decision under this paragraph 10.4, the Contractor shall be regarded as having accepted any final extension notified by the Commercial Officer in accordance with paragraph 10.2 above.

- 10.5 Any extensions of time granted in accordance with this paragraph 10 shall be reflected in the Programme.

11 Finance charges

Save as set out in condition 4.12 (Interest on late payment), the Contractor shall not be entitled to apply for payment of any interest or finance charges as part of any lump sum price for a Change.

12 Commercial Officer's duty to act fairly and impartially

In operating this Schedule, the Commercial Officer shall act fairly and impartially.

Schedule 5
(Provisions relating to payment)

1 The Pricing Document

- 1.1 The quantities set out in the Pricing Document are the estimated quantities of the Works to be carried out pursuant to the Contract but these quantities are not to be taken as the actual and correct quantities of the Works to be carried out by the Contractor in fulfilment of its obligations under the Contract.
- 1.2 After the date of the Contract, there shall be no rectification of any errors or omissions or wrong estimates in the prices inserted by the Contractor in the Pricing Document or in any of its computations or calculations relating to such prices. Errors or omissions in description or in quantity in the Pricing Document shall not vitiate the Contract nor relieve the Contractor from its obligations or liabilities under the Contract.

2 VAT

- 2.1 The Contract Sum excludes any United Kingdom (“**UK**”) output VAT and any similar European Union (“**EU**”) (or non-EU) taxes chargeable on the supplies of the Works by the Contractor to the Authority.
- 2.2 If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of its business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HMRC, the Authority shall pay to the Contractor in addition to the Contract Sum (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supplies of the Works, and all other payments under the Contract according to the law at the relevant tax point. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain and pass to the Authority a formal ruling from HMRC.
- 2.3 The Contractor is responsible for the determination of VAT liability. The Contractor is to consult its local VAT office (and not the Commercial Officer) in cases of doubt. The Contractor shall notify the Commercial Officer of the Authority’s VAT liability under the Contract, and any changes to it, when the liability is other than at the standard rate of VAT.
- 2.4 Where supplies of the Works come within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Works.
- 2.5 Where the Works are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non- EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Sum (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Works.
- 2.6 In relation to the Works supplied under the Contract the Authority shall not be required to pay any sum in respect of the Contractor’s input VAT (and/or similar EU and non-EU input taxes). However, these input taxes will be allowed where it is proven to the Authority that, despite the Contractor having taken all reasonable steps to recover such input taxes, it has not been possible to do so.

3 Construction Industry Tax Deduction Scheme

- 3.1 This paragraph 3 relates to the Construction Industry Scheme (the “**New Scheme**”). In this paragraph 3 (but not otherwise):-

“**CIS Regulations**” means the Income Tax (Construction Industry Scheme Regulations) 2005 (SI 2005/2045);

“**FA 2004**” means the Finance Act 2004;

“**Legislation**” means Chapter 3 of Part 3 of FA 2004 and any regulations made thereunder, the CIS Regulations and any other statute or subordinate legislation relating to the New Scheme as from time to time modified or replaced whether before or after the date of this Contract;

“**contractor**” means a person who is a contractor for the purposes of the Legislation pursuant to Section 59 of FA 2004;

“**statutory deduction**” means the deduction as provided for in Section 61 of FA 2004 or such other deduction as may be required to be made at the relevant time pursuant to Legislation in force at that time; and

“**subcontractor**” means a person who is a subcontractor for the purposes of the Legislation pursuant to Section 58 of FA 2004.

- 3.2 For the purposes of the New Scheme the Authority, as contractor, hereby agrees that it shall verify with HMRC whether the Contractor or its nominee, as subcontractors, are registered for gross payment, for payment under deduction or are not registered under Chapter 3 of Part 3 of FA 2004 no later than 30 days before the first payment under this Contract to which the New Scheme applies is due to be made to the Contractor or after this paragraph 3 applies for the first time and on each occasion when this paragraph 3 applies following a period when it has not so applied, and for these purposes the Contractor hereby agrees to provide the Authority with all information and assistance which may be required by the Authority under the New Scheme including (but not limited to) the subcontractor's name, unique tax payer reference company registration number, the National Insurance number (if applicable) and/or such other information as may be required under Regulation 6 of the CIS Regulations in sufficient time to enable the Authority to comply with its obligations.
- 3.3 If the Authority has verified the Contractor's tax status and the Contractor is not entitled (in accordance with the Legislation) either to receive payments at all or to receive payments without the statutory deduction, the Authority shall as soon as reasonably practicable notify the Contractor in writing and thereupon paragraph 3.5 below shall apply.
- 3.4 The Contractor undertakes to inform the Authority in writing as soon as practicable of any change in circumstances which may affect its tax status and give the date of such change.
- 3.5 The Authority agrees:
- 3.5.1 to pay to HMRC all amounts liable for deduction under section 61 of FA 2004 within the relevant time limits as provided for in Regulation 7 of the CIS Regulations; and
- 3.5.2 to make and submit monthly returns to HMRC as required by the Legislation and shall provide to the Contractor a payment statement (where appropriate) and/or any such other information as may be required by the Legislation in relation to contract payments to which the New Scheme applies.

- 3.6 Where this paragraph 3 applies, the Authority shall make such statutory deduction at the rate specified in the Legislation from any payment to the Contractor.
- 3.7 Where any error or omission has occurred in calculating or making the statutory deduction then:-
- 3.7.1 in the case of an under-deduction, the Contractor shall forthwith correct that error or omission by repayment of the sum under deducted to the Authority within 14 days of becoming aware of the under deduction; or
- 3.7.2 in the case of an over-deduction, the Authority shall forthwith correct that error or omission by repayment of the sum over deducted to the Contractor within 14 days of becoming aware of the over deduction.
- 3.8 For the avoidance of doubt, the provisions of this paragraph 3 shall apply throughout the term of this Contract save to the extent that and for any period during such term in respect of which:-
- 3.8.1 the Authority has received written confirmation from HMRC in a form which is reasonably satisfactory to the Contractor that it is not a contractor for the purposes of the New Scheme; or
- 3.8.2 the payments made by the Authority are not contract payments (as that term is defined in Section 60 FA 2004) or are exempt from the New Scheme under Regulation 23 of the CIS Regulations.
- 3.9 If compliance with this paragraph 3 involves the Authority or the Contractor in not complying with any other of the terms of this Contract (save for the parties' obligations to comply with all law) then the provisions of this paragraph 3 shall prevail.
- 3.10 The Contractor and Authority agree to comply with the parties' respective obligations in relation to the New Scheme under the Legislation.
- 3.11 The Authority will be responsible for the action, discharge, completion and submission of responsibilities under the New Scheme in relation to the Contractor.
- 3.12 The Contractor will be responsible for the action, discharge, completion and submission of responsibilities under the New Scheme in relation to its subcontractors.

4 Trust Deed and Project Bank Account

- 4.1 The Project Bank Account will be opened by the Contractor and held jointly with the Authority in accordance with the terms set out in the Trust Deed at Appendix 4 (Trust Deed).
- 4.2 The Project Bank Account will be set up on the date of this Contract with a one-off deposit of £1,000 (One Thousand Pounds) being placed by the Contractor.
- 4.3 The Authority and the Contractor shall enter into the Trust Deed on the date of this Contract. The Trust Deed shall include those Supply Chain members who will also sign the Trust Deed.
- 4.4 The Contractor shall procure that the following provisions will be inserted in any sub-contract with Supply Chain members:

- 4.4.1 where a Supply Chain member is to become a party to the Trust Deed such Supply Chain member shall, in relation to any payment, submit an application as referred to in the sub-contract, setting out the amount it considers due; and
- 4.4.2 an acknowledgement by the Supply Chain member that payment into the Project Bank Account shall discharge the Contractor's obligation to make payment under the sub-contract to the extent of that payment.
- 4.5 The Project Bank Account will remain in place until the final Completion Payment has been paid.
- 4.6 When the final Completion Payment has been paid, the Project Bank Account will be closed and any balance transferred to the Contractor.

5 **Tax Compliance**

Definitions

- 5.1 In this paragraph 5, unless the context otherwise requires, the following words and expressions have the following meanings:
 - 5.1.1 **"DOTAS"** means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to:
 - 5.1.1.1. tell HM Revenue & Customs of any specified notifiable arrangements or proposals; and
 - 5.1.1.2. provide prescribed information on those arrangements or proposals within set time limits as:
 - 5.1.1.2.1. contained in Part 7 of the Finance Act 2004 and in secondary legislation made under powers contained in Part 7 of the Finance Act 2004; and as
 - 5.1.1.2.2. extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.
 - 5.1.2 **"General Anti-Abuse Rule"** means:
 - 5.1.2.1. the legislation in Part 5 of the Finance Act 2013; and
 - 5.1.2.2. any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.
 - 5.1.3 **"Halifax Abuse Principle"** means the principle explained in the CJEU Case C-255/02 Halifax and others.
 - 5.1.4 **"Relevant Tax Authority"** means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.
 - 5.1.5 **"Occasion Of Tax Non-Compliance (OOTNC)"** means:

- 5.1.5.1. any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
 - 5.1.5.1.1. a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - 5.1.5.1.2. the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; or
- 5.1.5.2. any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the date this Agreement came into effect or to a civil penalty for fraud or evasion.

Warranty

- 5.2 The Contractor represents and warrants that at the date this Agreement came into effect, it has notified the Authority in writing of any OOTNC or any litigation that it is involved in that is in connection with any OOTNC.

Duty of the Contractor to notify OOTNC

- 5.3 If, at any point during the performance of this Agreement, an OOTNC occurs, the Contractor shall:
 - 5.3.1 Notify the Authority in writing of such fact within 20 Working Days of its occurrence; and
 - 5.3.2 Promptly provide to the Authority:
 - 5.3.2.1. details of the steps which the Contractor is taking to address the OOTNC and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - 5.3.2.2. such other information in relation to the OOTNC as the Authority may reasonably require.
- 5.4 For the avoidance of doubt, the obligation at paragraph 5.3 also applies to OOTNC in non-UK jurisdictions. If the OOTNC occurred in non-UK jurisdictions, the notification must be accompanied by a full explanation of the OOTNC and any relevant tax laws and administrative provisions so the Authority can understand the nature and seriousness of the OOTNC.
- 5.5 The duty to notify does not substitute the Contractor's obligations under DEFCON 605 (Financial Reports) when used.

Default

- 5.6 The Authority shall be entitled to terminate the Agreement in the event that:
- 5.6.1 the warranty given by the Contractor pursuant to paragraph 2 is materially untrue; or
 - 5.6.2 the Contractor commits a material breach of its obligation to notify the Authority of any OOTNC as required by Clause 3; or
 - 5.6.3 the Contractor fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority, are acceptable.
- 5.7 In the event that the Authority terminates the Contract under Clause 6, the Authority shall be entitled to recover from the Contractor:
- 5.7.1 The amount of any loss resulting from the termination; and
 - 5.7.2 Any other loss sustained in consequence of any breach of this Condition, where the Contract has not been terminated.

Duties of the Authority

- 5.8 In exercising its rights or remedies under this paragraph 5, the Authority shall:
- 5.8.1 act in a reasonable and proportionate manner taking into account, among other things:
 - 5.8.1.1. the gravity and duration of the OOTNC and any sanctions imposed by a court or tribunal; and
 - 5.8.1.2. any remedial action taken by the Contractor to prevent reoccurrence of the OOTNC.
 - 5.8.2 without prejudice to paragraph 5.6, seriously consider, where appropriate, action other than termination of the Agreement to deal with the failure by the Contractor to comply with this paragraph 5.
- 5.9 The Authority shall not in any case be liable to pay under the provisions of paragraph 5 any sum which, when taken together with any sums paid or due or becoming due to the Contractor under the Agreement, shall exceed the total Contract Sum payable under the Agreement.

Schedule 6
(Security Provisions)

1 Personnel Security

- 1.1 The Contractor shall ensure that the Contractor's employees including supply chain members carrying out Works under this Contract have sufficient security clearances in place where appropriate and in accordance with paragraph 6.4 (Security) of the Specification.
- 1.2 The Contractor must obtain a Baseline Personnel Security Standard check for Contractor employees including supply chain members where appropriate and provide the information to the Authority. A copy of the Baseline Security Personnel Standard application form is contained in Appendix G (Baseline Personnel Security Standard) of the Specification. For the avoidance of doubt, security clearance received by way of any another contract with any government department does nothing to remove or alter any of the obligations on the Contractor under this paragraph 1
- 1.3 In the event that the Authority requires that any Contractor employee including supply chain members to have clearances additional to the Baseline Personnel Security Standard, the Contractor shall co-operate, and shall ensure its employees and supply chain members co-operate, with the Authority to enable such additional clearances to be obtained.

2 Secrecy

- 2.1 For the purpose of this paragraph 2, “**Employee**” means any person who is an employee or director of the Contractor or who occupies the position of a director of the Contractor, by whatever title given.
- 2.2 The Contractor and the Supply Chain, which shall include any Employee or a director or employee of the Supply Chain upon entering into this Contract or such Supply Chain Contract as appropriate shall be deemed to have notice that the Official Secrets Act 1911-1989 applies to them and will continue so to apply after the completion of the Works or termination of this Contract or such Supply Chain Contract.
- 2.3 If directed by the Authority, the Contractor shall ensure that any such person referred to in paragraph 2.1 above shall sign a statement acknowledging that, both during the provision of the Works and after its completion or termination of this Contract, it is bound by the Official Secrets Acts 1911-1989 (and where applicable by any other legislation).
- 2.4 The Contractor shall:
 - 2.4.1 take all reasonable steps to ensure that any Employee engaged on any work or services in connection with this Contract shall have notice that the Official Secrets Act 1911-1989 applies to it and will continue to apply after the completion or termination of this Contract; and
 - 2.4.2 if directed by the Authority, ensure that any Employee shall sign a statement acknowledging that, both during the term of this Contract and after its completion or termination, it is bound by the Official Secrets Act 1911-1989 (and where applicable by any other legislation).
- 2.5 Unless the Contractor or any Employee has the written authorisation of the Authority to do otherwise, neither the Contractor nor such Employee shall, either before or after the completion or termination of this Contract, do or permit to be done anything which the

Contractor or the Employee knows or ought reasonably to know may result in a Secret Matter being disclosed to or acquired by a person in any of the following categories:

- 2.5.1 who is not a British citizen;
 - 2.5.2 who does not hold the appropriate authority for access to the Secret Matter;
 - 2.5.3 in respect of whom the Authority has notified the Contractor in writing that the Secret Matter shall not be disclosed to or acquired by that person;
 - 2.5.4 who is not an Employee; and/or
 - 2.5.5 who is an Employee and has no need to know the information for the proper performance of this Contract.
- 2.6 Unless the Contractor and/or its Employee has the written permission of the Authority to do otherwise, the Contractor and its Employee shall, both before and after the completion or termination of this Contractor, take all reasonable steps to ensure that:
- 2.6.1 no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of the Contract and with the prior consent of the Authority; and
 - 2.6.2 any Secret Matter is at all times strictly safeguarded in accordance with the Authority's Joint Services Publication 440 - Manual of Protective Security and upon request, is delivered up to the Authority who shall be entitled to retain it.
- 2.7 A decision of the Authority on the question of whether the Contractor has or is taking reasonable steps as requested by paragraph 2.6, shall be final and conclusive and not capable of being referred to the Commercial Representative, mediation, adjudication or arbitration in accordance with Schedule 8 (Resolution of disputes).
- 2.8 The Contractor shall:
- 2.8.1 provide to the Authority forthwith upon request:
 - 2.8.1.1 such records giving particulars of any Employee who has had at any time, access to any Secret Matter that is required to be kept in accordance with paragraph 2.4;
 - 2.8.1.2 such information as the Authority may from time to time require so as to be satisfied that the Contractor and any Employee are complying with the obligations of the Contractor and the Employee under this paragraph 2, including the measures taken or proposed by the Contractor so as to comply with its obligations and to prevent any breach of such obligations; and
 - 2.8.1.3 full particulars of any failure by the Contractor and any Employee to comply with any obligations relating to a Secret Matter arising under this paragraph immediately upon such failure becoming apparent, and
 - 2.8.2 ensure that, for the purpose of checking the Contractor's compliance with the obligations in paragraph 2.6.2, the Authority shall be entitled at any time to enter and inspect any premises used by the Contractor which are in any way connected with this Contract and inspect any document or thing in any premises, which is being used

or made for the purposes of the Contract. The Authority shall be entitled to all such information as it may reasonably require.

- 2.9 If at any time before or after the completion or termination of this Contract, the Contractor or any Employee discovers or suspects that an unauthorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the Contractor shall forthwith inform the Authority of the matter with full particulars thereof.
- 2.10 If the Contractor proposes to make a sub-contract which will involve the disclosure of any Secret Matter to a Supply Chain member, the Contractor shall:
 - 2.10.1 submit for approval of the Authority the name of the proposed Supply Chain member, a statement of the work or services to be carried out and any other details known to the Contractor which the Authority shall reasonably require prior to making such a sub-contract;
 - 2.10.2 incorporate into such subcontract the terms of Appendix 2 (MOD Policy Statement on Fraud & Theft) to these Conditions of Contract (with such amendment only as may be necessary according to the context) and such secrecy and security obligations as the Authority shall direct; and
 - 2.10.3 inform the Authority immediately it becomes aware of any breach by the Supply Chain member of any secrecy or security obligation and, if requested to do so by the Authority, terminate the sub-contract forthwith.
- 2.11 Where the Authority considers the circumstances of the breach jeopardises the secrecy or security of a Secret Matter, the Authority shall be entitled to terminate this Contract immediately if:
 - 2.11.1 the Contractor is in breach of any obligation under this paragraph; or
 - 2.11.2 the Contractor is in breach of any secrecy or security obligation imposed by another contract with the Crown.

Schedule 7
(Consequences of Termination)

1 Definitions

1.1 For the purposes of this Schedule 7, the following expressions shall have the following meanings:-

1.1.1 **“the amount paid”** means the total of all Progress Payments actually paid to the Contractor up to the date of termination;

1.1.2 **“the amount due”** means the total of the following individual sums:-

1.1.2.1 the value of all the work carried out in accordance with the Contract from the date of the last Progress Payment being paid up to the date of termination (such valuation to be carried out by the Authority by reference to the matters set out in paragraphs 6.2.1 and 6.2.2 (Calculation of lump sum price or saving for Changes where not agreed) of Schedule 4 (Change Control));

1.1.2.2 the amount payable for any work carried out or other things done in accordance with any Change Order issued in accordance with condition 8.2.3 (Termination) (the amount payable being calculated by reference to the matters set out in paragraphs 6.2.1 and 6.2.2 (Calculation of lump sum price or saving where not agreed) of Schedule 4 (Change Control));

1.1.2.3 the value of all Things for incorporation brought onto the Site, or in the course of preparation or manufacture off the Site, which the Authority elects to keep (such calculation to be carried out by the Authority by reference to the matters set out in paragraphs 6.2.1 and 6.2.2 (Calculation of lump sum price or saving where not agreed) of Schedule 4 (Change Control)); and

1.1.2.4 the value of any Things for incorporation which are being manufactured, assembled, constructed, stored or set aside off the Site which the Authority elects to keep (such calculation to be carried out by the Authority by reference to the matters as set out in paragraphs 6.2.1 and 6.2.2 (Calculation of lump sum price or saving for Changes where not agreed) of Schedule 4 (Change Control));

1.1.3 **“the compensation amount”** means the total of the following individual sums:-

1.1.3.1 the value of all the work carried out in accordance with the Contract from the date of the last Progress Payment being paid up to the date of termination (such valuation to be carried out by the Authority by reference to the matters set out in paragraphs 6.2.1 and 6.2.2 (Calculation of lump sum price or saving where not agreed) of Schedule 4 (Change Control));

1.1.3.2 the amount payable for any work carried out or other things done in accordance with any Change Order issued in accordance with condition 8.2.3 (Termination) (the amount payable being calculated by reference to the matters set out in paragraphs 6.2.1 and 6.2.2 (Calculation of lump sum price or saving where not agreed) of Schedule 4 (Change Control));

- 1.1.3.3 the value of any Things for incorporation brought onto the Site, or in the course of preparation or manufacture off the Site, which the Authority elects to keep (such calculation to be carried out by the Authority by reference to the matters set out in paragraphs 6.2.1 and 6.2.2 (Calculation of lump sum price or saving where not agreed) of Schedule 4 (Change Control));
- 1.1.3.4 the value of any Things for incorporation which are being manufactured, assembled, constructed, stored or set aside off the Site which the Authority elects to keep (such calculation to be carried out by the Authority by reference to the matters set out in paragraphs 6.2.1 and 6.2.2 (Calculation of lump sum price or saving where not agreed) of Schedule 4 (Change Control)); and
- 1.1.3.5 any reasonable sum expended by the Contractor because of the termination of the Contract in respect of:-
 - 1.1.3.5.1 the uncompleted part of any subcontract or other contracts (including those for the hire of plant, services and insurance); and
 - 1.1.3.5.2 any unavoidable contract of employment, entered into in connection with the Contract; and
- 1.1.4 **“the cost of completion”** means the cost to the Authority of the completion of the Contract, as certified by the DIO PM in accordance with paragraph 2.1.5 (Consequences of termination for default) of this Schedule.

2 Consequences of termination for default

- 2.1 If the Authority terminates the Contract for any reason mentioned in condition 8.2.6 (Termination), the following provisions shall apply:-
 - 2.1.1 save in accordance with the subsequent sub-paragraphs of this paragraph, all sums of money that may then be due or accruing due from the Authority to the Contractor shall cease to be due or to accrue due;
 - 2.1.2 the Authority may employ or engage any person or contractor, use any Things on the Site, and may purchase or do anything necessary for the completion of the Contractor's Design and/or the Works. The Contractor shall have no claim whatsoever in respect of any such action by the Authority;
 - 2.1.3 except where termination occurs by reason of any of the circumstances described in conditions 8.2.6.3 or 8.2.6.4 (Termination), the Contractor shall, if the Authority so requires, assign to the Authority without further payment, the benefit of any subcontract or the benefit of any contract for the supply of any Things for incorporation which it may have entered into in connection with the Contract;
 - 2.1.4 except where termination occurs by reason of any of the circumstances described in conditions 8.2.6.3 or 8.2.6.4 (Termination), the Authority may pay to any Supply Chain member or supplier of the Contractor any amount included in any previous Progress Payments to the Contractor which the DIO PM ascertains as properly due to such Supply Chain member or supplier. The amount so paid shall be recoverable forthwith by the Authority from the Contractor;
 - 2.1.5 the Contractor shall certify the cost to the Authority of the completion of the Contract.

- 2.1.6 if the total of the amount paid, plus the amount due, plus the cost of completion exceeds the Contract Sum, the Contractor shall pay the Authority the amount of the excess;
- 2.1.7 if the Contract Sum exceeds the total of the amount paid, plus the amount due plus the cost of completion, the Contractor shall pay the Authority the lesser of (a) the amount of the excess and (b) the amount due; and
- 2.1.8 the provisions set out in paragraph 4 (Consequences applicable to any termination) below shall apply.

3 Consequences of no default termination

- 3.1 If the Authority terminates the Contract for any reason other than those mentioned in condition 8.2.6 (Termination), the following provisions shall apply:-
 - 3.1.1 the Authority shall be liable to pay the Contractor the compensation amount, subject to the operation of condition 4.11 (Recovery of sums due) and 4.9 (Pay-Less Notice);
 - 3.1.2 if, in the period from the date of termination to the date on which any DIO PM's Directions or Change Orders under condition 8.2.3 (Termination) are to have been complied with, the Works or any part of the Works, or any Things for incorporation which the Authority elects to keep, are lost or damaged by reason of any of the events referred to in conditions 5.2.1.12 to 5.2.1.16 (Authority's Risks), and the loss or damage was not occasioned by any failure on the part of the Contractor to perform its obligations under paragraph 3 (Protection of the Works) of Schedule 2 (Provisions relating to the carrying out of the Works), the amount payable to the Contractor under this paragraph shall be ascertained as if no such loss and/or damage had occurred; and
 - 3.1.3 the provisions set out in paragraph 4 (Consequences applicable to any termination) below shall apply.

4 Consequences applicable to any termination

- 4.1 Upon termination of the Contract:
 - 4.1.1 subject to paragraph 4.1.2 below, the rights and obligations of the parties under the Contract shall terminate and be of no future effect, except that any provision of the Contract which expressly or by implication is intended to come into or continue in force on or after expiry or termination of this Agreement, including but not limited to the conditions listed in paragraph 4.1.1.1, Schedules listed in paragraph 4.1.1.2, Appendices listed in paragraph 4.1.1.3 and clauses of the Agreement listed in paragraph 4.1.1.4:
 - 4.1.1.1 conditions 1 (Definitions and Interpretation), 3.7 (Use of documents, information and communications with the media), 3.8 (Statutory obligations and security provisions), 3.4.5 (Design Rights), 3.4.6 (Design Warranty), 3.11 (Fraud Prevention), 3.12 (Compliance Audit), 3.13 (Photographs), 3.14 (Negative Covenants), 3.15.1.1 to 3.15.1.3 (General Contractor Warranties), 3.16 (Commercial Exploitation), 4 (Payment), 5.2 (Authority's Risks), 5.1.7 (Environmental Matters), 5.5 (Loss or Damage), 5.6 (Insurance), 8.2.11 to 8.2.14 (Step-in), 9 (Resolution of Disputes) and 12 (Decoupling – Sub-contracting with the Crown);

- 4.1.1.2 paragraphs 1 (Health and Safety), 6 (Damage to Public Roads), 17 (Provision of Information by the Contractor) and 18 (Completion Documents) of Schedule 2 (Provisions relating to the carrying out of the works), paragraphs 1 (Statutory Obligations), 3 (Personal Data), 4 (Equality and Non-Discrimination), 5 (Intellectual Property Rights) and 6 (Corrupt Gifts and Payment of Commission) of Schedule 3 (Compliance with statutory and other obligations), Schedule 5 (Provisions relating to payment), Schedule 6 (Security Provisions), Schedule 7 (Consequences of Termination), Schedule 8 (Resolution of Disputes) and paragraph 5 (Transparency Information) of Schedule 9 (Supplementary Conditions) shall remain in full force and effect;
- 4.1.1.3 Appendix 1 (Fraud Prevention Manual), Appendix 2 (MOD Policy Statement on Fraud and Theft For Construction Industry Suppliers), 5 (Required Insurances) and 6 (Contractor Commercially Sensitive Information); and
- 4.1.1.4 Clauses 13.1 (the DIO PM), 13.2 (the Commercial Officer), 13.3 (the Commercial Representative), 13.4 (the Adjudicator), 13.8 (Notices), 14 (Insurances) and 20 (Proper Law) of the Agreement;
- 4.1.2 the obligations of confidentiality (but not the rights to use or disclose) under condition 1.9 (Disclosure of Information) shall continue to apply to the parties without limit of time;
- 4.1.3 any obligations which have accrued due to any of the parties to this Contract from any other such party before such termination shall be performed; and
- 4.1.4 termination of the Contract shall not affect or prejudice any right to damages or other remedy which the terminating party may have in respect of the termination which gave rise to the termination or any other right to damages or other remedy which any party may have in respect of any breach of the Contract which existed at or before the date of termination.

Schedule 8
(Resolution of disputes)

1 Referrals to the Commercial Representative

- 1.1 Unless the parties otherwise agree, no referral for a decision in accordance with this paragraph shall be made after the completion, or abandonment of the Works or the termination of the Contract and no referral for a decision in accordance with this paragraph shall be made in relation to any matter or thing as to which a decision of the Authority under the Contract is expressed by the Contract to be final and conclusive.
- 1.2 Where, in accordance with these Conditions of Contract, a matter has been referred to the Commercial Representative, the party referring the dispute shall, within 7 days of the notice of referral, provide to the Commercial Representative a written statement specifying the nature of the matter in dispute, together with all supporting information and documents on which the party referring the dispute intends to rely. The party referring the dispute shall, at the same time, send a copy of the statement and the enclosures to the other party.
- 1.3 Within 7 days of receipt of the statement from the party referring the dispute, the other party, if such party so chooses, may provide its own statement, together with any supporting information upon which the other party intends to rely, to the Commercial Representative. The other party shall, at the same time, send a copy of the statement and the supporting information on which the other party intends to rely to the party referring the dispute.
- 1.4 The Contractor and the DIO PM shall attend any meeting called by the Commercial Representative.
- 1.5 The Contractor and the DIO PM shall, within 14 days, provide to the Commercial Representative any further information and/or documents which the Commercial Representative may request. If either the Contractor or the DIO PM is unable to provide the information and/or documents requested, it shall provide a written statement, within 14 days of the request for the information and/or documents, stating why the information and/or documents cannot be provided.
- 1.6 The Contractor shall continue to proceed with the Contractor's Design and/or the Works throughout the period of the referral. During the period of the referral, any DIO PM's Direction or Change Order shall remain in force notwithstanding that such DIO PM's Direction or Change Order was the cause of the referral.
- 1.7 Having received all relevant and/or requested information, the Commercial Representative shall make a decision and shall notify the parties accordingly. The decision of the Commercial Representative shall not include any reasons for its decision unless it chooses otherwise.
- 1.8 Subject to paragraphs 3 and 4 of this Schedule (Adjudication and Arbitration respectively), the decision of the Commercial Representative on the matter of the referral shall be binding on the Contractor and the DIO PM until completion, or abandonment of the Works or the termination of the Contract.
- 1.9 Each party shall bear its own costs and/or disbursements in connection with a referral under this paragraph.

2 Mediation

- 2.1 Unless the parties otherwise agree, no mediation in accordance with this paragraph shall be made after completion, or abandonment of the Works or the termination of the Contract and no mediation in accordance with this paragraph shall be made in relation to any matter or thing as to which a decision of the Authority under the Contract is expressed by the Contract to be final and conclusive.
- 2.2 A single mediator shall be jointly appointed by the Authority and the Contractor, or in default of such agreement shall be appointed at the request of the Authority by the Chief Executive of the Centre for Effective Dispute Resolution in accordance with the following provisions of this paragraph.
- 2.3 Unless the parties otherwise agree, no mediation shall take place in relation to a matter which is the subject of a referral to the Commercial Representative for a decision in accordance with paragraph 1 (Referrals to the Commercial Representative) of this Schedule.
- 2.4 The mediator shall start the mediation as soon as possible after such appointment and shall fix a procedure and a timetable for the conduct of the mediation. The mediator shall use its best endeavours to conclude the mediation within 2 months of its appointment unless the parties otherwise agree.
- 2.5 All discussions and negotiations during the mediation shall be on a privileged 'without prejudice' basis, unless such privilege is waived by the parties by agreement either generally or in relation to any specific aspect. No party may refer, in any proceeding that may subsequently take place, to any such privileged discussion and the mediator shall not be joined as a party to, nor shall the mediator be subpoenaed or otherwise required to give evidence or provide its notes in, any such proceedings.
- 2.6 The mediator shall not be liable for anything done or not done in the discharge or purported discharge of its functions as mediator, whether in negligence or otherwise, unless the act or omission is in bad faith.
- 2.7 Each party shall bear its own costs and/or disbursements in connection with the mediation and the parties shall be jointly and severally liable for the mediator's fees.

3 Adjudication

- 3.1 Either party to the Contract may at any time refer any dispute arising under the Contract to adjudication in accordance with this paragraph notwithstanding that any legal proceedings have been commenced in respect of such dispute.
- 3.2 Any decision of the Authority, the Commercial Representative or any DIO PM's Direction or Change Order which is the subject of adjudication shall remain in force until the decision of the Adjudicator.
- 3.3 For the purposes of this paragraph the term "**dispute**" shall include any difference as defined by the Housing Grants, Construction and Regeneration Act 1996.
- 3.4 If either party requires adjudication it shall notify the Adjudicator. The notice shall:-
 - 3.4.1. specify the matter in dispute;
 - 3.4.2. set out the principal facts and arguments relating to the dispute; and
 - 3.4.3. have appended all relevant documents which the party referring the disputes relies upon.

- 3.5 A copy of the notice referred to in paragraph 3.4 above and the appended relevant documents shall be sent to the other party at the same time.
- 3.6 The Adjudicator shall indicate, within 4 days of receipt of a copy of the notice under paragraph 3.4 above, its willingness to act.
- 3.7 Where the Adjudicator has not indicated its willingness to act in accordance with paragraph 3.6 above or where no Adjudicator has been named in the Agreement, either party may apply to the Chairman of TeCSA for a nomination, in which case, the following procedure will apply:-
- 3.7.1. the application shall be in writing, accompanied by a copy of these Conditions of Contract and the Agreement (without copies of any annexed documents, unless the annexed documents are relevant to the dispute), a copy of the written notice requiring adjudication, and TeCSA's appropriate appointment fee;
 - 3.7.2. the Chairman of TeCSA shall endeavour to secure the appointment of an Adjudicator and the referral to such Adjudicator of the dispute within 7 days from the notice requiring adjudication; and
 - 3.7.3. any person so appointed, and not any person named in the Agreement whose readiness or willingness is in question, shall be the Adjudicator.
- 3.8 The Chairman of TeCSA shall have the power by written notice to the parties to replace the Adjudicator with another nominated person if and when it appears necessary to the Chairman of TeCSA to do so. The Chairman of TeCSA shall consider whether to exercise such power if any party shall represent to it that the Adjudicator is not acting impartially, or that the Adjudicator is physically or mentally incapable of conducting the adjudication, or that the Adjudicator is failing with necessary dispatch to proceed with the adjudication or make its decision. In the event of a replacement under this paragraph, directions and decisions of the previous Adjudicator shall remain in effect unless reviewed and replaced by the new Adjudicator, and all timescales shall be recalculated from the date of the replacement.
- 3.9 Where an adjudicator has already been appointed in relation to another dispute arising out of the Contract, the Chairman of TeCSA may appoint either the same or a different person as the Adjudicator.
- 3.10 Within 7 days of receipt of the notice referred to in paragraph 3.4 above, the other party may submit to the Adjudicator any statement, representations or documents which that party relies upon relating to the dispute.
- 3.11 The scope of the Adjudication shall be the matters identified in the notice requiring adjudication, together with:-
- 3.11.1. any further matters which all parties agree should be within the scope of the Adjudication; and
 - 3.11.2. any further matters which the Adjudicator determines must be included in order that the adjudication may be effective and/or meaningful.
- 3.12 The Adjudicator may rule upon its own substantive jurisdiction, and as to the scope of the adjudication.

- 3.13 The underlying purpose of the adjudication is to resolve disputes between the parties that are within the scope of the adjudication as rapidly and economically as is reasonably possible.
- 3.14 Decisions of the Adjudicator shall be binding until the dispute is finally determined by legal proceedings, by arbitration under paragraph 4 (Arbitration) of this Schedule or by agreement (as the case may be).
- 3.15 The Adjudicator shall have the power to review and revise any certificates or other things issued or made in accordance with the Contract.
- 3.16 The Adjudicator shall act fairly and impartially, but shall not be obliged or empowered to act as though it were an arbitrator.
- 3.17 The Adjudicator shall establish the procedure and timetable for the adjudication.
- 3.18 Without prejudice to the generality of paragraph 3.17 above, the Adjudicator may if the Adjudicator thinks fit:-
- 3.18.1. require the delivery of written statements of case;
 - 3.18.2. require any party to produce a bundle of key documents, whether helpful or otherwise to that party's case, and to draw such inferences as may seem proper from any imbalance in such bundle that may become apparent;
 - 3.18.3. require the delivery to it and/or the other parties of copies of any documents other than documents that would be privileged from production to a court;
 - 3.18.4. limit the length of any written or oral submission;
 - 3.18.5. require the attendance before the Adjudicator for questioning of any party or employee or agent of any party;
 - 3.18.6. make site visits;
 - 3.18.7. make use of its own specialist knowledge;
 - 3.18.8. obtain advice from specialist consultants, provided that at least one of the parties so requests or consents;
 - 3.18.9. meet and otherwise communicate with any party without the presence of other parties;
 - 3.18.10. make directions for the conduct of the adjudication orally or in writing;
 - 3.18.11. review and revise any of its own previous directions;
 - 3.18.12. conduct the adjudication inquisitorially, and take the initiative in ascertaining the facts and the law; and
 - 3.18.13. reach its decision with or without holding an oral hearing, and with or without having endeavoured to facilitate an agreement between the parties.
- 3.19 The Adjudicator shall exercise such powers with a view of fairness and impartiality, giving each party a reasonable opportunity, in light of the timetable, of putting its case and dealing with that of its opponent.

- 3.20 The Adjudicator may not:-
- 3.20.1. require any advance payment of, or security for, its fees;
 - 3.20.2. receive any written submissions from one party that are not also made available to the other;
 - 3.20.3. refuse any party the right at any hearing or meeting to be represented by any representative of that party's choosing who is present;
 - 3.20.4. act or continue to act in the face of a conflict of interest; or
 - 3.20.5. require any party to pay, or make contribution to, the legal costs of another party arising in the adjudication.
- 3.21 The Adjudicator shall reach a decision within 28 days of referral or such longer period as is agreed by the parties after the said dispute has been referred to the Adjudicator. The Adjudicator shall be entitled to extend the said period of 28 days by up to 14 days with the consent of the party by whom the dispute was referred.
- 3.22 After service of a notice referred to in paragraph 3.4 above, the parties may agree in writing the allocation of costs relating to the adjudication.
- 3.23 The Adjudicator may in any decision direct the payment of such compound or simple interest as may be commercially reasonable.
- 3.24 All decisions of the Adjudicator shall be in writing and shall include its reasons for its decision.
- 3.25A The Adjudicator shall be entitled to allocate its fees and expenses as between the parties and to correct any decision it has made to remove clerical or typographical error arising by accident or omission.
- 3.25 Every decision of the Adjudicator shall be implemented without delay. The parties shall be entitled to such reliefs and remedies as are set out in the decision, and shall be entitled to summary enforcement of any such reliefs and remedies, regardless of whether such decision is, or is to be, the subject of any challenge or review. No party shall be entitled to raise any right of set-off, counterclaim or abatement in connection with any enforcement proceedings.
- 3.26 Neither TeCSA, nor its Chairman, nor deputy, nor the Adjudicator nor any employee or agent of any of such persons shall be liable for anything done or not done in the discharge or purported discharge of its functions as Adjudicator, whether in negligence or otherwise, unless the act or omission is in bad faith.
- 3.27 The adjudication and all matters arising in the course of it are and will be kept confidential by the parties except insofar as necessary to implement or enforce any decision of the Adjudicator or as may be required for the purpose of any subsequent legal proceedings.
- 3.28 In the event that any party seeks to challenge or review any decision of the Adjudicator in any subsequent arbitration, the Adjudicator shall not be joined as a party to, nor shall the Adjudicator be subpoenaed or otherwise required to give evidence or provide its notes in, such arbitration.
- 3.29 No party shall, save in case of bad faith on the part of the Adjudicator, make any application to the courts whatsoever in relation to the conduct of the adjudication or the decision of the

Adjudicator until such time as the Adjudicator has made its decision, or refused to make a decision, and until the party making the application has complied with any such decision.

- 3.30 In relation to any matter or thing as to which a decision of the Authority under the Contract is by the Contract expressed to be final and conclusive, the Adjudicator shall not be entitled to vary or overrule any such decision and the Contractor's only remedy (if at all) shall be to financial compensation.

4 Arbitration

- 4.1 Any dispute, difference or question arising between the parties that is not finally resolved in accordance with paragraphs 1 (Referrals to the Commercial Representative) to 3 (Adjudication) of this Schedule or by any agreement shall be finally settled by arbitration in accordance with the following procedure.
- 4.2 A single arbitrator shall be chosen by the parties or, in the absence of agreement, shall be nominated by the president for the time being of the Chartered Institute of Arbitrators or its or her deputy on the application of either party. The place of arbitration shall be England unless otherwise stated in the Agreement and the governing law of the arbitration shall be the substantive law of England unless otherwise stated in the Agreement.
- 4.3 The arbitrator shall have the power to rule on its own substantive jurisdiction as to:-
- 4.3.1. whether there is a valid arbitration agreement;
 - 4.3.2. whether the arbitrator is properly appointed;
 - 4.3.3. whether there is a dispute or difference capable of being referred to arbitration and whether it has been validly referred; and
 - 4.3.4. what matters had been submitted to it in accordance with these Conditions of Contract.
- 4.4 The Arbitrator shall have the power to:-
- 4.4.1. order the preservation of evidence;
 - 4.4.2. make orders relating to property which is the subject of the proceedings including:-
 - 4.4.2.1. inspection, photographing, preservation, custody or detention of the property;
 - or
 - 4.4.2.2. ordering that samples be taken from, or any observation be made of, or experiment conducted upon, the property;
 - 4.4.3. give directions for the detention, storage, sale or disposal of the part or any part of the subject matter of the dispute at the expense of one or both of the parties; or
 - 4.4.4. grant injunctive remedies and relief.
- 4.5 With the written consent of the Authority, the arbitrator shall have the power to order the consolidation of the arbitral proceedings with other arbitral proceedings or to order that concurrent hearing shall be held on such terms as the arbitrator deems fit.

- 4.6 If the arbitrator is satisfied that there has been inordinate and excusable delay on the part of the claimant in pursuing its claim and that delay:-
- 4.6.1. gives rise, or is likely to give rise, to a substantial risk that it is not possible to have a fair resolution of the issues in that claim; or
 - 4.6.2. has caused, or is likely to cause, serious prejudice to the respondent;
- the arbitrator may make an award dismissing the claim.
- 4.7 If, without showing sufficient cause, a party:-
- 4.7.1. fails to attend or be represented at an oral hearing of which due notice was given; or
 - 4.7.2. where matters are to be dealt with in writing, fails after due notice to submit written evidence or make written submissions;
- the arbitrator may continue the proceedings in the absence of that party.
- 4.8 If, without showing sufficient cause, a party fails to comply with any order or directions of the arbitrator, the arbitrator may make a peremptory order to the same effect, prescribing such time for compliance with it as the arbitrator considers appropriate.
- 4.9 If a claimant fails to comply with a peremptory order of the arbitrator to provide security for costs, the arbitrator may make an award dismissing its claim.
- 4.10 If a party fails to comply with any kind of peremptory order, the arbitrator may do any of the following:-
- 4.10.1. direct that the party in default shall not be entitled to rely upon any allegations or materials which are the subject matter of the order;
 - 4.10.2. draw such adverse inferences from the act of non-compliance as the circumstances justify;
 - 4.10.3. proceed to an award on the basis of such materials as have been properly provided to it; and
 - 4.10.4. make such order as it deems fit as to the payment of costs of the arbitration incurred in consequence of the non-compliance.
- 4.11 The arbitrator shall have power to decide all procedural and evidential matters including but not limited to:-
- 4.11.1. Pleadings: deciding whether formal pleadings are to be used, and if so, what form of statements of claim or defence are to be used (e.g. summary or abbreviated form) and the timetable for the supply of such statements and the extent to which such statements can be amended;
 - 4.11.2. Discovery: deciding on the need for and/or extent of, discovery and which documents or classes of documents should be disclosed and at what stage;
 - 4.11.3. Experts: deciding whether there is any need for parties to incur costs of having to produce expert witnesses and, if there are to be experts, whether each party should have its own experts or whether the arbitrator should appoint a single expert. The

arbitrator may also decide who should pay for the expert and the procedure for presenting expert evidence;

- 4.11.4. Arbitrator's powers: the arbitrator shall be entitled to take the initiative and ascertain the facts and law and shall be entitled to rely on its own knowledge and expertise;
 - 4.11.5. Evidence: the arbitrator shall decide whether the strict rules of evidence shall apply and to what extent evidence may be given under oath or affirmation and whether the arbitration should be a 'paper only' procedure;
 - 4.11.6. Security for Costs: the arbitrator shall have power to order security for costs or order for its own costs to be secured;
 - 4.11.7. Costs: the arbitrator shall be entitled to limit recoverable costs of the parties to a specific amount; and
 - 4.11.8. Representation: the arbitrator shall be entitled to decide whether the parties wish to allow other representation in addition to legal representation.
- 4.12 The arbitrator may at any time make an award, and may make more than one award at different times and for different aspects of the matters to be determined. The award shall be in writing signed by the arbitrator and shall state the date upon which the award is made. Once the award is made the award shall be notified to the parties by service on the parties of copies of the award.
- 4.13 The arbitrator may:-
- 4.13.1. make a declaration as to any matter to be determined in the proceedings;
 - 4.13.2. order the payment of a sum of money in any currency;
 - 4.13.3. order a party to do or refrain from doing anything;
 - 4.13.4. order specific performance of a contract (other than a contract relating to land);
 - 4.13.5. order the rectification, setting aside or cancellation of a deed or other document; and
 - 4.13.6. award simple or compound interest from such dates, at such rates as the arbitrator thinks fit subject to any express terms of these Conditions of Contract providing for a specified rate of interest to be payable.
- 4.14 The arbitrator shall include in its award reasons for the award unless it is a consent award or the parties have agreed that the arbitrator may dispense with reasons.
- 4.15 If, during the arbitral proceedings, the parties settle the dispute, the arbitrator shall terminate the substantive proceedings and shall record the settlement in the form of an agreed award.
- 4.16 The parties, shall be free to agree how the costs of an arbitration are to be borne. If there is no agreement between the parties, the arbitrator shall award the costs on the principle that costs should follow the event except in circumstances where that is not appropriate. The parties are also free to agree what costs of the arbitration are recoverable.
- 4.17 Save to the extent that the provisions of the Arbitration Act 1996 are inconsistent with any of the express provisions of this paragraph 4, such provisions of the Arbitration Act 1996 shall apply to any arbitration in accordance with these Conditions of Contract.

Schedule 9
(Supplementary Conditions)

1 Overseas expenditure

- 1.1 For the purposes of this paragraph “**overseas expenditure**” means payments made in respect of Things for incorporation where such Things are constructed, manufactured or assembled outside the United Kingdom and are imported into the United Kingdom for the sole purpose of the Works.
- 1.2 Unless the Contractor has been required to submit an estimate of the overseas expenditure which it anticipates it will incur in the performance of the Contract as part of its tender, the Contractor shall submit such an estimate to the DIO PM, in such form as the DIO PM shall direct, within 21 days after the date of award of the Contract.
- 1.3 During the performance of the Contract, the Contractor shall record, in such format as the DIO PM shall direct, the overseas expenditure actually incurred. The Contractor shall afford the DIO PM access to, and copies of, such records at reasonable intervals.

2 Transparency Information

- 2.1 Notwithstanding any other term of this Contract, the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information.
- 2.2 Before publishing the Transparency Information to the general public in accordance with paragraph 2.1 above, the Authority shall redact any information that would be exempt from disclosure if it was the subject of a request for information under the FOIA or the EI Regulations, including the Contractor Commercially Sensitive Information.
- 2.3 The Authority may consult with the Contractor before redacting any information from the Transparency Information in accordance with paragraph 2.2. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the FOIA or the EI Regulations.
- 2.4 For the avoidance of doubt, nothing in this paragraph 2 shall affect the Contractor’s rights at law.

3 Agency

Save as otherwise provided in this Contract the Contractor shall not be or be deemed to be an agent of the Authority and the Contractor shall not hold himself out as having authority or power to bind the Authority in any way. This Contract shall not create a partnership between the Authority and the Contractor within the meaning of the Partnership Act 1890 or any landlord and tenant relationship other than where specifically contemplated by the terms of this Contract.

4 Change of Control of Contractor

- 4.1 The Contractor shall inform the Authority, as soon as practicable, in writing of any change in control of the Contractor. The Contractor shall not be required to submit any advice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any

regulations governing the conduct of the Contractor in the UK or other jurisdictions where the Contractor may be subject to legal sanction arising from issue of such advice.

- 4.2 For the purposes of this paragraph “**control**” means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person:-

4.2.1 by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or

4.2.2 by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor,

and a change of control occurs if a person who controls the Contractor ceases to do so or if another person acquires control of the Contractor.

- 4.3 The Contractor shall inform the Authority on each occurrence of a change in control. Each advice shall be taken to be in respect of all contracts with the Authority. The advice should be submitted to:

DIO Senior Commercial Officer,
Delancey Building, Ground Floor (IDL 448), Marlborough Lines, Monxton Road, Andover,
Hampshire, SP11 8HJ
Email: DIOOPSSouth-ProjQECDredge@mod.uk

- 4.4 Advice by the Contractor of any change of control shall not prejudice the existing rights of the Authority or the Contractor under the Contract nor create or imply any rights of either the Contractor or the Authority additional to the Authority’s right to receive that information.

Appendix 1
Fraud Prevention Manual

Fraud Prevention Manual

To be circulated to all personnel

- 1 The Contractor and its Supply Chain members shall comply with the following minimum requirements which are deemed to form part of the Contract. Upon the Contractor entering into the Contract and any Supply Chain members entering into the subcontracts, as appropriate, this manual shall be distributed to all personnel prior to commencement of any Works and/or services being carried out.
- 2 Any failure by the Contractor and/or its Supply Chain members to observe these minimum requirements may give rise to a termination under the Contract and/or the subcontracts as the case may be.
- 3 The Contractor shall also comply and procure the compliance of its Supply Chain members with such additional measures and procedures as the Contractor has proposed in accordance with its Tender submission.

General

- 4 The Contractor shall carry out an internal audit on a period not greater than 6 monthly basis in respect of the Works. Where the Contractor or its parent is a PLC the audit committee of the Contractor or PLC company shall manage and be responsible for such audit. Where the Contractor is a joint venture company, or a non-PLC, that company or joint venture company shall set up an audit committee to manage and be responsible for such audit. The audit committee of the Contractor shall also:
 - 4.1 report to the Authority in respect of the standards achieved in the audit;
 - 4.2 notify the Authority of any fraud identified in any internal or external audit; and
 - 4.3 make recommendations to the Authority as to measures which should be taken to improve on fraud prevention and forward an action plan to show recommendations are put in place and ensure these are acted upon.

Gifts rewards and inducements

- 5 It shall be a term of any Supply Chain member's subcontract that the Supply Chain member shall not offer, give or agree to give to the Contractor or to any employee or agent of the Contractor or anyone acting on its behalf or on behalf of its or such Supply Chain member's employees, any gift or consideration as an inducement or reward for doing or not doing any act in relation to the obtaining or execution of any subcontract or for showing or not showing favour or disfavour to any person in relation to any subcontract or any other contract with the Contractor. Any subcontract shall provide for termination of the subcontract on the occurrence of any such event or, where the offence has been committed by an employee acting independently of the relevant Supply Chain members, the subcontract may be continued if the relevant employee's employment is terminated.

Construction and Maintenance Work

- 6 The Contractor shall permit and shall procure that any Supply Chain member permits there to be regular inspections of the Works and/or services and/or materials carried out or provided by the Authority, including inspections of those parts of the Works and/or services being carried out off-site and/or materials being manufactured off-site. In order to facilitate such inspections, the Contractor and its Supply Chain members shall fully co-ordinate and co-operate by answering any queries raised and allowing a more detailed inspection, if required, without obstruction provided there is no risk to health and safety or danger to persons and property. The Contractor and any Supply Chain member shall be responsible for implementing internal control mechanisms to detect and deter fraud and sharp practice activity. There shall be some element of a risk based control approach to identify potential fraud and elements of any design or works that do not appear to offer good value for money. The Contractor shall ensure and provide evidence when requested that all imposed quality standards and compliance with regulatory standards are met.
- 7 If required, the Contractor and its Supply Chain members shall forthwith produce for inspection original documentation for work and/or services being carried out by the Contractor and such Supply Chain members.
- 8 The Contractor and its Supply Chain members shall maintain asset and equipment registers which shall be open to inspection by the Authority at regular intervals during the course of the Works and/or services.

Change

- 9 The following provisions are to be complied with in conjunction with the Change Control provisions in Schedule 4 (Change Control) and any similar provisions in any subcontracts.
- 10 Whether a Change is requested by the Authority or the Contractor himself or by the Contractor on behalf of its Supply Chain members, the party requesting such Change shall provide detailed and accurate statements particularising the work required for each proposed item of work ordered or the service required as appropriate.
- 11 Prior to any approval or authorisation of a Change, there shall be an inspection of the existing site conditions which are proposed to be altered, rectified or replaced by the Change. Such inspection(s) will be attended by the Contractor, and its Supply Chain member(s) and the Authority. No Change shall be carried out without paper authorisation.
- 12 The Contractor and its Supply Chain members shall keep original records of the results of any work and/or services undertaken in carrying out an approved Change which shall be produced for inspection and review by the Authority forthwith upon request.
- 13 The Contractor shall put in place a monitoring system for its managers and supervisors (who should be named as part of the Key Personnel) to check Change Orders raised in order to confirm the validity of such Change Orders. These checks shall be carried out at regular intervals on a weekly basis. If appropriate, meetings shall also be held and minuted to discuss any such Changes.
- 14 Site visits and random spot checks by supervisors are to be carried out during the carrying out of the design and construction of the Works. The Authority shall also be entitled to carry out such site visits and random spot checks at its discretion. The Contractor and its Supply Chain members shall take all practicable steps to assist the Authority by making areas accessible for inspection where work is being undertaken or where services are being carried out, answering

queries and providing other appropriate evidence of work and/or services carried out pursuant to the Change Order.

- 15 All documents provided by the Contractor and its Supply Chain members in support of work and/or services carried out shall be original and authentic, duly signed and authorised by the appropriate representatives.
- 16 Follow up checks to confirm that payments made are valid and relate to the correct Change Order in issue shall also be made by the Authority at its discretion. The Contractor and its Supply Chain members shall make every effort to assist the Authority without delay during the follow up checking process.

Invoicing and Payment

- 17 The following provisions are to be complied with in conjunction with the payment conditions under the Contract, which shall continue to have full force and effect.
- 18 The Contractor shall put in place a reconciliation system designed to match and compare invoices to avoid any duplication of work being claimed either intentionally or inadvertently during the payment process. This system shall also confirm proof of delivery of the work and/or service as appropriate.
- 19 The Contractor shall review and check the invoices submitted to it by its Supply Chain members for accuracy and validity.
- 20 Any verification of documentation is to be of original documentation. Copy documents are not to be submitted in place of originals unless such copies have been checked against the original, are marked as 'certified copies' and duly signed and dated accordingly.
- 21 The Authority shall be entitled to inspect all original invoices submitted by the Contractor and its Supply Chain members at any time.
- 22 The Contractor and its Supply Chain members shall permit inspection of the original documents and invoices by any fraud investigation body identified by the Authority, including but not limited to the Controller and Auditor General, the National Audit Office, the Defence Fraud Unit and by any specified personnel at any independent consultant so notified to the Contractor.

IT

- 23 The Contractor is encouraged to use an electronic communications system to improve communications with its Supply Chain members and with the Authority in connection with the Works and/or services. The following provisions shall apply where the Contractor and its Supply Chain members have in place at any time an electronic communications and/or approvals system (hereinafter referred to as a “**Central Database System**”).
- 24 Access to the Central Database System will be controlled by a Systems Administrator who shall be a single individual from an independent third party organisation agreed between the Contractor and Authority with experience in carrying out this function. Permission to access the Central Database System will only be provided through authorisation of the Systems Administrator. The Systems Administrator will keep a record of users and will act only on authorisation to permit user access from previously identified individuals within the Contractor, Supply Chain members of the Contractor and the Authority. Procedures should also be in place for Systems Administrators to check authorisation instructions for new users with a second person at the relevant organisation.

- 25 The Systems Administrator shall be regulated and monitored by the Authority and/or any of the bodies referred to in paragraph 22 (Invoicing and Payment) above by random spot checks and audit procedures as and when required. The Authority shall be entitled to remove a Systems Administrator in the event of dissatisfactory performance findings during the Contract.
- 26 The Contractor and its Supply Chain members shall be required to monitor and check information available to it and such Supply Chain members on the Central Database System at regular intervals. Upon a party opening the electronic database and accessing specific data therein, it shall be deemed to have read and received such specific data. Other users shall be notified accordingly through the Central Database System.
- 27 The Central Database System shall be capable of printing out reports and carrying out a full audit trail.
- 28 Where the Central Database System uses the Internet:
 - 28.1 the Central Database System address shall not be available on the Worldwide Web; and
 - 28.2 encryption shall not be less than 128 bit and shall extend to PC/server encryption for each session.
- 29 The Contractor and its Supply Chain members and any third party organisation which supplies and operates the Central Database System (“**the Systems Operator**”) shall take all practicable steps to ensure that the Central Database System is protected and secure by implementing all of the following minimum security measures and confirming in writing to the Authority that such measures are in place upon entering into the Contract and subcontracts:
 - 29.1 requiring users to immediately change and personalise the allocated user name and password;
 - 29.2 requiring users to change personal passwords regularly;
 - 29.3 requiring irregular or rare users to re-register as users with expiry limits for non-use;
 - 29.4 limiting access permissions to parties depending upon the role and level of involvement of such parties in order to avoid users accessing sensitive or non-relevant information and data by way of controlled indexes;
 - 29.5 setting up controls to monitor users’ activities such as whether data is being read, amended, deleted, copied etc;
 - 29.6 setting up secure data centres which are to be physically secure so that servers may be safely housed; and
 - 29.7 setting up measures to protect the security of PCs and laptops outside office hours.
- 30 The following additional measures are highly recommended and the Contractor and its Supply Chain members shall each use its best endeavours to ensure that the Central Database System meets these controls prior to the Contractor and its Supply Chain members’ entering into the respective contracts. The Contractor must notify the Authority before entering into the Contract if the Central Database System it proposes to use will fail to meet any of the following measures and the Authority shall have discretion not to permit the use of the Central Database System should it fail to do so:

- 30.1 implementing a Positive Client Identification System which denies access to users attempting to access information from different computers and denies access and/or shuts down upon detection of unusual user activity. This system shall also be capable of informing Central Database System users and/or the Systems Administrator and/or the Systems Operator of such security breaches;
 - 30.2 implementing a Sheep Dip File to check for viruses prior to any uploading to the main server;
 - 30.3 implementing a Fire Walls Protection System which is designed to track unsuccessful access attempts; and
 - 30.4 commissioning an independent company to test the integrity of the Central Database System and to report on its effectiveness in advance of its implementation and widespread use.
- 31 On request, the Systems Administrator shall permit the Authority and the National Audit Office access to all files within the Central Database System relating to the Contract.
- 32 The Contractor shall put in place a Disaster Recovery Strategy in respect of the Central Database System before entering into the Contract and notify the Authority of that Strategy and of the measures which the Contractor shall adopt to ensure the availability and integrity of information contained in and generated by the Central Database System in these circumstances.
- 33 Any failure by the Contractor to comply with the provisions of this manual shall entitle the Authority to terminate the Contract pursuant to condition 8.2.6.8 (Termination) if any such failure is not rectified within a period of 14 days from notice of the relevant failure, unless the failure is (in the reasonable opinion of the Authority) incapable of remedy, in which case the 14 day notice period shall apply. This provision is to be mirrored in all subcontracts entered into by the Contractor.

Appendix 2
MOD Policy Statement on Fraud & Theft
For Construction Industry Suppliers

[Note: Appendix 2 is to be updated once a new anticipated policy statement is published by MOD Commercial Policy]

Introduction

This document sets out the MOD Construction Industry policy in relation to Fraud and Theft. It is intended to ensure that all Construction Industry Suppliers employed on the MOD Estate understand the MOD's policy on the detection and deterrence of fraud and what is expected of them.

Fraud includes dishonest acts committed by the employees of the Department, by external individuals or groups, or by employees and external parties working together, to gain a financial advantage from the Department. Corruption involves external parties, or anyone else making payments to, or bestowing benefits on, an employee with the intention of influencing them to act in a way that is against the interests of the Department. Where corruption is involved there may not be any immediate loss to the Department but positions of trust may have been abused. For the purposes of this paper, fraud and corruption are considered together.

The Ministry of Defence's policy on fraud

The Ministry of Defence has stated that dishonest and illegal activity will not be tolerated under any circumstances, irrespective of any loss or gain to the Department or others. Furthermore, the Department undertakes to investigate all cases of suspected fraud, theft and irregularity and, where appropriate, to prosecute cases or take disciplinary action.

What are fraud and corruption?

Fraud is defined as all those activities involving dishonesty that can drain value from a business, individual or public body, directly or indirectly, whether or not there is personal benefit to the fraudster. The Theft Acts of 1968 and 1978 (as amended by the Fraud Act 2006) cover the offences generally referred to as fraud and it is for the court to determine in a particular instance whether fraud has occurred. The Government Internal Audit Manual defines fraud as the use of deception with the intention of obtaining an advantage, avoiding an obligation or causing loss to another party.

Corruption is defined in the Prevention of Corruption Act, 1906, S.1 (1) (as replaced by the Bribery Act 2010) and is the offering, giving, soliciting or acceptance of an inducement or reward which may influence a person to act against the interests of the organisation. The Act of 1906 applies to Crown Servants and employees of local authorities. The Prevention of Corruption Act, 1916 and the Criminal Justice Act, 1967 (as replaced by the Bribery Act 2010) increased the penalties for corruption.

Principal differences between civil and criminal fraud cases relate to the burden of proof and the sanctions available. Generally the burden of proof required in a civil case is lower than that required in a criminal case.

Procurement Fraud

Procurement Fraud is the term used by the Department to cover cases of fraud and corruption which involve a contractor or supplier (or potential contractor or supplier); this definition is deemed to

include any companies or organisations that are, or are potentially, Supply Chain members of such contractors or suppliers. Some examples of procurement fraud are:

- Submission of false or duplicate invoices
- Submission of claims for interim payment before entitlement
- Supply of sub-standard items, sometimes in forged maker's packs
- False certification of quality or quantity of goods
- False statements at price meetings or on quotation
- Submission of rigged bids in competition (secret cartels)
- Obtaining inside information on rival bids or MOD procurement plans
- False accounting or cross-contract cost transfers
- False claims for Supply Chain members' or suppliers' costs
- Unauthorised use of government furnished stores or equipment
- Rigging of specifications in favour of one contractor
- Underbidding with a view to recouping costs unfairly later
- Corruption or attempted corruption of MOD personnel

Action required of Construction Industry Suppliers by the MOD

The MOD expects and requires all Civilian and Service Personnel, described collectively as "Crown Servants", to observe high standards of personal honesty and integrity and to ensure all Departmental business is carried out in a manner that conforms to the same high standards. In particular:

- Dishonest activity will not be tolerated.
- The Department will cause all suspected or attempted fraud to be investigated by the relevant authorities in order that prosecution or civil action can be undertaken where appropriate.
- Under the Prevention of Corruption Act 1916 (as replaced by the Bribery Act 2010), any money, gift or other consideration (including hospitality) received by a Crown Servant from a person or organisation holding or seeking to obtain a government contract will be deemed by the Courts to have been received corruptly unless proved to the contrary by the defendant.

The Department must be able to demonstrate the same level of confidence in Construction Industry Suppliers that it has in its Crown Servants. It needs this because it has a responsibility for safeguarding public funds, including the prevention and detection of fraud in all areas. That level of confidence does not presently exist.

The MOD spends substantially in excess of One Billion Pounds (£1Bn) each year on its estate. It believes that a significant element of this expenditure is at risk of fraud (that is, spent in ways that are inadequately controlled, audited and monitored).

It will take a period of time to establish the level of confidence required in suppliers' procedures, and it will only come about by the efforts of suppliers themselves. These efforts are not viewed by the MOD as new or onerous; indeed in seeking the following information, the MOD is merely asking to see what it is entitled to assume already exists, as a matter of good business practice.

The contractor's anti-fraud measures

As a minimum, these should include:-

- ***A statement of commitment to ethical business behaviour***
- ***A fraud policy statement***
- ***A fraud response plan***

In future each supplier will be required to provide detailed information covering the totality of its anti-fraud measures. As a minimum, these measures are expected to include:-

- **A statement of commitment to ethical business behaviour** (laying down parameters of what is, and is not, considered acceptable behaviour on the part of personnel)
- **A fraud policy statement**, which should address, inter alia:-
 - Allocation of responsibilities for the overall management of fraud,
 - The procedures which all personnel, Supply Chain members and suppliers should follow if a fraud or suspected fraud is
 - Guidance on training for the protection and prevention of fraud
 - Reference to the response plans that have been devised to deal with and minimise the damage caused by any fraud or attempted fraud
- **A fraud response plan**, whose objective is to ensure that timely and effective action can be taken to:-
 - Prevent losses of funds or other assets where fraud has occurred and to maximise recovery of losses
 - Minimise the occurrence of fraud by taking rapid, appropriate and effective action at the first sign of fraud or possible fraud
 - Identify the fraudsters and maximise the success of any disciplinary/legal action taken
 - Identify any lessons which can be acted upon in managing fraud in the future
 - Reduce any adverse impacts on the contractor and the MOD

The **fraud response plan** should address the following areas:-

- The Director to whom the fraud or suspicion of fraud and cases of sharp practice and poor performance should be reported in the first instance
- The contact point in DIO to whom the fraud or suspicion of fraud should be reported by that Director; all fraud, suspected fraud and cases of sharp practice and poor performance must be reported to the contact point:-

Fraud Prevention Unit,
DIO Fraud Focal Point
Defence Infrastructure Organisation, St. Georges House, Kingston Road, Sutton Coldfield,
West Midlands, B75 7RL
Telephone 0121 3113840

Alternatively

Defence Irregularity Reporting Cell (DIRC)
Room 209
Building 1071
MDPGA HQ
Wethersfield
Braintree
Essex CM7 4AZ
Telephone 0800 161 3665 (UK) or +44 1371 85 4881 (Overseas)

- How the Contractor should investigate the fraud or suspected fraud together with what steps should be taken to minimise or eliminate the potential loss from the fraud or suspected fraud
- How to ensure that any evidence is secured in a legally admissible form
- If, when and how to contact the police (which is patently easier if arrangements are already in place)
- How to initiate recovery action
- Who else needs to be contacted
- How to disseminate lessons learned to interested parties
- How to protect informants from reprisals whilst at the same time ensuring adequate arrangements are in place to protect individuals from unfounded or malicious allegations
- How the supplier will ensure that his Supply Chain comply with all aspects of his fraud response plan

A **fraud response plan** is, by definition, a complex document, because the subject it deals with is potentially very complex, with a large number of possible variations and permutations. It should ensure that each situation is dealt with in the most appropriate fashion.

In providing copies of the above 3 documents (and any other document considered relevant), the contractor should state for each document:-

- Date of issue
- Nature & extent of its dissemination
- Frequency of updates

Conclusion

The deterrence and detection of fraud involving expenditure on its estate is a very high priority for the Department. The robustness of suppliers' anti-fraud measures will be examined increasingly

thoroughly now and in the future, and the MOD will seek to protect the public purse by only doing business with suppliers who satisfy it that they take fraud as seriously as it does.

8th March 2001 approved by Fraud Prevention Steering Group (FPSG), name changed to Construction Fraud Initiative Steering Group (CFISG) on 2nd November 2001.

Appendix 3
Additional security measures
Provisions to be included in relevant subcontracts

Definition

1. In this Appendix:-
 - 1.1. “**secret matter**” means any matter connected with this agreement, or its performance which the Contractor informs the Supply Chain member, in writing, has been designated by the Authority as ‘Top Secret’, ‘Secret’, or ‘Confidential’, and shall include any information concerning the content of such matter and anything which contains or may reveal that matter;
 - 1.2. “**employee**” shall include any person who is an employee or director of the Supply Chain member or who occupies the position of a director of the Supply Chain member, by whatever title given; and
 - 1.3. the “**Authority**” means the Secretary of State for Defence.

The Official Secrets Acts

2. The Supply Chain member shall:-
 - 2.1. take all reasonable steps to ensure that all employees engaged on any work in connection with the agreement to which this Appendix applies have notice that the Official Secrets Acts 1911-1989 apply to such employees and will continue so to apply after the completion or termination of the agreement to which this Appendix applies; and
 - 2.2. if directed by the Contractor or the Authority, ensure that any employee shall sign a statement acknowledging that, both during the term of the agreement to which this Appendix applies and after its completion or termination, such employee is bound by the Official Secrets Acts 1911-1989 (and where applicable by any other legislation).

Security measures

3. Unless a Supply Chain member or any of its employees has the written authorisation of the Authority to do otherwise, neither the Supply Chain member nor any of its employees shall, either before or after the completion or termination of the agreement to which this Appendix applies, do or permit to be done anything which such Supply Chain member or any of its employees know, or ought reasonably to know, may result in secret matter being disclosed to, or acquired by, a person in any of the following categories:-
 - 3.1. who is not a British citizen;
 - 3.2. who does not hold the appropriate level of security clearance;
 - 3.3. in respect of whom the Authority of the Contractor has notified the Supply Chain member in writing that the secret matter shall not be disclosed to or acquired by that person;
 - 3.4. who is not an employee of the Supply Chain member; or

- 3.5. who is an employee of the Supply Chain member who has no need to know the information for the proper performance of this agreement.
4. Unless a Supply Chain member and its employees has the written permission of the Authority or the Contractor to do otherwise, the Supply Chain member and its employees shall, both before and after the completion or termination of the agreement to which this Appendix applies, take all reasonable steps to ensure that:-
 - 4.1. no photograph of, or pertaining to, any secret matter shall be taken and no copy of, or extract from, any secret matter shall be made, except to the extent necessary for the proper performance of this agreement; and
 - 4.2. any secret matter is at all times strictly safeguarded in accordance with the Authority's 'Manual of Protective Security' and, upon request, is delivered up to the Authority who shall be entitled to retain it.
5. A decision of the Authority on the question of whether the Supply Chain member has taken, or is taking, reasonable steps as required by paragraph 4 (Security measures), shall be final and conclusive.
6. The Supply Chain member shall:-
 - 6.1. provide to the Authority or the Contractor:-
 - 6.1.1. upon request, such records giving particulars of those employees who have had, at any time, access to any secret matter that is required to be kept in accordance with paragraph 4.2 (Security measures);
 - 6.1.2. upon request, such information as the Authority or the Contractor may from time to time require so as to be satisfied that the Supply Chain member and its employees are complying with its obligations under this paragraph, including the measures taken or proposed by the Supply Chain member so as to comply with its obligations and to prevent any breach of such obligations; and
 - 6.1.3. full particulars of any failure by the Supply Chain member and its employees to comply with any obligations relating to secret matter arising under the agreement to which this Appendix applies immediately upon such failure becoming apparent; and
 - 6.2. ensure that, for the purpose of checking the Supply Chain member's compliance with the obligation in paragraph 4.2 (Security measures), a representative of the Contractor or the Authority shall be entitled, at any time, to enter and inspect any premises used by the Supply Chain member which are in any way connected with the agreement to which this Appendix applies and inspect any document or thing in any such premises, which is being used or made for the purposes of the agreement to which this Appendix applies. Such representative shall be entitled to all information that it may reasonably require.
7. If at any time, either before or after the completion or termination of the agreement to which this Appendix applies, the Supply Chain member or any of its employees discovers or suspects that an unauthorised person is seeking, or has sought, to obtain information directly or indirectly concerning any secret matter, the Supply Chain member shall forthwith give full particulars of the matter to the Authority.

Supply Chain Member

8. If the Supply Chain member proposes to make a sub-subcontract which will involve the disclosure of secret matter to a sub-subcontractor, the supply Chain member shall:-
 - 8.1. submit for the approval of the Authority the name of the proposed sub-subcontractor, a statement of the work to be carried out and any other details known to the Supply Chain member which the Authority shall reasonably require;
 - 8.2. incorporate into such sub-subcontract the terms of this Appendix (with such amendments only as may be necessary according to the context) and such secrecy and security obligations as the Authority shall direct; and
 - 8.3. inform the Authority immediately the Supply Chain member becomes aware of any breach by the sub-subcontractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the sub-subcontract.

Termination

9. Where the Authority considers the circumstances of the breach jeopardise the secrecy or security of the secret matter and notifies the Contractor accordingly, the Contractor shall be entitled to terminate the sub-subcontract immediately if:-
 - 9.1. the sub-subcontractor is in breach of any obligation under this Appendix; or
 - 9.2. the sub-subcontractor is in breach of any secrecy or security obligation imposed by any other contract with the Crown.

Appendix 4
Trust Deed

THIS DEED is made the [*insert date figure in words*] day of [*insert month in words*] 201[]

BETWEEN:

- (1) The Authority (as detailed in Schedule 2 to this Deed);
- (2) The Contractor (as detailed in Schedule 2 to this Deed); and
- (3) The Sub-Contractors (as detailed in Schedule 2 to this Deed),

collectively referred to in this Deed as **“the Parties”** and **“Party”** shall be construed accordingly.

Background

- A. The Authority has engaged the Contractor to carry out [*insert project title*] under Contract Number [*insert contract number*].
- B. To assist in the development and performance of the Works, the Contractor has engaged the Sub-Contractors to carry out certain parts of the work required in respect of the Project as set out in more detail in the Sub-Contracts.
- C. The Parties wish to adopt a payment mechanism which will (i) ensure the ‘Fair Payment’ of both the Contractor and the Sub-Contractors; and (ii) ensure that the Sub-Contractors receive payment at the same time as the Contractor. To achieve this objective, the Parties have agreed to operate a bank account in accordance with the terms of this Deed.

NOW THIS DEED WITNESSES:

1 Definitions and Interpretation

- 1.1 Unless the context otherwise requires or this deed specifically provides otherwise, the following words and phrases, where such words and phrases appear in capitalised form in this deed, shall have the following meanings:

“Account Holders”	the Authority and the Contractor;
“Bank”	the Bank (including its successors and assigns) where the Bank Account will be held as set out in Schedule 2 to this Deed;
“Bank Account”	a Bank Account opened with the Bank which has no overdraft facility, into which all monies due under the Contract will be paid by the Authority in accordance with this Deed;
“Bank Mandate”	the instructions as to the operation of the Bank Account as agreed between the Account Holders and the Bank as set out in Schedule 3 to this Deed;
“Completion Payment”	has meaning given to it in the Contract;

“Contract”	the contract between the Authority and the Contractor in respect of the Project as detailed in Schedule 2 to this Deed;
“Final Date for Payment”	has meaning given to it in the Contract;
“Progress Payment”	has meaning given to it in the Contract;
“Project”	the project defined in Schedule 2 to this Deed;
“Sub-Contract”	a sub-contract agreement between a Sub-Contractor and the Contractor in respect of the Project; and
“Term”	from the date of this Deed until such time as all monies due to the Contractor and the Sub-Contractors under the Contract and/or the Sub-Contracts have been paid in full.

1.2 In this Deed, unless the context otherwise requires:

- 1.2.1 the headings are included for convenience only and shall not affect the interpretation of this Deed;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 a gender includes any other gender; and
- 1.2.4 a reference to a “person” includes any individual, firm, partnership, company and any other body corporate.

2 Bank Account

- 2.1 The Account Holders undertake to open a new interest-bearing deposit Bank Account with the Bank, such account to be opened and held in the names of the Account Holders.
- 2.2 The Authority undertakes to pay all monies due to the Contractor under the Contract into the Bank Account as and when such monies become due for payment in accordance with the terms of the Contract.
- 2.3 The Parties agree that any monies paid into the Bank Account shall, as from the date on which such monies are paid into the Bank Account, be kept separate and distinct and clearly identifiable, and shall be held in trust for each of the Contractor and the Sub-Contractors in the amounts owing to them as set out in the Account Holders’ instructions to the Bank for the payment of monies to the Contractor and the Sub-Contractors. The Contractor and the Sub-Contractors acknowledge that they have no rights and/or interest in the monies held in the Bank Account other than as a beneficiary of the monies owing to them.
- 2.4 If for any reason the total amount of monies deposited by the Authority in the Bank Account is less than the total amount of monies which has been authorised by the Account Holders for payment to the Sub-Contractors and the Contractor, the monies held in the Bank Account shall be allocated to and held on trust for each of the Sub-Contractors and the Contractor in the same proportions that the monies owed to them bear to the total amount of monies shown as due to them in the Account Holders’ instructions to the Bank.

- 2.5 The Authority acknowledges that, as and when the monies are paid by it into the Bank Account in accordance with the Contract, it will cease to have any further rights and/or interest in such monies.
- 2.6 The Account Holders accept that, irrespective of any disputes, which may arise in respect of work performed by the Contractor and/or the Sub-Contractors, the Account Holders may not withdraw any monies from the Bank Account (other than in the case of the Contractor where it may withdraw monies owned by it) to which it is beneficially entitled under the terms of this Deed.

3 Operation of the Bank Account

- 3.1 The Account Holders each agree that:
- 3.1.1 they will sign the Bank Mandate on the date of this Deed;
 - 3.1.2 they will operate the Bank Account at all times in accordance with the Bank Mandate, this Deed and the Contract. If there is any conflict between the Bank Mandate, this Deed and/or the Contract, the documents shall take precedence in the following order:
 - 3.1.2.1 this Deed;
 - 3.1.2.2 the Bank Mandate; and
 - 3.1.2.3 the Contract;
 - 3.1.3 the Bank Account shall not become overdrawn;
 - 3.1.4 they will keep accurate, complete and up to date books of account and records of all transactions relating to the Bank Account, including but not limited to details of all payments into the Bank Account and all payments out of the Bank Account authorised by the Account Holders and any Bank charges payable;
 - 3.1.5 if the Account Holders have the ability to authorise transactions in respect of the Bank Account via an electronic facility operated by the Bank, each Account Holder shall ensure that its access details for such facility are only made available to those of its employees and/or representatives which need to know such information, and that such employees and/or representatives are aware of the confidential nature of the access details, the Bank Account details and the Bank Account transactions;
 - 3.1.6 they are each responsible for the acts and/or omissions of their own employees and/or other representatives as if they were its own acts and/or omissions;
 - 3.1.7 they are each liable for their own acts and/or omissions under this Deed and have no liability for the acts and/or omissions of the other Account Holder; and
 - 3.1.8 they hold all monies in the Bank Account on trust for the full and exclusive benefit of the Contractor and the Sub-Contractors in accordance with clauses 2.3 and 2.4 above.
- 3.2 As and when a Progress Payment or Completion Payment is agreed or determined in accordance with condition 9 (Resolution of Disputes) under the Contract, the Account Holders shall identify any payments due under the Contract and the Sub-Contracts and:

- 3.2.1 the Authority shall pay the monies due under the Contract into the Bank Account in such time so as to provide cleared funds not later than the Final Date for Payment; and
- 3.2.2 the Account Holders shall promptly authorise the Bank to make any payments due pursuant to the Contract and/or Sub-Contract to the Sub-Contractors and/or the Contractor from the Bank Account.
- 3.3 The Contractor agrees to inform each of the Sub-Contractors of the amounts which are to be paid to them from the Bank Account and the date on which the Sub-Contractor can expect to receive such payment on the same day as the Account Holders authorise the payments out of the Bank Account.
- 3.4 All payments to the Sub-Contractors and the Contractor shall be made by bank transfer BACS. The Contractor shall inform the Authority and the Sub-Contractors shall inform the Account Holders of their relevant bank account details and keep them up to date at all times. The Sub-Contractors and the Contractor accept that failure to do so may result in monies not being paid to them and that the Account Holders have no liability for such non-payment.
- 3.5 Any interest paid by the Bank in respect of the monies held in the Bank Account shall belong to the Contractor and may be withdrawn by the Contractor at the end of the Contract as defined in Contract Number [*insert contract number*].
- 3.6 Any bank charges, money transmission costs and other disbursements incurred in the establishment and operation of the Bank Account shall be borne by the Contractor.
- 3.7 Neither of the Account Holders (as trustees pursuant to this Deed) shall be liable to, as applicable, the Contractor or Sub-Contractors (as beneficiaries pursuant to this Deed) for any loss to the amounts standing to the credit of the Bank Account or any loss of interest from any act or default unless such loss arises from the relevant Account Holder's wilful default or negligence.

4 New Sub-Contractors

- 4.1 If the Contractor appoints a new Sub-Contractor in respect of the Contract after the date of this Deed and agrees with that new Sub-Contractor that it shall be paid via the Bank Account, the Account Holders shall arrange for the new Sub-Contractor to sign a deed of adherence in the form set out in Schedule 1 to this Deed.
- 4.2 The Parties agree that, in signing the deed of adherence, the Account Holders are signing on behalf of themselves and as agent for each of the Sub-Contractors. Each Sub-Contractor agrees to be bound by the terms of any deed of adherence validly executed by the Account Holders on behalf of all the Parties.

5 Removal of Sub-Contractors

- 5.1 If prior to the expiry of the Term a Sub-Contractor ceases to be involved in the Project for whatever reason (including but not limited to the termination of its Sub-Contract), the Account Holders shall arrange for the payment out of the Bank Account to the Sub-Contractor of any monies held on trust for the benefit of that Sub-Contractor.
- 5.2 On payment of all the monies due to it from the Bank Account in accordance with clause 5.1 above, the Sub-Contractor shall cease to have any further rights and/or interest in the Bank Account.

6 Confidentiality

- 6.1 No Party shall use and/or disclose any confidential information, which is acquired by it about another Party's business and/or given to it by another Party to this Deed except in the proper performance of this Deed.

7 Termination

- 7.1 This Deed shall continue for the Term, subject to early termination in accordance with clause 7.2 below.
- 7.2 This Deed shall immediately terminate if:
- 7.2.1 the Parties agree in writing that the Deed should terminate; and/or
 - 7.2.2 the Contract terminates and no amounts remain outstanding under the Contract and all monies have been paid out from the Bank Account.
- 7.3 On termination of this Deed the Account Holders undertake to ensure all monies held on trust for the benefit of the Contractor and/or the Sub-Contractors and held in the Bank Account are promptly paid to the relevant Parties (less any outstanding bank charges and expenses).

8 General

- 8.1 This Deed contains the whole agreement in relation to the operation of, and monies standing to the credit of, the Bank Account between the Parties and it supersedes any prior written or oral agreement between them and is not affected by any other promise, representation, expectation, warranty, usage, custom or course of dealing. The Parties confirm that they have not entered into this Deed on the basis of any representation that is not expressly incorporated into this Deed. Nothing in this Deed shall exclude liability for any fraudulent statement or act made prior to the date of this Deed.
- 8.2 No waiver by any Party of any breach of this Deed shall be considered a waiver of any subsequent breach of the same provision or any other provision.
- 8.3 The invalidity, illegality or unenforceability of any of the provisions of this Deed shall not affect the validity, legality or enforceability of any of the remaining provisions of this Deed.
- 8.4 No Party shall be liable for any delay or failure in performing its obligations under this Deed as a result of reasons beyond its reasonable control, including but not limited to Bank operational fault or payment system shutdown, acts of God, war, flood, fire, labour disputes, sub-contractor delays, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, governmental actions and any other similar events. Failure to make payment due to insufficient funds in the Bank Account is not a force majeure event.
- 8.5 Each of the Sub-Contractors is only liable for its own acts and/or omissions under this Deed and not the acts and/or omissions of any of the other Sub-Contractors. The Sub-Contractors are not jointly and severally liable under this Deed.
- 8.6 No Party shall without the written consent of the other Parties assign this Deed or any rights under it.
- 8.7 None of the items and conditions of this Deed shall be enforceable by any person who is not a party to it.

8.8 This Deed (including any non-contractual disputes or claims related to the Deed) is governed by and interpreted in accordance with English law and the Parties agree to submit to the exclusive jurisdiction of the English courts.

IN WITNESS this document is executed as a Deed but not delivered until the date stated at the beginning of it.

The corporate seal of **THE SECRETARY
OF STATE FOR DEFENCE**

hereunto affixed is authenticated by:

.....
Authorised Signatory

.....
Authorised Signatory

EXECUTED and DELIVERED as a DEED
by [INSERT NAME OF CONTRACTOR]
acting by:

Director

Director/Secretary

EXECUTED and DELIVERED as a DEED
by [INSERT NAME OF SUB-CONTRACTOR] ¹
acting by:

Director

Director/Secretary

¹ Insert execution clause for each Sub-Contractor

Schedule 1 to Appendix 4

Deed of Adherence

THIS DEED OF ADHERENCE is dated the *[insert date figure in words]* day of *[insert month]* 201[]

BETWEEN:

- (1) **THE CURRENT PARTIES** (as defined below); and
- (2) *[INSERT NAME OF NEW SUB-CONTRACTOR]* (*insert company number*) whose registered office is at *[insert address]* (“**New Party**”)

Background

- A. The Current Parties have entered into a Deed dated *[insert Deed date]* which governs the operation of a Project Bank Account (as defined below) (“**PBA**”) into which all monies due under the Contract (as defined below) are paid.
- B. The New Party is a Sub-Contractor of *[insert name of Sub-Contractor]*. It has been agreed by the Authority and the Contractor that the New Party will be paid for its work using the PBA.
- C. This Deed of Adherence constitutes the terms upon which the New Party agrees to be paid for the work it performs for the Contractor via the PBA and sets out the New Party’s rights and interests in the monies contained within the PBA.

1. **Definitions**

- 1.1 In this Deed the following words have the following meanings:

“Admission Date”	<i>[insert date]</i> ;
“Authority”	The Secretary of State for Defence acting through Defence Infrastructure Organisation Commercial at Delancey Building, Ground Floor (IDL 448), Marlborough Lines, Monxton Road, Andover, Hampshire, SP11 8HJ (including his successors and assigns);
“Contract”	the contract between the Authority and the Contractor dated <i>[insert date]</i> for <i>[insert the project title]</i> ;
“Contractor”	<i>[insert Contractor name and company registration number]</i> ;
“Current Parties”	the persons/organisations whose names are set out in Annex 1 to this Deed of Adherence being the current parties to the Deed;
“Deed”	the Deed between the Current Parties dated [] which sets out the basis on which the Project Bank Account is to be operated;
“Project Bank Account”	the Bank Account held in the name of the Authority and the Contractor at <i>[Barclays Bank Plc/Bank of Scotland Plc]</i> account number <i>[insert bank account number]</i> into which all monies due in respect of the Contract are to be paid.

2. Admission

- 2.1 The New Party will be added as a party to the Deed on the Admission Date.
- 2.2 The New Party agrees to be bound by the Deed in relation to the Current Parties as from the Admission Date as if the New Party was an original party to the Deed.
- 2.3 The Current Parties agree to be bound by the Deed in relation to the New Party as from the Admission Date as if the New Party was an original party to the Deed.

3. General

- 3.1 The Authority and the Contractor are authorised by the remaining Current Parties to enter into and execute this Deed on behalf of all the Current Parties as their agent.
- 3.2 This Deed of Adherence is governed by English law and the Parties agree to submit to the exclusive jurisdiction of the English Courts.

IN WITNESS this document is executed as a Deed but not delivered until the date stated at the beginning of it.

The corporate seal of **THE SECRETARY
OF STATE FOR DEFENCE**

hereunto affixed is authenticated by:

.....

Authorised Signatory

.....

Authorised Signatory

EXECUTED and DELIVERED as a DEED
by [INSERT NAME OF CONTRACTOR]
acting by:

Director

Director/Secretary

EXECUTED and DELIVERED as a DEED
by [INSERT NAME OF NEW PARTY]
acting by:

Director

Director/Secretary

Annex 1 to Schedule 1 of Appendix 4

The Current Parties

[Insert details of the current parties to the Deed]

Schedule 2 to Appendix 4**Details**

Authority	Defence Infrastructure Organisation (DIO) Commercial, Delancey Building, Ground Floor (IDL 448), Marlborough Lines, Monxton Road, Andover, Hampshire, SP11 8HJ
Contractor	<i>[insert name, address and company number of the Contractor]</i>
Sub-Contractors	<i>[insert names, addresses and company numbers for each Sub-Contractor who will be a party to this Deed]</i>
Bank	<i>[insert details of the Bank which will operate the Project Bank Account]</i>
Contract	Contract between (1) the Authority and (2) the Contractor in respect of the Project and dated <i>[insert date]</i> with Contract Number <i>[insert contract number]</i>
Project	<i>[insert project title]</i>

Schedule 3 to Appendix 4

Bank Mandate

[Insert the instructions as to the operation of the Bank Account as agreed between the Account Holders and the Bank.]

(Use of Barclays Bank PLC/Bank of Scotland Plc)

Appendix 5
Required Insurances

1. Protection and Indemnity Insurance

1.1 Insured

Contractor

1.2 Insured Property

Any vessels/ and/or craft used for or in connection with the Contract for which the Insured may be responsible.

1.3 Insured

To indemnify the Insured in respect of all claims that it may become legally liable to pay (including claimants' costs and expenses) in respect of:

1.3.1 death or bodily injury to or sickness of any person;

1.3.2 loss or damage to property;

1.3.3 removal of wreck;

1.3.4 pollution; and/or

1.3.5 collision liability

happening during the Period of Insurance (as defined in paragraph 1.9 below) and arising out of or in connection with the Contract plus provision to include cover features and extensions.

1.4 Limit of Indemnity

Not less than (in respect of any one occurrence, the number of occurrences being unlimited in any one annual policy period):

1.4.1 general; unlimited as per ig rules

1.4.2 oil pollution; unlimited as per ig rules

1.4.3 liabilities and expenses caused by oil pollution during salvage operations where they arise in respect of the insured vessel and/or craft; unlimited as per ig rules (damage caused by the ship and thus during salvage-activities caused by salvers ship)

1.4.4 contractual liability (vessel specific) and where such cover has been agreed by insurers in writing upon such terms as insurers may require; \$500M however in the case of dredging/rock dumping activities €165M

1.4.5 special operations (vessel specific) and where such cover has been agreed by insurers in writing upon such terms as insurers may require; \$500M however in the case of dredging/rock dumping activities €165M and

1.4.6 tank cleaning (specialist operation vessel specific) and where such cover has been agreed by insurers in writing upon such terms as insurers may require; “not applicable but \$500M”

and such other amount or amounts as are available from Clubs that are members of the International Group of P&I Clubs.

1.5 Maximum Deductible

Not to exceed as follows; Vessels up to 2,000gt; \$30,000 – any one event, in respect of all claims under rules 3.6, 3.7 and 3.9; \$250,000 – any one event, in respect of all personal injury claims and pollution claims subject to US jurisdiction; \$15,000 – any one event, all other claims. Vessels 2,000gt and above; \$50,000 – any one event, in respect of all claims under rules 3.6, 3.7 and 3.9; \$250,000 – any one event, in respect of all personal injury claims and pollution claims subject to US jurisdiction; \$30,000 – any one event, all other claims.

1.6 Territorial Limits

United Kingdom inland and territorial waters and voyages between, extended to cover all waters outside territorial limits necessary within the scope of the Contract but no wider than Institute Trading Warranties.

1.7 Jurisdiction relating to policy interpretation

[English Courts.]

1.8 Choice of Law

[This insurance shall be governed in accordance with the laws of England and Wales.]

1.9 Period of Insurance

From the date of this Contract for the Contract term.

1.10 Cover Features and Extensions

1.10.1 Contractual towage liabilities

1.10.2 Contractual liability

1.10.3 Liability to persons being carried on board insured vessels

1.10.4 Specialist operations (vessel specific)

1.11 Principal Exclusions

1.11.1 Nuclear/radioactive risks

2. Professional Indemnity Insurance

2.1 Insured

Contractor

2.2 Interest

To indemnify the Insured for all sums which the Insured shall become legally liable to pay (including claimants costs and expenses) as a result of any claim or claims first made against the Insured during the Period of Insurance (as defined in paragraph 2.8 below) by reason of any negligent act, error and/or omission arising from or in connection with professional services associated with the Contract.

2.3 Limit of Indemnity

Not less than one million pounds (£1,000,000) in respect of any one claim, and in the annual aggregate during the period of insurance.

2.4 Maximum Deductible

Not to exceed €10,000,000 each and every claim.

2.5 Territorial Limits

United Kingdom.

2.6 Jurisdiction relating to policy interpretation

[English Courts]

2.7 Choice of Law

[This insurance shall be governed in accordance with the laws of England and Wales].

2.8 Period of Insurance

From the date of the Contract until completion of the Works and a period of twelve (12) years following the expiry or termination of the Contract whichever occurs earlier.

2.9 Cover Features and Extensions

2.9.1 Loss of documents and computer records extension.

2.9.2 Legal liability assumed under contract, duty of care agreements and collateral warranties.

2.9.3 Retroactive cover from the date of the Contract or retroactive date no later than the date of the Contract.

2.10 Principal Exclusions

2.10.1 War and related perils

2.10.2 Nuclear/radioactive risks

2.10.3 Insolvency of the Insured

2.10.4 Bodily injury, sickness, disease or death sustained by any employee

Appendix 6
Contractor Commercially Sensitive Information

Description of Contractor Commercially Sensitive Information	
Cross reference to location of Contractor Commercially Sensitive Information in Contract	
Explanation of sensitivity	
Details of potential harm resulting from disclosure	
Period of confidence	
Contact details for Transparency/Freedom of Information matters	

Appendix 7
Risk Register

Appendix 8

Obstruction Strategy

1 Definitions

In this Appendix the following words and expressions shall have the following meanings:-

“Alternative Recovery Plant” means equipment with a lifting capacity of 40 tonnes for the purpose of recovering Obstructions and transferring Obstructions to shore for disposal, which cannot be recovered and transferred by the Standing Recovery Plant, and for which the Pricing Document sets out applicable rates;

“Contract Pay Lines” means the limits of the areas designated to be dredged and the levels to which the dredging shall be carried out as set out in the drawings listed at paragraph 1.4 (Drawings) of the Specification.

“Exceptional Recovery Methods” means equipment for the purpose of recovering Obstructions and transferring Obstructions to shore for disposal, which cannot be recovered and transferred by the Standing Recovery Plant or the Alternative Recovery Plant;

“Standing Recovery Plant” means a pontoon mounted crane (or similar) with both grab and conventional lifting facilities and a minimum lifting capacity of 5 tonnes suitable for the purpose of recovering Obstructions and transferring Obstructions to shore for disposal;

“Standing Diving Capability” means a diving team and attendant vessels and equipment with the ability to undertake such diving operations as are required to assist with the removal of any Obstructions by the Standing Recovery Plant; and

“Standing Time” means any period for which the Works are stopped due to an Obstruction and calculated in accordance with paragraph 4.11 (Standing Time) of the Specification.

2 Debris

- 2.1 The Contractor shall remove and transfer any Debris encountered in the course of the Works ashore, wherever it is required to be removed in order for the Contractor to complete the Works, and dispose of such Debris in a licensed landfill site or as permitted in the Marine Management Organisation Licence.
- 2.2 The Contractor shall provide all equipment and personnel required to remove and transfer the Debris ashore at no extra charge to the Authority, including no charge for Standing Time, and the Authority shall pay the Contractor a tonnage rate for the disposal of any Debris onshore in accordance with the Pricing Document.

3 Dealing with Obstructions

- 3.1 If an Obstruction:

- 3.1.1 does not prevent the Contractor from completing the Works; or

- 3.1.2 if left in place will not protrude above the Contract Pay Lines,

then the DIO PM in its sole discretion may give its consent in writing for the Contractor to leave the Obstruction in place, otherwise paragraphs 4 (Removal of Obstructions by Standing Recovery Plant) to 7 (Standing Recovery Plant) shall apply.

3.2 If an Obstruction is a Small Obstruction then the provisions of paragraph 4 (Removal of Obstructions by Standing Recovery Plant) shall apply.

3.3 If an Obstruction is a Large Obstruction then the provisions of paragraph 5 (Removal of Obstructions by Alternative and Exceptional Recovery Methods) shall apply.

4 Removal of Obstructions by Standing Recovery Plant

4.1 If a Small Obstruction is required to be removed in order for the Contractor to complete the Works then the Contractor shall use the Standing Recovery Plant to remove and transfer that Obstruction ashore and dispose of it in a licensed landfill site or as permitted in the Marine Management Organisation Licence.

4.2 The Authority shall pay the Contractor a tonnage rate for the disposal of any Small Obstruction onshore in accordance with the Pricing Document.

5 Removal of Obstructions by Alternative and Exceptional Recovery Methods

5.1 If a Large Obstruction is required to be removed in order for the Contractor to complete the Works then the Contractor shall develop a removal methodology, specifying whether an Alternative Recovery Plant or Exceptional Recovery Method is required to remove the Large Obstruction, and submit the same to the DIO PM for approval. If the DIO PM rejects the removal methodology then the Contractor shall revise it until the DIO PM approves it, without limit on the number of iterations.

5.2 If the parties agree pursuant to paragraph 5.1 that the Large Obstruction shall be removed using:

5.2.1 an Alternative Recovery Plant then the Contractor shall mobilise and use such Alternative Recovery Plant to remove and transfer that Large Obstruction ashore and issue a Change Proposal in accordance with Schedule 4 (Change Control) in which case the Authority shall pay the Contractor in accordance with the applicable rates set out in the Pricing Document; or

5.2.2 an Exceptional Recovery Method then the Contractor shall mobilise and use such Exceptional Recovery Method to remove and transfer that Large Obstruction ashore and issue a Change Proposal in accordance with Schedule 4 (Change Control) in which case the parties shall agree appropriate payment in accordance with the procedures set out in Schedule 4 (Change Control),

and the Contractor shall dispose of the Large Obstruction in a licensed landfill site or as permitted in the Marine Management Organisation Licence in which case the Authority shall pay the Contractor a tonnage rate for the disposal of any Large Obstruction onshore in accordance with the Pricing Document.

6 Obstruction Standing Time

6.1 If any Obstruction encountered by the Contractor in the course of the Works delays the dredging equipment being employed for the Works in the relevant Zone at that time, the Contractor shall use its best endeavours to redeploy such dredging equipment to another Zone in order to progress the Works in that Zone, in which case the Authority shall pay the Contractor for Standing Time in accordance with the Pricing Document provided that:

- 6.1.1 Standing Time shall only be measured and paid for the period between cessation of the Works in the Zone in which the Obstruction is encountered and commencing Works at the alternative location (provided that an alternative location is available);
- 6.1.2 measurement of Standing Time shall stop when dredging equipment departs the Site to sail to a disposal site; and
- 6.1.3 the Contractor provides the Authority with records to substantiate any claim for Standing Time and the DIO PM agrees that such Standing Time has been properly incurred.

7 Standing Recovery Plant

- 7.1 For the duration of the Contract the Contractor shall provide:

- 7.1.1. maintain, fuel and crew the Standing Recovery Plant; and
- 7.1.2. the Standing Diving Capability,

each of which, subject to weather conditions, shall be suitable for deployment anywhere on the Site twelve hours a day, seven days a week, and at no extra charge to the Authority.

- 7.2 The Standing Recovery Plant shall be either self-propelled or provided with a dedicated tug and shall be fitted with suitable means of securing it in position during the process of recovering Obstructions.

8 Additional Divers

- 8.1 If additional divers to the Standing Diving Capability are required to assist with the removal of a Large Obstruction then the Contractor shall arrange for such dive equipment, team and vessel to be provided through its own resources or sub-contracting arrangements.
- 8.2 The Authority shall pay the Contractor for the dive equipment, team and vessel at the day rates set out in the Pricing Document provided that the Contractor:
 - 8.2.1. provides the Authority with records to substantiate any claim for diving costs and the DIO PM agrees that such costs have been properly incurred; and
 - 8.2.2. has utilised the Standing Diving Capability as far as is reasonably practicable prior to engaging any additional divers.

Appendix 9
Form of Payment Notices

Part 1: Payment Notices

MINISTRY OF DEFENCE

Project No:

DEFENCE INFRASTRUCTURE
ORGANISATION

Contract No:

PAYMENT NOTICE
UNDER THE CONDITIONS OF CONTRACT (COMPLETION PAYMENT)

Number:

PROJECT TITLE:.....

To the Contractor:

Contractor's address:

1. TOTAL AMOUNTS PREVIOUSLY PAID TO THE CONTRACTOR: £

2. ADDITIONAL AMOUNT NOW PAYABLE TO THE CONTRACTOR:-

2.1 Amount payable in respect of the following completed Milestones:-

<u>Milestone no.</u>	<u>Milestone completion certificate no.</u>	<u>Amount payable</u>
.....
.....
.....

Total £

2.2 **Plus** the following additional payments due in respect of the Changes referred to in the Change Orders dated and numbered as follows:-

	<u>Date</u>	<u>Number</u>	<u>Amount payable</u>
(i)
(ii)
(iii)

Total £

- 2.3 **Less** the following deductions (if any) due in respect of the Changes referred to in the Change Orders dated and numbered as follows:-

	<u>Date</u>	<u>Number</u>	<u>Amount deducted</u>
(i)
(ii)
(iii)
			Total £

- 2.4 **Less** the following deductions (if any) in accordance with condition 11.6 (Pay Less Notice) of the Contractor's Conditions of Contract as referred to in the notices of intention to withhold payment dated and numbered as follows:-

	<u>Date</u>	<u>Number</u>	<u>Amount deducted</u>
(i)
(ii)
(iii)
			Total £.....

TOTAL AMOUNT NOW PAYABLE £.....

Project Manager's signature:

Name (in capitals):

Project Sponsor's signature:

Name (in capitals):

Date:

¹Delete as appropriate

Distribution: Contractor, Project Sponsor, Project Manager, Commercial Officer and Authority's Accounts

Part 2: Default Payment Notices

MINISTRY OF DEFENCE

Project No:

DEFENCE INFRASTRUCTURE
ORGANISATION

Contract No:

DEFAULT PAYMENT NOTICE

under paragraph 9 of Part II of the Scheme for Construction Contracts (England and Wales)
Regulations 1998 (SI 1998/649) (as amended) and section 110A of the Housing Grants,
Construction Act 1996 (as amended)-

PROJECT TITLE:

To Defence Infrastructure Organisation:

Address:
.....
.....

PAYMENT DUE

We consider that the sum that is due on the date this notice is given is £ [TBC], calculated as set out below.

We understand the Final Date for Payment under Condition 4.8 (Final Date for Payment) is [TBC]

Contractor Representative:
Position:
Name (in capitals):
Date:

CALCULATION OF PAYMENT DUE²

² Please insert details

Part 3: Pay Less Notices

MINISTRY OF DEFENCE

Project No:

DEFENCE INFRASTRUCTURE
ORGANISATION

Contract No:

PAY LESS NOTICE

under paragraph 10 of Part II of the Scheme for Construction Contracts (England and Wales)
Regulations 1998 (SI 1998/649) (as amended) and section 111 of the Housing Grants,
Construction Act 1996 (as amended)

PROJECT TITLE:.....

To the Contractor:

.....

Contractor's address:

.....

.....

PAYMENT DUE

We consider that the sum that is due on the date this notice is given is £ **[TBC]**, calculated as set out below.

We understand the Final Date for Payment under Condition 4.8 (Final Date for Payment) is [TBC]

Project Manager's signature:

Name (in capitals):

Date:

CALCULATION OF PAYMENT DUE:-¹

1. We refer to the Payment Notice dated [TBC] for [amount in Payment Notice] to be paid by way of [advances against the Contract Sum] [or] [Completion Payment].
2. The Authority intends to pay less than this amount. The reason for the change to the amount to be paid is [TBC].
3. The sum that the Authority considers to be due and which will be paid is [TBC].

Amount in Payment Notice dated [TBC] £

£.....

£.....

¹Complete as appropriate

Appendix 10
Commercial Exploitation Agreement

[Appendix 10 to Contract number [●]]*

Ministry of Defence

Commercial Exploitation of Defence Equipment Developed at Government Expense

[CEL Agreement No.]*

Interpretation etc.

1. In this Agreement the following shall have the effect with respect to interpretation:
 - a. 'the Contract(s)' mean(s) Contract No(s)..... between the Ministry and the Contractor relating to/for ;
 - b. 'Contract Article' means any article which uses the design produced under the Contract(s) and includes any sub-assemblies, components or spares thereof;
 - c. 'Government-funded tooling' means jigs and tools, etc, provided or paid for by the Ministry and required for the production of a Contract Article;
 - d. the 'Contractor' includes any subsidiary or associated company of the Contractor;
 - e. 'leviable transaction' means a sale or any other transaction giving rise to levy under this Agreement;
 - f. the 'Contractor's selling price' means, subject to the proviso hereto, the price for which the Contractor invoices his customer but excluding the cost of such of the following elements as are applicable and can be identified to the satisfaction of the Ministry:
 - (1) Freight costs and insurance.
 - (2) Cost of packing not developed at UK Government expense.
 - (3) The cost of ECGD servicing and other sales finance charges including interest on customer credit.
 - (4) The cost of any MOD inspection.
 - (5) Installation and commissioning costs where installation and commissioning form no part of the work under the development contract(s).
 - (6) Agents' fees and commission.
 - (7) The price paid by the Contractor for an article or articles supplied to him by a third party for incorporation in the Contract Article, but only if such third party has a separate commercial exploitation agreement with the Ministry relating to such article or articles and has been informed by the Contractor that such article or articles are being used for a leviable transaction.
 - (8) Value Added Tax where applicable.

Provided that any element of profit which the contractor has included in the above items (1) - (8) shall not be so included.

g. 'Profit' other than for the purposes of the proviso to sub-clause (f) of this Clause means the difference between the Contractor's selling price and the allowable costs prescribed by the Ministry for the purpose of the sale in question, provided such difference is a positive sum.

Sales and Licences

2. Should the Contractor sell any Contract Article, other than for any purpose set out in Clauses 5 and 6 hereof, the Contractor shall pay to the Ministry:

a. a levy for the use of the design to be calculated at per cent of the Contractor's selling price [except that the percentage rate of levy may be revised at the end of the development contract if the Contractor or the Ministry can demonstrate that the design relied more, or less, on private venture research and development than was assumed in agreeing the levy rate]*.

b. a levy of 2.5 per cent of the Contractor's selling price for the use of Government-funded tooling except that the rate of 2.5 per cent shall be reduced appropriately where a substantial part of jigs and tools etc used in connection with a sale or other transaction has not been provided or paid for by the Ministry:

except that, unless otherwise agreed by the Ministry, levy on individual sales above £15M in value (for which purpose contemporaneous sales of the same equipment to the same customer will count as one sale) will be payable on an appropriate profit-sharing basis to be agreed between the Contractor and the Ministry before the contract of sale is entered into. The threshold of £15M may be increased from time to time by the Ministry, in relation to future sales, to take account of inflation.

3. Should the Contractor grant a licence to manufacture Contract Articles, the Contractor shall pay to the Ministry a levy calculated at 33.3 per cent of the gross receipts of the Contractor in money by way of royalties, licence fees or otherwise in respect thereof:

Provided that:

a. where the consideration consists wholly or in part of some benefit other than money the levy shall, in lieu of or in addition to such payments (as the case may be), consist of or include a sum representing 33.3 per cent of what may reasonably be regarded as the value of the said benefit; and

b. the Contractor shall not grant any licence for which there is no consideration, or only nominal consideration, without first agreeing with the Ministry what levy if any should reasonably be paid to the Ministry in respect of such licence; and

c. where the licensee pays for parts supplied in addition to paying his licence fee for manufacturing Contract Articles, levy on such parts shall be due in accordance with Clause 2 above in addition to the rate due under this clause. The receipts by the Contractor in respect of such parts shall not be regarded as receipts in respect of the licence on which the levy of 33.3 per cent is charged.

4. Payment of levy is deemed to include payment for the use of any industrial property rights owned by the Ministry in connection with a sale or other transaction giving rise to levy under this Agreement.

5. No levy shall be payable in respect of:

a. purchases by the Ministry;

- b. sales to another UK Government Contractor or sub-contractor when the Contract Articles concerned can be clearly identified as being supplied to meet the requirements of the Ministry;
- c. substantial individual equipments not developed at UK Government expense.

6. In the case of sales to the Government of Australia, whether directly or under a sub-contract, of Contract Articles which are Guided Weapons or other items which have been developed with the aid of the Joint Project facilities at the Weapons Research Establishment, Woomera, and of spares for elements of such systems, the levy shall be restricted to a charge for the use of Government-funded tooling in accordance with Clause 2(b).

Sales of or Licensing of Spares or Parts

7. The sale of or licence to manufacture spares or parts of Contract Articles shall attract levy in accordance with this Agreement unless the Ministry agrees that an allowance may be made for any elements of the design of any such spare or part that were not developed at UK Government expense or a reduced rate of levy shall apply on all such spares and parts where there are practical difficulties in distinguishing between those which attract the full rate of levy, those which attract a reduced rate of levy and those on which no levy is due.

Derivatives

8. Should the Contractor sell, refurnish, recondition, maintain, lend, hire, or grant a licence to manufacture any articles in any further stage of development or articles based on the design of, or using design features of, or being a scaled version of, the Contract Article, levy calculated in accordance with this Agreement shall be due to the Ministry only to such extent as shall be reasonable in the circumstances. Subject to this the provisions of this Agreement shall apply.

Refurbishing or Reconditioning

9. Should the Contractor for resale or otherwise refurbish or recondition any Contract Articles (except at no charge to the customer under defects liability obligations) the Contractor shall pay to the Ministry a levy consisting of:

- a. a sum calculated in accordance with this Agreement on the selling price of any new sub-assemblies, components and spare parts embodied in the reconditioned or refurbished Contract Articles; and
- b. a sum for any use of Government-funded tooling (other than any used only in the manufacture of the said new sub-assemblies, components and spare parts) calculated as in Clause 2(b) on the Contractor's selling price of the said reconditioned or refurbished Contract Articles after deduction of the selling price of any new sub-assemblies, components and spare parts embodied in the reconditioned or refurbished Contract Articles.

Maintenance Agreements

10. Where an agreement for the maintenance of Contract Articles between the Contractor and another party for a fee includes the provision of parts and spares of such Contract Articles not separately invoiced, a levy calculated in accordance with this Agreement will be due on that proportion of the maintenance fee which represents a reasonable estimate for the provision of such parts and spares.

Loan or Hire of Contract Articles

11. Should the Contractor enter into any Agreement for lending any Contract Articles or for otherwise making such Articles available to a third party except by way of sale, the Contractor shall

pay to the Ministry a levy calculated as specified under Clause 2 hereof of the gross receipts of the Contractor.

Provided that:

- a. where the consideration consists wholly or in part of some benefit other than money the levy shall, in lieu of or in addition to such payment (as the case may be), consist of or include a sum calculated in accordance with Clause 2 hereof and based on what may be reasonably regarded as the value of the said benefit; and
- b. the Contractor shall not enter into any Agreement (as set out in this clause) for which there is no consideration, or only nominal consideration, unless the Ministry has agreed what levy, if any, should reasonably be paid to the Ministry in respect of such Agreement.

12. Unless the Contract Article is subsequently sold, no levy shall be due where the Contractor makes a Contract Article solely for his own research or development purposes or for his own demonstration or sales promotion purposes, except in respect of use of Government-funded tooling. Contract Articles made and used by the Contractor for any other purpose shall attract levy at normal rates in accordance with Clause 2.

Abatement of Levy

13. Where, in the circumstances of an individual sale, the Contractor considers that the effect upon his selling price of inclusion of levy rates calculated in accordance with Clause 2 would be such as to prejudice his chances of completing the sale, or would result in an unreasonably low profit, it shall be open to the Contractor before the sale contract is entered into to seek the approval of the Ministry to an abatement scheme in accordance with the provisions of Clauses 14 and 15 herein. Provided that the Contractor's cost accounting system is adequate in the opinion of the Ministry to provide the statements of allowable costs necessary to implement the scheme such approval will not be unreasonably withheld.

14. The abatement scheme shall generally determine levy on the basis of outturn profitability of the sale in question expressed as a percentage on the allowable costs as prescribed for this purpose by the Ministry and shall apply as follows:

- a. where Government-funded tooling is used, the first half percent of profit on cost shall be payable to the Ministry;
- b. the next 5% of profit on cost (or the initial 5% where sub-clause 14(a) does not apply) shall be retained by the Contractor;
- c. the remaining profit, without upper limit, shall be shared between the Ministry and the Contractor in the ratio of 1:1 until a total profit of 25% on cost has been reached, and thereafter in the ratio of X:1.

Note: X should be one-fifth of the total normal unabated levy rates, but never less than 1).

15. Once a request to apply the abatement scheme has been approved by the Ministry it shall not thereafter be revoked by either party for the sale in question. The Contractor shall provide on request and in a specified form a certified statement of costs and profitability and such facilities as may be necessary for the Ministry, if it so desires, to verify the statements. Where the value of the sale is less than £500,000 any abatement of levy may at the discretion of the Ministry, be settled (before the sale contract entered into is concluded) on the basis of the expected outturn profitability provided the request for abatement is supported by adequate evidence and reasonable notice is given to the Ministry.

Notification of Leviable Transactions

16. The Contractor shall notify details including, where appropriate, the expected value of the sale, to the Ministry acquisition team named in the Contract quoting the number of the Contract / CEL Agreement No.:

- a. in respect of a sale of any Contract Articles or of a development or derivation thereof:
 - (1) as soon as it becomes apparent that a sale (or contemporaneous sales of the same equipment to the same customer) above £15M in value (or such higher value as may be notified by the Ministry from time to time) may arise;
 - (2) immediately a first sale of lesser value is entered into;
- b. immediately any negotiations for the grant of a licence for the manufacture of any Contract Articles, or of a development or derivation thereof, is entered into (the Ministry reserves the right in this connection to be supplied with a copy of the terms of the licence agreement); or
- c. in respect of any leviable transaction other than a sale or licence relating to any Contract Articles, or to a development or derivation thereof:
 - (1) immediately the transaction is entered into where the rate of levy is laid down in this Agreement;
 - (2) immediately negotiations are entered into where the appropriate rate of levy has not been agreed;
- d. when any proposed extension or alteration to the transactions set out in (a) (1), (b) or (c) (2) is considered.

Cancelled Orders

17. Where a sale is cancelled after some work in aid of the sale involving the use of Government-funded tooling has been undertaken, a levy shall be due in respect of such use calculated on a fair and reasonable basis. Where the Contractor has received any payments, whether from his customer or otherwise which he is entitled to retain, in respect of work done or in hand, or in respect of any claim arising out of the cancellation, levy shall also be due on a fair and reasonable basis having regard to the reasonable costs and claims which the Contractor may have to meet therefrom. The Contractor shall notify any such cancellation to the Ministry acquisition team named in the Contract and shall provide such information as may reasonably be required for the determination of the levies payable under this Clause. Should any Contract Article (or article falling under Clause 8) manufactured or in course of manufacture prior to cancellation subsequently be re-sold levy will again be due on the normal basis.

18. The liability of the Contractor to the Ministry for any sum due under this Agreement shall accrue:

- a. in respect of sales, on the date of delivery ex-Contractor's works or, where the sale contract so prescribes, upon shipment;
- b. in respect of cancelled sales, six months after the date of cancellation or such longer period as may be agreed;
- c. in the case of licences, and in any other case in which levy is based on gross receipts by the Contractor in respect of an agreement relating to Contract Articles, on the date of receipt by the Contractor of each payment;
- d. in respect of the use of Government-funded tooling where no other liability for levy arises, upon completion of the work in question, except that if the work takes longer than a

year interim payments of levy will accrue as deliveries take place. In the event of cancellation of the sale liability will accrue six months thereafter;

- e. in respect of any Variation of Price settlements on receipt of payment by the Contractor.

Payment of levy shall be in accordance with the Accounting provisions at Clauses 21-24 below.

19. Where an abatement scheme has been approved in accordance with Clauses 13-15 the Contractor shall be liable for interim payment of levy in accordance with the provisions of Clause 18 at one half the appropriate unabated levy rate unless the Ministry agrees otherwise. A final adjustment to or from the Ministry shall be made as soon as it is practicable after completion of the sale. The Ministry reserves the right to review and alter interim rates of levy from time to time and agrees to carry out such a review upon request by the Contractor.

20. Should the Contractor fail to provide statements under Clause 22 within a reasonable time the Ministry reserves the right to assess the levy payable and to recover the same.

Accounting

21. The Contractor shall supply to DBS FIN-IR-Acc2-CM3g, 1st Floor, Walker House, Exchange Flags, Liverpool L2 3YL, two copies of a statement (see clause 22) at [.....] intervals commencing with first sale or licensing arrangements (see Clause 16).

22. The statement shall contain information concerning every sale, licence or other transaction in respect of which levy accruing during the period to which the statement relates is payable, and in particular shall specify:

- a. the nature of the transaction (making clear under which of the Clauses 2-12 hereof it falls) and the date thereof and the name and address of the other party or parties thereto;
- b. in the case of a sale, the quantity and type of equipment sold, the selling price, and in any other case, the gross receipts in money in respect thereof and the nature and value of any consideration other than money;
- c. any other matters relevant to determining the levy payable;
- d. the sum (to the nearest pound) payable to be payable by the Contractor to the Ministry in respect of each transactions (including a provisional sum in any case in which the sum depends upon a reasonable figure yet to be agreed with the Ministry).

23. The statement shall be provided not later than two months after the close of the period to which it relates once a first sale or licensing has been agreed and 'nil' statements shall thereafter be provided whenever appropriate. Where there are NIL returns over a number of years and no evident prospect of a future leviable activity or receipt the contractor should approach the Ministry acquisition team commercial officer regarding future reporting and future CEL arrangements.

24. Each statement shall be accompanied by a payment covering the accrued levy calculated by the Contractor to be due and set out in the statement (plus VAT where applicable). Invoices in respect of any other accrued levy will be issued to the Contractor by DBS FIN-IR-Acc2-CM3g, Ministry of Defence. Payments (including VAT where applicable) shall be made to the Secretary of State for Defence at the address to which statements are to be supplied, or at the address stated on the invoice, as appropriate.

25. Two copies of an annual certificate that the sums reported on the statements are correct and complete and in accordance with the Contractor's books of account and records or that no sales have been made or licences granted or other leviable transactions entered into, shall be obtained by

the Contractor from his Auditors and shall be forwarded to DBS FIN-IR-Acc2-CM3g not later than six months after the end of the Contractor's financial year.

26. For the purpose of verifying the statements the Contractor shall maintain proper books of account and records at his premises and shall make them available for inspection at all reasonable times by the representatives of the Ministry and of the National Audit Office.

Recovery of Sums Due

27. Whenever under this Agreement any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Contractor under any contract with the Ministry or with any Department or Office of Her Majesty's Government.

Arbitration etc

28. This Agreement shall be considered as an agreement made in England** and subject to English Law**.

29. All disputes, differences or questions between the parties to this Agreement with respect to any matter arising out of or relating to this Agreement shall be referred to the arbitration of two persons (one to be appointed by the Ministry and one by the Contractor) or their Umpire, in accordance with the provisions of the Arbitration Act 1996.**

(** Amend as necessary should Scots Law apply - the revision should be modelled on DEFCONs 529A and 530A, omitting from the latter references to other conditions and matters on which MOD's decision is final.)

30. Nothing in this Agreement shall be construed as relieving the Contractor from responsibility for:

- a. obtaining the necessary export licence as applicable to any overseas sale;
- b. obtaining any necessary release from security restrictions in force for the Contract Articles.

31. Contractors are advised to consult the Defence Export Services Organisation, St Georges Court, 2-12 Bloomsbury Way, London WC1A 2SH, on a case by case basis before making offers to sell Contract Articles overseas.

Signed:
(MOD Commercial)

Signed:
(Contractor)

Date:

Date

* Delete words in parentheses as appropriate