 

**CT/COMM1/0057**

**BOOKLET 2**

**WORKS CONTRACTOR’S**

**CONDITIONS OF CONTRACT**

**DESIGN AND BUILD – TECHNICAL AND DOMESTIC ACCOMMODATION,**

**PERMANENT AND SEMI-PERMANENT STAFF**

**AT**

**LAIKIPIA AIR BASE (EAST), KENYA**

**Works Contractor’s**

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**1 Definitions and Interpretation**

1.1Definitions

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 S8-3.7 (Adjudication) of Schedule 8 (as the case may be);

‘**Agreement**’ means the form of agreement signed by or on behalf of the Authority and the Works Contractor which incorporates by reference these Conditions of Contract;

‘**Artificial Obstruction**’ means a man-made object, material, substance, fixture, structure, or part of such object, fixture or structure, encountered above or below the surface of the ground including any contamination;

‘**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 Works Contractor’s Contract, whose address is set out in the Agreement;

‘**Authority’s Building Control Officer**’ 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 Works Contractor;

‘**Authority’s Fire Officer**’ means the person so designated in the Agreement, or such other persons so appointed from time to time by the Authority and notified as such to the Works Contractor.

‘**Authority’s Risk(s)**’ means the risks set out in Condition 5.2 (Authority’s Risks);

‘**Bank Account Agreement**’ means the customer agreement for the Bank Account set up as part of the Project Bank Account.

‘**Building Regulations**’ means any regulation controlling the design and construction of buildings and services, fittings and equipment associated with them made under the Building Act 1984 (for Works carried out in England and Wales), the Building (Scotland) Acts 1959 and 1970 (for Works carried out in Scotland), or the Building Regulations (Northern Ireland) Order 1979 (for Works carried out in Northern Ireland). In the case of Works carried out outside the United Kingdom, references to ‘Building Regulations’ shall be deemed to refer to any regulation controlling the design and construction of buildings and services, fittings and equipment associated with them made under the Building Act 1984 and under any local statutory provision to the extent that any such local statutory provision imposes a more onerous obligation than any regulations under the Building Act 1984;

‘**CDM Co-ordinator**’shall have the same meanings ascribed to them in the CDM Regulations;

‘**CDM Co-ordinator Named Contact Point**’means the person appointed by the Project Manager and notified to the Authority as the principal point of contact under the Contract in connection with the Project Manager’s role as Planning Supervisor and who shall be qualified and competent to act in such capacity to the Authority’s satisfaction;

‘**CDM Regulations**’ means the Construction (Design and Management) Regulations 2007;

‘**Change**’ means the occurrence of an Authority’s Risk or any alteration of, or addition to, or omission from, the Works Contractor’s Brief 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, or on the basis of the Commercial Officer’s or (where authorised in accordance with paragraph S4-13 (Emergency works and the consequences of the occurrence of Authority’s Risks) of schedule 4) the Project Manager’s provisional lump sum price or saving and/or provisional extension of time for the Change and, in either case, with the details of any resulting change to the Milestone Payment Schedule;

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

‘**Change Quotation**’ means a quotation from the Works Contractor (in the standard form) giving details of the lump sum price or saving for any Change, together with details of any effect of the Change on the Date or Dates for Completion and of any alteration to the Milestone Payment Schedule;

‘**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 Works 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 Project Manager. The Commercial Representative shall be of a more senior rank or grade than the Commercial Officer;

‘**Completed Part**’ means any part of the Works which the Project Manager has certified as having been completed in accordance with paragraph S2-15 (Certification of completion of the Works or any Section or Completed Part) of Schedule 2 and is either:-

(i) a Section; or

(ii) any other part of the Works in respect of which either the parties agree, or the Commercial Officer has issued a Change Order, that possession shall be given before the completion of the Works or the relevant Section;

‘**Completed Parts**’ shall be construed accordingly;

‘**Completion Documents’** means the documents listed in Condition S2-19 of these Conditions of Contract;

‘**Completion Payment(s)**’ means, in relation to the completion of the Works as a whole, the final balance of the Contract Sum due to the Works Contractor and, in relation to the completion of any Completed Part, the final balance of the Contract Sum payable in respect of the Completed Part in accordance with paragraph S5-3 (Completion Payment(s)) of Schedule 5;

‘**Configuration Control**’ means the process of monitoring and recording in writing the evolution of all design;

‘**Construction Phase Plan**’shall have the meaning ascribed to it under the CDM Regulations;

‘**Contract Sum**’ means the sum payable to the Works Contractor for the performance of his obligations under the Works Contractor’s Contract as stated in the Agreement and as adjusted from time to time in accordance with these Conditions of Contract;

‘**Controlled Copy**’ means a copy of the most recent document produced via a recognized quality assurance system for the control and monitoring of the document in question.

‘**Crown Fire Standards**’ means the standards for fire precautions applicable to all property of the Authority;

‘**Customer Representative**’ means the person so designated in the Agreement or his successor from time to time notified as such to the Works Contractor;

‘**Date(s) for Completion**’ means the date specified in the Agreement for completion of the Works or (where the Works are divided into Sections) the dates specified in the Agreement for completion of individual Sections of the Works 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;

‘**Defect Liability Period**’ see Maintenance Period.

**‘Defence Infrastructure Organisation (DIO)’** shall have the same meaning as the ‘Authority’

‘**Designer**’ shall have the same meanings ascribed to them in the CDM Regulations;

‘**Design Document(s)**’ means any plan, model, sketch, drawing, calculation, specification or any other document whatsoever prepared by or on behalf of the Works Contractor in the performance of the Works Contractor’s Contract in accordance with paragraph S1-1 (Design Documents) of Schedule 1;

‘**DIO Estates 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 Works Contractors;

‘**DIO PM (Defence Infrastructure Organisation Project Manager)**’ means the person so designated in the Agreement or his successor from time to time notified as such to the Works Contractor;

‘**Establishment**’ means [insert project specific details of extent of establishment];

‘**Establishment Health & Safety Policy**’ means the policy produced by or on behalf of the Authority in respect of the Establishment as varied from time to time;

‘**Establishment Maintenance Policy Statement (EMPS)**’ records the standards of maintenance required on the Establishment.

‘**Group Undertaking**’ means the Works Contractor and any undertaking which is from time to time a parent undertaking of the Works Contractor or a subsidiary undertaking of either the Works Contractor or such parent undertaking within the meaning of section 258 of the Companies Act 1985 as substituted by section 144 of the Companies Act 1989;

**‘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 meanings ascribed to them in the CDM Regulations;

‘**Health and Safety Management System**’ means the system produced by the Contractor as required under the [The Management of Health & Safety at Work Regulations 1999];

‘**Health & Safety Executive**’ means the body so named and established and constituted pursuant to Section 10 of the Health and Safety at Work etc Act 1974;

‘**Issued Property**’ means any property or equipment of the Authority as referred to in the Agreement which shall be held by the Works Contractor in accordance with paragraph S9-6 (Issued Property) of Schedule 9;

‘**Key Personnel**’ means the personnel of the Works Contractor named as key personnel in the Agreement;

‘**Loss or Damage**’ means:-

(i) loss or damage to property;

(ii) personal injury to, or the sickness or death of, any person;

(iii) loss or damage to the Works or to any Things on the Site;

(iv) nuisance or inconvenience to the owners, tenants or occupiers of other properties or to the public; and

(v) pollution, silting or erosion of any river, stream or waterway;

‘**Maintenance Period(s)**’, also referred to as ‘Maintenance or Defect Liability Period’ means the period or periods following the issue of any Works Completion Certificate, as specified in the Agreement, for the rectification of defects in accordance with paragraph S2-18 (Defects in the Maintenance Period(s)) of Schedule 2;

‘**Maintenance Period Completion Certificate(s)**’ means the certificate or certificates of the completion of the Maintenance Period (in the relevant standard form) in respect of the Works as a whole or of the Maintenance Periods in respect of any Section or Completed Part issued by the Project Manager in accordance with paragraph S2-18 (Defects in the Maintenance Period(s)) of Schedule 2;

‘**Milestone**’ means an objectively ascertainable event detailed in the Milestone Payment Schedule and ‘Milestones’ shall be construed accordingly;

‘**Milestone Payment Schedule**’ means the Milestone Payment Schedule completed by the Works Contractor and agreed with the Authority, as amended (if at all) in accordance with paragraph S4-9 (Amendment of the Milestone Payment Schedule) of Schedule 4, which details or detail the Milestones and the advances against the Contract Sum payable on completion of each Milestone by the Authority to the Works Contractor during the performance of the Works Contractor’s Contract, a copy, or copies, of which is or are annexed to the Agreement;

‘**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;

‘**Pre-Construction Information Pack**’shall have the meanings ascribed to them under the CDM Regulations;

‘**Prescribed Design Solution(s)**’ means any design solution or solutions included within the Works Contractor’s Brief that the Works Contractor is required to adopt and implement without alteration;

‘**Pre-Tender Health and Safety Plan**’ shall have the meanings ascribed to them under the CDM Regulations;

‘**Pricing Document**’ means the document or documents prepared or completed by the Works Contractor and submitted by the Works Contractor as part of his tender in support of the Contract Sum (incorporating any amendments agreed by the parties prior to award of the Works Contractor’s Contract), a copy of which is annexed to the Agreement;

‘**Principal Contractor**’ shall have the same meanings ascribed to them in the CDM Regulations;

‘**Principal Contractor Co-ordinator**’ means the person appointed by the Contractor and notified to the Authority as the principal point of contact under the Contract in connection with the Contractor’s role as Principal Contractor and shall be qualified and competent to act in such capacity to the Authority’s satisfaction;

‘**Project Bank Account (PBA)**’ means the Bank Account set up and entered into jointly by the Authority and the Contractor governed by a Trust Deed which is designed to provide greater security for the Sub-Contractors. The Authority and the Contractor must be joint signatories to the PBA to ensure that all disbursements are jointly approved. An example Trust Deed setting up the PBA is at Annex G;

‘**Programme**’ means the latest programme for the performance of the Works Contractor’s obligations under the Works Contractor’s Contract prepared and operated in accordance with paragraph S2-10 (Programme) of Schedule 2;

‘**Project Manager**’ (PM) means the person or persons so designated in the Agreement or such other person or persons as may be appointed in that capacity for the time being by the Authority and notified as such to the Works Contractor;

‘**Project Manager’s Direction**’ means an instruction (in the standard form) issued by the Project Manager in the exercise by the Project Manager of his express powers under the Works Contractor’s Contract which does not implement a Change;

‘**Quality Plan**’means the quality plan to be produced by the Contractor in accordance with Schedule S2-10 (Quality Plan);

‘**Requirements**’ means those objectives and requirements identified as such within the Works Contractor’s Brief (including any Prescribed Design Solutions) that the Works Contractor is required to achieve;

‘**Risk Register**’means a document where risks are captured by description, as detailed in Schedule S1-4 (Risk Management).

‘**Risk Management**’means all activities required to identify and control the risks relating to the Works.

‘**Schedule of Supply Chain Members**’ means the document so headed submitted by the Works Contractor, a copy of which is annexed to the Agreement;

‘**Section**’ means any part of the Works specified as a Section in the Agreement which has a specified or ascertainable Date for Completion;

‘**Site**’ means the place or places specified in the Works Contractor’s Brief 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;

‘**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.

‘**Supplementary Conditions**’ means any supplementary conditions incorporated into the Works Contractor’s Contract as identified in the Agreement;

‘**Supply Chain**’ means the individuals and organisations who will be responsible for any of the design and/or construction of the Works as set out in the Schedule of Supply Chain Members and which lists the initial members of the Supply Chain as at the date hereof;

‘**Sustainable Development**’means development which meets the needs of the present without compromising the ability of future generations to meet their own needs;

‘**Task Officer**’ means the person so designated in the Contract being the Authority’s Task Officer responsible for monitoring the performance and progress of the Works against the Requirements;

‘**Task Officer Direction**’ means an instruction (in the standard form) issued by the Task Officer in the exercise of his expressed powers (for emergency work) under the contract which would not necessarily result in or implement a Change Order;

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

‘**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;

‘**Construction** **Planning Application(s) and Consent(s)**’means all or any construction planning application(s) or consents relating to the carrying out of the Works;

‘**Through Life Costing**’means the technique of establishing the total cost of ownership, i.e. the total cost of constructing, operating and maintaining a building or facility for its planned life.

‘**Unknown Artificial Obstruction**’ means an Artificial Obstruction certified by the Project Manager as an Unknown Artificial Obstruction in accordance with Condition 5.1.6 (Conditions affecting the Works) or treated as such in accordance with paragraph S2-7.3 (Excavations) of Schedule 2;

‘**Works**’ means the works (other than the Works Contractor’s Design) described or shown in the Works Contractor’s Brief and the Works Contractor’s Design Proposals (if any) including all modified or additional works to be carried out in accordance with the Works Contractor’s Contract;

‘**Works Completion Certificate(s)**’ means the certificate or certificates of completion of the Works as a whole or any Section or Completed Part issued by the Project Manager in accordance with paragraph S2-15 (Certification of completion of the Works or any Section or Completed Part) of Schedule 2, in the relevant standard form;

‘**Works Completion Date(s)**’ means the date of the completion of the Works as set out in the last Works Completion Certificate or, where the Works are divided into Sections or where Condition 6.6 (Early possession) applies, the date or dates of completion of the relevant Section or Completed Part as set out in the relevant Works Completion Certificates;

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

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

‘**Works Contractor’s Contract**’ comprises the documents defined as such in the Agreement and any reference to the date of the Works Contractor’s Contract shall refer to the date of the Agreement;

‘**Works Contractor’s Design**’ means the design of the Works for which the Works Contractor is responsible in accordance with the Works Contractor’s Brief and these Conditions of Contract;

‘**Works Contractor’s Design Proposals**’ means all or any designs, plans, models, sketches, drawings, calculations, specifications and any other documents whatsoever submitted by the Works Contractor as part of his tender or during the course of the Works Contractor’s Contract detailing how he proposes to implement the Works Contractor’s Brief in accordance with the Works Contractor’s Brief.

* 1. **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, the Works Contractor or the Project Manager, are required to take any action or make any decision, determination or calculation, may be extended by agreement, 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.

**1.3** **Resolution of discrepancies**

1.3.1 **Discrepancies between these Conditions of Contract and other documents forming part of the Works Contractor’s Contract**

In the case of any discrepancy between these Conditions of Contract and other documents forming part of the Works Contractor’s Contract, these Conditions of Contract shall prevail, save in the event of any discrepancy between these Conditions of Contract and any Supplementary Conditions, in which case, the Supplementary Conditions shall prevail.

1.3.2 **Discrepancies between any Authority’s Prescribed Design Solution and any other Project Requirements**

In the case of any discrepancy between any Prescribed Design Solution and any Requirements, the Prescribed Design Solution shall prevail without adjustment to the Contract Sum or the Date or Dates for Completion.

1.3.3 **Discrepancies between or within the Project Objectives, the Project Requirements or any Prescribed Design Solutions**

1.3.3.1 In the case of any discrepancy between or within any Requirements or Prescribed Design Solutions, the Works Contractor shall immediately notify the Project Manager of the discrepancy by the issue of a Change Notification to the Commercial Officer (copied to the Project Manager) and shall indicate what measures, if any, he recommends to resolve the discrepancy.

1.3.3.2 On receipt of a copy of any Change Notification in accordance with Condition 1.3.3.1, the Project Manager shall determine whether a discrepancy exists. If the Project Manager determines that such a discrepancy exists, he shall resolve the discrepancy in accordance with the following principles applied in the following order:-

1.3.3.2.1 he shall resolve the discrepancy by reference to the purpose or purposes of the Works and/or (as the case may be) of the Works Contractor’s Design;

1.3.3.2.2 where it is possible to reconcile the discrepancy by waiving one or more of the discrepant items, the Project Manager shall advise the Commercial Officer to waive one or more of the discrepant items by the issue of a Change Order to the Works Contractor. No such Change Order shall be deemed to relieve the Works Contractor of any of his obligations under the Works Contractor’s Contract to any greater extent than is expressly referred to in the relevant Change Order. No such Change Order shall entitle the Works Contractor to any adjustment of the Contract Sum or to the Date or Dates for Completion;

1.3.3.2.3 the Project Manager shall not advise the Commercial Officer to issue a Change Order in accordance with Condition 1.3.3.2.2 where such a Change Order would render the Works and/or (as the case may be) the Works Contractor’s Design unsuitable or unfit for the purpose or purposes described in the Works Contractor’s Brief;

1.3.3.2.4 where the issue of a Change Order in accordance with Condition 1.3.3.2.2 is not appropriate, the Project Manager shall resolve the discrepancy by advising the Commercial Officer to issue an appropriate Change Order to the Works Contractor that will entitle the Works 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);

1.3.3.2.5 the Project Manager shall act fairly and impartially in the operation of Conditions 1.3.3.2.2 to 1.3.3.2.4.

1.3.4 **Discrepancies between any Requirements and the Works Contractor’s Design Proposals or any Design Documents**

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

1.3.5 **Discrepancies between any Requirements or Prescribed Design Solutions and any statutory requirements**

1.3.5.1 In the case of any discrepancy between any Requirements or Prescribed Design Solutions and any statutory requirement, Building Regulation or Construction ~~Town~~ Planning clearance current at the date of the Works Contractor’s Contract, the Works Contractor shall immediately notify the Project Manager of the discrepancy by the issue of a Change Notification to the Commercial Officer (copied to the Project Manager) and shall indicate what measures (if any) he recommends to resolve the discrepancy.

1.3.5.2 On receipt of a Change Notification in accordance with Condition 1.3.5.1, the Project Manager shall determine whether a discrepancy exists. If the Project Manager determines that such a discrepancy exists, he shall resolve the discrepancy in accordance with the following principles applied in the following order:-

1.3.5.2.1 the relevant statutory provision, Building Regulations, MOD Health and Safety Policy, Crown Fire Standards or Construction ~~Town~~ Planning clearance shall prevail;

1.3.5.2.2 the Project Manager shall resolve the discrepancy by reference to the purpose or purposes of the Works and/or (as the case may be) of the Works Contractor’s Design;

1.3.5.2.3 where it is possible to reconcile the discrepancy by waiving one or more of the discrepant items, the Project Manager 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 Works Contractor of any of his obligations under the Works Contractor’s Contract to any greater extent than is expressly referred to in the relevant Project Manager’s Direction. No such Change Order shall entitle the Works Contractor to any adjustment of the Contract Sum or to the Date or Dates for Completion;

1.3.5.2.4 the Project Manager shall not issue a Change Order in accordance with Condition 1.3.5.2.3 where such a Change Order would render the Works and/or (as the case may be) the Works Contractor’s Design unsuitable or unfit for the purpose or purposes described in the Works Contractor’s Brief;

1.3.5.2.5 where the issue of a Change Order in accordance with Condition 1.3.5.2.3 is not appropriate, the Project Manager shall resolve the discrepancy by advising the Commercial Officer to issue an appropriate Change Order that will entitle the Works 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);

1.3.5.2.6 the Project Manager shall act fairly and impartially in the operation of Conditions 1.3.5.2.2 to 1.3.5.2.5.

1.3.6 **Discrepancies within or between the Works Contractor’s Design Proposals and any Design Documents**

1.3.6.1 In the case of any discrepancy within the Works Contractor’s Design Proposals the Project Manager may choose between discrepant items or agree any proposal from the Works 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 Project Manager’s choice between discrepant items will produce a saving to the Works Contractor, the Works 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, the Works Contractor shall issue a Change Notification and Change Quotation in accordance with Schedule 4 (Change control).

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

1.3.6.3 If the Works Contractor discovers any discrepancy within or between Design Documents he shall immediately notify the Project Manager of the discrepancy and shall resolve the discrepancy to the satisfaction of the Project Manager. There shall be no consequential adjustment to the Contract Sum or the Date or Dates for Completion as a result of the resolution of any such discrepancy.

1.3.7 **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 Works Contractor shall keep one copy of the Works Contractor’s Brief, any Works Contractor’s Design Proposals and any Design Documents on the Site and the Project Manager or his representatives shall at all reasonable times have access to these documents.

1.4.2 The Works Contractor’s Brief, any Works Contractor’s Design Proposals and any 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 Works Contractor’s Contract.

**1.5 Communications in writing**

1.5.1 Any notices, quotations, orders, consents, waivers, Project Manager’s Directions, or certificates to be given under the Works Contractor’s Contract shall be in writing. All communications required by the Works Contractor’s 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 facsimile 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 Works Contractor’s 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 facsimile, delivery shall be deemed to have been made upon transmission provided transmission takes place within the hours of 9.00am and 5.00pm (GMT) on a working 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 working day.

**1.6 Standard forms**

1.6.1 Where the use of a standard form is referred to in, and/or specified by, the Works Contractor’s Contract, only the relevant standard form shall be used (these forms are included at Enclosure 2).

1.6.2 The Authority will, from time to time, advise the Works Contractor of the publication of any amended or subsequent versions of any relevant standard forms. Following receipt by the Works 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 Works Contractor’s Contract or to require performance by the Works Contractor of any of the provisions of the Works Contractor’s Contract shall not be construed as a waiver of any such provision and shall not affect the validity of the Works Contractor’s 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 Works Contractor’s 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 the Contract.

1.9.2 Subject to paragraph 1.9.5 and 1.9.6 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 Works Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;

1.9.2.3 shall not use any of that Information otherwise than for the purpose of the 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 the Contract.

1.9.3 The Works Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Works Contractor by or on behalf of the Authority under or in connection with the Contract:

1.9.3.1 is disclosed to its employees and supply chain members, only to the extent necessary for the performance of the Contract; and

1.9.3.2 is treated in confidence by them 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 the Contract or any subcontract under it.

1.9.4 The Works Contractor shall ensure that his employees are aware of his arrangements for discharging the obligations at paragraph 1.9.2 and 1.9.3 before they receive Information and take such steps as may be reasonably practical to enforce such arrangements.

1.9.5 Paragraph 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, the Contract;

1.9.5.2 has the right to use or disclose the Information in accordance with other conditions of the 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 the 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 it receiving it under or in connection with the 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 the 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 Nothing in this Condition shall affect the parties' obligations of confidentiality where information is disclosed orally in confidence.

1.9.8 The Authority shall not 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 its obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

**2 Project Manager’s powers and co-operation**

**2.1 Delegations and representatives**

2.1.1 The Project Manager shall act generally for the Authority in respect of the issue or receipt of all notices or other communications in connection with the Works Contractor’s Contract except where otherwise stated in the Works Contractor’s Contract. Any decision to be made by the Authority under the Works Contractor’s Contract may be communicated to the Works Contractor either by the Authority or the Project Manager.

2.1.2 The Project Manager may from time to time delegate to named representatives any of his powers and duties with the consent of the Authority (such consent not to be unreasonably withheld).

2.1.3 The appointment of representatives by the Authority or the Project Manager shall be without prejudice to the right of the Authority or the Project Manager to exercise subsequently and directly any of the powers and duties conferred under the Works Contractor’s Contract.

2.1.4 The Works Contractor shall, as soon as possible, be notified of all powers and duties delegated, and of the names of any representatives appointed, and of any subsequent alterations.

**2.2 Project Manager’s Directions and Change Orders**

2.2.1 The Project Manager may issue Project Manager’s Directions or Change Orders as he considers appropriate or necessary from time to time. Any Change Orders shall be issued in accordance with the procedures set out in Schedule 4 (Change control).

2.2.2 The Works Contractor shall comply promptly with any Project Manager’s Directions or Change Orders issued. A Project Manager’s Direction shall not give rise to any adjustment to the Contract Sum or to the Date or Dates for Completion. 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). A Project Manager’s Direction may be superseded by the issue of a Change Order.

2.2.3 If the Works Contractor considers that any Project Manager’s Direction issued by the Project Manager represents a Change and should have been issued as a Change Order, the Works Contractor shall immediately refer the matter to the Commercial Officer (copied to the Project Manager) giving the reasons why he 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 Project Manager’s Direction should be re-issued as a Change Order, he shall inform the Works Contractor who shall be bound by the Commercial Officer’s decision unless, within 14 days of receiving notification of the Commercial Officer’s decision, he refers the matter for a decision of the Commercial Representative in accordance with paragraph S8-1 (Referrals to the Commercial Representative) of Schedule 8 or else refers the question to adjudication in accordance with paragraph S8-3 (Adjudication) of Schedule 8.

2.2.4 If, after receipt of a notice from the Commercial Officer requiring compliance with any Project Manager’s Direction or Change Order within a period specified in the notice, the Works Contractor fails to comply, the Authority may, without prejudice to the exercise of the Authority’s powers to terminate the Works Contractor’s Contract, do anything necessary or make any arrangements necessary to give effect to that Project Manager’s Direction or Change Order including making arrangements for another contractor to carry out the Project Manager’s Direction or the Change Order. Any additional cost loss and/or expense incurred by the Authority by reason of the Works Contractor’s failure to comply with that Project Manager’s Direction or Change Order shall be ascertained by the Commercial Officer and shall be recoverable from or payable by the Works Contractor in accordance with Condition 4.6 (Recovery of sums and notice of intention to withhold payment).

**2.3 Co-operation**

The Authority and the Works Contractor agree to work together with each other and with the Project Manager 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 they will each give to, and welcome from, the other and from others involved with the design and/or construction of the Works, feedback or performance and will draw each other’s attention to any difficulties and will share information openly, at the earliest practicable time.

**3 Works Contractor’s obligations**

**3.1 Resources, Key Personnel and use of Supply Chain**

3.1.1 **Generally**

The Works Contractor shall provide sufficient resources at all times to enable him to perform his obligations under the Works Contractor’s Contract.

3.1.2 **Key Personnel**

3.1.2.1 The Works Contractor shall employ or engage the Key Personnel in connection with the performance of the Works Contractor’s Contract.

3.1.2.2 The Works Contractor shall not make alterations in the Key Personnel without the prior consent of the Project Manager (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 Works Contractor’s control, the Works 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 Works Contractor’s employees**

3.1.3.1 The Authority may at any time require the Works Contractor immediately to cease to employ or engage in connection with the performance of the Works Contractor’s Contract any person (including any of the Key Personnel) whose continued employment or engagement is in the opinion of the Authority undesirable. The Works Contractor shall replace any such person with a person of similar 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 Works Contractor shall engage the members of his Supply Chain in relation to their 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 Works 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 their input in relation to the design and proposed method of construction of the Works and in all risk, Value Engineering and whole life cost analysis carried out in connection with the design and/or construction of the Works.

**3.2 Checking of Requirements and Prescribed Design Solutions**

3.2.1 Following the date of the Works Contractor’s Contract, the Works Contractor shall check any Requirements and Prescribed Design Solution contained in the Works Contractor’s Brief for any patent errors, discrepancies, faults or defects which he considers may render any part of the Works Contractor’s Design or the Works unfit for the purpose or purposes described in the Works Contractor’s Brief.

3.2.2 The Works Contractor shall give notice to the Project Manager of any such error, discrepancy, fault or defect by the issue of a Change Notification in accordance with Condition 1.3.3.1 (Resolution of discrepancies).

**3.3 Responsibility for design**

3.3.1 **In all cases**

The Works Contractor shall, in all cases, be responsible for the development and detailing of the design set out in, or implicit from, the Works Contractor’s Brief to whatever level is necessary to enable the Works to be carried out.

3.3.2 **Responsibility for co-ordination of design**

3.3.2.1 Where the Authority’s procurement strategy is ‘Authority’s Design’, the Project Manager shall be responsible for the co-ordination of all design of the Works, including the Works Contractor’s Design. The Works Contractor shall comply with all Project Manager’s Directions relating to the co-ordination of the Works Contractor’s Design.

3.3.2.2 Where the Authority’s procurement strategy is ‘Works Contractor’s Design’ the Works Contractor shall be responsible for the co-ordination of all design of the Works, including any design carried out by or on behalf of the Project Manager.

3.3.3 **Compliance with the Works Contractor’s Brief**

The Works Contractor shall comply with all Requirements and Prescribed Design Solutions set out in the Works Contractor’s Brief but shall otherwise be free to adopt or ignore any further design proposals, indicative solutions or other information set out in the Works Contractor’s Brief.

3.3.4 **Compliance with Health and Safety obligations**

In relation to any design carried out by the Works Contractor, or for which he is responsible, the Works Contractor shall take all reasonable steps to ensure that the CDM Regulations are fully complied with and, in particular, that:

3.3.4.1 His 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 All designs for which the Works Contractor is responsible shall co-operate with the CDM Co-ordinator and any other designers to enable them to fulfil their respective statutory duties;

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 everyone involved in the design and or construction of the Works who requires this 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 Works Contractor’s Design**

3.4.1 **Prescribed Design Solutions**

The Works Contractor shall not be responsible for any Prescribed Design Solution but shall be responsible for carrying out a check of all Prescribed Design Solutions in accordance with Condition 3.2 (Checking of Requirements and Prescribed Design Solutions). Where the Works Contractor is responsible for the design of the part of the Works to which a Prescribed Design Solution relates, he shall undertake and be responsible for the development, detailing and co-ordinating of such Prescribed Design Solution into the Works Contractor’s Design.

3.4.2 **Carrying out of the Works Contractor’s Design**

3.4.2.1 The Works Contractor shall carry out and complete the Works Contractor’s Design:-

3.4.2.1.1 in accordance with the Works Contractor’s Brief;

3.4.2.1.2 in accordance with the Works Contractor’s Design Proposals (if any);

3.4.2.1.3 so as to ensure that it is physically and legally possible to implement the Works Contractor’s Design in accordance with the Works Contractor’s Brief;

3.4.2.1.4 so as to produce a design that can physically and legally be built and is fit for the purpose or purposes described in the Works Contractor’s Brief;

3.4.2.1.5 so as to ensure that all Things for incorporation conform with the standards specified in the Works Contractor’s Brief or, where no such standards are specified, with the appropriate standards and/or relevant standard codes of practice;

3.4.2.1.6 in the most cost effective manner having regard to Through Life Costing and Value Engineering considerations (see paragraphs S1-5 (Through Life Costing) and S1-6 (Value Engineering) of Schedule 1).

3.4.2.2 The Works Contractor shall be deemed to have satisfied himself as to his competency and ability to carry out and complete the Works Contractor’s Design in accordance with Condition 3.4.2.1.

3.4.2.3 Without prejudice to Conditions 3.4.2.1 and 3.4.2.2, if the Works Contractor is unable to carry out and complete the Works Contractor’s Design in accordance with the Works Contractor’s Contract, he shall submit to the Project Manager a notice justifying his position and requesting permission for the Works Contractor’s Design to deviate in a manner specified in the notice. The Project Manager shall issue a Project Manager’s Direction to allow the deviation requested or otherwise agreed, in the terms he sees fit, where he is satisfied that such deviation does not render the Works Contractor’s Design, or any part of it, unfit for the purpose or purposes described in the Works Contractor’s Brief. The issue of any such Project Manager’s Direction shall not be deemed to relieve the Works Contractor of any of his obligations under the Works Contractor’s Contract to any extent greater than is expressly noted in the relevant Project Manager’s Direction.

3.4.3 **Design review**

The Works Contractor shall produce Design Documents in accordance with paragraph S1-1 (Design Documents) of Schedule 1 and submit them to the Project Manager for review in accordance with paragraph S1-2 (Design review) of Schedule 1.

3.4.4 **Effect of collateral warranties from supply chain members**

The Works Contractor's liability for any Works Contractor’s Design shall not be affected by any warranty the Authority may obtain from any supply chain member of the Works Contractor.

3.4.5 **Statutory requirements (including Building Regulations, MOD Health and Safety Policy, CDM Regulations and Crown Fire Standards) and Construction Planning Clearance(s)**

3.4.5.1 The Works Contractor shall ensure that the Works are carried out in accordance with, and fully comply with the requirements of all relevant Acts of Parliament or regulations (including the Building Regulations, MOD Health and Safety Policy, CDM Regulations, the Crown Fire Standards) and any Construction Planning Clearance or Clearances or byelaws and associated legislation in force at the time the work is undertaken (whether or not the same are binding on the Authority) and are in accordance with any relevant published codes of practice, British Standards or similar requirements.

3.4.5.2 Where the Authority’s procurement strategy is ‘Works Contractor’s Design’, the Works Contractor shall be responsible for co-ordinating the submission of all applications for, and the obtaining of, Construction Planning Clearance(s) and all other statutory approvals or licences that may be required for the carrying out of the Works to the extent that they have not already been obtained by the Project Manager. In making any submission for any Construction Planning Clearance, the Works Contractor shall comply with paragraph S3-8 (Construction ~~Town~~ Planning Clearances) of Schedule 3.

**3.5 The Works**

3.5.1 **Carrying out of the Works**

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

3.5.1.1.1 in accordance with the Works Contractor’s Brief and any Works Contractor’s Design Proposals and the Works Contractor’s Design;

3.5.1.1.2 with diligence;

3.5.1.1.3 in a workmanlike manner;

3.5.1.1.4 in accordance with any quality control or assurance system, standard or procedure required by the Works Contractor’s Contract; and

3.5.1.1.5 on or before the Date or Dates for Completion.

3.5.1.2 The Works Contractor shall be deemed to have satisfied himself as to his 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 any Requirements, Prescribed Design Solutions and/or any Works Contractor’s Design Proposals. Furthermore (and without prejudice to the Works Contractor’s implied obligations at common law) any Things for incorporation which the Works Contractor is required to choose or select shall be fit for their purpose in the Works.

3.5.1.4 The Works Contractor shall provide such samples of Things for incorporation and/or standards of workmanship as are expressly specified in any 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 Works Contractor shall ensure that all relevant Things for incorporation and/or standards of workmanship are of a standard equivalent to the sample provided.

3.5.2 **Competent Site personnel**

Whether as part of the provision of the Key Personnel or not, the Works Contractor shall employ or engage a competent person or persons with authority to receive and action any Project Manager’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 Project Manager’s Direction or Change Order given to the person or persons so appointed shall be deemed to have been given to the Works Contractor.

3.5.3 **CDM Regulations**

The Works Contractor shall, in relation to the Works, perform the role of the ‘Principal Contractor’ in accordance with the CDM Regulations.

3.5.4 **Compliance with operational requirements**

In carrying out the Works, the Works Contractor shall liaise with any persons responsible for the operation of the Establishment, 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 Works Contractor shall comply with any such operational requirements.

3.5.5 **Compliance with Schedule 2**

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

**3.6 Ozone-depleting substances**

The Works Contractor shall not, without the prior written consent of the Authority, specify in the Works 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, as amended and updated from time to time. Refer to Annex A - Montreal Protocol.

**3.7 Quality assurance**

3.7.1 The Works Contractor shall maintain, for the duration of the Works Contractor’s Contract, the relevant quality assurance accreditation specified in the Agreement.

3.7.2 The Works Contractor shall prepare and implement a quality plan in respect of his obligations under the Works Contractor’s Contract in accordance with paragraph S2-11 (Quality plan) of Schedule 2.

**3.8 Use of documents, information and communication with the media**

3.8.1 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.

3.8.2 The Works 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 Works Contractor’s Contract, or any matter arising from the Works Contractor’s Contract, without the prior approval of the Authority.

**3.9 Statutory obligations and security provisions**

In carrying out his obligations under the Works Contractor’s Contract, the Works Contractor shall comply with Schedules 3 (Compliance with statutory and other obligations) and 6 (Security provisions).

**3.10 Technical Guidance**

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

3.10.2 The Works Contractor shall check that all Technical Guidance of relevance to the Works is in fact listed in, or appended to, the Works Contractor’s Brief and shall notify the Project Manager of any omissions which the Works Contractor believes has, or may have, been made.

3.10.3 Any queries regarding any Technical Guidance should be addressed to the Authority.

**3.11 Proposed Changes**

The Commercial Officer (either of his own initiative or in response to a recommendation from the Project Manager) or the Works Contractor may, at any time during the Works Contractor’s Contract, propose an alteration of, or addition to, or omission from, the Works Contractor’s Brief or any change in the design, quality or quantity of the Works in accordance with Schedule 4 (Change Control).

**3.12 Fraud Prevention**

3.12.1 The Works Contractor shall comply, and shall ensure that all members of his Supply Chain comply, with:

3.12.1.1 the Works Contractor’s policy for the prevention and detection of fraud as submitted in accordance with his tender for the Works Contractor’s Contract;

3.12.1.2 the Fraud Prevention Manual attached to these Conditions of Contract at Annex B - Fraud Prevention Manual; and

3.12.1.3 MOD Policy Statement on Fraud & Theft for Construction Industry Suppliers attached to these Conditions of Contract at Appendix 1 to Annex B; and

3.12.1.4 MOD Policy on Fraud, Theft, Corruption, Bribery and Irregularity attached to these Conditions of Contract at Appendix 2 to Annex B; and

3.12.1.5 MOD Policy on Fraud Response Procedure attached to these Conditions of Contract at Appendix 3 to Annex B.

3.12.2 Upon the request of the Authority, the Works Contractor shall carry out an internal audit and an audit of the members of his Supply Chain in relation to their respective compliance with Condition 3.12.1 above and shall report to the Authority on the result of such audit.

1. **Payment**
   1. **Payment against Milestones**
      1. The Works Contractor shall be entitled to apply for and to be paid advances against the Contract Sum during the carrying out of the Works Contractor’s Design and the Works for each Milestone certified as completed in accordance with paragraph S5-1 (Certification of Milestones) of Schedule 5 provided that all preceding Milestones on the Milestone Payment Schedule current at the date of application have been completed.
      2. The amount of each advance shall be:

4.1.2.1 the total of the advance payable in respect of the relevant Milestone as shown in the relevant Milestone Payment Schedule (as amended (if at all) in accordance with paragraph S4-9 (Amendment of the Milestone Payment Schedule)) of Schedule 4;

4.1.2.2 less any sum of money recoverable from, or payable by, the Works Contractor in accordance with Condition 4.6 (Recovery of sums and notice of intention to withhold payment).

4.1.2.3 The amount of each advance payable shall be the relevant milestone value detailed in the agreed extant Milestone Payment Schedule less 5%, which the Authority shall withhold as the Retention Sum from each Milestone Payment.

* + - * 1. If the agreed final milestone completion date is achieved in accordance with Condition 4.1.1 then the Authority will pay 50% of the value of the Retention Sum, with the remaining 50% of the Retention being paid on successful completion of any defects at the end of the 12 months Maintenance / Defects Liability Period (DLP) (or such lesser period decided by the Commercial Officer) and on satisfaction by the Authority that all Contractual obligations have been fulfilled subject to Condition 4.6 (Recovery of Sums from the Contractor).
        2. Failure to meet the final milestone completion date will result in the full Retention Sum being retained until successful completion of the defects in the DLP.

4.1.3 The Works Contractor shall comply with the procedure set out in paragraph S5-2 (AG200 Payment procedure) of Schedule 5, or (Paragraph S5-6 P2P procedure if directed by the Authority) in making any application for payment under this condition. Approved payments will be made via BACS or P2P directly in to the Principal Contractors bank account or Project Bank Account.

* + - 1. **Project Bank Account**

4.1.3.1.1 The Project Bank Account will be set up at Contract Award with a one-off deposit of £1,000 (One Thousand pounds only) being placed by the Principal Contractor.

4.1.3.1.2 The Project Bank Account will be opened by the Principal Contractor and held jointly with the Authority in accordance with the terms set out in the Trust Deed and Bank Account Agreement.

4.1.3.1.3 The Project Bank Account will remain in place until the end of the Contract.

4.1.3.1.4 For the purposes of the Construction Industry Scheme (CIS), the Authority will be responsible for the action, discharge, completion and submission of all CIS responsibilities in relation to the Principal Contractor. The Principal Contractor will be responsible for the action, discharge, completion and submission of all CIS responsibilities for the sub-contractors.

4.1.3.1.5 At the end of the Contract, once all required payments have been made, the Project Bank Account will be closed and any balance transferred to the Principal Contractor.

**4.2 Adjustment of the Contract Sum**

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

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

**4.3 Dates for payment**

4.3.1 Advances payable in respect of completed Milestones shall become due to the Works Contractor 7 days after the later of:

4.3.1.1 the date of completion of the relevant Milestone, as confirmed in the relevant certificate of completion of the Milestone issued in accordance with paragraph S5-1 (Certification of Milestones) of Schedule 5; or

4.3.1.2 the date of the Works Contractor’s application for the issue of a certificate of completion of the relevant Milestone in accordance with paragraph S5-1.2.1 (Certification of Milestones) of Schedule 5.

and, in the case of any Completion Payment, shall become due to the Works Contractor on the later of 7 days after the date of completion of the relevant Maintenance Period or the date of agreement of the relevant Completion Payment in accordance with paragraph S5-3 (Completion Payment(s)) of Schedule 5.

4.3.2 The final date for payment to the Works Contractor of any sum due under the Works Contractor’s Contract shall be 30 days after the date the payment became due plus the number of days that lapse from the Works Contractor receiving a Form AG200 signed by the Project Manager and the DIO PM, to receipt by the Authority’s Accounts of a properly documented application in accordance with either paragraph S5-2 (Payment procedure) of Schedule 5.

4.3.3 Where the Works (or a majority of them) will be carried out outside the United Kingdom, the periods of days referred to in Conditions 4.3.1 and 4.3.2 shall be extended to 21 days and 35 days respectively.

**4.4 Notice of payment**

4.4.1 Not later than 5 days after the date on which payment becomes due from the Authority to the Works Contractor under the Works Contractor’s Contract, or would have become due if:-

4.4.1.1 the Works Contractor had carried out his obligations under the Works Contractor’s Contract; and

4.4.1.2 no set-off or abatement was permitted by reference to any sum claimed to be due under the Works Contractor’s Contract;

4.4.2 the Authority shall give notice to the Works Contractor specifying the amount (if any) of the payment made or proposed to be made, and the basis on which the amount is calculated using the relevant standard form of notice of payment.

**4.5 Completion Payment(s)**

Completion Payments shall be calculated in accordance with paragraph S5-3 (Completion Payment(s)) of Schedule 5.

**4.6 Recovery of sums and notice of intention to withhold payment**

4.6.1 Without prejudice to any other rights of the Authority, whenever under the Works Contractor’s Contract any sum of money shall be recoverable from, or payable by, the Works 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 Works Contractor under, or in respect of, the Works Contractor’s Contract or any other contract with the Authority or with any department or office of the Crown.

4.6.2 The Authority shall give notice of its intention to withhold payment, in part or in whole, of any amount due under the Works Contractor’s Contract no later than 7 days after the date the relevant payment becomes due, as set out in Condition 4.3.1 (Dates for payment). The notice shall be in the relevant standard form and shall specify:-

4.6.2.1 the ground or grounds for withholding payment; and

4.6.2.2 the amount attributable to the ground or, if more than one ground, the amounts attributable to each ground.

4.6.3 Where the ground or grounds for withholding payment are referred to adjudication under paragraph S8-3 (Adjudication) of Schedule 8 and the Adjudicator decides that the amount or amounts withheld should be paid, in whole or in part, payment shall be made not later than:-

4.6.3.1 7 days from the date of the decision; or

4.6.3.2 the date which, apart from the notice in Condition 4.6.2, would have been the final date for payment, whichever is the later.

**4.7 Interest on late payment**

In the event that payment is not made of any sum due to the Works Contractor in accordance with Condition 4.1 (Payment against Milestones) by the final date for payment of such sum in accordance with Condition 4.3 (Dates for payment), the Authority shall pay to the Works Contractor interest on the amount of the payment remaining due for the period from the date the relevant payment became due until the date the relevant payment is made at the rate of statutory interest payable from time to time on late payments under the Late Payment of Commercial Debts (Interest) Act 1998.

**4.8 Payment of Sub-Contractors**

4.8.1 Where the Contractor enters into a sub-contract with a supplier or sub-contractor for the purpose of performing the Contract, he shall cause a term to be included in such sub-contract which requires payment to be made to the supplier or sub-contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements.

**4.9 Retention**

4.9.1 The amount of each advance payable shall be the relevant milestone value detailed in the agreed extant Milestone Payment Schedule less 5%, which the Authority shall withhold as the Retention Sum from each Milestone Payment.

4.9.2 If the agreed final milestone completion date is achieved in accordance with Condition 4.1.1 then the Authority will pay 50% of the value of the Retention Sum, with the remaining 50% of the Retention being paid on successful completion of any defects at the end of the 12 months Defects Liability Period (DLP) (or such lesser period decided by the Commercial Officer) and on satisfaction by the Authority that all Contractual obligations have been fulfilled subject to Condition 4.6 (Recovery of sums and notice of intention to withhold payment).

4.9.3 Failure to meet the final milestone completion date will result in the full Retention Sum being retained until successful completion of the defects in the DLP.

4.9.4 Subject to the discretion of the Authority, and as a general rule, any Change Orders, raised during the life of the project, will not be subject to the retention of 5% of their value.

1. **Allocation of risk**
   1. **Conditions affecting the Works**

5.1.1 Where the Authority has made available to the Works Contractor, before submission of his tender, factual information relating to the ground and sub-soil conditions obtained by, or on behalf of, the Authority in relation to the Site (including factual information relating to the existence of any Artificial Obstructions) the Authority warrants the accuracy of that part of such factual information which has been obtained by or on behalf of the Authority from investigations undertaken for the purposes of the Works.

5.1.2 The Works 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. The Works Contractor shall be responsible for the interpretation of all such factual information for the purposes of carrying out the Works Contractor’s Design and constructing the Works.

5.1.3 The Works Contractor shall obtain all further necessary information and shall conduct all further necessary investigations required for the purposes of carrying out the Works Contractor’s Design and constructing the Works save where the Authority’s security or operational requirements prevent the giving of access for the Works Contractor to carry out his own surveys and investigations. In such circumstances, in the absence of any express provision in the Works Contractor’s Brief, the Works Contractor shall discuss with the Authority what further necessary information the Contractor considers he 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 Notwithstanding Condition 5.1.1, the Works 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 except where, and to the extent that, the factual information has been warranted by the Authority in accordance with Condition 5.1.1;

5.1.4.5 the exact location and extent of Artificial Obstructions notified to him by the Authority;

5.1.4.6 the conditions under which the Works will have to be carried out, including precautions to prevent nuisance and pollution;

5.1.4.7 the supply of and conditions affecting labour or plant necessary to carry out the Works Contractor’s Design and/or the Works;

5.1.4.8 the availability of any Things, whether or not for incorporation; and

5.1.4.9 any other matters or information affecting or likely to affect the carrying out of the Works Contractor’s Design and/or the Works and/or the Contract Sum;

5.1.5 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.

5.1.6 If, during the carrying out of the Works Contractor’s Design and/or of the Works, the Works Contractor becomes aware of any Artificial Obstruction the existence of which he was not informed of, he shall immediately:-

5.1.6.1 inform the Commercial Officer by the issue of a Change Notification of the Artificial Obstruction; and

5.1.6.2 state the measures which he proposes to take to deal with the Artificial Obstruction and issue a Change Quotation accordingly.

5.1.7 If the Commercial Officer agrees that the Works Contractor was not informed (either as part of the factual information provided in accordance with Condition 5.1.1 or as part of the information obtained in accordance with Condition 5.1.3, or otherwise) of the existence of the Artificial Obstruction referred to in the notice under Condition 5.1.5, he shall certify that obstruction to be an Unknown Artificial Obstruction. The Commercial Officer shall notify the Works Contractor of his decision within 7 days of receipt of the Works Contractor's Change Notification and Change Quotation under Condition 5.1.5. The Works 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 his decision.

* 1. **Authority’s Risks**

5.2.1 The Authority’s Risks are:-

5.2.1.1 any alteration of, addition to or omission from the Works Contractor’s Brief or the Works or any alteration in the design, quality or quantity of the Works confirmed or authorised by the Authority in accordance with Conditions 1.3.3.2.4 or 1.3.5.2.5 (Resolution of discrepancies);

5.2.1.2 an omission or default of the Authority or the Project Manager or any employee, contractor or agent of the Authority or the Project Manager (including any errors or omissions in description or in quantity in any draft Pricing Document in accordance with paragraph S5-4.2 (The Pricing Document) of Schedule 5);

5.2.1.3 any delay by the Project Manager 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 he is obliged to provide or give under the Works Contractor’s 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 Works Contractor;

5.2.1.4 the failure of the Authority or the Project Manager to comply with any time limit specified in the Works Contractor’s 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 Works 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 somebody other than the Works 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 Works Contractor;

5.2.1.6 Loss or Damage to the Works or to any Things owned by the Works Contractor or on the Site for the Works Contractor’s use which is due to any act, omission or default of the Authority or the Project Manager or their employees or agents or any other contractor of the Authority engaged in relation to the Works or any part of the Works or his 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 Works Contractor’s Contract which affects the Works Contractor’s carrying out of the Works Contractor’s Design and/or the Works and which was not reasonably foreseeable at the date of the Works Contractor’s 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;

5.2.1.9 a breach of the warranty of accuracy contained in Condition 5.1.1 (Conditions affecting the Works);

5.2.1.10 any Unknown Artificial Obstruction certified in accordance with Condition 5.1.6 (Conditions affecting the Works) or reported in accordance with paragraph S2-7.3 (Excavations) of Schedule 2;

5.2.1.11 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 Works Contractor’s Contract in accordance with paragraph S2-5.5 (Inspection of the Works and Things for incorporation) of Schedule 2;

5.2.1.12 any damage to highways, roads or bridges communicating with, or on the routes to, the Site caused by any extraordinary traffic in accordance with paragraph S2-6.2 (Damage to public roads) of Schedule 2;

5.2.1.13 any official strike or industrial action which prevents or demonstrably delays the carrying out of the Works Contractor’s Design and/or the Works and which is outside the control of the Works Contractor or any of his supply chain members or agents;

5.2.1.14 pressure waves caused by the speed of aircraft or other aerial devices;

5.2.1.15 ionising radiations or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel;

5.2.1.16 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly (including any nuclear component);

5.2.1.17 war, invasion, act of foreign enemy, hostilities (whether or not war has been declared), civil war, rebellion, insurrection, or military or usurped power.

5.2.2 If an event constituting one of the Authority’s Risks shall occur which the Works Contractor reasonably believes will have, or has had, an effect on the cost of carrying out the Works and/or the Works Contractor’s ability to complete the carrying out of the Works by the Date or Dates for completion, the Works Contractor shall submit a Change Notification to the Project Manager 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 Works Contractor fails to submit a Change Notification within the 14 day period, the Works Contractor shall not be entitled to apply for any extension of time or any additional payment in respect of the relevant event. The Commercial Officer may nevertheless award an extension of time in accordance with paragraph S4-10 of Schedule 4 (Change control) if he considers that an act, omission, or default of the Authority or the Project Manager 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 5.2.1.1 to 5.2.1.17 may give rise to an extension of time for the completion of the Works or any relevant Section in accordance with paragraph S4-10 (Extensions of time) of Schedule 4 but shall not give rise to any adjustment to the Contract Sum.

5.2.4 The Works 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 Works Contractor’s Design and/or the Works. The Works 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 Works Contractor.

**5.3 Works Contractor’s risks**

All risks that are not Authority’s Risks shall be risks of the Works Contractor.

**5.4 Loss or Damage**

5.4.1 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 Works Contractor’s Design or the Works, the Works 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:-

5.4.1.1 all costs and expenses reasonably and properly incurred by the Authority; and/or

5.4.1.2 any damages awarded against the Authority in connection with any claims or proceedings made or brought against the Authority.

5.4.2 In the event of any Loss or Damage arising in accordance with Condition 5.4.1, the Works Contractor shall, without delay and at his own cost rectify, reinstate, replace or make good to the satisfaction of the Authority, or if the Authority agrees, compensate the Authority for any such Loss or Damage.

5.4.3 The Project Manager shall notify the Works 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 5.4.1.

**5.5 Insurance**

5.5.1 Without prejudice to its obligation to indemnify the Authority under this Contract, the Works Contractor shall from the date of this Contract (and in respect of Professional Indemnity Insurance for a period of twelve (12) years following expiry or termination of this Contract, whichever occurs earlier) take out and maintain or procure the taking out and maintenance in full force and effect the insurances in accordance with the requirements specified in Condition 5.5.2 and any other insurances as may be required by law or statute in the relevant territory from time to time (together the “Required Insurances”). The cost of effecting and maintaining any Required Insurances shall be incorporated into the Firm Price prior to acceptance of the Works Contractor’s offer.

5.5.2 The Works Contractor shall ensure that the Required Insurances including as further detailed in this Condition 5.5.2 are effective in each case not later than the date on which the relevant insurable risk commences.

5.5.2.1 Construction "All Risks" Insurance (CAR)

5.5.2.1.1 providing insurance cover in respect of "All Risks" of sudden and unforeseen physical loss, damage or destruction to the permanent and temporary works, materials, goods, plant and equipment for incorporation in the Works (and all other property used or for use in connection with the Works and Things associated with the Contract).

5.5.2.1.2 at all times an amount not less than the full reinstatement or replacement value of the insured property, plus provision to include policy features and extensions as appropriate. The Authority shall be named as an insured party for its separate interests where appropriate.

5.5.2.2 Third Party Liability Insurance

5.5.2.2.1 indemnifying the Works Contractor in respect of all sums that they may become legally liable to pay (including claimant’s costs and expenses) as damages in respect of accidental death or bodily injury, illness or disease contracted by any person (not an employee of the Works Contractor) and/or loss or damage to third party property happening during the period of insurance and arising out of or in connection with the Contract.

5.5.2.2.2 the limit of indemnity shall be not less than five million (5,000,000) USD per occurrence in respect of any one claim, and ten million (10,000,000) USD in the annual aggregate during the period of insurance.

5.5.2.3 Professional Indemnity Insurance

5.5.2.3.1indemnifying the Works Contractor 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 by reason of any act, error and/or omission arising from or in connection with the Contract.

5.5.2.3.2 the limit of indemnity not less than five million (5,000,000) GBP in respect of any one claim, and in the annual aggregate during the period of insurance.

5.5.3 The required insurances referred to in Condition 5.5.2 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 relevant insurance market.

5.5.4 The Works Contractor shall not (and the Works Contractor shall procure that none of its Supply Chain 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 or additional insured person.

5.5.5 The Works Contractor shall provide, on request, to the Authority evidence of the required insurances referred to in Condition 5.5.2, in a form satisfactory to the Authority; and that the premiums payable under the required insurances referred to in Condition 5.5.2 have been paid and that the insurances are in full force and effect and meet the insurance requirements of the Works Contractor in respect thereof. Neither inspection, nor receipt of such evidence, shall constitute acceptance by the Authority of the terms thereof, nor be a waiver of the Works Contractor's liability under this Contract.

5.5.6  Where the insurers purport to cancel, suspend or terminate the required insurances referred to in Condition 5.5.2, the Works Contractor shall procure that the insurers shall, as soon as is reasonably practicable, notify the Works Contractor in writing in the event of any such proposed suspension, cancellation or termination. Where the Works Contractor receives such notification from insurers the Works Contractor shall promptly notify the Authority in writing of receipt of such proposed suspension, cancellation or termination.

5.5.7 If the Works Contractor is in breach of Condition 5.5.1 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 Works Contractor on written demand, together with all expenses incurred in procuring such insurance.

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

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

1. All insurance proceeds received under the Contractor’s “All Risks” Insurance referred to Condition 5.5.2 shall be applied to repair, reinstate and replace each part or parts of the insured property in respect of which the proceeds were received.

5.5.11 The Works 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 and diligently pursue any valid claim.

5.5.12 Except where the Authority is the claimant party and without limiting the other provisions of this Contract Condition, the Works Contractor shall notify the Authority immediately, (such notification to be accompanied by reasonable particulars of the incident or circumstances giving rise to such claim) of any incident or circumstances which may give rise to any claim amounting to or in excess of fifty thousand (50,000) GBP in connection with this Contract under any of the Required Insurances.

**5.6 War Risk Indemnity**

5.6.1 Notwithstanding any other provisions of the Contract, but subject to the provisions of this Condition, the Authority shall hold harmless and indemnify the Contractor in respect of the liabilities, losses, payments and damage described in Annex C, Appendix 1 Sub-clauses 2.a to 2.h inclusive of this Clause, where and to the extent that such liabilities, losses, payments or damage are directly attributable to a War Risk and the involvement or requirement for the involvement, for the purpose of work under the Contract of any employees or property of the Contractor in circumstances to which the War Risk Exclusion Clause applies. Refer to Annex C - War Risk Indemnity (DEFCON 661) for further information.

**6 Provisions as to time**

* 1. **Commencement of the Works Contractor’s Design**

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

**6.2 Possession of the Site and completion**

6.2.1 The Works Contractor shall not commence any works on Site unless and until he has prepared or developed a Construction Phase 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 Works Contractor on the date or dates for possession of the Site specified in the Agreement, and subject to compliance with Condition 6.2.1 on such date or dates the Works Contractor shall take possession of the Site and shall forthwith proceed with the Works in accordance with the Works Contractor’s Contract. The Works Contractor shall proceed with diligence so that the whole of the Works or any Section shall be completed in accordance with the Works Contractor’s Contract by the relevant Date or Dates for Completion.

**6.3 Programme**

6.3.1 The draft Programme submitted in accordance with Condition 5.2.6 of the Conditions of Tender for the Works Contractor’s Contract shall be updated to incorporate any amendment necessary to meet the Requirements and any amendments agreed between the Works Contractor and the Authority between the time of the Works Contractor’s tender and the date of the Works Contractor’s Contract and shall become the Programme upon the date of the Works Contractor’s Contract.

6.3.2 The Works Contractor shall prepare and maintain the Programme in accordance with paragraph S2-10 (Programme) of Schedule 2.

**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 S2-14 (Acceleration) of Schedule 2.

**6.5 Certification of completion of the Works or any Section or Completed Part**

The Project Manager shall certify the completion of the Works or any Section or Completed Part in accordance with paragraph S2-15.4 (Certification of completion of the Works or any Section or Completed Part) of Schedule 2.

**6.6 Early possession**

The Authority shall be entitled to take possession of any Completed Part of the Works prior to completion of the Works or the Section of which the Completed Part forms part, subject to compliance with paragraph S2-16 (Early possession) of Schedule 2.

**6.7 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 S4-10 (Extensions of time) of Schedule 4.

* 1. **(Not Used)**

**7 Assignment and subcontracting**

7.1 **Assignment**

The Works Contractor shall not, without the prior consent of the Authority, assign the Works Contractor’s Contract, or any part, share, interest or benefit in or under the Works Contractor’s Contract. The Works Contractor shall not assign the right to receive any monies due under the Works Contractor’s Contract to any person without the prior consent of the Authority. No sum of money to become payable under the Works Contractor’s Contract shall be payable to any person other than the Works 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.

* 1. **Subcontracting**

7.2.1 The Works Contractor shall not subcontract the whole of the Works Contractor’s Contract.

7.2.2 The Works Contractor shall not subcontract any part of the Works Contractor’s Contract without the prior consent of the Project Manager save that the Works Contractor shall be deemed to have received the Project Manager’s consent to subcontract that part, or those parts, of the Works 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 Works Contractor shall provide such details of any additional supply chain members he wishes to engage as the Project Manager may reasonably require.

7.2.3 The Works Contractor shall take all necessary steps to ensure that each subcontract entered into will enable him to fulfil his obligations under the Works Contractor’s Contract. The Works Contractor shall ensure that any subcontract he enters into in connection with the performance of his obligations under the Works Contractor’s Contract shall require the supply chain member to assume towards the Works Contractor the obligations and responsibilities which the Works Contractor owes to the Authority and the Project Manager under the Works Contractor’s Contract and shall give the Works Contractor rights, remedies and redress against the supply chain member equivalent to those given to the Authority against the Works Contractor under the Works Contractor’s Contract. In particular any subcontract shall include:-

7.2.3.1 power to terminate the subcontract as a consequence of termination of the Works Contractor’s 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 belonging to the person who enters into the subcontract which are brought on the Site in connection with the subcontract shall vest in the Works Contractor subject to any right of the Works Contractor to reject the same;

7.2.3.3 such provisions as may be necessary to enable the Works Contractor to fulfil his obligations to the Authority under the Works Contractor’s 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 Works Contractor under the Works Contractor’s 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 Works Contractor;

7.2.3.6 similar provisions to those set out in paragraphs S2-19 (The provision of information by the Works Contractor), S3-7 (Corruption) of Schedule 3 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; and

7.2.3.8 a provision requiring the supply chain member to comply with the Works Contractor’s policy for the prevention and detection of fraud and the fraud prevention manual attached as Appendix 1 to these Conditions of Contract.

7.2.4 The Works Contractor shall take all reasonable steps to secure the due observance and performance by any supply chain member of his 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 Works Contractor complies with and performs all obligations imposed upon him.

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 Works Contractor shall, at his own expense, secure completion of the subcontract.

7.2.6 The Works Contractor shall be wholly responsible for any supply chain member or supplier employed or engaged by him in connection with the Works Contractor’s Design and/or the Works.

7.2.7 The Works 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.

**8 Suspension and termination**

**8.1 Suspension of performance**

8.1.1 The Works Contractor may, subject to giving notice in accordance with Condition 8.1.2, suspend performance of his obligations under the Works Contractor’s Contract when the Authority:-

8.1.1.1 has not paid the full amount due by the final date for payment (calculated in accordance with Condition 4.3.2 (Dates for payment)); and

8.1.1.2 has not given notice to withhold payment in accordance with Condition 4.6 (Recovery of sums and notice of intention to withhold payment).

8.1.2 It shall be a condition precedent to suspending performance of his obligations under the Works Contractor’s Contract that the Works Contractor gives not less than 7 days notice of his intention to suspend performance to the Project Manager, 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 Works Contractor suspends performance in accordance with this condition he 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 his obligations under the Works Contractor’s Contract.

8.1.4 The suspension of performance by the Works 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 S4-10 (Extensions of time) of Schedule 4 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 Works Contractor received, in accordance with Condition 8.1.3, full payment of the amount due.

**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 Works Contractor’s Contract by notice to the Works Contractor. Upon receipt by the Works Contractor of such notice, the Works Contractor’s 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 Project Manager may issue Project Manager’s Directions or recommend the Commercial Officer to issue Change Orders 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 Project Manager’s Directions or Change Orders issued under Condition 8.2.3 shall be given not later than 3 months from the sooner of the date of the notice of termination under Condition 8.2.1 or the Works Completion Date for the Works as a whole.

8.2.5 Upon receipt of notice of termination in accordance with Condition 8.2.1, the Works Contractor shall promptly pass to the Authority all of the 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 Works Contractor within the ambit of paragraph S2-19 (The provision of information by the Works Contractor) of Schedule 2.

8.2.6 Paragraph S7-2 (Consequences of termination for default) of Schedule 7 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 Works Contractor’s Contract or the failure of the Works Contractor to comply with a Project Manager’s Direction or a Change Order within a reasonable period of its issue;

8.2.6.2 the failure of the Works Contractor to proceed diligently with, or complete, the Works Contractor’s Design and/or the Works in an efficient, workmanlike or proper manner, the failure of the Works Contractor to comply with Condition 6.3.2 (Programme) or the suspension by the Works Contractor of the carrying out of the Works 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 Project Manager the Works 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 Works Contractor is an individual, the insolvency of that individual, or, where the Works 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 working days from the date on which the Works 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;

8.2.6.4 where the Works Contractor is a company, the passing of any resolution, or the making of any application to the Court, for the winding up of the company, the making of any arrangement with creditors, the appointment of a receiver including, without limitation any receiver appointed under the Law of Property Act 1925, or administrative receiver or an interim receiver or manager on behalf of a creditor, or the occurrence of any circumstances which will entitle any creditor to appoint a receiver or manager of the Court to make a winding up order;

8.2.6.5 any breach by the Works Contractor of paragraph S3-7 (Corruption) of Schedule 3;

8.2.6.6 the failure of the Works Contractor to comply with paragraph S6-4 (Site admittance) of Schedule 6 where the Authority determines that such failure is prejudicial to the interests of the Authority;

8.2.6.7 where required by the Works Contractor’s Contract, the failure of the Works Contractor to provide a guarantee in accordance with paragraphs S9-2 (Guarantee from Group Undertaking) of Schedule 9; or

8.2.6.8 the failure of the Works Contractor to comply with the provisions of the Authority’s fraud prevention manual set out in Appendix 1 after allowing any period for rectification of this failure in accordance with this manual.

8.2.7 Paragraph S7-3 (Consequences of other termination) of Schedule 7 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 Works Contractor's expense shall (whether damaged or not) revest in and be removed by him as and when they cease to be required in connection with the Works as the result of the issue of any Project Manager’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 Works 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 5.2.1.13 to 5.2.1.17 (Authority's Risks).

8.2.10 Any decisions of the Authority under Conditions 8.2.6.5 or 8.2.6.6 shall be final and conclusive.

**9 Resolution of disputes**

9.1 Any dispute, difference or question between the parties to the Works Contractor’s Contract with respect to any matter or thing arising under or in relation to the Works Contractor’s 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 Works Contractor’s Contract is one to which section 108 of the Housing Grants, Construction and Regeneration Act 1996 applies.

**Schedule 1**  
**(Works Contractor’s Design)**

**S1-1 Design Documents**

S1-1.1 The Works Contractor shall prepare all Design Documents necessary for the complete and efficient execution of the Works Contractor’s Design. In preparing these Design Documents, the principles of prevention required by the CDM Regulations shall be fully complied with.

S1-1.2 The Works Contractor shall provide to the Project Manager two copies of all Design Documents of the type and/or nature which the Works Contractor’s Brief expressly requires the Works Contractor to provide.

S1-1.3 The Design Documents provided in accordance with paragraph S1-1.2 shall be provided as required by the Works Contractor’s Brief or otherwise in a format that can be reproduced.

S1-1.4 The Works Contractor shall keep, on the Site, one copy of each Design Document, to which the Project Manager or his representatives shall have access at all reasonable times.

**S1-2 Design review**

S1-2.1 The Works Contractor shall submit Design Documents to the Project Manager in accordance with paragraph S1-1.2 (Design Documents) of this Schedule within the period or periods stated in the Works Contractor’s Brief or (if no such period or periods are so stated) within a period which will reasonably allow the Project Manager to raise queries, and for the Works Contractor to respond, before the date on which the Works Contractor intends to commence work to which such Design Documents relate.

S1-2.2 The Project Manager shall examine the Design Documents provided by the Works Contractor and shall be entitled to reject a Design Document as unsatisfactory only where he considers:-

S1-2.2.1 that the Design Document is not in accordance with the Works Contractor’s Brief; or

S1-2.2.2 that the Design Document does not comply with any statutory requirements or regulations (including the Building Regulations, the Crown Fire Standards and any Construction Planning Clearance or Clearances) or byelaws and associated legislation in force at the time the work is undertaken; or

S1-2.2.3 that, if it is used for construction, it would render the Works Contractor’s Design unfit for the purpose or purposes described in the Works Contractor’s Brief.

S1-2.3 The Project Manager shall give notice to the Works Contractor of the reasons why any Design Document is unsatisfactory. The Works Contractor shall immediately address the reasons given by the Project Manager and re-submit the Design Document to the Project Manager in accordance with paragraph S1-2.1

S1-2.4 If the Project Manager does not reject the Design Document within the period or periods for the review of Design Documents set out in paragraph S1-2.1, the Works Contractor may commence work in accordance with the Design Document. During the above period or periods, the Project Manager may raise such questions as he considers necessary in order to satisfy himself that a Design Document is in accordance with the Works Contractor’s Brief or with the Works Contractor’s Design Proposals or any other Design Document.

S1-2.5 If the Project Manager rejects a Design Document as unsatisfactory in accordance with paragraph S1-2.2 the Works Contractor may not commence the work to which the Design Document relates.

S1-2.6 The Works Contractor shall respond promptly to any questions raised by the Project Manager in relation to any Design Documents.

S1-2.7 Nothing in this paragraph shall relieve the Works Contractor of any liability under the Works Contractor’s Contract for any defect in any Design Document, or for any inconsistency between any Design Documents.

**S1-3 Design rights**

S1-3.1 The copyright in all drawings, reports, models, specifications, bills of quantities, calculations and other documents and information provided by the Works Contractor in connection with the Works (together referred to in this paragraph as ‘copyright documents’) shall remain vested in the Works Contractor (or as may be otherwise provided by the Works Contractor), but the Authority and its appointees shall have a licence to copy and use copyright documents, and to reproduce the designs contained in them, 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 Works 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 Works Contractor.

S1-3.2 On or before the Works Completion Date the Works 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 Works Contractor, any Supply Chain members or any of the Works Contractor’s other supply chain members in connection with the performance of the Works Contractor’s Contract.

**S1-4 Risk management**

S1-4.1 The Works Contractor shall take all reasonable steps to minimise the Authority's exposure to all risks throughout the performance of the Works Contractor’s Contract that could have an adverse effect on the cost, Programme or quality of the Works and shall report to the Project Manager at, or before, each progress meeting (see paragraph S2-12 (Progress meetings) of Schedule 2) on the nature, likelihood and possible effects of such areas of potential risk.

S1-4.2 Where the Authority’s procurement strategy is ‘Works Contractor’s Design’:-

S1-4.2.1 The Works Contractor shall, immediately following its appointment, carry out (if not already carried out by the Project Manager) an initial risk analysis in accordance with relevant Technical Guidance to identify:

S1-4.2.1.1 potential risks relating to the performance of the Services and/or the delivery of the Project, the occurrence of which are capable of adversely affecting the time for completion, cost or quality of the Project;

S1-4.2.1.2 the probability of these risks occurring;

S1-4.2.1.3 a financial estimate of the most likely consequences of each risk occurring; and

S1-4.2.1.4 those risks that are within the control, or are best managed by, the Authority, the Project Manager or the Works Contractor or any other organisation engaged in relation to the project the results of this initial risk assessment will be set out in a Risk Register that shall be discussed and agreed with the DIO PM and the Commercial Officer. A copy of the agreed form of this Risk Register shall be forwarded to both the DIO PM and the Commercial Officer.

S1-4.2.2 If the Project Manager has already prepared a Risk Register in the form described in paragraph S1-4.2.1 above, the Works Contractor shall, immediately following its appointment, review with the Project Manager the latest version of the Risk Register produced by the Project Manager to consider any amendment necessary to the contents of the Risk Register, in particular to the financial estimates of the most likely consequences of each risk occurring. Otherwise, the Works Contractor shall use the Risk Register prepared in accordance with paragraph S1-4.2 above. Whichever situation applies, the Works Contractor shall discuss and agree the relevant version of the Risk Register with the DIO PM and the Commercial Officer. A copy of the agreed form of this Risk Register shall be forwarded to both the DIO PM and the Commercial Officer; otherwise, it will use the Risk Register prepared in accordance with paragraph S1-4.2.1 above. In either case, the Works Contractor shall be responsible for the updating and amendment of the Risk Register and will seek the assistance of the Project Manager and any other organisations engaged in relation to the project as considered appropriate. The Works Contractor shall also arrange regular meetings with the DIO PM, the Project Manager and any other organisations engaged in relation to the project as considered appropriate to review and update the Risk Register and to consider:

S1-4.2.2.1 any new risks that have arisen since the date of the last review;

S1-4.2.2.2 the steps taken to prevent/mitigate previously identified risks;

S1-4.2.2.3 risks which have been successfully prevented/mitigated (which can be removed from the Risk Register); and

S1-4.2.2.4 the prioritisation of all continuing risks and agreement of an action plan in respect of, and risk owners for, all risks prioritised as serious risks.

S1-4.3 Where the Authority’s procurement strategy is ‘Authority’s Design’, the Works Contractor will provide all reasonable assistance, and will use all reasonable endeavours to procure that the members of his Supply Chain and any other organisation engaged in relation to the project for which he is responsible, provide assistance to the Project Manager in the updating of the Risk Register.

S1-4.4 Where the Works Contractor is responsible for updating the Risk Register in accordance with paragraph S1-4.2.2, the Works Contractor shall provide a copy of the latest version of the Risk Register to the Project Manager at, or before, each progress meeting (see paragraph S2-12 (Progress meetings) of Schedule 2).

**S1-5 Through Life Costing**

S1-5.1 Through Life Costing refers to the technique of establishing the total cost of ownership, i.e. the total cost of constructing, operating and maintaining a building or facility for its planned life.

S1-5.2 Where the Authority’s procurement strategy is ‘Works Contractor’s Design’, the Works Contractor shall carry out Through Life Costing analysis in accordance with relevant Technical Guidance.

S1-5.3 Where the Authority’s procurement strategy is ‘Works Contractor’s Design’, as part of the Works Contractor’s Design, the Works Contractor shall produce a Through Life Cost analysis of all or any proposed design solutions or Things for incorporation.

S1-5.4 Where the Authority’s procurement strategy is ‘Works Contractor’s Design’, the Works Contractor shall, at the same time as producing his Works Contractor’s Design, produce a Through Life Costing report which he shall update throughout the stages of design for which he is responsible.

S1-5.5 The Works Contractor shall provide updates to the Project Manager at, or before, each progress meeting (see paragraph S2-12 (Progress meetings) of Schedule 2) to record and comment upon the results of all or any Through Life Costing analysis carried out.

**S1-6 Value Engineering**

S1-6.1 Where the Authority’s procurement strategy is ‘Works Contractor’s Design’, the Works Contractor shall carry out Value Engineering appraisals (in accordance with relevant Technical Guidance) of any Works Contractor’s Design to identify the function of relevant building components, and to provide the necessary function reliably at the lowest possible cost in terms of Through Life Costing. The Works Contractor shall incorporate the findings of any such appraisals into the Works Contractor’s Design. The Works Contractor shall not be entitled to any adjustment to the Contract Sum as a result of the incorporation of the findings of any such appraisals.

S1-6.2 Where the Authority’s procurement strategy is ‘Works Contractor’s Design’, the Works Contractor shall, at the same time as producing his Works Contractor’s Design, produce a Value Engineering report which he shall update throughout the stages of the design for which he is responsible. The Value Engineering report shall include the preparation of option appraisals and reasoned arguments to demonstrate why particular systems, plant, equipment, materials and the like, have been selected in preference to others for incorporation into the Works, taking into account the planned operational life of the relevant building or facility.

S1-6.3 The Works Contractor shall provide updates to the Project Manager at, or before, each progress meeting (see paragraph S2-12 (Progress meetings) of Schedule 2) to record and comment upon the results of all or any Value Engineering analysis carried out.

S1-6.4 Nothing in this paragraph shall relieve the Works Contractor of any liability under the Works Contractor’s Contract for any defect in any Design Document, or for any inconsistency between any Design Documents.

**S1-7 Sustainable Development**

S1-7.1 The Works Contractor shall ensure that it complies with the principles of Sustainable Development and that sustainability issues are incorporated into all aspects of the Work’s Contractors design, construction and life of the building. The selection and use of materials and the construction and maintenance must minimise the environment and social impacts over the full life cycle of the building. The Works Contractor should at all times comply with the Authority’s policies relating to the selection and use of materials (including but not limited to timber and wood containing products and peat) as may be promulgated and notified to the Works Contractor from time to time.

S1-7.2 The Works Contractor shall provide updates to the Project Manager at, or before, each progress meeting (see paragraph S2-12 (Progress meetings) of Schedule 2 of the Works Contractor’s Conditions of Contract) to record and comment on the results of all or any Through Life Costing assessments carried out.

**S1-8 Site Waste Management Plan (SWMP)**

S1-8.1 The Works Contractor shall ensure that it complies with the Site Waste Management Plan (SWMP) Regulations 2008. The Works 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.

S1-8.2 The Works Contractor shall implement the SWMP and update it as the Works proceeds. All waste transactions must be recorded or referenced in the SWMP to prevent fly-tipping.

S1-8.3 The SWMP is a document for recording 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. Typically the SWMP will identify the following:

S1-8.3.1 details of the Authority, Works Contractor and who drafted the plan;

S1-8.3.2 the location of the Site and cost of the Works;

S1-8.3.3 a description of each waste type and quantity expected to be produced and details of how it is to be managed (including re­use, recycling, other types of recovery and disposal);

S1-8.3.4 details of person(s) removing waste, the type of waste and where it is being taken;

S1-8.3.5 details of actual waste managements actions.

S1-8.4 The Works 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.

S1-8.5 After completion of the Works, the Works Contractor must finalise the SWMP, reconciling what was planned with what actually happened during the Works, together with recording the reason for any deviation(s). The Works Contractor includes a copy of the SWMP in the Handover documents. The Works Contractor shall keep the SWMP for a minimum of 6 years after completion of the Works for Authority Design and 12 years for Works Contractors Design.

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

**S2-1 Health and safety**

S2-1.1 The Works Contractor and sub-contractors engaged by him, shall comply with all relevant Health and Safety Legislation, MOD Health and Safety Policy and the requirements of the Establishments Health and Safety Policy(ies).

S2-1.2 The Works Contractor shall hold on site, and maintain, a controlled copy of his organisations Health and Safety Management System.

S2-1.3 The Works Contractor shall monitor the activities of his own staff and supply chain members engaged by him, to ensure compliance with both legislative and MOD Health and Safety Policy requirements. The Works 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.

S2-1.4 The Works Contractor shall carry out such checks that are necessary to ensure that his own staff and all sub-contractors engaged by him are competent and capable of carrying out their duties. A record of all pre-contract assessments of all staff and supply chain members such consultants is to be kept readily available for inspection by the Authority.

S2-1.5 The Works Contractor shall provide suitable induction training for his own staff and supply chain members with regard to the health and safety requirements of the Establishment(s) 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.

S2-1.6 The Works Contractor shall ensure that all staff and supply chain members are provided with health and safety information relevant to the Establishment(s) activities and information on activities and information on activities being carried out by others that may affect their employees.

S2-1.7 The Works Contractor shall record all accidents involving his staff and any of his supply chain members. Records shall be kept that are readily available on site and reported to the Project Manager and DIO PM at Progress Meetings. Serious accidents, incidents and ill health, reportable under the Reporting of Injuries Diseases and Dangerous Occurrences Regulations (RIDOR), must be notified to the Project Manager and DIO PM at the first available opportunity.

S2-1.8 The Works Contractor shall ensure that all accidents and incidents involving his staff, and any supply chain members on Site, are properly investigated and corrective actions are taken. A copy of the investigation of a serious injury or a fatal accident is to be submitted to the Project Manager and the DIO PM.

S2-1.9 The Works Contractor shall notify the Project Manager and the Authority at the first available opportunity of;

S2-1.9.1 any fatalities to the Works Contractor’s staff and his supply chain members;

S2-1.9.2 any accident or incident that involves the attendance of the Health and Safety Executive, and

S2-1.9.3 any enforcement action taken by the Health and Safety Executive against the Works Contractor, or any of his staff and supply chain members.

S2-1.10 The Works Contractor shall provide the Project Manager and the DIO PM with a suitable report, at each Progress Meeting, on the fulfilment of his responsibilities arising from the health and safety aspects of the project.

S2-1.11 All projects shall be subject to random site inspections, at short notice, by the Authority. The Works Contractor shall ensure that full access to the Site, and any relevant documents and all records, are made available to the Authority’s representatives.

S2-1.12 The Authority shall appoint the Works Contractor organisation as Principal Contractor for this project in accordance with the CDM Regulations. The Works Contractor shall ensure that all relevant requirements of the CDM Regulations are complied with.

S2-1.13 The Works Contractor shall ensure that the person nominated (as one of the Key personnel) to act as Principal Contractor Co-ordinator, is competent and has suitable resources, to ensure that the Works Contractor carries out the duties and responsibilities of Principal Contractor in accordance with the CDM Regulations.

S2-1.14 The Works Contractor shall be responsible for developing the Pre Construction Information Pack for the project into a suitable Construction Phase Plan before commencing works on site.

S2-1.15 The Works Contractor shall provide the Project Manager and CDM Co-ordinator with any relevant information to allow him to compile the Health and Safety File(s) for each structure, in accordance with the Authority’s requirements.

S2-1.16 The Works Contractor shall ensure:

S2-1.16.1 that any Designers appointed by him shall have suitable competence and resources to undertake the duties as specified in the CDM Regulations;

S2-1.16.2 Designers fully implement the principles of prevention of any design work;

S2-1.16.3 adequate information is provided on risks that remain which have not been eliminated by design.

S2-1.17 The Works Contractor shall ensure that a copy of the notification given to the Health and Safety Executive (Form F10[Rev]) is displayed in a readable condition in a position where it can be read by any person who works on or visits the site.

S2-1.18 The Works Contractor shall co-operate with any other contractors working at the Establishment.

S2-1.19 The Works Contractor shall ensure that his staff and his sub-contractors staff complies with the relevant requirements of the Construction Phase Plan.

S2-1.20 The Works 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.

**S2-2 Setting out**

S2-2.1 The Works Contractor shall set out the Works in accordance with the Works Contractor’s Brief and/or (if appropriate) the Works Contractor’s Design, and shall provide all the instruments, profiles, templates, rods, stakes and other equipment necessary for that purpose. The Works Contractor shall be solely responsible for the correctness of the setting out.

S2-2.2 The Works 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 Works Contractor shall take all necessary precautions to prevent their removal, alteration or disturbance and shall be liable for the consequences of such removal, alteration or disturbance and for their efficient reinstatement.

**S2-3 Protection of the Works**

S2-3.1 The Works 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 Works Contractor shall be deemed to have custody of all Things on Site for the purposes of this paragraph.

S2-3.2 The Works 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 his workpeople or to any other person.

S2-3.3 The Works 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.

**S2-4 Care of the Site**

The Works 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 Works 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 Works Contractor’s Contract. The Works Contractor shall comply at his own cost with any Project Manager’s Directions relating to the removal of any Things and rubbish.

**S2-5 Inspection of the Works and Things for incorporation**

S2-5.1 The Project Manager and his representative 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 they are lying or from which they are being obtained, and the Works Contractor shall give all such facilities as the Project Manager or his representative may reasonably require to be given for such inspection and examination.

S2-5.2 The Project Manager may reject any work or Things for incorporation which are not in accordance with the Works Contractor’s Contract.

S2-5.3 Where any work or Things for incorporation have been rejected, the Project Manager shall issue a Project Manager's Direction for the demolition or removal of such work or Things and for their reconstruction, rectification or replacement in accordance with the Works Contractor’s Contract.

S2-5.3.1 The Works Contractor shall, at his own cost, demolish, remove, replace, reinstate, rectify or reconstruct:-

S2-5.3.2 the Works, or any part of them, which do not conform with the Works Contractor’s Contract; and

S2-5.3.3 any Things for incorporation which do not conform with the Works Contractor’s Contract and which have been rejected by the Project Manager.

S2-5.4 The Project Manager may issue a Project Manager’s Direction requiring the Works 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 disclose that the work or Things in question are not in accordance with the Works Contractor’s Contract the costs incurred shall be borne by the Works Contractor and there shall be no consequential adjustment to the Contract Sum or to the Date or Dates for Completion.

S2-5.5 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 Works Contractor’s Contract the Works 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 S4-10 (Extensions of time) of Schedule 4 and the Project Manager shall recommend the Commercial Officer to issue a Change Order to cancel and supersede the Project Manager’s Direction issued in accordance with paragraph S2-5.4.

**S2-6 Damage to public roads**

S2-6.1 For the purpose of this paragraph ‘extraordinary traffic’ means extraordinary traffic within the meaning of the Highways Act 1980 (or in relation to Scotland, the Roads (Scotland) Act 1984).

S2-6.2 The Authority shall, subject to the Works Contractor’s compliance with this paragraph, be responsible for, and make good to the Works Contractor, any liability established against the Works Contractor 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 extraordinary traffic of the Works Contractor or a supply chain member in connection with the Works.

S2-6.3 The Works 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 extraordinary traffic 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 extraordinary 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.

S2-6.4 The Works Contractor shall, without prejudice to his obligations under paragraph S2-6.3, comply with any Project Manager’s Directions regarding the matters referred to in paragraph S2-6.3 as may be given to him from time to time.

S2-6.5 The Works Contractor shall notify the Authority of any claim or proceeding made or brought in respect of any damage to highways, roads or bridges by extraordinary traffic to which this paragraph applies. Following such notification, the Authority shall be responsible for dealing with or settling that claim or proceeding provided always that if it is decided by the Authority that any such claim or proceeding is due, wholly or in part, to any failure by the Works Contractor to comply with paragraph S2-6.3 or with any Project Manager’s Directions given under paragraph S2-6.4, the Authority may recover from the Works Contractor so much of the costs and/or expenses incurred by the Authority in connection with such claim or proceeding, as is due to the failure of the Works Contractor in that respect.

**S2-7 Excavations**

S2-7.1 Subject to paragraph S2-7.2, material of any kind obtained from any excavations on the Site shall remain the property of the Authority. Such material shall be dealt with as provided for in the Works Contractor’s Contract, but the Project Manager shall have power to direct or instruct its use in the Works or disposal by other means. When the Authority's property is directed to be used in substitution for any Things which the Works Contractor would otherwise have provided, the Project Manager shall recommend the Commercial Officer to issue a Change Proposal to the Works Contractor in accordance with Schedule 4 (Change Control).

S2-7.2 All fossils, antiquities and other objects of interest or value found on the Site or in carrying out excavations in the carrying out of the Works shall remain or become the property of the Authority. Upon discovery of any such object the Works Contractor shall forthwith:-

S2-7.2.1 take all practicable measures not to disturb the object;

S2-7.2.2 cease work if, and in so far as, the continuance of work would endanger, or disturb, the object or prevent or impede its excavation or removal;

S2-7.2.3 take all necessary steps to preserve the object in the exact position and condition in which it was found; and

S2-7.2.4 inform the Project Manager of the discovery and the precise location of the object.

S2-7.3 Any object the finding of which is reported to the Project Manager by the Works Contractor under paragraph S2-7.2 shall be treated as an Unknown Artificial Obstruction in accordance with Condition 5.1.6 (Conditions affecting the Works).

**S2-8 Emergency work**

S2-8.1 In this paragraph ‘emergency work’ means any work required during the performance of the Works Contractor’s Contract to:-

S2-8.1.1 prevent or alleviate the effects of any accident, failure or other like event in connection with the carrying out of the Works;

S2-8.1.2 secure and/or to make safe the Works, the Site or any adjoining property from Loss or Damage; or

S2-8.1.3 without prejudice to the Works Contractor’s liability for Loss or Damage set out in Condition 5.4 (Loss or Damage), repair any damaged or dangerous part of the Works.

S2-8.2 If the Works Contractor does not comply promptly with any Project Manager’s Direction or Change Order issued to him in respect of any emergency work required by the Project Manager, 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 Works Contractor is liable under the Works Contractor’s Contract to carry out that work at his own expense, then the Works Contractor shall reimburse:-

S2-8.2.1 any costs and/or expenses incurred by the Authority in connection with such emergency work; and

S2-8.2.2 any loss suffered by the Authority because the Works Contractor has not carried out the work.

**S2-9 Other works**

S2-9.1 The Authority may at any time carry out other works on the Establishment.

S2-9.2 The Works 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 Works Contractor or his supply chain members.

S2-9.3 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 work 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.

**S2-10 Programme**

S2-10.1 The Programme shall show at least the level of detail to identify the sub-elements of each building and/or infrastructure to be constructed on the Site.

S2-10.2 The Programme shall show the sequence in which the Works Contractor proposes to carry out his obligations under the Works Contractor’s Contract, 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 his opinion, are critical to the satisfactory completion of the Works. The Programme shall also show the Date or Dates for Completion. The Works 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 paragraph S1-2.1 (Design review) of Schedule 1 for examination by the Project Manager of Design Documents and of any samples required to be provided in accordance with Condition 3.5.1.4 (The Works).

S2-10.3 As part of the Programme, the Works Contractor shall provide all necessary information in support of the predicted duration of the activities shown in the Programme.

S2-10.4 The Works Contractor may, at any time, amend the Programme provided that the prior consent of the Authority or the Project Manager 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 Works Contractor shall notify the Project Manager of all amendments to the Programme as soon as they are made.

S2-10.5 Nothing stated in, or implied from, paragraphs S2-10.1 to S2-10.4 shall relieve the Works Contractor from any of his obligations or liabilities under the Works Contractor’s Contract.

**S2-11 Quality plan**

S2-11.1 The Works Contractor shall prepare and implement a quality plan to cover the performance of all the Works Contractor’s obligations under the Works Contractor’s Contract which shall set out the specific quality practices, procedures, resources, methods of operation and sequence of activities that are identified by the Works Contractor to satisfy all Requirements relating to quality. The Quality Plan shall relate the generic requirements of the Works Contractor’s quality assurance accreditation to the specific quality requirements of the Works Contractor’s Contract. The quality plan shall satisfy the requirements of ISO 9001:2000.

S2-11.2 The quality plan shall define:-

S2-11.2.1 how the Requirements relating to quality are to be attained;

S2-11.2.2 the specific allocation of responsibilities, authority and resources during the period of the Works Contractor’s Contract and the specific documented procedures and instructions to be applied;

S2-11.2.3 suitable testing, inspection, examination and audit programmes at appropriate stages;

S2-11.2.4 a documented procedure for alterations and modifications to the quality plan as the Works and the Works Contractor’s Design proceed;

S2-11.2.5 a method for measuring the achievement of the Requirements relating to quality; and

S2-11.2.6 other actions necessary to meet the Requirements relating to quality.

S2-11.3 In addition, the quality plan shall define the content and performance criteria to be achieved for the following:-

S2-11.3.1 Risk Management strategy (see paragraph S1-4 (Risk Management) of Schedule 1);

S2-11.3.2 Through Life Costing strategy (see paragraph S1-5 (Through Life Costing) of Schedule 1);

S2-11.3.3 Value Engineering Strategy (see paragraph S1-6 (Value Engineering)) of Schedule 1); and

S2-11.3.4 Commissioning plan (see paragraph S2-11.7).

S2-11.4 The quality plan shall be submitted to the Project Manager within 4 weeks of the date of Works Contract and shall be prepared and maintained throughout the period of the Works Contractor’s Contract as a separate document.

S2-11.5 The contents of the quality plan shall be consistent with all other requirements of the Works Contractor’s quality assurance system and shall seek to ensure that the Requirements relating to quality are met.

S2-11.6 The Works Contractor shall also evaluate the quality plans of his supply chain members and with a view to ensuring their compliance and compatibility with his quality plan.

S2-11.7 **Commissioning plan**

As part of the quality plan, the Works 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.

**S2-12 Progress meetings**

S2-12.1 The Works 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 Works Contractor’s Design and of the Works or any Section and to facilitate their due and satisfactory completion by the Date or Dates for Completion.

S2-12.2 A progress meeting shall be held on the Site each month, in accommodation provided by the Works Contractor, subject to any Project Manager’s Direction to the contrary. The Project Manager shall specify the time and date of progress meetings.

S2-12.3 The Works Contractor shall submit to the Project Manager, 5 days before each progress meeting, a written report which shall:-

S2-12.3.1 specify all outstanding requests by the Works Contractor for additional information and/or clarification;

S2-12.3.2 describe the progress of the Works Contractor’s Design and/or of the Works by reference to the Programme, and any relevant Change Orders;

S2-12.3.3 explain any new circumstances arising since the previous meeting which in his opinion have delayed, or may delay, completion of the Works Contractor’s Design and/or the Works or any Section;

S2-12.3.4 refer to any request for an extension of time under paragraph S4-10 (Extensions of time) of Schedule 4 submitted since the previous meeting;

S2-12.3.5 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;

S2-12.3.6 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;

S2-12.3.7 any other issue of concern to the Works Contractor.

S2-12.4 The Project Manager shall, within 7 days after each progress meeting, give the Works Contractor a written response to the issues raised in accordance with paragraph S2-12.3 and raise any other issue of concern to the Project Manager.

**S2-13 Vesting of Things**

S2-13.1 **Vesting of Things brought onto the Site**

S2-13.1.1 Any Things brought onto the Site in connection with the Works Contractor’s Contract which are owned by the Works Contractor or by any Group Undertaking, or which vest or will vest in the Works 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 Works Contractor’s Contract (under paragraph S2-54 (Inspection of the Works and Things for incorporation) of this Schedule).

S2-13.1.2 Subject to Condition 5.2 (Authority's Risks) and paragraph S2-9 (Other works) 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 their purpose.

S2-13.1.3 No Things shall be removed from the Site before the Works Completion Date for the Works as a whole without the consent of the Project Manager. The Project Manager may direct or permit the Works Contractor at any time during the carrying out of the Works to remove from the Site any Things which are unused or which have been rejected by the Project Manager and the Works Contractor shall at his own expense forthwith remove them. Once removed from the Site the Things shall re-vest in the Works Contractor.

S2-13.2 **Vesting of Things held off-Site**

S2-13.2.1 The provisions of this paragraph S2-13.2 shall apply only in relation to any Things held off-Site which are notified by the Project Manager to the Works Contractor as being Things that shall vest in accordance with this paragraph.

S2-13.2.2 For the purpose of this paragraph, Things shall mean any Things for incorporation which are manufactured, assembled or constructed off the Site and which the Project Manager considers are in accordance with the Works Contractor’s Contract and substantially ready for incorporation in the Works.

S2-13.2.3 In order to transfer the property in Things the Works Contractor shall:-

S2-13.2.3.1 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 they are lying or from which they are being obtained;

S2-13.2.3.2 ensure that the Things in question have been suitably marked or otherwise identified so as to show that their destination is the Site, that they are the property of the Authority and, where relevant, to whose order they are held; and

S2-13.2.3.3 provide to the Project Manager documentary evidence that the property in the Things in question has vested unconditionally in the Works Contractor.

S2-13.2.4 Upon the Project Manager confirming that the Works Contractor has complied with the requirements of paragraph S2-13.2.3, the Works Contractor shall transfer to the Authority the property in the Things. Upon the Project Manager 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 Works Contractor for the sole purpose of the performance of the Works Contractor’s 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 Works Contractor.

S2-13.2.5 Approval by the Project Manager for the purposes of this paragraph shall be without prejudice to the power of the Project Manager to reject any Things in accordance with paragraph S2-5.4 (Inspection of the Works and Things for incorporation) of Schedule 2. In the event of any Things being rejected by the Project Manager in accordance with paragraph S2-5.4, they shall re-vest in the Works Contractor.

S2-13.2.6 The Works 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.

S2-13.2.7 The Works 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.

S2-13.2.8 The Works 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.

S2-13.2.9 In the event of termination of the Works Contractor’s 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 Works Contractor on the expiration of 30 days from the date on which such termination takes effect unless the Authority shall have given the Works Contractor, before the expiration of such period, notice that the Authority elects to retain the property in such Things.

S2-13.2.10 Where the Authority elects to retain the property in any Things under paragraph S2-13.2.9: -

S2-13.2.10.1 the Works Contractor shall hand over to the Authority the Things, and if he fails to do so, the Authority may enter any premises owned or occupied by the Works Contractor and remove the said Things and recover the cost of doing so from the Works Contractor; and

S2-13.2.10.2 the Authority shall pay a fair and reasonable price for the Things which are handed over to him by the Works Contractor or otherwise come into his possession.

S2-13.2.11 Any payment made by the Authority in respect of any Things which re-vest in the Works Contractor under paragraphs S2-13.2.5 or S2-13.2.9 shall be a sum recoverable in accordance with Condition 4.6 (Recovery of sums and notice of intention to withhold payment).

S2-13.2.12 The Works 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.

**S2-14 Acceleration**

S2-14.1 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 Works Contractor to submit to him:-

S2-14.1.1 a Change Quotation for achieving the accelerated completion date and any consequential amendments to the Programme; and

S2-14.1.2 the Programme amended to show the effect of the proposed acceleration; or

S2-14.1.3 the Works Contractor’s explanation as to why he is unable to achieve the accelerated completion date.

S2-14.2 Any Change Quotation referred to in paragraph S2-14.1.1 shall give credit for any amount or amounts previously paid to the Works 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.

S2-14.3 If the Commercial Officer accepts the Change Quotation he shall issue a Change Order accordingly specifying:-

S2-14.3.1 the accelerated Date or Dates for Completion of the Works and any relevant Section;

S2-14.3.2 the amount by which the Contract Sum shall be adjusted;

S2-14.3.3 (if appropriate) a revised Milestone Payment Schedule; and

S2-14.3.4 the amended Programme.

S2-14.4 The Works Contractor may at any time during the Works Contractor’s Contract submit to the Commercial Officer (copied to the Project Manager) 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 S2-14.1.1 and S2-14.1.2.

**S2-15 Certification of completion of the Works or any Section or Completed Part**

S2-15.1 When the Works Contractor considers the Works, or any Section, to be complete in accordance with the Works Contractor’s Contract, he shall apply to the Project Manager for the issue of a Works Completion Certificate in respect of the Works or the relevant completed Section.

S2-15.2 Before certifying the Works, or any Section, as complete, the Project Manager and Works Contractor shall jointly inspect the Works. If, in the opinion of the Project Manager, the Works, or any Section, are or is not complete, the Project Manager shall not issue a Works Completion Certificate and the Works Contractor shall do whatever is necessary to complete the Works or the relevant Section (as the case may be).

S2-15.3 If the Authority takes possession of any Completed Part in accordance with paragraph S2-16 (Early possession) of this Schedule the Completed Part shall be deemed to have been completed on the date the Authority takes possession.

S2-15.4 The Project Manager shall certify the date when the Works or any Section has been completed in accordance with the Works Contractor’s Contract, or the date of the Authority’s possession of any Completed Part, by the issue of a Works Completion Certificate.

S2-15.5 With effect from the date of completion of the Works, any Section or any Completed Part in accordance with paragraph S2-15.4, the relevant Maintenance Period in relation to the Works or the relevant Section or Completed Part shall commence and the provisions of paragraph S2-18 (Defects in the Maintenance Period(s)) of this Schedule shall apply accordingly. In the case of the completion of a Completed Part, the relevant Maintenance Period shall be the Maintenance Period applicable to the Section of which the Completed Part forms a part or, where the Works are not divided into Sections, the Maintenance Period applicable to the Works as a whole.

**S2-16 Early possession**

S2-16.1 If the Authority wishes to take possession of any Completed Part of the Works prior to the completion of the Works or Section of which the Completed Part forms part, the Authority shall issue a Change Proposal in accordance with Schedule 4 (Change control).

S2-16.2 The Authority may take possession of the relevant Completed Part upon the issue of an appropriate Change Order in accordance with Schedule 4 (Change control) and a Works Completion Certificate in accordance with paragraph S2-15.4 (Certification of completion of the Works or any Section or Completed Part) of this Schedule.

S2-16.3 With effect from the date of the issue of a Works Completion Certificate in respect of any Completed Part, such Completed Part shall no longer form part of the Works for the purposes of the Works Contractor’s responsibility for Loss or Damage under Condition 5.4 (Loss or Damage) or the Works Contractor’s insurance obligations under Conditions 5.5 (Insurance) or the Contractor’s responsibility for liquidated damages in accordance with paragraph S2-17 (Liquidated damages) of this Schedule.

**S2-17 (Not Used)**

**S2-18 Defects in the Maintenance Period(s)**

S2-18.1 The Project Manager may at any time during any Maintenance Period issue Project Manager’s Directions requiring the Works Contractor to make good any defects, omissions or other faults in the Works, any Section or any Completed Part which are, or may become, apparent during the relevant Maintenance Period.

S2-18.2 The Works Contractor shall without delay and at his own cost rectify, reinstate, replace or otherwise make good any defects, omissions or other faults notified to him in accordance with paragraph S2-18.1. The Works Contractor shall make good all defects, omissions or other faults in accordance with the relevant ‘Establishment Maintenance Policy Statement’ applicable to the Establishment within which the Site is situated. All making good shall take place on the Site; however if equipment has to be repaired elsewhere, the Works 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 Works Contractor shall notify the Project Manager in writing of the predicted timescale for making good with supporting evidence of the predicted timescale.

S2-18.3 The Authority shall reimburse the Works Contractor for any costs properly incurred in accordance with paragraph S2-18.2 to the extent that the Authority is satisfied that the defects, omissions or other faults occurred despite compliance with the Works Contractor’s Contract in all respects by the Works Contractor or his supply chain members. In such circumstances the Works Contractor shall issue a Change Notification and a Change Quotation in accordance with Schedule 4 (Change control).

S2-18.4 Throughout any Maintenance Period, the Project Manager shall continue to exercise the powers conferred by paragraph S2-5 (Inspection of the Works and Things for incorporation) of this Schedule.

S2-18.5 In the case of any defects, omissions or other faults which have been made good under this paragraph the relevant Maintenance Period shall apply to the remedial works in full from the date of making good.

S2-18.6 At the end of the Maintenance Period in relation to the Works as a whole or any Section or any Completed Part, the Project Manager shall issue a Maintenance Period Completion Certificate accordingly.

S2-18.7 The issue of the final Maintenance Period Completion Certificate shall discharge the Works 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 Maintenance 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 Maintenance Period Completion Certificate.

**S2-19 The provision of information by the Works Contractor**

S2-19.1 **Records and assistance**

S2-19.1.1 The Works Contractor shall provide the Project Manager with a return, in such form as the Project Manager shall direct, of the quantity and description of labour and plant engaged or employed each day in carrying out the Works and the Works Contractor’s Design.

S2-19.1.2 The Works Contractor shall keep such records as may be necessary for the Project Manager or the Authority to calculate or verify any claims, demands or applications made, or to be made, by the Works Contractor or any sums to be paid to the Works Contractor under or in connection with the Works Contractor’s Contract.

S2-19.1.3 The Works Contractor shall afford the Project Manager access to the records referred to in paragraph S2-19.1.2 and shall supply any information the Project Manager may reasonably require in connection with such records.

S2-19.1.4 The Works Contractor shall, at all times during the course of the Works Contractor’s Contract and for a period of 6 years if Authority Design and 12 years if Works Contractor Design after final payment of all sums due under the Works Contractor’s Contract, maintain the originals or complete copies of all documents, drawings, specifications, correspondence and the like which relate to the Works in his 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.

S2-19.1.5 The Works Contractor shall, within 7 days after the date of the issue of the last Maintenance Period Completion Certificate, forward to the Project Manager a schedule of all the documents held by the Works Contractor and any of his supply chain members in accordance with paragraph S2-19.1.4 together with details of where the documents are being held. Upon request, the Works 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.

S2-19.1.6 The Works Contractor grants to the Authority the right to take possession of all documents held in accordance with paragraph S2-19.1.4 in the event that the Works 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).

S2-19.2 **As-built drawings and other information**

S2-19.2.1 Not later than the period or periods stated in Condition 14 of the Agreement following the issue of any Works Completion Certificate, the Works Contractor shall submit to the Project Manager, at no extra charge, full drawings, calculations and other documents as necessary to show and describe the Works or relevant Section or Completed Part as built, together with such other information as may be required by the Works Contractor’s Contract or is otherwise necessary to explain the operation and maintenance of the Works or relevant Section or Completed Part. These drawings, documents and other information shall be subject to the approval of the Project Manager, which shall not be unreasonably withheld.

S2-19.2.2 When the Project Manager has given approval in accordance with paragraph S2-19.2.1 the Works Contractor shall supply to the Project Manager, at no extra charge, two sets of the approved drawings, documents and other information in a reproducible format.

S2-19.3 **Retention of records**

S2-19.3.1 The Works Contractor is responsible for assembling and maintaining, for a period of 6 years if Authority Design, or 12 years if it is Works Contractor’s Design, after final payment of all sums due under the Works Contractor’s Contract, the originals or complete copies of all documents prepared by him and/or within his custody.

**Schedule 3  
(Compliance with statutory and other obligations)**

**S3-1 Statutory obligations**

S3-1.1 The Works Contractor shall comply with and give all notices required by any Act of Parliament or any instrument, rule, or order made under any Act of Parliament or any regulation or bye-law made under any applicable law or made by any local authority or statutory undertaker which has jurisdiction in relation to the Works whether or not the same is binding on the Authority. The Works Contractor shall pay all fees or charges required to be paid under any Act, 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.

S3-1.2 The Works Contractor shall obtain the consent, permission or licence of any statutory undertakers, or any adjoining owners whose consent is necessary in connection with the Works. The Works Contractor shall pay any licence fee or charge required in connection with any such consent, permission or licence.

S3-1.3 The Works 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 notice, instrument, rule, order, regulation, bye-law, consent, permission or licence as referred to in paragraphs S3-1.1 or S3-1.2.

S3-1.4 Subject to paragraph S3-1.5, the Contract Sum shall be deemed to include the amount of any fee, licence fee or charge incurred in accordance with paragraphs S3-1.1 or S3-1.2.

S3-1.5 The Authority shall reimburse to the Works 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 paragraphs S3-1.1 or S3-1.2 which:-

S3-1.5.1 was necessarily incurred in order to comply with a Change Order; and

S3-1.5.2 was not reasonably contemplated by the parties or provided for by or under the Works Contractor’s Contract.

**S3-2 Building Regulations and Crown Fire Standards**

S3-2.1 The Works Contractor shall carry out the Works Contractor’s Design and the Works in accordance with the requirements of the Building Regulations and Crown Fire Standards. The Project Manager certifies the Certificate of Compliance to the Building Regulations at completion of design.

S3-2.2 Where a dispute arises between the Project Manager and the Works Contractor or any other person concerning the interpretation of the Building Regulations and/or the Crown Fire Standards, the dispute shall be referred to the Authority’s Building Control Officer or the Authority’s Fire Officer, respectively, whose decision shall be final and conclusive.

S3-2.3 The Works Contractor shall allow access to the Site at all reasonable times by the Authority’s Building Control Officer and/or the Authority’s Fire Officer and/or the Project Manager and their respective representatives to enable them to inspect the Works for compliance with the Building Regulations and the Crown Fire Regulations and shall cooperate with the Authority’s Building Control Officer and/or the Authority’s Fire Officer and/or the Project Manager and their respective representatives in carrying out any Building Regulations audit of the Works.

S3-2.4 The Works Contractor shall not lay any foundations until the excavations for the same have been examined by the Project Manager (or the Project Manager’s representative). The Works Contractor shall give reasonable notice to the Project Manager before any foundations are to be laid. Such notice shall be sufficient in all respects to enable inspection by the Project Manager.

S3-2.5 The Authority’s Building Control Officer and the Authority’s Fire Officer are the sole authorities for the determination of the compliance with, the issue of, and dispensation under, the Building Regulations and the Crown Fire Standards respectively.

S3-2.6 The Project Manager certifies the Certificate of Compliance to the Building Regulations at Completion of the Construction.

**S3-3 Nuisance and pollution**

S3-3.1 The Works 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.

S3-3.2 The Works 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.

S3-3.3 The Works 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 arising in respect of:-

S3-3.3.1 any failure to comply with such legislation or requirements; or

S3-3.3.2 any act or omission of the Works Contractor his employees, agents or supply chain members which results in pollution of land, water or air due to the release or escape (into any environmental medium) of substances or articles capable of causing harm to man or any other living organisms.

S3-3.4 In paragraph S3-3.3.2 ‘harm’ means harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of human beings, includes offence to any of their senses or harm to their property. Refer to Annex D - Nuisance and Pollution (DEFCON 68) for further in formation.

**S3-4 Personal data**

S3-4.1 The Works 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:-

S3-4.1.1 the loss or destruction of personal data;

S3-4.1.2 the disclosure of, or access to, personal data; or

S3-4.1.3 any other breach of the Data Protection Act 1998;

in the circumstances mentioned in paragraph S3-4.2.

S3-4.2 Paragraph S3-4.1 shall apply where:-

S3-4.2.1 personal data has been lost or (without the consent of the Authority) destroyed by the Works Contractor, his employees or agents; or

S3-4.2.2 the Works Contractor, his employees or agents, have disclosed, or allowed access to, personal data to or by any other person.

S3-4.3 In this paragraph ‘personal data’ has the same meaning as in section 1(3) of the Data Protection Act 1998.

**S3-5 Discrimination**

S3-5.1 The Works Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976 (the "Act") or any statutory modification or re-enactment thereof relating to discrimination in employment.

S3-5.2 Where in connection with the Contract, the Works 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 Works Contractor shall comply with the reasonable directions of the Authority in order to enable the Authority to fulfil its duties under section 71(1) of the Act. Those directions shall include but not be limited to the directions set out in Condition S3-5.7.

S3-5.3 The Works Contractor shall take all reasonable steps to procure the observance of the provisions of Conditions S3-5.1 and S3-5.2 by any servants, employees or agents of the Works Contractor and any supply chain members engaged in the performance of the Contract.

S3-5.4 If the Works Contractor becomes aware of any prosecution or proceedings, brought under the Act, against the Works Contractor, any servants, employees or agents of the Works Contractor and any supply chain members engaged in performance of the Contract, the Works Contractor shall immediately notify the Authority at the address specified in the Contract. The Works Contractor shall not be required to so notify in breach of any duty of confidentiality between the Works Contractor and any of his employees.

S3-5.5 Notification by the Works Contractor of any information shall not prejudice any rights of the Authority or the Works Contractor under the Contract.

S3-5.6 Where the Works Contractor lets a contract ("the Subcontract") in connection with the performance of the Contract to another party "(the supply chain member")), the Works Contractor shall incorporate the terms of the Appendix to this Condition (see Appendix 4 - Provisions to be included in subcontracts) in the Subcontract as follows:

S3-5.6.1 where the Appendix reads "[the Subcontract]", the Works Contractor shall substitute the phrase or description used in the Subcontract to denote the same;

S3-5.6.2 where the Appendix reads "[the Works Contractor]", the Works Contractor shall substitute the phrase or description used in the Subcontract to denote the same; and

S3-5.6.3 where the Appendix reads "[the supply chain member]", the Works Contractor shall substitute the phrase or description used in the Subcontract to denote the same.

S3-5.7 In connection with S3-5.2, the Works Contractor shall so far as is reasonable promote good relations between persons of different racial groups (whether defined by colour, race, nationality, or ethnic or national origin) by:

S3-5.7.1 encouraging the use of verbal and non-verbal language which will not cause racial offence;

S3-5.7.2 encouraging the use of words or terms in written communications which will not cause racial offence;

S3-5.7.3 discouraging any form of racial stereotyping;

S3-5.7.4 encouraging behaviour which will not create restrictions between racial groups; and

S3-5.7.5 encouraging behaviour which respects racial differences.

S3-5.8 The Works Contractor is encouraged to bring to the attention of the Authority any measures which might promote good relations between different racial groups.

**S3-6 Intellectual property rights**

S3-6.1 The Works 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 Works Contractor’s Contract (‘intellectual property rights’).

S3-6.2 The Works 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 Works Contractor undertakes to be responsible for dealing with and settling at his own expense any such claim, or proceedings.

S3-6.3 Subject to paragraph S3-6.6, the Contract Sum shall be deemed to include the amount of any royalty, licence fee or other expense incurred in accordance with paragraph S3-6.1.

S3-6.4 The Works Contractor shall inform the Project Manager as soon as he becomes aware of the need to make payment for use of any intellectual property rights.

S3-6.5 The Works Contractor shall not settle any claim for use of any intellectual property rights without the agreement of the Project Manager.

S3-6.6 The Authority shall reimburse to the Works 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 S3-6.1 which:-

S3-6.6.1 was necessarily incurred in order to comply with a Change Order; and

S3-6.6.2 was not reasonably contemplated by the parties or provided for by or under the Works Contractor’s Contract.

**S3-7 Corruption**

S3-7.1 The Works Contractor shall not by himself, or in conjunction with any other person:-

S3-7.1.1 corruptly solicit, receive or agree to receive, for himself or for any other person; or

S3-7.1.2 offer, give or agree to give to any person in the service of the Crown, or any consultant or contractor who has a contract with the Crown; any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act or thing, or for showing favour or disfavour to any person, in relation to the Works Contractor’s Contract or any other contract to which the Crown is a party.

S3-7.2 The Works Contractor (or anyone acting on his behalf or with his knowledge) shall not have paid or agreed to pay any commission in connection with his entry into the Works Contractor’s Contract, or any other contract to which the Crown is a party, unless before the entry into any such contract the Works Contractor has disclosed to the Authority full particulars of any such commission and of the terms and conditions of any agreement for the payment of any such commissions.

S3-7.3 The Works Contractor shall not have entered into the Works Contractor’s Contract having:-

S3-7.3.1 communicated any figures or other information indicating the Works Contractor’s tender prices to any third party before the return of his tender for the Works Contractor’s Contract (other than in connection with the obtaining of insurance quotations, provided any such information was given in strict confidence);

S3-7.3.2 obtained, or attempted to obtain, any information in connection with any other tender before the time set for the return of tenders for the Works Contractor’s Contract;

S3-7.3.3 made or discussed any arrangement with any third party regarding whether or not they should tender, or about their or any other party’s tender for the Works Contractor’s Contract.

S3-7.4 Any breach of paragraph S3-7.1 to S3-7.3 or the commission of any offence under the Prevention of Corruption Acts 1889 to 1916 by the Works Contractor or by anyone employed or engaged by him or acting on his behalf (whether with or without the knowledge of the Works Contractor) in relation to the Works Contractor’s Contract or any other contract to which the Crown is a party, shall entitle the Authority, without prejudice to any rights or remedies of the Authority under the general law:-

S3-7.4.1 to recover from the Works Contractor the amount or value of any such gift, consideration or commission paid to the Works Contractor or anyone employed or engaged by him or acting on his behalf;

S3-7.4.2 to terminate the Works Contractor’s Contract forthwith and recover from the Works Contractor the amount of any loss and/or expense resulting from the termination; and

S3-7.4.3 to recover from the Works Contractor any other loss and/or expense sustained in consequence of the Works Contractor’s breach of this paragraph, whether or not the Works Contractor’s Contract has been terminated.

S3-7.5 Any dispute, difference or question arising in respect of:-

S3-7.5.1 the right of the Authority to terminate the Works Contractor’s Contract; or

S3-7.5.2 any of the amounts recoverable from the Works Contractor under paragraph S3-7.4;

S3-7.5.3 shall be decided by the Authority, whose decision shall be final and conclusive.

S3-7.6 Recovery action taken against any person in the service of the Crown shall be without prejudice to any recovery action taken against the Works Contractor under this paragraph.

**S3-8 Construction Planning Application(s) and Consent(s)**

S3-8.1 The submission of all Construction Planning Application(s) for planning permission for Works shall be in accordance with the relevant statutory planning procedure applicable to the Establishment.

S3-8.2 The Works Contractor shall, in all cases be responsible for the Construction Planning Application and for obtaining the planning permission.

S3-8.3 The Works Contractor shall:

S3-8.3.1 consult with DIO Land Management Services prior to submitting any Construction Planning Application and before holding any pre-application exchange of correspondence or meetings with the Local Planning Authority or other relevant body;

S3-8.3.2 submit the Construction Planning Application and pay associated fee(s), conduct any negotiations with the relevant Local Planning Authority or with any other relevant body, comply with all conditions and/or agreements attached or ancillary to the subsequent grant of the planning permission;

S3-8.3.3 give to the DIO PM copies of all decision notices relevant to the Construction Planning Application to enable the planning details to be entered on the DIO Land Management Services Planning Register;

S3-8.3.4 in the event of a planning permission being refused or obtained subject to conditions or obligations unacceptable to the Authority, the Works Contractor shall provide a report on the advisability of progressing a planning appeal or such other alternative course of action. Provide all necessary information to the DIO PM for the purpose of the appeal.

S3-8.4 The Works Contractor shall, in performing the obligations under this paragraph, have regard to any relevant Technical Guidance.

**S3-9 (Not Used)**

**Schedule 4  
(Change control)**

**S4-1 Proposed Changes**

Where either the Commercial Officer (either of his own initiative or in response to a recommendation from the Project Manager) or the Works Contractor propose a Change, the Commercial Officer or the Works Contractor (as the case may be) shall submit to the Commercial Officer (copied to the DIO PM) a Change Proposal dated with the date on which it was sent.

**S4-2 Notification of Changes**

S4-2.1 Where the Works Contractor wishes to notify the occurrence of one of the Authority’s Risks, the Works Contractor shall issue a Change Notification to the Commercial Officer (copied to the DIO PM) dated with the date on which it was sent.

**S4-3 Requirement for the Works Contractor to provide a Change Quotation**

S4-3.1 If the Commercial Officer proposes a Change by the issue of a Change Proposal the Works Contractor shall submit a Change Quotation not later than 14 days from the receipt of the Change Proposal.

S4-3.2 If the Works Contractor proposes a Change by the issue of a Change Proposal he shall submit a Change Quotation with his Change Proposal to the Commercial Officer. If the Works Contractor notifies a Change by the issue of a Change Notification, he shall submit a Change Quotation within 14 days from the date of his Change Notification to the Commercial Officer.

S4-3.3 The Change Quotation shall :-

S4-3.3.1 (if relevant) state the price of any disruption to, or prolongation of, the Works directly consequential upon the Change; and

S4-3.3.2 indicate how the lump sum price or saving is calculated by showing, separately, the amounts attributable to:-

S4-3.3.2.1 the direct price of, or the direct saving from, the Change; and

S4-3.3.2.2 the price (if any) of any disruption to, or prolongation of, the Works, or the saving (if any), directly consequential upon the Change.

S4-3.4 The Change Quotation shall further provide a breakdown showing how the price or saving referred to in paragraph S4-3.3 is arrived at and shall indicate what alteration (if any) is required to the Milestone Payment Schedule.

S4-3.5 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.

**S4-4 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 Works Contractor in accordance with paragraphs S3-1.5 (Statutory obligations) or S3-6.6 (Intellectual property rights) of Schedule 3.

**S4-5 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 S4-8 (The issue of Change Orders) of this Schedule.

**S4-6 Calculation of lump sum price or saving where not agreed**

S4-6.1 If either:-

S4-6.1.1 the Works Contractor fails to provide a Change Quotation in accordance with paragraph S4-3 (Requirement for the Works Contractor to provide a Change Quotation) of this Schedule; or

S4-6.1.2 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 Works Contractor within 21 days from the date of the relevant Change Proposal or Change Notification (as the case may be) either:-

S4-6.1.3 that the proposed Change referred to in any Change Proposal is withdrawn; or

S4-6.1.4 that he will carry out his own calculation of the lump sum payment or saving for the Change calculated in accordance with paragraph S4-6.2.

S4-6.2 The Commercial Officer’s calculation of the lump sum price or saving for a Change shall be made by reference to:-

S4-6.2.1 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 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

S4-6.2.2 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.

S4-6.3 The Commercial Officer shall carry out his calculation of the lump sum price or saving for a Change in accordance with paragraph S4-6.2 and shall notify the Works Contractor of his calculation within the period of 14 days from the date of his notification in accordance with paragraph S4-6.1.4 subject to extension of this period in accordance with paragraph S4-6.4.

S4-6.4 The Works Contractor shall supply the Commercial Officer with any information reasonably requested by the Commercial Officer or the Project Manager to enable the Commercial Officer (with the assistance of the Project Manager) to assess the amount of any lump sum price or saving in accordance with paragraph S4-6.2. The period of 14 days referred to in paragraph S4-6.3 shall be deemed to be extended by the period between the date of receipt (or deemed receipt) of the later of the Commercial Officer’s or the Project Manager’s request under paragraph S4-6.3 and the date of the Commercial Officer’s receipt of all the information requested.

S4-6.5 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 he is satisfied that he can agree or assess a final price or saving.

**S4-7 Works Contractor’s disagreement with the calculation of any lump sum price or saving**

S4-7.1 If the Works Contractor disagrees any final lump sum price or saving calculated or recalculated under paragraph S4-6.2 (Calculation of lump sum price or saving for Changes where not agreed) of this Schedule, he shall, within 14 days of receipt of the relevant Change Order, notify the Commercial Officer of his reasons for disagreement and of his calculation of the appropriate lump sum price or saving. If the Works Contractor does not so notify the Commercial Officer of his disagreement, he shall be regarded as having accepted the lump sum price or saving set out in the relevant Change Order.

S4-7.2 Where the Works Contractor has notified the Commercial Officer in accordance with paragraph S4-7.1 that he disagrees with any calculation made by the Commercial Officer in accordance with paragraph S4-6.2 (Calculation of lump sum price or saving for Changes where not agreed) of this Schedule, the Commercial Officer shall consider the Works Contractor’s calculation and supporting evidence and shall, within 14 days of receipt of the Works Contractor's calculation and supporting evidence:-

S4-7.2.1 confirm his original calculation; or

S4-7.2.2 agree the Works Contractor's calculation; or

S4-7.2.3 agree some other sum as a result of negotiation with the Works Contractor.

S4-7.3 If, within 35 days from the date of the Works Contractor’s receipt of the relevant Change Order, the Commercial Officer and Works Contractor cannot agree the amount of the Change, the Works Contractor may (subject to the right of either party to refer the matter to adjudication in accordance with paragraph S8-3 (Adjudication) of Schedule 8) refer the matter to the Commercial Representative for a decision in accordance with paragraph S8-1 (Referrals to the Commercial Representative) of Schedule 8.

S4-7.4 If the Works 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 Works Contractor’s receipt of the relevant Change Order, he shall be regarded as having accepted the lump sum price or saving referred to in the relevant Change Order.

**S4-8 The issue of Change Orders**

S4-8.1 The Contract Sum can only be increased or reduced by the issue of a Change Order.

S4-8.2 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 S4-5 (Agreed lump sum price or saving for Changes), S4-6 (Calculation of lump sum price or saving for Changes where not agreed) or S4-7 (Works Contractor’s disagreement with the calculation of any lump sum price or saving) of this Schedule respectively.

**S4-9 Amendment of the Milestone Payment Schedule**

S4-9.1 If, as a result of a Change Order, the Contract Sum is increased or decreased, the Milestone Payment Schedule shall be amended in one or more of the following ways, as shall be decided by the Commercial Officer by considering which of the following options (applied in the following order) is most appropriate:-.

S4-9.1.1 adjusting the amount of the advance to be made on completion of a Milestone;

S4-9.1.2 adjusting the amount of the advances to be made on completion of two or more Milestones;

S4-9.1.3 creating a new Milestone on completion of which a further advance will be payable; or

S4-9.1.4 agreeing a new Milestone Payment Schedule by reference to which further advances will be payable.

**S4-10 Extensions of time**

S4-10.1 Where the Commercial Officer:

S4-10.1.1 receives a Change Quotation from the Works Contractor which requests an extension of time to the Date or Dates for Completion (which shall include the grounds for his request) or;

S4-10.1.2 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;

S4-10.1.3 where the Commercial Officer considers that any act, omission or default of the Authority or the Project Manager has caused a delay which will prevent, or has prevented, completion of the Works or any relevant Section by the relevant Date for Completion;

he 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:-

S4-10.1.4 to the extent that the Works Contractor has failed to take reasonable steps to avoid or reduce the relevant delay; or

S4-10.1.5 in respect of any period of delay which had arisen prior to the relevant Change, for which the Works Contractor was not entitled to any extension of time.

S4-10.2 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 Works Contractor of his decision regarding the award of an extension of time for completion of the Works or relevant Section and whether his decision is provisional or final. The Commercial Officer shall keep all provisional decisions under review until he is satisfied from the information available to him that he can give a final decision. The Commercial Officer shall notify the Works Contractor of any extensions of time by the issue of an appropriate Change Order.

S4-10.3 If the Works Contractor is dissatisfied with a final decision under paragraph S4-10.2, he shall, not later than 14 days from receipt of the decision, submit a claim to the Commercial Officer specifying the grounds which in his view entitle him to an extension or further extension of time.

S4-10.4 The Commercial Officer shall, within 14 days of the receipt of such a claim under paragraph S4-10.3, notify the Works Contractor whether the disputed decision has been amended. If the Works Contractor is still dissatisfied he may (subject to the right of either party to refer the matter to adjudication in accordance with paragraph S8-3 (Adjudication) of Schedule 8) refer the matter to the Commercial Representative for a decision in accordance with paragraph S8-1 (Referrals to the Commercial Representative) of Schedule 8. If the Works 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 S4-10.4, he shall be regarded as having accepted any final extension notified by the Commercial Officer in accordance with paragraph S4-10.2.

S4-10.5 Any extensions of time granted in accordance with this paragraph S4-10 shall be reflected in the Programme.

**S4-11 Finance charges**

Save as set out in Condition 4.7 (Interest on late payment), the Works 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.

**S4-12 Commercial Officer’s duty to act fairly and impartially**

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

**S4-13 Emergency works**

In relation to:-

S4-13.1 any ‘emergency work’ (as defined in paragraph S2-8 (Emergency work) of Schedule 2); and/or

S4-13.2 the consequences of the occurrence of any Authority’s Risks to the extent covered by any written delegation of authority to the Project Manager in accordance with paragraph 3.23.5 (Change control procedure under the Works Contractor’s Contract) of the Project Manager’s Handbook;

the Project Manager shall be authorised to perform the role of the Commercial Officer as set out in the preceding paragraphs of this Schedule 4 and to issue Change Orders accordingly. However the Project Manager shall ensure that the Commercial Officer and the DIO PM are kept fully aware of any such emergency work and/or the consequences of any Authority’s Risks covered by paragraph S4-13.2 above and the steps taken to agree or assess any payments or extensions of time resulting from them.

**Schedule 5  
(Provisions relating to payment)**

**S5-1 Certification of Milestones**

S5-1.1 A Milestone shall be deemed to have been completed when it has been certified as completed by the Project Manager in accordance with Condition 4.1 and the definition of completion for that Milestone contained in the relevant Milestone Payment Schedule by the issue of a certificate of completion of a Milestone in the relevant standard form.

S5-1.2 Provided that all preceding Milestones on the relevant Milestone Payment Schedule current at the date of application have been completed, when the Works Contractor considers that a Milestone has been completed in accordance with the Works Contractor’s Contract he shall submit to the Project Manager Form AG 200 with the sections to be completed by the Works Contractor duly completed including the amount of the advance due to the Works Contractor on completion of the relevant Milestone (calculated in accordance with Condition 4.1.2 (Payment against Milestones) excluding the amount of any VAT).

S5-1.3 Within 5 days of receipt of the Works Contractor’s application under paragraph S5-1.2 the Project Manager shall either:-

S5-1.3.1 notify the Works Contractor that the Milestone has not been completed in accordance with the Works Contractor’s Contract, together with his reasons; or

S5-1.3.2 if he agrees that the relevant Milestone has been completed, confirm its completion by the issue of a certificate in accordance with paragraph S5-1.1.

S5-1.4 In the event that the relevant Milestone is certified as completed in accordance with paragraph S5-1.3.2, the Project Manager shall take all reasonable steps to ensure that the Form AG 200 signed by both the Project Manager and the DIO PM is returned to the Works Contractor within 7 days from the date of completion of the relevant Milestone.

S5-1.5 The confirmation of completion of a Milestone in accordance with paragraph S5-1.3.2 shall not relieve the Works Contractor of his obligations or liabilities to the Authority arising out of, or in any way connected with, the performance of the Works Contractor’s Contract.

S5-1.6 In operating this paragraph, the Project Manager shall act fairly and impartially.

**S5-2 AG200 Payment procedure**

S5-2.1 All applications for payment by the Works Contractor shall be made to the Authority’s Accounts.

S5-2.2 On receipt of the Form AG 200 signed by the Project Manager and the DIO PM, the Works Contractor may apply for payment to the Authority’s Accounts.

S5-2.3 To apply for payment, the Works Contractor shall send to the Authority’s Accounts:-

S5-2.3.1 one completed Form DAB 10;

S5-2.3.2 the Form AG 200 endorsed with the relevant details from any relevant Change Order applicable to the payment and signed by the Project Manager and the DIO PM; and

S5-2.3.3 an appropriate invoice in accordance with paragraph S5-5 (VAT) of this Schedule.

S5-2.4 The Works Contractor may choose, if he has other contracts with the Authority, to submit more than one application for payment on Form DAB 10. If he so chooses, the Works Contractor’s application for payment will comprise:-

S5-2.4.1 one completed Form DAB 10;

S5-2.4.2 a Form AG 200 for each payment, endorsed with the relevant details from any relevant Change Order applicable to each payment and signed by the Project Manager and the DIO PM or the appropriate person or persons under any other contract (as the case may be); and

S5-2.4.3 an appropriate invoice or invoices in accordance with paragraph S5-5 (VAT) of this Schedule.

S5-2.5 Photocopies of the completed Form DAB 10 and the signed Form AG 200 are not acceptable.

S5-2.6 The Works Contractor may obtain payment using the Bankers Automatic Clearing Services (‘BACS’) system.

S5-2.7 To facilitate payment by the BACS system, the Works Contractor shall provide the Authority’s Accounts, in advance of the submission of a Form AG 200 (if he has not already done so) with details of the name and address of his bank (or details of the Project Bank Account if applicable), the sort code and account number . The Works Contractor shall confirm the accuracy of this information with the Authority’s Accounts on an annual basis.

S5-2.8 The Works Contractor shall issue to the Commercial Officer a certified copy of an original current CIS Tax Certificate. If during the contract the Works Contractor’s CIS Tax Certificate expires, the Works Contractor shall issue to the Commercial Officer a certified copy of the new CIS Tax Certificate held.

**S5-3 Completion Payment(s)**

S5-3.1 Where the Project Manager has issued a Maintenance Period Completion Certificate in relation to the Works or any Section or Completed Part, the Project Manager shall, within 3 months from the date of completion of the relevant Maintenance Period (as set out in the relevant Maintenance Period Completion Certificate) forward to the Works Contractor one copy of his draft calculation of the relevant Completion Payment due to the Works Contractor.

S5-3.2 The Works Contractor shall, within 3 months of receipt of such draft calculation, notify his agreement or disagreement with it. If he disagrees, he shall specify in such notice his reasons for disagreement and his own calculation of the relevant Completion Payment.

S5-3.3 If the Works Contractor fails to give notice of disagreement within the 3 month period referred to in paragraph S5-3.2, or gives notice but fails (in the reasonable opinion of the Project Manager) to specify adequate grounds for disagreement, he shall be deemed to have agreed the draft calculation of the relevant Completion Payment as being the calculation of the relevant Completion Payment.

S5-3.4 The Project Manager shall determine the amount of the relevant Completion Payment taking into account any reasons for disagreement and/or the Works Contractor’s own calculation put forward in accordance with paragraph S5-3.1.

S5-3.5 Once the relevant Completion Payment has been calculated and agreed, or has been treated as having been agreed under paragraph S5-3.3, or in default of agreement, has been determined by the Project Manager in accordance with paragraph S5-3.4, if the total amount previously paid to the Works Contractor exceeds the amount due to the Works Contractor (taking into account the relevant Completion Payment), the Works Contractor shall repay the excess to the Authority.

S5-3.6 If the total amount due to the Works Contractor (taking into account the relevant Completion Payment) exceeds the amount previously paid to the Works Contractor, the Works Contractor shall apply for payment of the excess in accordance with paragraph S5-2 (Payment procedure) of this Schedule and the Authority shall pay the amount of such excess subject (in the case of the last Completion Payment following completion of the Works as a whole) to the prior receipt by the Authority of the schedule of documents and the as-built drawings and other information in accordance with paragraphs S2-19.1.5 and S2-19.2.1 (The provision of information by the Works Contractor) of Schedule 2 and subject (in the case of the Completion Payment following completion of any Section) to the prior receipt by the Authority of the as-built drawings and other information in relation to that Section in accordance with paragraph S2-19.2.1 (The provision of information by the Works Contractor).

S5-3.7 In operating this paragraph, the Project Manager shall act fairly and impartially.

**S5-4 The Pricing Document**

S5-4.1 After the date of the Works Contractor’s Contract, there shall be no rectification of any errors or omissions or wrong estimates in the prices inserted by the Works Contractor in the Pricing Document or in any of his computations or calculations relating to such prices. Errors or omissions in description or in quantity in the Pricing Document shall not vitiate the Works Contractor’s Contract nor relieve the Works Contractor from his obligations or liabilities under the Works Contractor’s Contract.

S5-4.2 If the Works Contractor discovers any errors or omissions in description or in quantity in any draft Pricing Document provided by the Project Manager he shall immediately notify the Project Manager of the error or omission by the issue of a Change Notification together with a Change Quotation. The Works Contractor shall only be entitled to an adjustment of the Contract Sum to reflect any errors or omissions in such draft Pricing Document and shall not be entitled to any extension of time to the Date or Dates for Completion. The Project Manager shall request the Commercial Officer to rectify any such error or omission in any such draft Pricing Document by the issue of an appropriate Change Order in accordance with Schedule 4 (Change control).

**S5-5 VAT**

S5-5.1 All sums payable by or to the Authority or the Works Contractor are exclusive of Value Added Tax (‘VAT’). Where VAT is chargeable on such sums, the payer shall, upon production of a valid VAT invoice by the payee, pay such VAT in addition to such sums.

S5-5.2 When requesting or claiming payment in accordance with paragraph S5-2 (Payment procedure) of this Schedule the Works Contractor shall forward to the Authority’s Accounts an appropriate VAT invoice clearly stating how the services in question are rated for VAT purposes and the relevant amount of any VAT payable.

S5-5.3 If the Works Contractor fails to carry out his obligations under the Works Contractor’s Contract and the Authority employs some other person to fulfil them, and a payment in respect of VAT is made, or falls to be made, to that other person, the Authority shall be entitled to recover from the Works Contractor any VAT (which he is not otherwise able to recover) additional to what he would have paid had the Works Contractor carried out his obligations under the Works Contractor’s Contract.

S5-5.4 Where the Authority or the Works Contractor is liable to reimburse or indemnify the other for costs incurred by the other, the amount to be paid shall not include any VAT charged on such costs, save where the payee is unable to recover such VAT from HM Customs & Excise as his input tax.

**S5-6 P2P Payment**

S5-6.1 From such date as the Authority shall notify the Contractor that the P2P system is available for use, the procedure set out in this Schedule 5-6 shall apply: All applications for payment shall be submitted in accordance with Condition 4 to the PM and Task Officer for scrutiny and approval. Once certified and signed by the PM and Task Officer it will be retained for audit purposes. The relevant forms and further information can be found in Enclosure 2 – DEFFORM 30.

S5-6.2 Upon submission of the invoice the Authority shall within 5 Working days:

S5-6.2.1 either receipt the request on the P2P system (“Payment Approval”) and specify the amount receipted and the basis on which that amount was calculated; or

S5-6.2.2 send to the Principal Contractor a written notice that no amount is approved in respect of the Payment Request (“Notice of Non-Approval”).

S5-6.2.3 Where either the amount of the Payment Approval is less than the Payment Request or a Notice of Non-Approval is issued, the Authority shall specify the reasons why he considers the Payment Approval may be withheld or abated and the amount of the withholding attributable to each reason.

S5-6.3 The receipting by the Authority of your Payment Request (P2P Invoice) will enable payment to be made by the Bill Paying Branch (DBS Finance).

S5-6.4 All valid, properly completed Invoices for payment received in P2P shall be paid by the Authority in accordance with this Condition S5-6 by means of BACS directly into the Principal Contractors bank account (Project Bank Account) and to facilitate payment by means of the BACS system, the Principal Contractor shall provide the Bill Paying Branch in advance of the submission of valid claims details of the name and address of his bank, sort code and account number.

S5-6.5 Notwithstanding any statement to the contrary on the Payment Request, the Payment Approval shall not be construed as acceptance by the Authority of the performance of the Principal Contractor’s obligations nor as a waiver of his rights and remedies under the Contract or otherwise.

S5-6.6 The due date for payment (“Due Date”) shall be as follows:

S5-6.6.1 Where the Authority has receipted your application on P2P in accordance with Condition S5-6.2 the amount receipted shall become due on the day the Bill Paying Branch receives it.

S5-6.6.2 Where neither a Payment Approval nor a Notice of Non-Approval has been issued and should have been issued in accordance with S5-6.2 the amount of the relevant Payment Request shall become due in 3 Working Days after the date upon which the Authority should have sent either the Payment Approval or Notice of Non-Approval in accordance with Condition S5-6.2.

**Schedule 6  
(Security provisions)**

**S6-1 Authority’s property**

Where the Works are to be carried out within the boundaries of any property of the Authority, the Works Contractor shall comply with any rules or regulations applicable to persons working at, or visiting, any such property which shall be communicated to him by the Project Manager. The Works Contractor shall comply with any changes to any such rules or regulations notified to him during the carrying out of the Works.

**S6-2 Security clearance**

S6-2.1 The Works Contractor and his employees shall undergo a security check to establish both their identity and integrity. Higher levels of clearance may be required where employees have access to classified material, or require unescorted access to certain Establishments.

S6-2.2 In this paragraph, ‘employee’ means any individual or supply chain member employed, or likely to be employed, by the Works Contractor in the discharge of any duties and responsibilities required by the Works Contractor’s Contract. The Works Contractor shall take all reasonable steps to ensure that no employee is engaged to perform any works in relation to the Works Contractor’s Brief until the appropriate security clearance is received.

S6-2.3 For each employee, the Works Contractor shall provide a reference or references in accordance with paragraphs S6-2.4 and S6-2.5 and shall obtain and/or provide original documents to establish that employees are who they say they are in accordance with paragraph S6-2.6. Duplicates or photocopies of the documents referred to in paragraph S6-2.6 will not under any circumstances be accepted.

S6-2.4 References should be sought on the basis of the standard reference request form or similar.

S6-2.5 References may be obtained by telephone, but must be recorded on the standard reference report form together with identifying details of the referee and the person obtaining the reference. The fact that the reference has been obtained by telephone must also be recorded. References covering the last 3 years be provided as follows:-

S6-2.5.1 for a current employee who has been with the Works Contractor for the past 3 years or more, a perusal of the Works Contractor’s records and a check, using the standard reference report form, with the relevant line manager, is sufficient and no further references are required;

S6-2.5.2 for all other employees, the following references should be obtained and/or provided:-

S6-2.5.2.1 the first should ideally be obtained from previous employers. Where this is not possible because the individual has been unemployed, or his previous employer is no longer in business, or declines to provide a reference on the grounds of company policy, a second personal reference must be obtained. Where an individual has been in full time education, a reference must be sought from the relevant school or academic institution attended. In cases where an individual has served in the armed forces or in the civil service during the past 3 years, references should be sought from previous line managers named by the candidate and not from the relevant service of the armed forces or department of the civil service. Where a candidate has been overseas for a period greater than 6 months during the past 3 years every effort must be made to obtain a reference from the overseas employer;

S6-2.5.2.2 a second reference must be sought from a personal referee nominated by the candidate. Ideally such a referee should be of professional standing e.g. solicitor, civil servant, teacher, accountant, bank manager, doctor or officer of the armed forces. However, individuals should be advised to nominate such a person only when their personal knowledge of that individual is likely to be sufficient to allow them to provide a considered reference. Where the individual is unable to nominate such a person, a reference should be obtained from personal acquaintances who are not related to, or involved in any financial arrangement with, the candidate.

S6-2.6 The documents required to verify identity will vary according to the nationality of the individual concerned:-

S6-2.6.1 British National: either a full (i.e. 10 year) passport or a combination of at least two of the following documents:-

(i) original birth certificate;

(ii) Inland Revenue form P45;

(iii) British driving licence;

(iv) proof of residence at a given address, such as a bill from one of the public utilities or other public bodies (e.g. water, electricity, gas, telephone or council tax bill);

S6-2.6.2 Other European Union Nationals: either a full European Union passport or an identity card issued by a member country of the European Union;

S6-2.6.3 Other Nationals: either a full passport issued by the country concerned or a document/letter issued by the Home Office establishing their immigration status in the UK.

S6-2.7 The Works Contractor will also be responsible for ensuring that similar provisions are incorporated into any subcontract and for obtaining and collating all of the foregoing information in respect of employees of any such supply chain member and his Supply Chain members responsible for part or parts of the Works Contractor’s Design or the Works.

**S6-3 Passes**

Where passes are required for the admission of any employees, supply chain members or agents of the Works Contractor to the Site, the Project Manager shall make arrangements for their issue by the Authority to the Works Contractor. The Works Contractor shall submit to the Project Manager, on behalf of the Authority, a list of the names of all employees, supply chain members and any other information the Authority reasonably requires for this purpose. The passes shall be returned at any time on the demand of the Authority and, in any event, on the date of the issue of the last Maintenance Period Completion Certificate.

**S6-4 Site admittance**

S6-4.1 Where the Authority gives the Works Contractor notice that any person is not to be admitted to the Site, the Works Contractor shall take all reasonable steps to prevent that person being admitted.

S6-4.2 If and when instructed by the Project Manager, the Works Contractor shall give to the Authority a list of names and addresses of all persons who are or may be at any time concerned with the Works or any part of the Works on the Site, specifying the capacities in which they are so concerned, and giving such other particulars as the Authority may reasonably require.

S6-4.3 The Works Contractor shall bear the cost of compliance with this paragraph.

S6-4.4 The decision of the Authority as to whether any person is to be admitted to the Site shall be final and conclusive.

**S6-5 Photographs**

The Works 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 Works 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 him, unless the Works Contractor has obtained the prior consent of the Authority.

**S6-6 Secrecy**

S6-6.1 The Works Contractor shall take all reasonable steps to ensure that all persons employed or engaged by him in connection with the Works Contractor’s Contract are aware that the Official Secrets Act 1989 and, where appropriate, section 11 of the Atomic Energy Act 1946 apply to them both during the continuance of the Works Contractor’s Design and of the Works and after the completion or earlier termination of the Works Contractor’s Contract.

S6-6.2 Information concerning the Works Contractor’s Contract and any information obtained either by the Works Contractor or by any person employed or engaged by him in connection with the Works Contractor’s Contract is confidential and shall not at any time be disclosed by the Works Contractor or by any such person without the prior written consent of the Authority, except to such persons, and to such extent, as may be strictly necessary for the performance of the Works Contractor’s Contract.

**Schedule 7  
(Consequences of termination)**

**S7- 1 Definitions**

**Definitions**

S7-1.1 For the purposes of this Schedule, the following expressions shall have the following meanings:-

S7-1.1.1 ‘the amount paid’ means the total of all advances actually paid to the Works Contractor up to the date of termination

S7-1.1.2 ‘the amount due’ means the total of the following individual sums:-

S7-1.1.2.1 the amount paid together with the value of all the work carried out in accordance with the Works Contractor’s Contract from the date of the last completed Milestone up to the date of termination (such valuation to be carried out by the Project Manager by reference to the matters set out in paragraphs S4-6.2.1 and S4-6.2.2 (Calculation of lump sum price or saving for Changes where not agreed) of Schedule 4);

S7-1.1.2.2 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 S4-6.2.1 and S4-6.2.2 (Calculation of lump sum price or saving for Changes where not agreed) of Schedule 4);

S7-1.1.2.3 the balance of the Contract Sum as adjusted to take account of any further Change Orders to which the Works Contractor would have become entitled had he completed the performance of the Works Contractor’s Contract;

S7-1.1.2.4 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 Project Manager by reference to the matters set out in paragraphs S4-6.2.1 and S4-6.2.2 (Calculation of lump sum price or saving for Changes where not agreed) of Schedule 4); and

S7-1.1.2.5 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 Project Manager by reference to the matters as set out in paragraphs S4-6.2.1 and S4-6.2.2 (Calculation of lump sum price or saving for Changes where not agreed) of Schedule 4);

S7-1.1.3 ‘the compensation amount’ means the total of the following individual sums:-

S7-1.1.3.1 the amount paid together with the value of all the work carried out in accordance with the Works Contractor’s Contract from the date of the last completed Milestone up to the date of termination (such valuation to be carried out by the Project Manager by reference to the matters set out in paragraphs S4-6.2.1 and S4-6.2.2 (Calculation of lump sum price or saving for Changes where not agreed) of Schedule 4);

S7-1.1.3.2 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 S4-6.2.1 and S4-6.2.2 (Calculation of lump sum price or saving for Changes where not agreed) of Schedule 4);

S7-1.1.3.3 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 Project Manager by reference to the matters set out in paragraphs S4-6.2.1 and S4-6.2.2 (Calculation of lump sum price or saving for Changes where not agreed) of Schedule 4);

S7-1.1.3.4 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 Project Manager by reference to the matters set out in paragraphs S4-6.2.1 and S4-6.2.2 (Calculation of lump sum price or saving for Changes where not agreed) of Schedule 4); and

S7-1.1.3.5 any reasonable sum expended by the Works Contractor because of the termination of the Works Contractor’s Contract in respect of:-

1. the uncompleted part of any subcontract or other contracts (including those for the hire of plant, services and insurance); and
2. any unavoidable contract of employment, entered into in connection with the Works Contractor’s Contract;

S7-1.1.4 ‘the cost of completion’ means the cost to the Authority of the completion of the Works Contractor’s Contract, as certified by the Project Manager in accordance with paragraph S7-2.1.5.

**S7-2 Consequences of termination for default**

S7-2.1 If the Authority terminates the Works Contractor’s Contract for any reason mentioned in Condition 8.2.6 (Termination), the following provisions shall apply:-

S7-2.1.1 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 Works Contractor shall cease to be due or to accrue due;

S7-2.1.2 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 Works Contractor’s Design and/or the Works. The Works Contractor shall have no claim whatsoever in respect of any such action by the Authority;

S7-2.1.3 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 Works 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 he may have entered into in connection with the Works Contractor’s Contract;

S7-2.1.4 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 of the Works Contractor any amount included in any previous advance to the Works Contractor which the Project Manager ascertains as properly due to such supply chain member. The amount so paid shall be recoverable forthwith by the Authority from the Works Contractor;

S7-2.1.5 the Project Manager shall certify the cost to the Authority of the completion of the Works Contractor’s Contract;

S7-2.1.6 if the total of the cost of completion and the amount paid exceeds the amount due, the Works Contractor shall pay the Authority the amount of the excess; and

S7-2.1.7 if the amount due exceeds the total of the cost of completion and the amount paid, the Authority shall pay the Works Contractor the amount of the excess, subject to the operation of Condition 4.6 (Recovery of sums and notice of intention to withhold payment).

S7-2.2 Termination of the Works Contractor’s Contract in accordance with Condition 8.2.6 (Termination) shall not prejudice or affect any right of action or remedy which has accrued or may accrue to the Authority.

**S7-3 Consequences of other termination**

S7-3.1 Termination of the Works Contractor’s Contract in accordance with Condition 8.2.7 (Termination) shall be without prejudice to the rights of the parties accrued to the date of termination.

S7-3.2 The Authority shall be liable to pay the Works Contractor the amount that the compensation amount exceeds (if at all) the amount paid, subject to the operation of Condition 4.6 (Recovery of sums and notice of intention to withhold payment).

S7-3.3 If, in the period from the date of termination to the date on which any Project Manager’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 5.2.1.14 to 5.2.1.17 (Authority's Risks), and the loss or damage was not occasioned by any failure on the part of the Works Contractor to perform his obligations under paragraph S2-3 (Protection of the Works) of Schedule 2, the amount payable to the Works Contractor under this paragraph shall be ascertained as if no such loss and/or damage had occurred.

**Schedule 8  
(Resolution of disputes)**

**S8-1 Referrals to the Commercial Representative**

S8-1.1 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 Works Contractor’s 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 Works Contractor’s Contract is expressed by the Works Contractor’s Contract to be final and conclusive.

S8-1.2 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 he 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.

S8-1.3 Within 7 days of receipt of the statement from the party referring the dispute, the other party, if he so chooses, may provide his own statement, together with any supporting information upon which he 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 he intends to rely to the party referring the dispute.

S8-1.4 The Works Contractor and the Project Manager shall attend any meeting called by the Commercial Representative.

S8-1.5 The Works Contractor and the Project Manager shall, within 14 days, provide to the Commercial Representative any further information and/or documents which the Commercial Representative may request. If either the Works Contractor or the Project Manager is unable to provide the information and/or documents requested, he 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.

S8-1.6 The Works Contractor shall continue to proceed with the Works Contractor’s Design and/or the Works throughout the period of the referral. During the period of the referral, any Project Manager’s Direction or Change Order shall remain in force notwithstanding that such Project Manager’s Direction or Change Order was the cause of the referral.

S8-1.7 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 his decision unless he chooses otherwise.

S8-1.8 Subject to paragraphs S8-3 and S8-4 (Adjudication and Arbitration respectively), the decision of the Commercial Representative on the matter of the referral shall be binding on the Works Contractor and the Project Manager until completion, or abandonment of the Works or the termination of the Works Contractor’s Contract.

S8-1.9 Each party shall bear their own costs and/or disbursements in connection with a referral under this paragraph.

**S8-2 Mediation**

S8-2.1 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 Works Contractor’s 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 Works Contractor’s Contract is expressed by the Works Contractor’s Contract to be final and conclusive.

S8-2.2 A single mediator shall be jointly appointed by the Authority and the Works 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 (‘CEDR’) in accordance with the following provisions of this paragraph.

S8-2.3 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 S8-1 (Referrals to the Commercial Representative) of this Schedule.

S8-2.4 The mediator shall start the mediation as soon as possible after his appointment and shall fix a procedure and a timetable for the conduct of the mediation. He shall use his best endeavours to conclude the mediation within 2 months of his appointment unless the parties otherwise agree.

S8-2.5 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 he be subpoenaed or otherwise required to give evidence or provide his notes in, any such proceedings.

S8-2.6 The mediator shall not be liable for anything done or not done in the discharge or purported discharge of his functions as mediator, whether in negligence or otherwise, unless the act or omission is in bad faith.

S8-2.7 Each party shall bear their own costs and/or disbursements in connection with the mediation and the parties shall be jointly and severally liable for the mediator’s fees.

**S8-3 Adjudication**

S8-3.1 Either party to the Works Contractor’s Contract may at any time refer any dispute arising under the Works Contractor’s Contract to adjudication in accordance with this paragraph notwithstanding that any legal proceedings have been commenced in respect of such dispute.

S8-3.2 Any decision of the Authority, the Commercial Representative or any Project Manager’s Direction or Change Order which is the subject of adjudication shall remain in force until the decision of the Adjudicator.

S8-3.3 For the purposes of this paragraph the term ‘dispute’ shall include any difference as defined by the Housing Grants, Construction and Regeneration Act 1996.

S8-3.4 If either party requires adjudication they shall notify the Adjudicator. The notice shall:-

S8-3.4.1 specify the matter in dispute;

S8-3.4.2 set out the principal facts and arguments relating to the dispute; and

S8-3.4.3 have appended all relevant documents which the party referring the disputes relies upon.

S8-3.5 A copy of the notice referred to in paragraph S8-3.4 and the appended relevant documents shall be sent to the other party at the same time.

S8-3.6 The Adjudicator shall indicate, within 4 days of receipt of a copy of the notice under paragraph S8-3.4, his willingness to act.

S8-3.7 Where the Adjudicator has not indicated his willingness to act in accordance with paragraph S8-3.6 or where no Adjudicator has been named in the Agreement, either party may apply to the Chairman of The Technology and Construction Solicitors Association (‘TeCSA’) for a nomination, in which case, the following procedure will apply:-

S8-3.7.1 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 they are relevant to the dispute), a copy of the written notice requiring adjudication, and TeCSA’s appropriate appointment fee;

S8-3.7.2 the Chairman of TeCSA shall endeavour to secure the appointment of an Adjudicator and the referral to him of the dispute within 7 days from the notice requiring adjudication; and

S8-3.7.3 any person so appointed, and not any person named in the Agreement whose readiness or willingness is in question, shall be the Adjudicator.

S8-3.8 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 him to do so. The Chairman of TeCSA shall consider whether to exercise such power if any party shall represent to him 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 his 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.

S8-3.9 Where an adjudicator has already been appointed in relation to another dispute arising out of the Works Contractor’s Contract, the Chairman of TeCSA may appoint either the same or a different person as the Adjudicator.

S8-3.10 Within 7 days of receipt of the notice referred to in paragraph S8-3.4, the other party may submit to the Adjudicator any statement, representations or documents which that party relies upon relating to the dispute.

S8-3.11 The scope of the Adjudication shall be the matters identified in the notice requiring adjudication, together with:-

S8-3.11.1 any further matters which all parties agree should be within the scope of the Adjudication; and

S8-3.11.2 any further matters which the Adjudicator determines must be included in order that the adjudication may be effective and/or meaningful.

S8-3.12 The Adjudicator may rule upon his own substantive jurisdiction, and as to the scope of the adjudication.

S8-3.13 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.

S8-3.14 Decisions of the Adjudicator shall be binding until the dispute is finally determined by arbitration under paragraph S8-4 (Arbitration) of this Schedule or by agreement.

S8-3.15 The Adjudicator shall have the power to review and revise any certificates or other things issued or made in accordance with the Works Contractor’s Contract.

S8-3.16 The Adjudicator shall act fairly and impartially, but shall not be obliged or empowered to act as though he were an arbitrator.

S8-3.17 The Adjudicator shall establish the procedure and timetable for the adjudication.

S8-3.18 Without prejudice to the generality of paragraph S8-3.17, the Adjudicator may if he thinks fit:-

S8-3.18.1 require the delivery of written statements of case;

S8-3.18.2 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;

S8-3.18.3 require the delivery to him and/or the other parties of copies of any documents other than documents that would be privileged from production to a court;

S8-3.18.4 limit the length of any written or oral submission;

S8-3.18.5 require the attendance before him for questioning of any party or employee or agent of any party;

S8-3.18.6 make site visits;

S8-3.18.7 make use of his own specialist knowledge;

S8-3.18.8 obtain advice from specialist consultants, provided that at least one of the parties so requests or consents;

S8-3.18.9 meet and otherwise communicate with any party without the presence of other parties;

S8-3.18.10 make directions for the conduct of the adjudication orally or in writing;

S8-3.18.11 review and revise any of his own previous directions;

S8-3.18.12 conduct the adjudication inquisitorially, and take the initiative in ascertaining the facts and the law; and

S8-3.18.13 reach his decision with or without holding an oral hearing, and with or without having endeavoured to facilitate an agreement between the parties.

S8-3.19 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 his case and dealing with that of his opponent.

S8-3.20 The Adjudicator may not:-

S8-3.20.1 require any advance payment of, or security for, his fees;

S8-3.20.2 receive any written submissions from one party that are not also made available to the other;

S8-3.20.3 refuse any party the right at any hearing or meeting to be represented by any representative of that party’s choosing who is present;

S8-3.20.4 act or continue to act in the face of a conflict of interest; or

S8-3.20.5 require any party to pay, or make contribution to, the legal costs of another party arising in the adjudication.

S8-3.21 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 him. 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.

S8-3.22 If a party shall request adjudication, and it is subsequently established that he is not entitled to do so, that party shall be solely responsible for the Adjudicator’s fees and expenses.

S8-3.23 Save as aforesaid, the parties shall be jointly responsible for the Adjudicator’s fees and expenses including those of any specialist consultant appointed under paragraph S8-3.18.8. In his decision, the Adjudicator shall have the discretion to make directions with regard to those fees and expenses. If no such directions are made, the parties shall bear such fees and expenses in equal shares, and if any party has paid more than such equal share, that party shall be entitled to contribution from the other party accordingly.

S8-3.24 The Adjudicator may in any decision direct the payment of such compound or simple interest as may be commercially reasonable.

S8-3.25 All decisions of the Adjudicator shall be in writing and shall include his reasons for his decision.

S8-3.26 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.

S8-3.27 Neither TeCSA, nor its Chairman, nor deputy, nor the Adjudicator nor any employee or agent of any of them shall be liable for anything done or not done in the discharge or purported discharge of his functions as Adjudicator, whether in negligence or otherwise, unless the act or omission is in bad faith.

S8-3.28 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.

S8-3.29 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 he be subpoenaed or otherwise required to give evidence or provide his notes in, such arbitration.

S8-3.30 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 his decision, or refused to make a decision, and until the party making the application has complied with any such decision.

S8-3.31 In relation to any matter or thing as to which a decision of the Authority under the Works Contractor’s Contract is by the Works Contractor’s Contract expressed to be final and conclusive, the Adjudicator shall not be entitled to vary or overrule any such decision and the Works Contractor’s only remedy (if at all) shall be to financial compensation.

**S8-4 Arbitration**

S8-4.1 Any dispute, difference or question arising between the parties that is not finally resolved in accordance with paragraphs S8-1 to S8-3 of this Schedule or by any agreement shall be finally settled by arbitration in accordance with the following procedure.

S8-4.2 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 his 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.

S8-4.3 The arbitrator shall have the power to rule on his own substantive jurisdiction as to:-

S8-4.3.1 whether there is a valid arbitration agreement;

S8-4.3.2 whether he is properly appointed;

S8-4.3.3 whether there is a dispute or difference capable of being referred to arbitration and whether it has been validly referred; and

S8-4.3.4 what matters had been submitted to him in accordance with these Conditions of Contract.

S8-4.4 The Arbitrator shall have the power to:-

S8-4.4.1 order the preservation of evidence;

S8-4.4.2 make orders relating to property which is the subject of the proceedings including:-

1. the inspection, photographing, preservation, custody or detention of the property; or
2. ordering that samples be taken from, or any observation be made of, or experiment conducted upon, the property;

S8-4.5 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

S8-4.6 grant injunctive remedies and relief.

S8-4.7 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.

S8-4.8 If the arbitrator is satisfied that there has been inordinate and excusable delay on the part of the claimant in pursuing his claim and that delay:-

S8-4.8.1 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

S8-4.8.2 has caused, or is likely to cause, serious prejudice to the respondent; the arbitrator may make an award dismissing the claim.

S8-4.9 If, without showing sufficient cause, a party:-

S8-4.9.1 fails to attend or be represented at an oral hearing of which due notice was given; or

S8-4.9.2 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.

S8-4.10 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.

S8-4.11 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.

S8-4.12 If a party fails to comply with any kind or peremptory order, the arbitrator may do any of the following:-

S8-4.12.1 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;

S8-4.12.2 draw such adverse inferences from the act of non-compliance as the circumstances justify;

S8-4.12.3 proceed to an award on the basis of such materials as have been properly provided to it;

S8-4.12.4 make such order as it deems fit as to the payment of costs of the arbitration incurred in consequence of the non-compliance.

S8-4.13 The arbitrator shall have power to decide all procedural and evidential matters including but not limited to:-

S8-4.13.1 **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 their supply and the extent to which they can be amended;

S8-4.13.2 **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;

S8-4.13.3 **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;

S8-4.13.4 **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 his own knowledge and expertise;

S8-4.13.5 **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;

S8-4.13.6 **Security for Costs:** the arbitrator shall have power to order security for costs or order for his own costs to be secured;

S8-4.13.7 **Costs:** the arbitrator shall be entitled to limit recoverable costs of the parties to a specific amount;

S8-4.13.8 **Representation:** the arbitrator shall be entitled to decide whether the parties wish to allow other representation in addition to legal representation.

S8-4.14 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 them of copies of the award.

S8-4.15 The arbitrator may:-

S8-4.15.1 make a declaration as to any matter to be determined in the proceedings;

S8-4.15.2 order the payment of a sum of money in any currency;

S8-4.15.3 order a party to do or refrain from doing anything;

S8-4.15.4 order specific performance of a contract (other than a contract relating to land);

S8-4.15.5 order the rectification, setting aside or cancellation of a deed or other document;

S8-4.15.6 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.

S8-4.16 The arbitrator shall include in his award reasons for the award unless it is a consent award or the parties have agreed that the arbitrator may dispense with reasons.

S8-4.17 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.

S8-4.18 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.

S8-4.19 Save to the extent that they are inconsistent with any of the express provisions of this paragraph S8-4, the provisions of the Arbitration Act 1996 shall apply to any arbitration in accordance with these Conditions of Contract.

**Schedule 9  
(Supplementary Conditions)**

**S9-1 Overseas expenditure**

S9-1.1 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.

S9-1.2 Unless the Works Contractor has been required to submit an estimate of the overseas expenditure which he anticipates he will incur in the performance of the Works Contractor’s Contract as part of his tender, the Works Contractor shall submit such an estimate to the Project Manager, in such form as the Project Manager shall direct, within 21 days after the date of award of the Works Contractor’s Contract.

S9-1.3 During the performance of the Works Contractor’s Contract, the Works Contractor shall record, in such format as the Project Manager shall direct, the overseas expenditure actually incurred. The Works Contractor shall afford the Project Manager access to, and copies of, such records at reasonable intervals.

**S9-2 Guarantee from Group Undertaking**

S9-2.1 If the Works Contractor is a subsidiary of a Group Undertaking, the Works Contractor shall, within 7 days of award of the Works Contractor’s Contract, provide to the Authority a guarantee from its parent undertaking in the form annexed to the Work Contractor’s Agreement.

S9-2.2 If the Works Contractor fails to provide such a guarantee in accordance with paragraph S9-2.1, the Authority may terminate the Works Contractor’s Contract in accordance with Condition 8.2.6.7 (Termination).

**S9-3 Not Used**

**S9-4 Collateral Warranty**

S9-4.1 The Works Contractor shall obtain a collateral warranty, in the form annexed to the Agreement, from any Supply Chain member responsible for carrying out any part of the Works or the Works Contractor’s Design.

**S9-5 Additional security measures**

**Definitions**

S9-5.1 In this condition:-

S9-5.1.1 ‘**Secret Matter**’ means any matter connected with the Contract, or its performance which is designated by the Authority in the security aspects letter annexed to the Contract or otherwise in writing as "Top Secret" or "Secret", and shall include any information concerning the content of such matter and anything which contains or may reveal that matter;

S9-5.1.2 ‘**Employee**’ shall include 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.

**The Official Secrets Acts**

S9-5.2 The Contractor shall:

S9-5.2.1 take all reasonable steps to ensure that all Employees engaged on any work in connection with the Contract have notice that the Official Secrets Acts 1911-1989 apply to them and will continue so to apply after the completion or termination of the Contract; and

S9-5.2.1 if directed by the Authority, ensure that any Employee shall sign a statement acknowledging that, both during the term of the Contract and after its completion or termination, they are bound by the Official Secrets Acts 1911-1989 (and where applicable any other legislation).

**Security Measures**

S9-5.3 Unless they have the written authorisation of the Authority to do otherwise, neither the Contractor nor any of their Employees shall, either before or after the completion or termination of the Contract, do or permit to be done anything which they 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:

S9-5.3.1 who is not a British citizen;

S9-5.3.2 who does not hold the appropriate authority for access to the protected matter;

S9-5.3.3 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;

S9-5.3.4 who is not an Employee of the Contractor;

S9-5.3.5 who is an Employee of the Contractor and has no need to know the information for the proper performance of the Contract.

S9-5.4 Unless they have the written authorisation of the Authority to do otherwise, the Contractor and their Employees shall, both before and after the completion or termination of the Contract, take all reasonable steps to ensure that:

S9-5.4.1 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 the Contract;

S9-5.4.2 any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy Framework (as amended from time to time) and upon request is delivered up to the Authority who shall be entitled to retain it.

A decision of the Authority on the question of whether the Contractor has taken or is taking reasonable steps as required by this Clause, shall be final and conclusive.

S9-5.5 The Contractor shall:

S9-5.5.1 provide to the Authority:

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 Sub-clause S9-5.4.2);
2. upon request, such information as the Authority may from time to time require so as to be satisfied that the Contractor and their Employees are complying with their obligations under this Condition, including the measures taken or proposed by the Contractor so as to comply with their obligations and to prevent any breach of them;
3. full particulars of any failure by the Contractor and their Employees to comply with any obligations relating to Secret Matter arising under this Condition immediately upon such failure becoming apparent;

S9-5.5.2 ensure that, for the purpose of checking the Contractor's compliance with the obligation in Sub-clause S9-5.4.2), a representative of 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 the Contract and inspect any document or thing in any such premises, which is being used or made for the purposes of the Contract. Such representative shall be entitled to all such information as they may reasonably require.

S9-5.6 If at any time either before or after the completion or termination of the Contract, the Contractor or any of their Employees 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.

**Subcontracts**

S9-5.7 If at any time either before or after the completion or termination of the Contract, the Contractor or any of their Employees 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.

S9-5.7.1 submit for approval of the Authority the name of the proposed sub-contractor, a statement of the work to be carried out and any other details known to the Contractor which the Authority shall reasonably require;

S9-5.7.2 incorporate into the sub-contract the terms of the Appendix to this condition and such secrecy and security obligations as the Authority shall direct. In the appendix "Agreement" shall mean the "Sub-Contract", "First Party" shall mean the "Contractor" and "Second Party" shall mean the "Sub-Contractor";

S9-5.7.3 inform the Authority immediately they become aware of any breach by the sub-contractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the sub-contract.

**Termination**

S9-5.8 The Authority shall be entitled to terminate the Contract immediately if:

S9-5.8.1 the Contractor is in breach of any obligation under this Condition; or

S9-5.8.2 the Contractor is in breach of any secrecy or security obligation imposed by any other contract with the Crown;

where the Authority considers the circumstances of the breach jeopardise the secrecy or security of the Secret Matter.

**S9-6 Issued Property**

**General**S9-6.1 All Issued Property shall remain the property of the Authority. It shall be used in the execution of the Works Contractor’s Contract and for no other purpose, without the prior approval in writing of the Authority.

S9-6.2 Neither the Works Contractor, nor any supply chain member, nor any other person, shall have a lien on Issued Property, for any sum due to the Works Contractor, any supply chain member or any other person, and the Works Contractor shall take all such steps as may be necessary to ensure that the title of the Authority, and the exclusion of any such lien, are brought to the notice of all supply chain members and other persons dealing with any Issued Property.

S9-6.3 Subject to Condition S9-6.4 below, within 14 days of receipt of Issued Property the Works Contractor shall:

S9-6.3.1 check the Issued Property to verify that it corresponds with the Issued Property specified in the Contract;

S9-6.3.2 conduct a reasonable visual inspection; and

S9-6.3.3 conduct any additional inspection and testing as may be necessary and practicable to check that the Issued Property is not defective or deficient for the purpose for which it has been provided; and notify the Authority of any defects, deficiencies or discrepancies discovered.

S9-6.4 Where Issued Property is packaged it shall not be unpacked earlier than is necessary. The period identified in Condition S9-6.3 above shall count from the date on which packages are opened.

S9-6.5 The Authority shall within a reasonable time after receipt of any notice under Condition S9-6.3 replace, re-issue or authorise repair of Issued Property agreed to be defective or deficient and, if appropriate, the Authority shall make the appropriate adjustment to the Contract Sum. If appropriate, it shall also issue written instructions for the return or disposal of the defective or deficient Issued Property.

S9-6.6 In the event that the Authority fails to provide, replace or authorise repair of defective or deficient Issued Property within a reasonable time of receipt of a notice in accordance with Condition S9-6.5 an adjustment to the Contract Sum shall be made as may be appropriate provided that the Works Contractor has taken all reasonable measured to mitigate the consequences of any such delay.

**Custody**

S9-6.7 Subject to Condition S9-6.10 below and any limitation or exclusion of liability as may be specified in the Works Contractor’s Contract, the Works Contractor shall be responsible for the safe custody and due return of Issued Property, whether or not incorporated into the Works, and shall be responsible for all loss or damage to the Issued Property, until redelivered in accordance with the Authority’s instructions or until the expiry of the period specified in Condition S9-6.12 below.

S9-6.8 The Works Contractor shall be responsible for such calibration and maintenance of the Issued Property as is specified in the Works Contractor’s Contract.

S9-6.9 If requested, the Authority, within a reasonable time, and where practicable before delivery of the Issued Property, shall notify the Work Contractor of the value of the Issued Property.

S9-6.10 The Works Contractor shall not be liable in respect of:

S9-6.10.1 defects or deficiencies notified to the Authority in accordance with Condition S9-6.3 or latent defects which the Works Contractor can show could not reasonably have been discovered by means of the activities described in Condition S9-6.3;

S9-6.10.2 fair wear and tear in Issued Property resulting from its normal and proper use in the execution of the Works Contractor’s Contract (except insofar as the deterioration is contributed to by an misuse, lack of care or want of maintenance by the Works Contractor);

S9-6.10.3 Issued Property rendered unserviceable as a direct result of the ordinary performance of the Works Contractor’s Contract;

S9-6.10.4 any loss or damage to Issued Property arising from any of the Authority’s Risks.

**Accounting and return of issued property**

S9-6.11 The Prime Contractor shall open and maintain a Register of Issued Property. The Register shall:

S9-6.11.1 be maintained to the reasonable satisfaction of the Authority’s Asset Accounting Centre (AAC) in accordance with the ‘Equipment Accounting Instructions’ issued by the Authority and in force at the date of the Works Contractor’s Contract, or with such other requirements specified in the Works Contractor’s Contract;

S9-6.11.2 be available at all reasonable times for audit and inspection by the Authority and its agents;

S9-6.11.3 be retained for 3 years after disposal of the item of Issued Property, or for such other period as is specified in the Works Contractor’s Contract.

S9-6.12 Immediately following the date of Completion of the Works (or if the Issued Property is or may be required during the Maintenance Period(s), immediately following the expiry of the last Maintenance Period) or, if earlier, upon the termination of the Works Contractor’s Contract, the Works Contractor shall forward a list of Issued Property still held to the Project Manager. The return or disposal of such Issued Property will be as specified in the Contract or as instructed by the Project Manager at expiry of the Contract Period. If no disposal instructions are specified in the Works Contractor’s Contract, the Authority shall provide such instructions within 2 months of the Works Contractor’s written request to do so.

**S9-7 Not Used**

**Annex A to**

**Booklet 2 to**

**CT/COMM1/0057**

**MONTREAL PROTOCOL SUBSTANCES**

**CFCs**

Production of controlled CFCs has stopped.

CFC-11 (trichlorofluoromethane) CFC-211

CFC-12 (dichlorodifluoromethane) CFC-212

CFC-13 CFC-213

CFC-111 CFC-214

CFC-112 CFC-215

CFC-113 (trichlorotrifluorethane) CFC-216

CFC-114 (dichlorotetrafluoroethane) CFC-217

CFC-115 (chloropentafluoroethane)

The above substances are also used in blends. For example:CFC-500 (CFC-12/HFC152a)

and CFC-502 (CFC-115/HCFC-22)

**Halons**

Production of controlled Halons has stopped

Halon-1211 (bromochlorodifluoromethane - BCF)

Halon-1301 (bromotrifluoromethane - BTM)

Halon-2402

**HBFCs**

No production after 31 December 1995

CHFBr2 C2H2F2Br2 C2HF4Br5 C3H3F2Br3

CHF2BrC2H2F3BrC3HF5Br2 C3H3F3Br2

CH2FBr C2H3FBr2 C3HF6BrC3H3F4Br

C2H3F3Br C3H2FBr5 C3H4FBr3

C2HFBr4 C2H4FBrC3H2F2Br4 C3H4F2Br2

C2HF2Br3 C3H2F3Br3 C2H2F2Br2

C2HF3Br2 C3HFBr6 C3H4F4Br2 C3H5FBr2

C2HF4BrC3HF2Br5 C3H2F5BrC3H5F2Br

C2H2FBr5 C3HF3Br4 C3H3FBr4 C3H6FBr

**HCFCs**

The use of the following HCFC refrigerants is no longer acceptable (See Note 1). Please therefore complete and sign below, in doing so you are confirming that none of the refrigerants listed are being proposed within your tender.

HCFC-21 HCFC-141 HCFC-225ca HCFC-243

HCFC-22\* HCFC-141b HCFC-225cb HCFC-244

HCFC-31 HCFC-142 HCFC-226 HCFC-251

HCFC-121 HCFC-142b HCFC-231 HCFC-252

HCFC-122 HCFC-151 HCFC-232 HCFC-253

HCFC-123 HCFC-221 HCFC-233 HCFC-261

HCFC-124 HCFC-222 HCFC-234 HCFC-262

HCFC-131 HCFC-223 HCFC-235 HCFC-271

HCFC-132 HCFC-224 HCFC-241

HCFC-133 HCFC-225 HCFC-242

**CARBON TETRACHLORIDE (CCI4)** Production has stopped

**1,1,1 – TRICHLOROETHANE (C2H3Cl3)** – No production after 1st December 1995.

**METHYL BROMIDE (CH3Br)** – Production limits apply.

**SIGNED**: …………………………………………………

Name (in CAPITALS).……………………………………

in the capacity of .…………………………………………

duly authorised to sign tenders for and on behalf of (in CAPITALS):

…………………………………………………………………………

Address (including postcode):

…………………………………………………………………………

…………………………………………………………………………

…………………………………………………………………………

…………………………………………………………………………

Date: ………………………………………

**Note:**

1. The total ban applies to new equipment (MOD Policy requires that new designs of equipment and installations are not to use or incorporate HCFCs). For new installations, seek guidance from Defence Works Functional Standards - "Design and Maintenance Guide 07", which may be purchased from The Stationery Office Bookshop.

2. It is accepted that during the course of this Contract that HCFC-22 (R-22) will continue to be in common use in Oman, and that the existing installations on this site contain HCFC-22. The Contractor may replace this Refrigerant only like for like until such time as such action shall be banned under the terms of the Montreal Protocol or shall be deemed unlawful under Omani law. Following either event HCFC-22 shall be banned on this site.

3. Should a unit containing HCFC-22 come to the end of its economical life it is to be replaced with a unit compliant with the Montreal Protocol.

**Annex B to**

**Booklet 2 to**

**CT/COMM1/0057**

**FRAUD PREVENTION MANUAL/BOOKLET**

**To be circulated to all personnel**

1. The Contractor and his Supply Chain shall comply with the following minimum requirements, which are deemed to form part of this Contract. Upon the Contractor entering into this Contract and the Supply Chain entering into the Supply Chain Contracts, as appropriate, this Schedule is to 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 his Supply Chain to observe these minimum requirements may give rise to a termination under this Contract and/or the Supply Chain Contracts as the case may be.
3. The Contractor shall also comply and procure the compliance of his Supply Chain with such additional measures and procedures as he has proposed in the Contractor’s Fraud Proposals.

**General**

1. The Contractor shall carry out an internal audit on a period not greater than 6 monthly basis in respect of the Contract. Where the Contractor or his 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:
   * 1. report to the Authority in respect of the standards achieved in the audit;
     2. notify the Authority of any fraud identified in any internal or external audit; and
     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**

1. It will be a term of the Supply Chain Contract that the Supply Chain will not offer, give or agree to give to the Contractor or to any employee or agent of the Contractor or anyone acting on his behalf or on behalf of his or their 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 the Supply Chain Contract or for showing or not showing favour or disfavour to any person in relation to the Supply Chain Contract or any other Contract with the Contractor . The Supply Chain Contract should provide for termination of the Supply Chain Contract on the occurrence of any such event or, where the offence has been committed by an employee acting independently of the member of the Supply Chain, the Supply Chain Contract may be continued if the relevant employee’s employment is terminated.

# Construction and Maintenance Work

1. The Contractor shall permit and shall procure that the Supply Chain permits regular inspections of the any Works and/or Services and/or materials carried out by the MOD element of the Commercial/Project Team, including inspections of those parts of the any 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 his Supply Chain shall fully co-ordinate and co-operate with the Commercial/Project 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 Supply Chain shall be responsible for implementing internal control mechanisms to detect and deter fraud and sharp practice activity. There shall be an element of risk based control approach to identify potential fraud and poor VFM areas. The Contractor shall ensure and provide evidence when requested that all imposed quality standards and compliance with regulatory standards are met.
2. If required, the Contractor and his Supply Chain shall forthwith produce for inspection original documentation for any Works and/or Services being carried out by them.
3. The Contractor and his Supply Chain shall, where appropriate, obtain and provide to the Authority written confirmation from occupiers that the works (or relevant parts thereof in relation to Sectional Completions), have been completed.
4. The Supply Chain shall, wherever possible, be paid by reference to Milestone or Interim Payments.
5. The Contractor and his Supply Chain 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**

1. The following provisions are to be complied with in conjunction with the Change Conditions under the Main and Supplementary Contracts and Supply Chain Contracts which shall continue to have full force and effect.
2. Whether a Change is requested by the Authority or the Contractor himself or by the Contractor on behalf of his Supply Chain; 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.
3. Prior to any approval or authorisation of a Change, there may be an inspection of the existing site conditions, which are proposed to be altered, rectified or replaced by the Change. Such inspections will be attended by the Contractor, any relevant member of the Supply Chain and the Authority shall be notified and invited to attend. No Change shall be carried out without written authorisation.
4. Where the Contractor intends to market test and invite competitive tenders in respect of any Change in accordance with the conditions of the Main and Supplementary Contracts;
   * 1. any tenderer who is selected to carry out the change in place of or in addition to the Supply Chain should be able to demonstrate a collaborative working relationship with the Contractor and an understanding of what integrated supply chain management involves.
     2. Where a proposed sub-contractor has been previously engaged by a Contractor, the Contractor should be satisfied that there are demonstrably good reasons for awarding the Supply Chain Contract to that sub-contractor, such as evidence of good past performance.
     3. The tender documentation is to be heavily safeguarded at all times by those persons responsible for it. This may involve it being locked away with access only being available when separate keyholders together unlock the container with the tender documents.
5. Tenders should be reviewed by boards or panels of the Contractor consisting of more than one individual and should include individuals with no direct connection with any of the tendering companies to reduce the risk of unfair assessments or alterations of tender bids submitted for evaluation.
6. The Contractor and his Supply Chain shall keep original records of the results of any Works and/or Services undertaken in carrying out an approved Change which shall be produced for inspection and review by the MoD element of the Commercial / Project Team forthwith upon request.
7. The Contractor shall put in place a monitoring system for his managers and supervisors to check works orders raised in order to confirm the validity thereof. These checks shall be carried out at regular intervals and no less than a weekly basis. If appropriate, meetings shall also be held and minuted to discuss any such Changes. The Supply Chain shall co-ordinate and co-operate with the Contractor in respect of this clause 16.
8. The Contractor and his Supply Chain shall carry out appropriate checks with occupiers to ensure that Works and/or Services ordered pursuant to a Change have been completed to a satisfactory standard. Occupier approval is to be obtained in writing and is to be signed and dated. Such records shall be admissible only as evidence in support of completion certificates or statements.
9. Site visits and random spot checks by supervisors are to be carried out during the Works and/or Services. The Project Manager shall also be entitled to carry out such site visits and random spot checks at his discretion. The Contractor and his Supply Chain shall take all practicable steps to assist these supervisors and managers and the Project Manager 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.
10. All documents provided by the Contractor and his Supply Chain in support of Works and/or Services carried out shall be original and authentic, duly signed and authorised by the appropriate representatives.
11. Follow up checks to confirm that payments made are valid and relate to the correct Change in issue shall also be made by the Authority at its discretion. The Contractor and his Supply Chain shall make every effort to assist the Authority without delay during the follow up checking process.

**Invoicing and Payment**

1. 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.
2. (Not Used)
3. 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.
4. The Contractor shall review and check the invoices submitted to him by his Supply Chain for accuracy and validity prior to such invoices being processed for payment by the Contractor in accordance with the payment procedures pursuant to the Conditions of the Main and Supplementary Contracts.
5. (Not Used)
6. The Contractor shall ensure that all applications for payment submitted to the Authority are duly signed by an authorised officer of the Contractor, who shall be a different person from the individual who authorised the work. Each application for payment is also to contain a "statement of truth" as to the validity and accuracy of the actual costs for the said application for payment.
7. 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.
8. The Contractor and The Authority shall be entitled to inspect all original invoices submitted by the Contractor and the Supply Chain at any time jointly by agreement, such agreement not to be unreasonably withheld or delayed and the said invoices shall be placed in a locked container at a location to be agreed by the parties or if no such agreement can be reached, at a location selected by Project Manager. Access to the original invoices is to be restricted to those individual representatives expressly permitted to inspect the invoices in accordance with this clause 28 above.
9. Without prejudice to clause 28 above, the Contractor and his Supply Chain shall permit inspection of the aforementioned 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 Units and by any specified personnel and any independent consultant so notified to the Contractor.
10. (Not Used)
11. (Not Used)
12. (Not Used)
13. (Not Used)

**Information Technology**

1. The Contractor is encouraged to use an electronic communications system to improve communications with the Supply Chain and with the Authority in connection with the Works and/or Services. The following provisions shall apply where the Contractor and his Supply Chain have in place at any time an electronic communications and/or approvals system hereinafter referred to as a Central Database System.
2. 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 [chosen by the Authority/agreed between the Contractor and Authority] with experience in carrying out this function. Authority 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, the Supply Chain 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.
3. The Systems Administrator shall be regulated and monitored by the Authority by random spot checks and audit procedures as and when required. Authority shall be entitled to remove a Systems Administrator or notify the parties in the event of dissatisfactory performance findings during the Contract.
4. The Contractor and his Supply Chain shall be required to monitor and check information available to them on the Central Database System at regular daily 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**.
5. The Central Database System shall be capable of printing out reports and carrying out a full audit trail.
6. Where the Central Database System uses the Internet:
   * 1. The Central Database System address will not be available on the Worldwide Web.
     2. Encryption will not be less than 128 bit. Encryption will extend to PC/server encryption for each session.
7. The Contractor and his Supply Chain 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 their contracts:
   * 1. requiring users to immediately change and personalise the allocated user name and password;
     2. requiring users to change personal passwords regularly;
     3. requiring irregular or rare users to re-register as users with expiry limits for non-use;
     4. limiting access permissions to parties depending upon their role and level of involvement in order to avoid users accessing sensitive or non-relevant information and data by way of controlled indexes.
     5. setting up controls to monitor users’ activities such as whether data is being read, amended, deleted, copied etc;
     6. setting up secure data centres which are to be physically secure so that servers may be safely housed.
     7. Setting up measures to protect the security of PCs and laptops outside office hours.
8. The following additional measures are highly recommended and the Contractor and his Supply Chain shall use their best endeavours to ensure that the Central Database System meets these controls prior to entering into their 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:
   * 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;
     2. implementing a Sheep Dip File to check for viruses prior to any uploading to the main server;
     3. implementing a Fire Walls Protection System which is designed to track unsuccessful access attempts;
     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.
9. 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.
10. 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.
11. If the Contractor intends to use any system of electronic trading for financial approvals and financial transactions he shall inform the Authority and provide details to the Authority of the procedures which shall be in place for ensuring the integrity of the System. The Contractor and his Supply Chain shall only be entitled to proceed with such electronic trading if the Authority is satisfied that sufficient measures will be in place to ensure the integrity of the System.
12. Any failure by the Contractor to comply with clauses 40 to 44 shall entitle a termination under the Contract pursuant to the Conditions of the Main and Supplementary Contracts if not rectified in accordance with that clause. This provision is to be mirrored in the Supply Chain Contracts.
13. Any failure by the Contractor and his Supply Chain to comply with clause 45 above may result in the Authority making appropriate adjustments to the Contract Pricing Provisions to take into account the increased risk of potential fraud.

**Appendix 1 to**

**Annex B to**

**Booklet 2 to**

**CT/COMM1/0057**

**CODE OF PROCUREMENT ETHICS**

Ministry of Defence - Guidelines for Industry No 2

OVERVIEW

1. The Ministry of Defence (MOD) and its suppliers, and those hoping to do business with the Department, have a shared mutual interest in establishing a proper and fair commercial relationship. In an increasingly demanding and competitive environment it is important that all parties should work towards ensuring there is no fraud or corruption (or suspicion thereof) in that relationship.
2. In keeping with the statement on good customer practice contained in 'Setting New Standards - A Strategy for Government Procurement' (Cm 2840 - May 1995), MOD expects the highest standards of honesty of its staff. For those involved in, or associated with the procurement of equipment or services, there is detailed internal guidance on the rules and procedures they must observe. The Code of Procurement Ethics provides a synopsis for industry of the main features of these, and sets out in a public statement the Department's stance on ethical conduct in procurement. Equally, the Department looks to its suppliers to act honestly and with integrity, and not in any way to encourage or induce any MOD employee to behave in a manner inconsistent with his/her obligations as described in the Code. The Department will view any attempt on the part of its employees or suppliers to engage in corrupt activities with the utmost seriousness. Any cases of suspected fraud are rigorously investigated and may lead to Police investigation.
3. To that end, attention is drawn to the requirements of Standard Condition No 20 (Corrupt Gifts and Payments of Commission) of the Standard Conditions of Government Contracts for Stores Purchases (Form GC/Stores/1, Edition April 1979). This condition makes it clear that contractors must not offer or give any gift or consideration or commission, which might influence the action of a public servant. It should also be borne in mind that such activities may also be construed as a criminal offence irrespective of whether or not a contract exists between the Department and the contractor.
4. The greatest openness and trust should exist in the relationship between the Department and its suppliers (and potential suppliers). If a company suspects that any irregularity may have arisen, or working practices are such as potentially to give rise to any uncertainty or misunderstanding in this regard, it should immediately bring the circumstances to the attention of the relevant Director of Contracts or to the Director of Commercial Policy.
5. This guidance leaflet supersedes General Notice to Defence Contractors No 8.

INTRODUCTION

1. Ethics is concerned with human behaviour and conduct, the difference between right and wrong and the integrity of standards of behaviour. It goes beyond legal requirements. It is about a consistent form of conduct and behaviour which ensures that individuals and organisations are trusted and respected by those with whom they deal. In the context of procurement it leads to business being conducted by all parties not only efficiently but also in a fair and reasonable manner.
2. All dealings between MOD and industry should be on an ethical basis. In this respect MOD's drive for value for money in procurement must not compromise standards of conduct. It is of the utmost importance that the integrity of individual members of staff and the integrity of MOD as a whole should not only be maintained but should be seen to be maintained.

**SCOPE**

1. The guidance in the Code sets out:
   * 1. the legal framework (including that relating to the acceptance of gifts and hospitality);
     2. the basic rules of ethical conduct in procurement;
     3. the personal standards which MOD staff are expected to uphold in the course of their official duties.
2. The Code does not supplant the detailed internal guidance to all MOD staff found in existing departmental publications. Rather it provides a synopsis for industry of MOD's overall stance and policy.

THE LEGAL FRAMEWORK

1. In English law there is no such crime as fraud; the criminal offences generally referred to as fraud are covered in detail in the Theft Acts of 1968 and 1978 and include false accounting and obtaining by deception. Theft and corruption are not "fraud" but are criminal offences in their own right. Simply, these terms may be described as follows:-
   * 1. "**Fraud**" - false representation with an intention to deceive or to enable an individual or organisation to gain an unfair advantage. It includes the falsification of documents and the certification as true of facts known to be wrong.
     2. **Theft** - stealing or dishonest misappropriation of money or property belonging to another with the intention of permanently depriving the other of it.
     3. **Corruption** - acceptance of any gift or consideration as an inducement or reward; or the misuse of information obtained in the course of official duties.
2. The legal position on corrupt receipt of gifts etc. is that:
   * 1. it is an offence under the Prevention of Corruption Acts 1889 - 1916 for Crown Servants (civilian or military) in their official capacity to accept any gift or consideration as an inducement or reward for doing, or refraining from doing, anything; or showing favour or disfavour to any person;
     2. under the Prevention of Corruption Act 1916, any money, gift or consideration received by an MOD official from a person or organisation holding or seeking to obtain a Government contract would be deemed by the Courts to have been received corruptly unless, on the balance of probability, it is proved to the contrary by the defendant.
3. The legal position on the corrupt use of information obtained in the course of official duties is that:
   * 1. A Crown Servant can be guilty of insider dealing in the same way that anyone else can. The chief insider dealing offences under the Criminal Justice Act 1993 are:

(i) acquisition or disposal of price affected securities on the basis of inside information;

(ii) encouraging another to deal in such securities;

(iii) disclosing inside information. Inside information is specific information in relation to securities, which, if made public, would be likely to have a significant effect on their price.

* + 1. In passing information to unauthorised third parties a Crown Servant may be guilty of an offence under the Official Secrets Act 1989.

1. Within this legal framework it is the Department's stated policy to pursue vigorously any alleged or suspected cases of fraud or other criminal activity.

**GUIDING PRINCIPLES**

1. Against this background the guiding principles of ethical behaviour in procurement are as follows:
   * 1. that the conduct of individuals should not foster the suspicion of any conflict between their official duty and their private interest;
     2. that the action of individuals in their official capacity should not give the impression to anyone whatsoever that they have been or might be influenced by a gift or consideration to show favour or disfavour to any person or organisation;
     3. that dealings with companies and others must at all times be equitable and even-handed.
2. These guiding principles may be summarised as the 'Three I's’ - Impartiality, Independence and Integrity. The following sections look at the practical implication of these guiding principles, setting out the standard of conduct, which is expected to be adopted.

CONFLICT OF INTEREST

1. If MOD staff have any form of personal interest, it must be disclosed to senior line management. For instance, without such prior declaration staff should not have, or enter into:
   * 1. a direct financial interest which conflicts with their official duty. Whilst staff may hold any stocks, shares or other investments that do not conflict with their official duty, they must declare to their senior line manager all investments in any company with which they have official dealings. These declarations should also include details of such investments held by an individual's immediate family. Changes in the private interests (e.g. share disposals or acquisitions) of all those covered by these instructions must also be declared. Staff do not need to declare investments in Unit Trusts or other managed funds over which individuals have no control, unless a sensitive company is the dominant factor in the investment;
     2. a directorship or consultancy with an outside business;
     3. official dealings with a company that are employing close family (in particular partners) or associates.

GIFTS AND HOSPITALITY

1. MOD staff are under instructions that no gifts, money, free loans, or discount on purchases may be accepted by themselves, their families or associates from companies with whom they have official dealings, which are not also available to the general public. Gifts of a seasonal or trivial nature (whose retail value is less than £50) may, however, be accepted. The offer of small gifts or hospitality is a normal part of commercial life, and no offence or damage to relationships should be caused by staff when explaining that acceptance is contrary to MOD's normal practice. All offers of non-trivial gifts must be recorded and reported by staff to their line management. Similarly, any offer of a bribe, or other inducement, must be reported immediately in order that MOD can initiate criminal or other action as appropriate.
2. It is common practice for companies to offer hospitality to customers, client’s etc., and it is recognised that this may be beneficial to mutual understanding and the efficient conduct of business. Invitations to lunches or dinners with representatives of a company with which MOD has or is contemplating doing business may normally be accepted by MOD staff as long as the purpose is to discuss Departmental business, and acceptance is considered to be necessary in the interest of the Department. Invitations of a social kind, and in particular to sporting or cultural events, must normally be declined by MOD staff as must offers of hospitality that include overnight accommodation paid for by the company, and/or free travel. MOD top management are expected to set an example for more junior staff to follow. All Crown Servants are required to maintain a written record of all hospitality offered regardless of whether or not it has been accepted.
3. Any offer of such things as holidays and the use of vehicles must be refused, and details of the offer reported to line management. Similarly, transport costs cannot be accepted, although the use of local transportation, for example a lift in a company car between a contractor's site and the nearest railway station, is admissible.

CONFIDENTIALITY OF INFORMATION

1. If procurement staff have access to commercially confidential information they must protect it and never utilise it for personal gain or in a way which may prejudice fair competition.
2. Information on individual contracts, contracts policy or procedures will not be given to the media or any other third party enquirer without the authority of line management and of the Press Office, as appropriate. Price and other details will not be revealed in a way that enables the information to be seen as applying to the offer from a particular company. Companies may have many different points of contact with MOD; individual officials holding commercially sensitive information must ensure that it is not released by others, inadvertently or otherwise.

FAIR DEALING

1. Procurement staff, are expected to treat all companies in an equitable and even-handed manner. They should be able to demonstrate that they are impartial managers of the MOD business of which they are in charge.

**EMPLOYMENT**

1. No Crown Servant should use an official position to seek other employment. All Crown Servants are required to apply for permission before taking up, within 2 years of leaving Crown service, any paid appointment with a commercial organisation connected with their official duties, or with a foreign government or foreign publicly owned organisation. Senior staff (2 Star military – SCS ML2 civilians and above) have to apply for permission before taking up any paid appointment. These rules are designed to ensure that when a Crown Servant accepts outside employment:
   * 1. no cause for suspicion of impropriety exists that a Crown Servant's actions in service may have been influenced by the hope or expectation of future employment with a particular company or organisation;
     2. no company or organisation gains an unfair advantage over its competitors by employing a Crown Servant who has access to the trade secrets of those competitors or to information relating to proposed developments of Government policy that might affect that company or organisation or its competitors.

**Appendix 2 to**

**Annex B to**

**CT/COMM1/0057**

**MINISTRY OF DEFENCE POLICY**

**FRAUD, THEFT, CORRUPTION, BRIBERY AND IRREGULARITY**

**Introduction**

1. Fraud in the Ministry of Defence is unacceptable. While most MOD personnel would not consider committing fraud there is, unfortunately, a small minority, both civilian and military, who do so. People who abuse the system are not only defrauding taxpayers but also our Service personnel on the front line.

2. The Ministry of Defence has a zero tolerance approach to fraud. The Department expects all staff to act in accordance with the Civil Service Code or the appropriate Values and Standards of the Single Services and to protect the public resources for which they are responsible. All reported suspicions will be investigated fully and appropriate sanctions applied through administrative, disciplinary or criminal procedures. The Department has a one-stop-shop for reporting and recording suspicions and incidents, where reports are treated in strict confidence and all whistle blowers are fully protected.

3. This policy applies to all MOD personnel, military and civilian, staff employed by contractors at our premises and other contractors with whom we do business. It should be read in conjunction with:

* + 1. The MOD Fraud Response Procedure;
    2. The Civil Service Code;
    3. The Naval Service Core Values;
    4. The Values and Standards of the British Army;
    5. The Royal Air Force Ethos, Core Values and Standards.

4. In this document the term ‘fraud’ is used generically and includes fraud, theft, corruption, bribery and irregularity.

**Principles**

5. MOD is committed to preventing fraud from occurring and to developing an anti-fraud culture. To achieve this, MOD will:

* + 1. Develop and maintain effective controls to prevent, deter and detect fraud;
    2. Ensure that if fraud occurs a vigorous and prompt investigation takes place;
    3. Take appropriate administrative, disciplinary and legal action in all cases where justified;
    4. Review systems and procedures to prevent similar frauds;
    5. Investigate whether there has been a failure in supervision and, where appropriate, take administrative or disciplinary action where supervisory failures occur; and
    6. Report and record all discovered cases of fraud.

**Ownership**

6. As Accounting Officer, the Permanent Secretary is responsible for ensuring that the Department has an effective counter fraud policy in place. Director General Finance is the Senior Responsible Owner of this policy.

**Responsibilities**

7. All staff have a role to play in creating an anti-fraud culture which underpins all the work undertaken to counter fraud.

**Management** (including process and policy owners)

8. Work to counter fraud is a core management responsibility. Management at all levels, both military and civilian, are responsible for:

* + 1. Identifying the risks to which their systems and procedures are exposed.
    2. Developing and maintaining effective controls to prevent and detect fraud; and
    3. Ensuring that controls are being complied with.

**Staff**

9. All members of staff (civilian and military) are responsible for:

* + 1. Acting with proprietary in the uses of official resources and in the handling and use of funds whether they are involved with cash or payment systems, receipts or dealing with contractors or supplier;
    2. Reporting details immediately to their line management, Chain of Command or the Defence Irregularity Reporting Cell if they suspect that a fraud has been committed or see any suspicious acts or events; and
    3. Assisting in the investigation of any suspected fraud.

**Fraud Response Plan**

10. MOD has established arrangements via the Fraud Hotline for staff to report any concerns that may have without fear of prejudice or harassment.

* + 1. All incidents are logged in the Fraud Database, which contains details of allegations, investigations and conclusions.
    2. All allegations of fraud are investigated by appointed members of staff (Ministry of Defence Police, the Service Police Authorities, the Defence Fraud Analysis Unit or line managers).
    3. Following completion of investigations, the Department will take appropriate sanctions, both internal and criminal, against all individuals, both civilian and military, found to be committing fraud.
    4. Recovery of misappropriated funds is a priority for MOD so that fraudsters are fully aware that they have nothing to gain from their actions. This redress may entail recovery from salary, directly from individuals, through civil procedures or through the criminal courts.

**Appendix 3 to**

**Annex B to**

**Booklet 2 to**

**CT/COMM1/0057**

**MINISTRY OF DEFENCE**

**FRAUD RESPONSE PROCEDURE**

**Introduction**

* 1. This procedure applies to all MOD personnel, military and civilian, staff employed by contractors at our premises and other contractors with whom we do business. It should be read in conjunction with:
     1. The MOD Policy on Fraud, Theft, Bribery, Corruption and Irregularity;
     2. The Civil Service Code;
     3. The Naval Service Core Values;
     4. The Values and Standards of the British Army;
     5. The Royal Air Force Ethos, Core Values and Standards.

**The Defence Irregularity Reporting Cell**

* 1. The Defence Irregularity Reporting Cell (DIR Cell) is the Department’s one-stop-shop for reporting suspicions of fraud, theft, bribery, corruption and other irregularity.
  2. If you suspect, or are aware of an instance of fraud, theft, bribery, corruption or irregularity you must report it as follows:
     1. Suspicions involving civilian personnel, contractors or other external bodies must be reported immediately to the DIR Cell by line management or the Chain of Command.
     2. Suspicions involving Service personnel must be reported through the Chain of Command and the appropriate Service Police Authority. The Service Police Authorities will inform the DIR Cell of all reported suspicions on the military side in order that one full Departmental record is kept.
     3. However, individuals, both Service and civilian, who feel unable to inform line management or the Chain of Command, or prefer to speak to an independent body, for whatever reason, may contact the DIR Cell directly by phone, fax, e mail or letter. All calls and correspondence will be treated in strict confidence.
  3. When a report is received, DIR Cell staff will carry out some initial research. If further action is required the DIR Cell will pass the case to one of a number of agencies for investigation: line management, the Defence Fraud Analysis Unit, the Ministry of Defence Police or the Service Police. Some cases may require the involvement of more than one agency.

**Reporting Suspicions**

* 1. You can report suspicions to the DIR Cell by phone, fax, e mail or letter as follows:

|  |  |
| --- | --- |
| **DIR Cell Free Hotline**  0800 161 3665 (UK)  +44 1371 854881 (Overseas) | **DIR Cell Fax**  94667 4438 (military line)  01371 854438 (civilian line)  +44 1371 854438 (Overseas) |
| **DIR Cell e mail address**  dircellmailbox@mdpga.mod.uk |  |
| **DIR Cell Address**  Defence Irregularity Reporting Cell  Room 209, Building 1071  MDPGA HQ  Wethersfield  Braintree  Essex CM7 4AZ | **DIR Cell Advice and Queries**  94667 extension 4223 or 4740 or 4806 or 4479 (Military line)  01371 85 extension 4223 or 4740 or 4806 or 4479 (civilian line)  +44 1371 85 extension 4223 or 4740 or 4806 or 4479 (Overseas) |

**Remember: All calls to, and correspondence with, the DIR Cell are confidential and the identity of the whistleblower will be protected.**

**Annex C to**

**Booklet 2 to**

**CT/COMM1/0057**

**DEFCON 661 – War Risk Indemnity**

This Annex contains guidance on war risk indemnity for the Tenderer to enable them to confirm their understanding of the application of DEFCON 661/661A and advise how/when they would liaise with the Authority for any indemnity.

**APPENDICES:**

1. DEFCON 661 War Risk Indemnity Edition 10-06.

**Appendix 1 to**

**Annex C to**

**Booklet 2 to**

**CT/COMM1/0057**

**War Risk Indemnity - DEFCON 661** (Edition 10/06)

1. In this condition:

a. The expression "War Risks" means risks in respect of which the Contractor's policy of insurance contains an exclusion or limitation upon claims applicable by reason of a War Risk Exclusion Clause;

b. The expression "War Risk Exclusion Clause" means a provision in the Contractor's policy of insurance excluding or limiting claims by the Contractor by reference to activities that include war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, martial law, military or usurped power and attempts at usurpation of power or activities of a similar nature.

c. The expression "Subcontractor" means a subcontractor at any level of subcontracting.

2. Notwithstanding any other provisions of the Contract, but subject to the provisions of this Condition, the Authority shall indemnify the Contractor in respect of the liabilities, losses, payments and damage described in sub-clauses a) to h) inclusive of this Clause, where and to the extent that such liabilities, losses, payments or damage are directly attributable to a War Risk and the involvement or requirement for the involvement, for the purpose of work under the Contract of any employees or property of the Contractor in circumstances to which the War Risk Exclusion Clause applies:

a. All liability in respect of claims and proceedings (including reasonable settlements thereof) made or brought against the Contractor by employees of the Contractor, their dependants, executors or administrators, in respect of death, injury, sickness, capture or detention of the Contractor’s employees, or loss of or damage to employee’s property, and against all costs and expenses reasonably incurred in respect of such claims and proceedings;

b. All liability in respect of claims and proceedings (including reasonable settlements thereof) made or brought against the Contractor by third parties (other than the Contractor's employees) arising from the acts or omissions of the Contractor's employees;

c. Any loss of or damage to property of the Contractor, and the loss of use of such property, including any payment made in respect of the necessary hire of suitable property required for performing the contract or other activity dependent on such property pending the return, replacement or repair of such property, but excluding loss of profit;

d. Any reasonable payment made to any employee or his dependants, executors or administrators ordinarily payable in respect of absence from work as a result of injury, sickness, capture or detention, or other reasonable allowance or compensation or gratuity where such payment was necessarily incurred by the Contractor for the purpose of enabling him to perform the Contract and the payment was not otherwise payable as of right or as a matter of discretion under any statutory provision or by reason of length of employment with the Contractor;

e. Any reasonable payment made in respect of the hire or employment of suitable staff to replace employees absent from work as a result of injury, sickness, capture or detention, when such replacement staff are necessary for performing the Contract or other activity dependent on the availability of the absent employees, pending their return to work;

f. Any payment made, where the Authority has not otherwise made provision (e.g. treatment or transportation provided without charge by the Authority), in respect of:

(1) The reasonable costs of treatment of any employee properly prescribed by a qualified medical practitioner; or

(2) Reasonable medical repatriation costs; and

(3) Reasonable funeral and associated transportation costs; where the Contractor has necessarily incurred a commitment to make such payment for the purpose of enabling him to perform the Contract, and the payment was not otherwise payable as of right or a matter of discretion under the pre-existing terms of the contract of employment of that employee, and that employee’s condition would not have arisen by virtue of his employment at his normal place of work;

g. Any loss of, or damage to, or loss of use of property of the Authority made available to the Contractor for the purpose of performing the Contract including any payment made in respect of the hire of suitable property necessary for performing the Contract or other activity dependent on such property pending the return, replacement and/or repair of such property but excluding loss of profit;

h. Any additional payments reasonably incurred to maintain the insurance cover referred to in sub-clause 3. a. below and expressly required by reason of performance of the Contract.

3. The Authority shall not indemnify the Contractor in respect of any claim, proceedings, cost, expense, payment, loss or damage which arises from:

a. Any risks in respect of which the Contractor is insured;

b. Any risks which, although uninsured, the Contractor could reasonably have been expected to have been able to insure;

c. Malicious acts, acts of sabotage, strikes, riots, civil commotion or labour disturbances other than where such activities occur in support of or as a direct result of activities described in sub-clause 1 b) above;

d. Performance of the Contract within the Territories listed at Schedule 1 to this Condition;

e. Wilful misconduct, lack of good faith, or negligence on the part of the Contractor, his officers, servants or agents;

f. The wilful disregard of instructions properly given to employees (including but not limited to officers, servants or agents) of the Contractor by the Authority (who for the purposes of this Condition shall include members of HM Armed Forces and members of any other Armed Forces with whom the Authority is acting in concert);

g. Activities undertaken by the Contractor, his officers, servants or agents for purposes other than performance of the Contract except where those activities are in compliance with instructions properly given to employees of the Contractor by the Authority (who for the purposes of this Condition shall include members of HM Armed Forces and members of any other Armed Forces with whom the Authority is acting in concert);

h. Use of any property of the Contractor, his officers, servants or agents for purposes other than performance of the Contract except where such use is in compliance with instructions properly given to employees of the Contractor by the Authority (who for the purposes of this Condition shall include members of HM Armed Forces and members of any other Armed Forces with whom the Authority is acting in concert);

i. Activities undertaken by the Contractor, his officers, servants or agents which contravene any code of conduct or similar guidance issued by the Authority for the purposes of defining the Authority’s reasonable expectations of the conduct of the Contractor, his officers, servants or agents in the theatre of operations; or

j. Payments of any nature whatsoever to pension funds or schemes operated by or on behalf of the Contractor or any Subcontractor, or any fund or scheme relating to an individual officer, servant or agent of the Contractor, including but not limited to lump sum death benefit, pension payment, compensation payment or redundancy payment.

4. The Authority shall not indemnify the Contractor in respect of any claims, proceedings, costs, expense, payments, loss or damage for which the Contractor has made provision, other than for insurance cover, in the Contract Price (either as a direct charge, indirect charge or contingency).

5. The Authority shall not indemnify the Contractor where the Contractor and the Contractor's insurer under the Contractor's policy of insurance in respect of property or third party liability are connected persons. Any question whether the Contractor and its insurer are connected persons shall be determined in accordance with the provisions for determining such question that are set out in section 839 of the Income and Corporation Taxes Act 1988.

6. Subject to any Subcontractor of the Contractor observing and performing the terms of Clause 7, such Subcontractor shall be entitled to the benefit of and to enforce this Condition as if he were the Contractor.

7. It is a pre-condition to any liability of the Authority under this indemnity that the Contractor shall:

a. As soon as reasonably practicable notify the Authority of any occurrence, claim or proceedings that may be expected to give rise to liability of the Authority under this Condition;

b. Provide evidence or proof of any claim, proceeding, cost, expense, loss or damage in the manner and form reasonably requested by the Authority; and

c. Promptly furnish to the Authority copies of all pertinent papers received by the Contractor and which may reasonably be required by the Authority.

8. The Authority shall make available to the Contractor a copy of the relevant findings of any military Board of Inquiry into any matter which gives rise to a liability on the Authority under this Condition.

Schedule 1 to DEFCON 661 (V2.0 dated 21-11-03)

The European Union

Norway

USA

Canada

Australia

New Zealand

Other States except Turkey which are full members of NATO

**Annex D to**

**Booklet 2 to**

**CT/COMM1/0057**

DEFCON 68 (EDN 9/97) - SUPPLY OF HAZARDOUS ARTICLES AND SUBSTANCES

1. The Contractor shall provide information about any hazardous articles or substances to be supplied under the contract.

1. The information to be supplied in accordance with Clause 1 shall be provided either in the form of the Annex to this Condition or in the form of the Contractor’s own Safety Data Sheet or those of his suppliers and sub contractors. E.g. as defined in the Approved Code of Practice Safety data sheets for substances and preparations dangerous for supply: Guidance on Regulation 6 of the Chemicals (Hazard Information and Packaging for Supply) Regulations.
2. Safety Data Sheets supplied in accordance with this condition shall be sent directly to the Contracts Branch named in the Contract.
3. The Contractor shall:
   1. provide a copy of the Safety Sheet with each delivery made under a contract e.g. where deliveries occur in batches under an Enabling Arrangement: or

* 1. provide a “ nil return” where no hazardous articles or substances are to be supplied under the Contract.

1. Failure by the Contractor to comply with the requirements of this Condition shall be regarded as a breach of contract for which the Authority reserves the right to terminate the Contract

**Appendix 1 to**

**Annex D to**

**Booklet 2 to**

**CT/COMM1/0057**

SUPPLY OF HAZARDOUS ARTICLES AND SUBSTANCES

**[Extract of Appendix to DEFCON 68]**

|  |
| --- |
| GUIDE TO SAFETY DATA |
| 1. **CONTRACTOR’S DETAILS:**   NAME OF CONTRACTOR:  ADDRESS:  FULL TELEPHONE NUMBER: |
| 1. **IDENTIFICATION OF SUPPLIER AND SUBSTANCE OR PREPARATION:**   CONTRACT NO:  DATE:  NATO STOCK NO. (NSN)  MANUFACTURES PART NO:  CHEMICAL NAME:  TRADE NAME:  SUPPLIER:  SUPPLIER’S PART NO:  FULL TELEPHONE NO:  MANUFACTURER:  FULL TELEPHONE NO: |
| 1. **CHEMICAL COMPOSITION/INFORMATION ON INGREDIENTS:** |
| 1. **HAZARDS IDENTIFICATION:** |
| 1. **FIRST AID MEASURES:**   SKIN CONTRACT  EYE CONTACT  INGESTION:  INHALATION: |
| 1. **TOXICOLOGICAL INFORMATION:**   HEALTH EFFECTS:   1. ROUTES OF EXPOSURE: 2. ACUTE EFFECTS: 3. CHRONIC EFFECTS: |
| 1. **FIRE FIGHTING MEASURES:** |
| 1. **ACCIDENTAL RELEASE MEASURES:** |
| 1. **HANDLING AND STORAGE:** |
| 1. **EXPOSURE CONTROL/PERSONAL PROTECTION:** |
| 1. **PHYSICAL AND CHEMICAL PROPERTIES:**   APPEARANCE:  ODOUR:  pH:  BOILING POINT/RANGE:  MELTING POINT/RANGE:  FLASH POINT:  FLAMABILITY LIMITS:  AUTOIGNITION TEMPREATURE:  EXPLOSIVE PROPERTIES:  OXIDISING PROPERTIES:  AMBIENT VAPOUR PRESSURE:  RELATIVE DENSITY:  WATER SOLUBILITY:  FAT SOLUBILITY:  OTHER PROPERTIES:  PRESSURE (bar/psi):  PARTITION COEFICIENT:  OTHER DATA: |
| 1. **STABILITY AND REACTIVITY:** |
| 1. **ECOLOGICAL INFORMATION:** |
| 1. **DISPOSAL CONSIDERATIONS:** |
| 1. **TRANSPORTING INFORMATION:**   PROPERSHIPPING NAME:  UN CLASS:  UN NUMBER:  PACKAGING GROUP:  CARRIAGE BY ROAD (ADR)  TREMCARD:  CARRIAGE BY SEA (IMDG):  CARRIAGE BY AIR (ICAO):  HAZARD WARNING LABELS:  IS UN CERTIFIED PACKAGING REQUIRED?:  RECEPTACLE CAPACITY:  PACKAGE TYPE/SIZE: |
| 1. **REGULATORY INFORMATION:**   CHIP INDEX NUMBER:  CLASSIFICATION:  EEC NUMBER:  RISK PHASES:  SAFETY PHASES: |
| 1. **OTHER INFORMATION**   IS THE ITEM RADIOACTIVE: YES/NO  IF YES’ WHAT IS THE ACTIVITY, SUBSTANCE AND FORM (INCLUDING ISOTOPE)?    IS THE ITEM A RADIOACTIVE “SUBSTANCE”: YES/NO  IS THE ITEM A RADIATION “GENERATOR”: YES/NO  IF YES’ WHAT TYPE OF RADIATION?:  IS THERE ASBESTOS IN THE ITEM: YES/NO  IF YES WHAT TYPE AND IN WHAT FORM?:  IS THE ITEM MAGNETIC: YES/NO  IF YES’ WHAT IS THE READING FOR MAGENTIC FLUX DENSITY, IN WHAT CONDITION (PACKED OR NO) AND AT WHAT DISTANCE? |
| SIGNATURE:  DATE:  APPOINTMENT: |

**Annex E to**

**Booklet 2 to**

**CT/COMM1/0057**

**DISCRIMINATION**

**Provisions to be included in subcontracts**

1. In this Condition the "Authority" shall mean the Secretary of State for Defence.

2. [The member of the Supply Chain] shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976 (the "Act") or any statutory modification or re-enactment thereof relating to discrimination in employment.

3. Where in connection with [the Subcontract], [the member of the Supply Chain] 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 member of the Supply Chain] shall comply with the reasonable directions of the Authority or [the Contractor] in order to enable the Authority to fulfil its duties under section 71(1) of the Act. Those directions shall include but not be limited to the directions set out in the Annex to this Condition.

4. [The member of the Supply Chain] shall take all reasonable steps to procure the observance of the provisions of conditions 1 and 2 above by any servants, employees or agents of [the member of the Supply Chain] and any members of the Supply Chain to whom condition 3 above would apply.

5. If [the member of the Supply Chain] becomes aware of any prosecution or proceedings, brought under the Act, against [the member of the Supply Chain], any servants, employees or agents of [the member of the Supply Chain] and any Supply Chain members employed in performance of [the Subcontract], [the member of the Supply Chain] shall immediately notify the Authority at the address specified in the Contract. [The member of the Supply Chain] shall not be required to so notify in breach of any duty of confidentiality between [the member of the Supply Chain] and any of his employees.

6. Notification by [the member of the Supply Chain] of any information shall not prejudice any rights or obligations of [the member of the Supply Chain] or [the Contractor] under [the Subcontract].

**Annex F to**

**Booklet 2 to**

**CT/COMM1/0057**

**ADDITIONAL SECURITY MEASURES**

Provisions to be included in relevant subcontracts

**Definition**

1. In this Condition:-

1.1 ‘**Secret Matter**’ means any matter connected with the Agreement, or its performance which the First Party informs the Second Party in writing has been designated by the Authority as "TOP SECRET" or "SECRET" 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 Second Party or who occupies the position of a director of the Second Party, by whatever title given.

1.3 The ‘**Authority**’ means the Secretary of State for Defence.

**The Official Secrets Acts**

2. The Second Party shall:

2.1 Take all reasonable steps to ensure that all Employees engaged on any work in connection with the Agreement have notice that the Official Secrets Acts 1911-1989 apply to them and will continue so to apply after the completion or termination of the Agreement; and

2.2 If directed by the First Party or the Authority, ensure that any Employee shall sign a statement acknowledging that, both during the term of the Agreement and after its completion or termination, they are bound by the Official Secrets Acts 1911-1989 (and where applicable any other legislation).

**Security Measures**

3. Unless they have the written authorisation of the Authority to do otherwise, neither the Second Party nor any of their Employees shall, either before or after the completion or termination of the Agreement, do or permit to be done anything which they 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 authority for access to the protected matter;

3.3 in respect of whom the Authority has notified the Second Party 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 Second Party;

3.5 who is an Employee of the Second Party and has no need to know the information for the proper performance of the Agreement.

4. Unless they have the written permission of the Authority to do otherwise, the Second Party and their Employees shall, both before and after the completion or termination of the Agreement, 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 the Agreement;

4.2 any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy Framework (as amended from time to time) and upon request is delivered up to the Authority who shall be entitled to retain it.

A decision of the Authority on the question of whether the Second Party has taken or is taking reasonable steps as required by this Clause, shall be final and conclusive.

5. The Second Party shall:

5.1 provide to the Authority:

5.1.1 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 Sub-clause 4.b).;

5.1.2 upon request, such information as the Authority may from time to time require so as to be satisfied that the Second Party and their Employees are complying with their obligations under this Condition, including the measures taken or proposed by the Second Party so as to comply with their obligations and to prevent any breach of them;

5.1.3 full particulars of any failure by the Second Party and their Employees to comply with any obligations relating to Secret Matter arising under this Condition immediately upon such failure becoming apparent;

5.2 ensure that, for the purpose of checking the Second Party's compliance with the obligation in Sub-clause 4.b), a representative of the First Party or the Authority shall be entitled at any time to enter and inspect any premises used by the Second Party which are in any way connected with the Agreement and inspect any document or thing in any such premises, which is being used or made for the purposes of the Agreement. Such representative shall be entitled to all such information as they may reasonably require.

6. If at any time either before or after the completion or termination of the Contract, the Second Party or any of their Employees discovers or suspects that an unauthorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the Second Party shall forthwith inform the Authority of the matter with full particulars thereof.

**Sub-Contracts**

7. If the Second Party proposes to make a sub-contract which will involve the disclosure of Secret Matter to the sub-contractor, the Second Party shall:

7.1 submit for approval of the Authority the name of the proposed sub-contractor, a statement of the work to be carried out and any other details known to the Second Party which the Authority shall reasonably require;

7.2 incorporate into the sub-contract the terms of this Condition and such secrecy and security obligations as the Authority shall direct.

7.3 inform the Authority immediately they become aware of any breach by the sub-contractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the Agreement.

**Termination**

8. The First Party shall be entitled to terminate the Agreement immediately if:

8.1 the Second Party is in breach of any obligation under this Condition; or

8.2 the Second Party is in breach of any secrecy or security obligation imposed by any other contract with the Crown;

where the Authority considers the circumstances of the breach jeopardise the secrecy or security of the Secret Matter and notifies its contractor accordingly.

**Annex G to**

**Booklet 2 to**

**CT/COMM1/0057**

**Example Trust Deed**

**Trust Deed**

**THIS DEED is made the** [insert date figure in words]]**day of** [insert month in words] **2009**

**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”.

**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.

**TRUST DEED**

**1.0 Definitions**

**1.1** In this Deed, the following words have the following meanings:

‘Account Holders’ the Authority and the Contractor;

‘Bank’ the Bank 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;

‘Contract’ the contract between the Authority and the Contractor in respect of the Project as detailed in Schedule 2 to this Deed;

‘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.

**2.0 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 and/or the Sub-Contractors under the Contract and the Sub-Contracts 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 Holder’s 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 forms of the total amount of monies owed at that time to the Sub-Contractors and the Contractor collectively.

**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).

**3.0 Operation of the Bank Account**

**3.1** The Account Holders each agree that:

3.1.1 they will sign the Bank Mandate as soon as reasonably practicable following execution of this Deed; and in any event, within 21 days of 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 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 of 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;

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 payment milestones set out in the Contract have been achieved, the Account Holders shall identify any payments due under the Contract and the Sub-Contracts and:

3.2.1 the Authority shall promptly pay the monies due under the Contract into the Bank Account;

3.2.1 as and when the monies have been cleared, 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 Sub-Contractors and the Contractor must 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 failure.

**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.

**4.0 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.

**5.0 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.

**6.0 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.

**7.0 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 all monies have 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).

**8.0 General**

**8.1** This Deed contains the whole agreement 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 Agreement on the basis of any representation that is not expressly incorporated into this Agreement. 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 Agreement 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 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** The Sub-Contractors are only liable for their 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 may assign its interest in this Deed (or any part) without the written consent of the other parties, such consent not to be unreasonably withheld or delayed.

**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 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 OF THE ABOVE the parties execute this document as a Deed on the date written above.**

**Example: Schedule 1: Deed of Adherence**

**THIS DEED OF ADHERENCE is dated the** [insert date figure in words] **day of** [insert month] **2009**

**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 (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 (as defined below).

**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.

**1.0 Definitions**

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

‘Admission Date’ [insert date];

‘Authority’ The Secretary of State for Defence acting through Defence Estates at [insert Commercial Branch address] (including his successors and assigns);

‘Contract’ the contract between the Authority and the Contractor dated {insert date} for [insert the project title];

‘Contractor’ [insert registered Contractor name and company number];

‘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 {insert date} which sets out the basis on which the Project Bank Account is to be operated; and

‘Project Bank Account’ the Bank Account held in the name of the Authority and the Contractor at [Barclays Bank Plc/Bank of Scotland Plc] account number {insert bank account number} into which all monies due in respect of the Contract are to be paid.

**2.0 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.

**3.0 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 non-exclusive jurisdiction of the English Courts.

**IN WITNESS OF THE ABOVE the parties execute this document as a Deed on the date written above.**

**Example**: **Annex 1 – The Current Parties**

[insert details of the current parties to the Deed]

EXECUTED and DELIVERED as a DEED

by the Authority

acting by: ………………………………………

Deputy Commercial Director/DIO

For the Commercial Director/DIO

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

**Schedule 2: Details**

|  |  |
| --- | --- |
| Authority: | [insert name, address and company number of the Authority]. |
| Contractor: | [insert name, address and company number of the Contractor]. |
| Sub-Contractors: | [insert names, addresses and company numbers for each Sub-Contractor who will be a party to this Deed]. |
| Bank: | [insert details of the Bank which will operate the Project Bank Account]. |
| Contract: | Contract between (1) the Authority and (2) the Contractor in respect of the project and dated [insert date] with Contract Number:[insert contract number]. |
| Project: | [insert project title]. |

**Example**: **Schedule 3: 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)

EXECUTED and DELIVERED as a DEED

by the Authority

acting by: ………………………………………

Deputy Commercial Director/DIO

For the Commercial Director/DIO

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 H to**

**Booklet 2 to**

**CT/COMM1/0057**

**SUMMARY OF CHANGES**

**TO WORKS CONTRACTOR’S CONDITIONS OF CONTRACT**

**DEFCON 2000 EDITION 2 (2005)**

**Exclusions**

* Condition 6.8 - Liquidated Damages.
* Schedule 2-17 - Liquidated Damages.
* Schedule 3-9 - Fair Employment (Northern Ireland) Act 1989.
* Schedule 9-2 - Performance Guarantee.
* Schedule 9-7 - Project Aquatrine and/or Regional Prime Contractor.

**Inclusions**

* Condition 4.1.3 - Project Bank Account
* Condition 5.6 - War Risk Indemnity DEFCON 661.
* Schedule 5-6 - Payment Under P2P
* Schedule 9-1 - Guarantee from Group Undertaking.

**Alterations**

* Definition: Town & Country Planning Application(s) and Consent(s) – revised to read ‘Construction Planning Approvals’ in accordance with Kenyan Planning Approvals process.
* S9-5 Additional Security Measures – revised in accordance with new Government Security Classifications guidelines.
* Project Bank Account information
* Purchase to Payment (P2P) information