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INTRODUCTION AND NOTICES

THE GC/WORKS CONTRACT

GC/Works/1 (1998), amended for use in the Cayman Islands (2003), is a new edition of the standard Government form of contract for building and civil engineering works in the Cayman Islands.

PROCUREMENT METHOD

This contract is for use with Bills of Quantities, where all or most of the quantities are firm and not subject to re-measurement, giving a lump sum contract subject to adjustment for variations ordered.

SUPPORTING DOCUMENTATION

The General Conditions also contains the following forms -

• Abstract of Particulars and Addendum.
• Invitation to Tender.
• Tender and Tender Price Form.
• Contract Agreement.

Model Forms & Commentary are available separately and contain forms that may be used with these General Conditions.

DISCLAIMER

All parties must rely exclusively upon their own skill and judgement, or upon those of their advisers, when making use of this document. Neither the Cayman Islands Government, Property Advisers to the Civil Estate (PACE), nor any contributor assumes, assumes any liability to anyone for loss or damage caused by any error or omission, whether such an error or omission is the result of negligence or any other cause. Any and all such liability is disclaimed.

SUPPLEMENTARY CONDITIONS

Conditions, such as a variation of price condition, may be added to supplement the printed Conditions of Contract according to the circumstances. They are incorporated into the Conditions of Contract by listing in the Abstract of Particulars.

If the parties incorporate Supplementary Conditions into the Conditions of Contract by listing in the Abstract of Particulars, such Supplementary Conditions will, as provided by the Abstract, prevail over the printed Conditions.
GENERAL CONDITIONS OF CONTRACT
GC/WORKS/1 (1998) -
AMENDED FOR USE IN THE CAYMAN ISLANDS (2003)

CONTRACT DOCUMENTATION, INFORMATION AND STAFF

1 Definitions, etc.

(1) In the Contract, unless the context otherwise requires -

‘Abnormal Weather Conditions’ means weather conditions of a given type (including wind, rainfall, or tropical storms) experienced at the Site by the Contractor, which are recorded by the Cayman Islands National Weather Services as having a severity greater than 150% of the average severity of such category of weather conditions over the previous 10 year period.

‘the Abstract of Particulars’ means the document so headed included in the Contract;

‘the Accepted Risks’ means the risks of –

(a) pressure waves caused by the speed of aircraft or other aerial devices;

(b) ionising radiations or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel;

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

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

‘Bills of Quantities’ means the priced and completed Bills of Quantities (includes Provisional Bills of Quantities and Bills of Approximate Quantities);

‘Company’ means and includes any body corporate;

‘the Contract’ means the -

(a) Contract Agreement (if any);

(b) Conditions of Contract (namely, these Conditions and any Supplementary Conditions and Annexes prescribed by the Abstract of Particulars);

(c) Abstract of Particulars;

(d) Specification (if used);

(e) Drawings;

(f) Bills of Quantities;

(g) Tender; and

(h) Employer’s written acceptance;
‘the Contract Agreement’ means the formal agreement (if any) executed by the Employer and the Contractor recording the terms of the Contract;

‘the Contract Sum’ means the sum accepted by the Employer when awarding the Contract;

‘the Contractor’ means the person or persons whose tender is accepted by the Employer and his or their legal personal representatives or permitted assignees;

‘Contractor’s Documents’ means the information required pursuant to Condition 2A(1)(a) (Contractor’s Documents);

‘the Crown’ means Her Majesty in the right of her Government of the Cayman Islands, and “Cayman Islands Government” or the abbreviated form “CIG” shall be construed accordingly,

‘the Date or Dates for Completion’ means the date or dates ascertained in accordance with the Abstract of Particulars or, where extensions of time have been awarded or acceleration agreed, the date as adjusted by such extensions or agreements;

‘Days’ means calendar days;

‘Delaying Event’ means any event referred to as such in Condition 36(9) (Extensions of time);

‘the Drawings’ means the drawings listed in the Schedule of Drawings annexed to the Contract Agreement or, if there is no such Schedule, the drawings listed in the Schedule of Drawings referred to in the tender;

‘the Employer’ means the Employer in the Contract as named in the Abstract of Particulars and any permitted successors or assignees (whether in ministerial responsibility or otherwise);

‘the Final Account’ means the document prepared by the QS showing the calculation of the Final Sum and agreed or otherwise settled under Condition 49 (Final Account);

‘the Final Sum’ means the amount payable under the Contract by the Employer to the Contractor for the full and entire execution and completion of the Works;

‘Group’ means and includes a company and every holding company of that company for the time being, and every subsidiary for the time being of every such holding company, and the terms ‘Employer’s Group’ and ‘Contractor’s Group’ shall be interpreted accordingly; but, while the Employer is a Minister of the government, a government department or other Cayman Islands government agency or authority, the term ‘Employer’s Group’ shall also include all other Cayman Islands government Ministers, government departments and Crown agencies and authorities;

‘Hurricane’ means a violent storm with sustained winds exceeding 73 miles per hour (mph), a ‘Tropical Storm’ means a storm with sustained winds between 39 mph and 73 mph.

‘Instruction’ means any instruction given in accordance with Condition 40 (PM’s Instructions), which only where expressly stated to do so includes any Variation Instruction.

‘Intellectual Property’ means any patent, process, drawing, model, plan, invention, design, copyright, trademark, and all other property resulting from intellectual activity;

‘Intellectual Property Rights’ means the rights and licences to Intellectual Property subsisting in any matter, Thing, or process (including documentation, drawings and software) prepared or to be prepared, used or to be used by or on behalf of the Contractor in performing the Works or to be delivered by him to the Employer under this Contract;

‘Laws’ means all laws in force and effect as of the date of this Contract and which may be promulgated or brought into force and effect hereinafter in the Cayman Islands, including legislation and subordinate legislation passed by parliamentary bodies, regulations, bye-laws,
judgements, decrees, injunctions, writs, orders of any court or notifications issued by appropriate authorities, as may be in force and effect during the subsistence of this Contract;

‘the Maintenance Certificate’ means the certificate issued to the Employer in accordance with Condition 21(9) (Defects in the Maintenance Period);

‘the Maintenance Period’ means the period, or any of the periods, specified in the Abstract of Particulars for completing outstanding items and for the remedying of defects, damage, imperfections or faults in accordance with Condition 21(9) (Defects in the Maintenance Period);

‘Manufacturer’s warranties’ means those warranties mentioned in the Specification;

‘National Hurricane Committee’ means the National Hurricane Committee of the Cayman Islands;

‘the PM’ means the Project Manager who is the Chief Engineer, Public Works Department, or the person appointed to act on his behalf and is named in the Abstract of Particulars, and will carry out those duties described in the Contract (subject to the exclusions set out in the Abstract of Particulars), or such other person as may be appointed in that capacity for the time being by the Employer;

‘the Performance Tests’ means those performance tests appended to the Abstract of Particulars;

the Permanent Works’ has the meaning ascribed to it in Condition 10(1) (Design);

‘the Programme’ means the programme submitted prior to acceptance of the tender and reviewed and commented on at that time by the Employer, as it may be amended from time to time;

‘Progress Photographs’ has the meaning ascribed to it in Condition 28 (Photographs);

‘the QS’ means the Executive Quantity Surveyor, Public Works Department (including any person or persons acting for him) appointed for the time being by the Employer;

‘Retention Payment’ shall have the meaning given in Condition 48A (Retention payment bond);

‘Section’ means any part of the Works specified as a Section in the Abstract of Particulars and which has a specified Date for Completion;

‘the Site’ means the land or place described in the Contract, together with such other land or places as may be allotted or agreed by the parties from time to time, for the purpose of carrying out the Contract;

‘the Specification’ means the Specification (if any) annexed to the Contract Agreement or otherwise included in the Contract;

‘Subsidiary’ means any company controlled by the contractor, directly or indirectly through shareholding or otherwise;

‘Temporary Works’ has the meaning ascribed to it in Condition 7A(1) (Temporary Works and Use of the Site);

‘Tests on Completion’ means those tests on completion appended to the Abstract of Particulars;

‘Things’ comprise ‘Things for incorporation’, which means equipment, goods and materials intended to form part of the completed Works, and ‘Things not for incorporation’ which means equipment, plant, goods and materials provided or used to facilitate execution of the Works but not for incorporation in them;
‘Unforeseeable Ground Conditions’ means ground conditions certified by the PM in accordance with Condition 7 (Conditions affecting Works);

‘Variation Instruction’ (‘VI’) means any Instruction which makes any alteration or addition to, or omission from, the Works or any change in the design, quality or quantity of the Works; and

‘the Works’ means the works described or shown in the Specification, Bills of Quantities and Drawings, including all modified or additional works to be executed under the Contract and all other things to be done by the Contractor in relation thereto.

(2) The headings to these Conditions shall not affect their interpretation. Any reference to legislation shall be deemed to include a reference to any amendment or re-enactment thereof for the time being in force. Words in the singular include the plural, and vice versa. Words in the masculine include feminine and neuter.

(3) Unless otherwise provided by the Contract, certificates of the PM shall be issued to the Contractor. Any notices or other documents required or authorised to be served in pursuance of the Contract shall be in writing. They may be given to the Contractor by delivery to his agent or may be posted to the registered office or last known place of business of the Contractor. They may be given to the Employer by delivery to the PM or may be posted to the registered office or last known place of business of the Employer. A postal notice shall be deemed to have been served on the date when in the ordinary course of post it would have been delivered.

(4) (a) Except in relation to Condition 36 (Extensions of time), any period of time in these Conditions within which the Employer, the Contractor, PM or QS, is to take action or decide anything may be extended by agreement, notwithstanding that the period of time has expired.

(b) For the purposes of this Contract, and for all other purposes, periods of time shall include Saturdays and Sundays, but shall be reckoned as follows -

   (i) where an act is required to be done within a specified period after or from a specified date, the period begins immediately after that date; and

   (ii) where the period would include Christmas Day, Good Friday or a day which is a public holiday in Cayman Islands, that day shall be excluded.

(5) The Contract constitutes the entire agreement between the Employer and the Contractor in relation to its subject matter and supersedes all prior agreements and understandings whether oral or written with respect to such subject matter. No amendment of the Contract or waiver of any obligation herein shall be effective unless reduced to writing and signed on behalf of a duly authorised representative of each the Employer and the Contractor.

**1A Fair dealing and teamworking**

The parties acknowledge the benefits of a co-operative and open relationship when dealing each other.

**2 Contract documents**

(1) In case of discrepancy between the Supplementary Conditions and Annexes prescribed by the Abstract of Particulars and these Conditions, the former shall prevail. In case of discrepancy between the Conditions of Contract and other documents forming part of the Contract, the Conditions of Contract shall prevail.

(2) The Specification, or that part of the Bills of Quantities which serves as the Specification, shall take precedence over the specification content of the Drawings, unless the PM Instructs otherwise.
Figured dimensions on all drawings shall be followed in preference to the scale.

The PM shall provide free to the Contractor as soon as reasonably practicable a copy of each of the Drawings, the Specification, the unpriced Bills of Quantities, and any drawings issued during the progress of the Works, in a form which the PM considers suitable for reproduction. The Contractor shall keep one copy of all such drawings and of the Specification on the Site, and the PM or his representative shall have access to them at all reasonable times.

The Contractor shall thoroughly examine the documents comprising the Contract and shall satisfy himself that there are no discrepancies, inconsistencies or omissions and that such documents are accurate and sufficient in all respects for the purposes of the execution of the Works.

If, notwithstanding the Contractor's examination, discrepancies, inconsistencies or omissions within the Contract come to the attention of either party, that party shall forthwith notify the other party and the PM. The notification may be accompanied by proposals for overcoming the discrepancies, inconsistencies or omissions (as the case may be) based upon paragraphs (1), (2) and (3) as is appropriate.

The PM shall issue an Instruction as to how the discrepancies, inconsistencies or omissions shall be overcome, and may include acceptance of any proposals made by the Contractor under paragraph (6). The PM's Instruction or the implementation of any Contractor's proposals (as the case may be) shall be undertaken by the Contractor at his own cost and without any right to a VI, unless the PM's Instructions constitutes a VI.

The Contractor shall at his own cost, time and expense provide such information to the PM as the PM or the Employer may reasonably require for the purposes of the preparation of as built drawings of the Works.

2A Contractor’s Documents

The Contractor shall submit to the PM for approval -

(a) within the time given in the Contract, or if no time is so specified then in accordance with the Programme or within the time reasonably required by the PM, such shop drawings and product data and all other technical information together with samples, models and mock-up’s as may be called for in the Contract or as the PM may reasonably require, and in the numbers and format as required by the Contract or, if no such number or format is stated in the Contract, as reasonably required by the PM; and

(b) during the progress of the Works and within such times as the PM may require such additional Contractor's Documents as the PM may require.

The PM shall review and comment on the Contractor's Documents submitted in accordance with paragraph (1) in the period stated in the Abstract of Particulars, at which time the PM shall signify his 'approval', or 'approval with corrections' or 'resubmit' and return one copy to the Contractor. If the PM shall fail to do so within the stated period, the Contractor's Document shall be deemed to be approved by the PM. The notes 'approved' or 'approved with corrections' shall give the Contractor the authorisation to proceed on the basis of the Contractor's Document provided that the required corrections, if any, are made and such approved Contractor's Documents shall not be departed from except in accordance with a VI. Where any Contractor's Document is marked 'resubmit', the same shall be corrected and re-submitted by the Contractor and the procedure for approval set out in this paragraph (2) shall apply to the re-submitted Contractor's Document. Any approval by the PM of any Contractor's Document shall not relieve the Contractor of any liability or obligation which he has under this Contract nor place any liability or obligation on the Employer.

The Contractor’s Documents of which the PM marks ‘resubmit’ shall be modified and resubmitted by the Contractor without delay.
The Contractor shall provide to the PM at such times as may be specified in the Contract or, if no time is specified, then in accordance with the Programme or within the time reasonably required by the PM, operating and servicing instructions accompanied by drawings of the Works as completed to enable the Employer to operate, maintain, dismantle, reassemble, adjust and repair all parts of the Works. Unless otherwise agreed the Works shall not be considered to be complete in accordance with Condition 39 (Certifying completion) until such operating and servicing instructions and drawings have been supplied to the PM.

The Contractor shall be responsible for any discrepancies, inconsistencies or omissions in the Contractor's Documents or other information supplied by the Contractor, whether they have been approved by the PM or not. The Contractor shall at his own expense carry out any alterations or remedial work necessitated by reason of such discrepancies, inconsistencies or omissions and shall modify the Contractor's Documents or other information accordingly, or if the same shall be done by or on behalf of the Employer, the PM shall ascertain the costs and expenses of the Employer in connection therewith and deduct this sum from the Contract Sum.

3 Bills of Quantities

(1) Except where otherwise stated, the Bills of Quantities shall be deemed to have been prepared in accordance with the method of measurement expressed in them.

(2) Omissions or errors in description or in quantity in the Bills of Quantities shall not vitiate the Contract nor release the Contractor from any of his obligations or liabilities under the Contract.

(3) The Employer shall rectify any error or omission in the Bills of Quantities in accordance with Condition 42(5) (Valuation of Variation Instructions), and the Contract Sum shall be increased or decreased accordingly, provided that there shall be no rectification of any errors, omissions or wrong estimates in the prices inserted by the Contractor in the Bills of Quantities or in any of his calculations or computations based on those Bills.

(4) Any quantities designated as approximate in the Bills of Quantities shall not be held to gauge or limit the amount and description of the work to be executed by the Contractor but shall be replaced in the Final Account by actual quantities measured by the QS and priced in accordance with the rates and prices in the Bills of Quantities. Where the QS is of the opinion that because of a substantial difference between billed and measured quantities it would be unreasonable to use the rates and prices in the Bills he shall value in accordance with Condition 42(5)(b) or (c) (Valuation of Variation Instructions).

(5) The Contractor shall be deemed to have satisfied himself before entering into the Contract as to the correctness and sufficiency of the rates and prices contained in the Bills of Quantities to cover all his risks, liabilities and obligations set out in or implied by the Contract (including, but without limitation, those in respect of the supply of Things) and all matters and things necessary for the proper execution of the Works.

4 Delegations and representatives

(1) All decisions to be made by or on behalf of the Employer under the Contract shall be communicated to the Contractor by the PM. The PM shall be deemed to be authorised to act generally for the Employer, and the PM and the QS shall carry out the duties specified in, or necessarily implied from the Contract, subject to any excluded matters set out in the Abstract of Particulars. In relation to those excluded matters, the person or persons authorised to act for the Employer are identified in the Abstract of Particulars, but decisions in respect of excluded matters shall nevertheless be communicated to the Contractor by the PM. The PM and the QS and others acting in respect of any excluded matters shall have no authority to amend the Contract, to release the Contractor from any of his duties, obligations or liabilities under the Contract nor to create any estoppel against them or the Employer. Unless and until the
Employer notifies the Contractor to the contrary, the Contractor shall take Instructions, notices, communications and decisions only from the PM.

(2) The PM and the QS may expressly delegate in writing to named representatives any of their powers and duties. Where a Clerk of Works or Resident Engineer is appointed he shall exercise the powers of the PM under Condition 31 (Quality) and such other powers as the PM may delegate to him. The PM and the QS may at any time revoke any delegation. No representative of the PM or of the QS (including for the avoidance of doubt the Clerk of Works or the Resident Engineer) shall have any authority to issue any Instructions or decisions to the Contractor, which may lead to an increase to the Contract Sum or any extension to the Date or Dates for Completion. Any such Instruction or decision shall immediately be referred to the PM for confirmation before the Contractor takes any action with regard thereto. Any written communication between the Contractor and any representative of the PM or QS shall immediately be copied by the Contractor to the PM. Any examination, testing or similar act by any representative of the PM, in accordance with the delegation, shall have effect as though it had been an act of the PM. However -

(a) any failure to disapprove any Things, design, or workmanship, shall not prejudice the right of the PM within a reasonable time to reject such Things, design or workmanship; and

(b) if the Contractor questions any determination or Instruction of a representative of the PM or the QS, the Contractor may refer the matter to the PM, who shall confirm, reverse or vary such determination or Instruction.

(3) The appointment of representatives by the Employer, PM or QS shall not prevent them from subsequently exercising directly any of the powers and duties conferred under the Contract.

(4) The Contractor shall as soon as possible be notified by the PM of the names of representatives to whom powers and duties have been delegated, and of all powers and duties delegated. Any subsequent changes to the names, powers and duties of such representatives shall be notified to the Contractor by the PM as soon as possible.

(5) It is agreed and declared that provisions or requirements in the Contract, that matters or work be done to the satisfaction of or to be certified, determined, accepted or confirmed by the PM, or with the comment or approval of the PM, are inserted as protection to the Employer additional to any other rights whatsoever which the Employer may have for breach of an obligation under this Contract on the part of the Contractor. No payment by the Employer nor any expression or implication of satisfaction or acceptance nor any Instruction, confirmation, certification, determination, comment, approval or notice by the PM shall restrict, debar, exclude or waive any claims or actions whatsoever by the Employer for any breach of any such obligation by the Contractor.

5 Contractor's agent

(1) The Contractor shall give or provide all necessary superintendence during the carrying out of the Works and as long thereafter as the PM may consider necessary for the proper fulfilling of the Contractor's obligations under the Contract. The Contractor shall appoint a competent agent, accepted by the PM in writing to supervise the execution of the Works. Such competent agent shall be in full charge of the Works on behalf of the Contractor and shall receive, on behalf of the Contractor, directions and instructions from the PM or, subject to Condition 4 (Delegations and representatives) any representative of the PM. Except when required to attend the office of the PM or when reasonably absent from the Site, the agent shall be constantly in attendance on the Works and give his whole time to the superintendence of the same. When the agent is not in attendance at the Site, the Contractor will so notify the PM, stating the period of and reason for the absence, together with the name of the agent's authorised deputy.
If the PM's acceptance of the agent shall be withdrawn by the PM, the Contractor shall, as soon as is practicable after receiving written notice of such withdrawal, remove the agent from the Works at his own expense and shall not thereafter employ him again on the Works in any capacity and shall replace him at his own expense by another representative accepted by the PM.

6 Contractor's employees

(1) The PM may at any time, require the Contractor immediately to cease to employ in connection with the Contract any person whose continued employment is in the opinion of the PM undesirable. The Contractor shall replace any such person, as soon as possible and at his own cost, with a suitably qualified person. Such person shall not be employed again in connection with the Works without the written permission of the PM. The PM shall not be required to justify his reasons for requiring a person's employment to cease.

(2) Other than for causes outside his control, the Contractor shall not make changes in personnel named in his tender in connection with the Contract without the prior approval of the PM.

(3) The Contractor and his subcontractors and suppliers shall provide and employ on the Site in connection with the Works:

(a) only such technical assistants as are skilled and experienced in their respective callings and such sub-agents and foremen as are competent to give proper supervision to the work they are required to supervise; and

(b) such skilled, semi-skilled and unskilled labour as is necessary for the proper execution of the Works.

(4) All the Contractor's technical assistants and other personnel, and others who are required to deal directly with the PM, or any representative of the PM, shall -

(a) not be transferred from the Works without the consent of the PM (save for reasons outside the Contractor’s control); and

(b) be named and listed in an organisation chart which the Contractor shall supply to the PM within 14 Days of receipt of the Employer's notification under Condition 34(1) (Commencement and completion); and

(c) be fluent in the English language and where, in the PM's opinion, it is appropriate, the predominant language of the labour force.
GENERAL OBLIGATIONS

7 Conditions affecting Works

(1) The Contractor shall be deemed prior to executing the Contract, to have, and warrants that he has, inspected and examined to his satisfaction the Site and its surroundings and where applicable, any existing structures or works on, over or under the Site; and has satisfied himself as to:

(a) the nature of the climatic, hydrological, ecological, environmental conditions (including all hazards and the potential for any contamination of the Site or the sub-soil by any noxious or hazardous substances) and the general conditions of the Site;

(b) the form and nature of the Site (including existing ground and sea-bed levels) and its adequacy for the purposes of the Works;

(c) the extent and nature of the design and work, the availability, supply, condition and quality of any Things and the labour, water and electrical power necessary for the Works;

(d) the risk of injury or damage to adjacent property to the Site and to the occupiers of such property;

(e) the existence of vegetation and foliage and the nature of the soil, the sub-soil and material (whether natural or otherwise) to be excavated and the geotechnical and ground conditions (including those caused by weather or artificial obstructions) in which the Works or any part will be carried out;

(f) the means and extent of communication with and access to and from the Site (including any existing roads and all other means of communication) and the accommodation it may require and the adequacy of the rights of access set out in this Contract for those purposes;

(g) the nature and extent of any restrictions upon possession or use of the Site and the possibility of interference by persons (other than the Employer) with access to and from or with use of or possession of the Site;

(h) the conditions under which the Works will be carried out, including the precautions and the times and methods of working necessary to prevent any nuisance and pollution and any restriction on cranage;

(i) the whereabouts of existing services and mains;

(j) the nature and extent of any restrictions upon conditions affecting shipping and transportation, port facilities, port congestion, access, disposal, handling and import or export of Things;

(k) Laws, regulations and any local customs;

(l) any design or works carried out by other contractors on the Site which design or work the Contractor has taken over with the Site or with which the design and execution of the Works is required to integrate (where such information has been provided by the Employer);

(m) the presence or absence of objects of the kind described in Condition 32 (Excavations); and

(n) any other matters or information affecting or likely to affect the execution of, or price tendered for, the Works;
and warrants further that he has thoroughly examined, checked and satisfied himself as to the adequacy, correctness and suitability of all data made available to the Contractor prior to the execution of this Contract and in general to have obtained for himself all necessary information as to risks, contingencies and all other circumstances which may influence or affect the Works and any other factors which would affect his decision to enter into this Contract or the terms on which he would do so. Unless specifically warranted in writing, the Employer does not warrant the correctness of any representation, opinion, comment, or of any other matter whether made orally or contained in any part of the Contract or any other document provided to the Contractor and the Contractor uses or relies upon such representations, opinions, comments or other matters entirely at his own risk.

(2) Paragraph (1) shall not apply to any information given or referred to in the Bills of Quantities which is required to be given in accordance with the method of measurement expressed therein.

(3) If, during the execution of the Works, the Contractor becomes aware of ground conditions (excluding those caused by weather but including artificial obstructions) which he did not know of, and which he could not reasonably have foreseen having regard to any information which he had or ought reasonably to have had, or ascertained, he shall, as a condition precedent to any right or remedy in respect of such conditions and subject always to paragraph (1), by notice immediately -

(a) inform the PM of those conditions; and

(b) state the measures which he proposes to take to deal with them

(4) If the PM agrees that the ground conditions specified in a notice under paragraph (3) could not reasonably have been foreseen by the Contractor having regard to any information he should have had in accordance with that paragraph and paragraph (1), he shall, subject certify those conditions to be Unforeseeable Ground Conditions. The PM shall notify the Contractor of his decision.

(5) If, after the ground conditions specified in a notice under paragraph (3) have been or should have been certified as Unforeseeable Ground Conditions in accordance with paragraph (4), and as a result of such Unforeseeable Ground Conditions, the Contractor in executing the Works properly carries out or omits any work which he would not otherwise have carried out or omitted, then, without prejudice to any Instruction given by the PM, the value of the work carried out or omitted shall be ascertained in accordance with Condition 42 (Valuation of Variation Instructions) and the Contract Sum shall be increased or decreased accordingly.

(6) No claim by the Contractor for additional payment or an extension of time will be allowed because he has misunderstood or misinterpreted anything mentioned in paragraph (1), or because incorrect or insufficient information was given to the Contractor by any person whether or not in the employ of the Employer or because the Contractor failed to obtain correct and sufficient information. Nor shall the Contractor be relieved from any risk or obligation imposed on or undertaken by him under the Contract on these reasons, or because he did not or could not reasonably foresee any matter which may in fact affect or have affected the execution of the Works, or compliance with his other obligations under the Contract.

(7) The Contractor is responsible for the adequacy, stability and safety of the Works and all site operations and methods of construction. The Contractor shall place the highest importance on safety during the design (to the extent required under this Contract), and execution of the Works. The Contractor shall establish a safety programme to ensure that all activities required to undertake and complete the design, if any, and execution of the Works in accordance with the Contract are carried out in a safe manner and comply with all Laws, codes of practice and other things relevant to safety which may from time to time apply to the Works.

(8) The Contractor warrants that the Works shall meet the intents and objectives of the Contract and shall be in accordance with best industry practice, consistent with the Specification, and
accepted professional standards, codes of practice and regulations which are in force at the
date of the of the Contract or are reasonably foreseeable by an appropriately qualified and
competent contractor to be likely to come into force during the execution of the Works. If the
Works, or part thereof, fails to meet or be in accordance with the aforementioned, the Works or
such part thereof shall be deemed to be deficient, and the Contractor shall correct any
deficiencies, mistakes, faults, omissions or damage at the Contractor’s own expense. Any
failure on the part of the Employer or PM to notify the Contractor of any such deemed
deficiency shall not exempt the Contractor from liability under this Contract.

(9) The Contractor shall liaise with all relevant authorities and utilities for temporary works required
to maintain existing service facilities without interruptions during the execution and maintenance
of the Works.

7A Temporary Works and Use of the Site

(1) Without prejudice to Conditions 7(7) (Conditions affecting Works) and 10 (Design), the
Contractor shall be responsible for the design of all temporary works of every kind required in or
for the carrying out of the Works (“Temporary Works”) and shall at his own expense submit to
the PM, in accordance with Condition 2A (Contractor’s Documents), such detailed drawings and
calculations of Temporary Works as may be required by the PM.

(2) The Contractor shall obtain at his own expense, all special or temporary rights of way required
by him in connection with access to the Site and access for connection to utilities and shall be
responsible for obtaining all necessary permits and permissions in order to obtain access to
those areas. The Contractor shall also provide at his own expense, any additional
accommodation outside the Site required by him for the purposes of the Works. The Contractor
shall be responsible for applying for and obtaining at his own expense, all necessary
permissions for temporary buildings, including without limitation, his offices, stores, workshops
and sheds.

(3) The Contractor shall provide and maintain all temporary roadways and means of access,
whether on or off the Site, that he may require and shall remove and/or reinstate the said
temporary roadways and means of access on completion of the relevant part of the Works, or
as required by the PM. The Contractor shall permit without charge the use by the Employer or
any other contractor employed by the Employer of any such roads and means of access
provided by the Contractor, subject to such use not causing unreasonable damage or
interference with the Contractor.

(4) Possession of the Site given to the Contractor shall not be for his exclusive use except for such
parts as may be designated by the PM for the purposes of temporary buildings, material
storage and the like and the Contractor shall not use any portion of the Site for any purpose not
connected with the Works. The Contractor shall take into account the effect of his work on the
operations of other contractors, public utilities, authorities, or persons who will be working on or
adjacent to the Site during the currency of the Contract and the facilities he is required to grant
to other contractors employed by the Employer.

(5) The Contractor shall liaise with all relevant authorities and utilities in respect of any temporary
works required to maintain existing service facilities without interruptions during the execution
and maintenance of the Works.

(6) The Contractor shall maintain access for the inspection, operation and maintenance of any of
the Employer’s Things or works which lie within the Site or elsewhere.

(7) The Contractor shall at all times, keep the Site tidy and free from debris, litter and rubbish.
8 Insurance

(1) A party required under this Condition to effect or maintain insurance is called in this Condition ‘the insuring party’.

(2) The Contractor shall by such existing or new policies as he sees fit effect and maintain from the time he takes possession of the Site or any part of the Site or from the time he commences the execution of the Works (if earlier) to the expiration of the last Maintenance Period to expire, employer’s liability insurance in respect of persons in his employment appropriate to the nature of the Works. Such insurance shall comply with the law of the Cayman Islands and any subordinate legislation made thereunder, and shall be for the minimum amount of CI$1,000,000 (or such other minimum amount as may be stated in the Abstract of Particulars) for any one occurrence or series of occurrences arising out of one event.

(3) The Contractor shall by such existing or new policies as he sees fit effect and maintain for the same period -

(a) construction all risks insurance in the joint names of the Employer and the Contractor against loss or damage to the Works and Things for which the Contractor is responsible under the terms of the Contract for the full reinstatement value thereof (including transit and off-Site risks) plus 15% (or such other percentage as may be stated in the Abstract of Particulars) for professional fees; and

(b) public liability insurance against legal liability for personal injury to any persons and loss or damage to property arising from or in connection with the Works, which is not covered by employer’s liability insurance under paragraph (2) or by insurance against loss or damage to the Works and Things under subparagraph (a), for the minimum amount stated in the Abstract of Particulars, such public liability insurance to include a provision for indemnity to the Employer in respect of the Contractor’s liability under Condition 19 (Loss or damage);

provided that the insurance which the Contractor is required to effect and maintain under this paragraph need not cover loss or damage caused by any Accepted Risk.

(4) The other party shall have the right to receive, on request, a copy of insurances required to be effected or maintained by the insuring party under this Condition. The insuring party shall within 21 Days of the acceptance of the tender, and also within 21 Days of any subsequent renewal or expiry date of relevant insurances, send to the other party a certificate in the form attached to the Abstract of Particulars from his insurer or broker attesting that insurance has been effected in accordance with the Contract.

(5) All insurances required to be effected or maintained by the insuring party under this Condition shall be with reputable insurers, to whom the other party has no reasonable objection, lawfully carrying on such insurance business in the Cayman Islands, and upon customary and usual terms prevailing for the time being in the insurance market.

(6) All insurances required to be effected or maintained under paragraph (3) -

(a) shall be in the joint names of the Employer, such other persons as the Employer may reasonably require (including, without limitation, the Employer’s consultants, any persons who have entered or shall enter into an agreement for the provision of finance in connection with the Works, and any persons who have acquired or shall acquire any interest in or over the Works or any part thereof), the Contractor and all subcontractors; and

(b) shall extend to cover loss or damage which the Contractor is responsible for making good under Condition 21 (Defects in the Maintenance Period) or which occurs while the Contractor is making good defects in the Works under that Condition.
If, without the approval of the other party, the insuring party fails to effect and maintain insurance he is required to effect and maintain under this Condition as described, or obtains a different policy of insurance, or fails to provide a copy of insurances or certificates in accordance with this Condition, the other party may, but is not required to, effect and maintain appropriate insurance cover and deduct the cost of doing so from any payment due to the insuring party under the Contract, or recover such sum from the insuring party as a debt.

If -

(a) the 'Works involve the refurbishment, alteration or extension of existing structures; and/or

(b) a completed part' within the meaning of Condition 37 (Early possession) is certified by the PM as having been completed in accordance with the Contract;

the Employer shall bear the risks of fire, lightning, explosion, Abnormal Weather Conditions, tempest flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft or other aerial devices or articles dropped therefrom, riot and civil commotion (including terrorism) in respect of loss or damage to the existing structures and contents for which the Employer is responsible, and in respect of loss or damage to the completed part from the date of its certification, except where Condition 19 (Loss or damage) applies to the relevant loss or damage and to the extent that the Contractor is not entitled to reimbursement under Condition 19(5).

The Contractor, for himself and for any others who are recognised as an insured under the policies in paragraph (3), shall authorise the insurers to pay all monies to the Employer. Where insurance proceeds are received by the Employer in relation to loss or damage, the Employer shall pay to the Contractor such monies (less amounts properly incurred by the Employer in respect of fees and expenses incurred in consequence of the loss or damage) or the appropriate proportion thereof having regard to the extent to which the events to which such insurance monies relate have been rectified by the Contractor and such payment shall be paid under certificates certified by the PM in accordance with Condition 50 (Certifying Payments).

For the avoidance of doubt, it is agreed that nothing in this Condition shall relieve the Contractor from any of his obligations and liabilities under the Contract.

8A Professional indemnity insurance for design (only applicable if stated in Abstract of Particulars)

The Contractor shall maintain professional indemnity insurance covering (inter alia) all liability hereunder in respect of defects or insufficiency in design, upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the Cayman Islands (in an amount not less than that required by the Abstract of Particulars) for any one occurrence or series of occurrences arising out of any one event, for a period beginning now and ending 12 years (or such other period as is required by the Abstract of Particulars) after certification under Condition 39 (Certifying completion) of the completion of the Works or the last Section thereof in respect of which completion is certified, or the determination of the Contract for any reason whatsoever, including (without limitation) breach by the Employer, whichever is the earlier, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers. The Contractor shall not, without the prior approval in writing of the Employer, settle or compromise with the insurers any claim which the Contractor may have against the insurers and which relates to a claim by the Employer against the Contractor, or by any act or omission lose or prejudice the Contractor’s right to make or proceed with such a claim against the insurers.
(2) The Contractor shall immediately inform the Employer if such insurance ceases to be available at rates that the Contractor considers to be commercially reasonable. Any increased or additional premium required by insurers by reason of the Contractor’s own claims record or other acts, omissions, matters or things particular to the Contractor shall be deemed to be within commercially reasonable rates.

(3) The Contractor shall fully co-operate with any measures reasonably required by the Employer, including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the Employer undertakes in writing to reimburse the Contractor in respect of the net cost of such insurance to the Contractor above commercially reasonable rates.

(4) As and when reasonably required to do so by the Employer, the Contractor shall produce for inspection documentary evidence (including, if required by the Employer and where permitted, the originals of the relevant insurance document) that his professional indemnity insurance is being maintained.

(5) The above obligations in respect of professional indemnity insurance shall continue notwithstanding determination of the Contract for any reason whatsoever, including (without limitation) breach by the Employer.

9 Setting out

(1) Subject to any express provision in the Contract to the contrary, the PM shall provide such dimensional drawings, levels and other information as he considers reasonably necessary to enable the Contractor to set out the Works. The Contractor shall set out the Works accordingly, and shall provide all the instruments, profiles, templates and rods for that purpose. The Contractor shall be solely responsible for the correctness of the setting out.

(2) The Contractor shall provide, fix and be responsible for the maintenance of all stakes, templates, profiles, level marks, points and any other setting out apparatus which is required. He shall take all necessary precautions to prevent their removal, alteration or disturbance until the PM agrees that the said stakes, templates, profiles, level marks, points and other setting out apparatus may be abandoned and the Contractor shall be liable for the consequences of their removal, alteration or disturbance and for their efficient reinstatement.

10 Design

(1) Where the Contractor, either by himself or by means of any employee, agent, subcontractor or supplier, is required under the Contract to undertake the design of any part of the permanent works to be constructed and completed in accordance with the Contract (‘Permanent Works’) such design shall form part of the Works and the Contractor shall accept full responsibility for such design in accordance with the provisions of the Contract. Drawings, design documents or other suitable design information prepared by the Contractor shall be in the form and medium stated in the Specification or Bills of Quantities, or as Instructed by the PM, and shall be submitted to the PM in accordance with the provisions of Condition 2A (Contractor’s Documents). The Contractor shall not commence any work to which such drawing, design document or design information relates unless the design has been approved in writing by the PM without any need for resubmission and the Contractor shall not alter that design without the further Instruction of the PM. The approval of the PM shall not relieve the Contractor of any liability which he would otherwise have in respect of the design in accordance with paragraph (2).

(2) The Contractor warrants to the Employer that any Works designed by the Contractor, or by any employee, agent, subcontractor or supplier of his, will be fit for their purposes, as made known to the Contractor by the Contract.
(3) The Contractor’s liability under this Condition shall not be affected by any warranty that the Employer may obtain from any subcontractor.

(4) The copyright in all documents provided by the Contractor or any subcontractor in connection with the Works shall remain vested in the copyright owner (or as may be otherwise provided by the relevant subcontract), but the Employer and its appointee shall have, and the Contractor warrants and shall procure that the Employer and its appointee shall have, a licence to copy and use such documents, and to reproduce the designs contained in them, for any purpose related to the Works including, without limitation, the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, repair and extension of the Works. The Contractor shall, at any time and on one or more occasions, if the Employer so requests and undertakes in writing to pay the Contractor’s reasonable copying charges, promptly supply the Employer with conveniently reproducible copies of all such documents.

11 Statutory notices

(1) The Employer shall acquire and be responsible for all consents, permissions, authorities approvals and planning permissions (‘the Employer’s Permissions’) as specified in the Abstract of Particulars. If requested by the Employer, the Contractor shall use his best endeavours to assist the Employer in obtaining in a timely and expeditious manner, any of the Employer’s Permissions.

(2) The Contractor shall at his own expense acquire all other consents and permissions required by the rules and regulations of public bodies, companies and adjoining owners whose properties and rights are or may be affected in any way by the Works.

12 Intellectual property rights

(1) The Contractor shall pay any royalty, licence fee or other expense for the supply or use of any Intellectual Property and Intellectual Property Rights used or necessary for, or in connection with, the Works. The Contractor agrees to grant to the Employer all licences in respect of Intellectual Property and/or Intellectual Property Rights now or hereafter owned or controlled by the Contractor or in respect of which the Contractor has or will have the right to grant licences, required by the Employer in respect of any part of the Works designed by the Contractor, any Things or material or in the practice of any methods or processes used for or in connection with the Works or any part thereof or the use of any Thing supplied by the Contractor.

(2) Where the use or supply of any Intellectual Property and/or Intellectual Property Rights in accordance with paragraph (1) gives rise to any claim or proceedings against the Employer, the Contractor shall reimburse the Employer any costs and incurred by the Employer in respect of such claim or proceedings.

(3) The Employer shall reimburse the Contractor the amount of any royalty, etc., incurred in accordance with paragraph (1) which was necessarily incurred in order to comply with a VI.

13 Protection of the Works

(1) The Contractor shall during the execution of the Works take all reasonable measures and precautions needed to take care of the Site and the Works, and shall have custody of all Things on the Site against loss or damage from fire and any other cause. The Contractor shall be solely responsible for and shall take all reasonable and proper steps for protecting, securing, lighting and watching all places on or about the Works and the Site, which may be dangerous to his workpeople or to any other person.

(2) The Contractor shall take all steps necessary to ensure that the Works and the Site are protected from loss and/or damage in the event of Abnormal Weather Conditions or a Hurricane.
The Contractor shall comply with any statutory regulations (whether or not binding on the Cayman Islands Government) which govern the storage and use of all Things which are brought on to the Site in connection with the Works.

14 Nuisance and pollution

1. The Contractor shall take all reasonable precautions to prevent unnecessary or improper interference to, or any nuisance or inconvenience to the owners, tenants or occupiers of any other property, including, without limitation, roads, footpaths, waterways, means of access (whether in the possession of the Employer or any other person) and to the general public, and shall secure the efficient protection of waterways, ground water, lakes, ponds, lagoons, canals, dykes, and ditches and the sea against pollution. The Contractor shall indemnify the Employer (save where intentionally caused by the Employer) against all claims, demands, proceedings, damages, costs, loss, charges and expenses arising out of or in relation to any such matters.

2. The Contractor shall not interfere in any way with any other works whether the property of the Employer or of a third party except where such interference is specifically described in this Contract as part of or is necessary for the construction of the Works.

3. The Contractor shall be responsible for the delivery to the Site of all Things or pre-constructed parts of the work and for obtaining all necessary consents for the movement thereof to and from the Site. The Contractor shall provide all necessary protection and strengthening of the routes off the Site over which Things or pre-constructed parts of work are to be transported and the Contractor shall indemnify the Employer against all claims, demands, proceedings, damages, costs, loss, charges and expenses arising out of or in relation to any such matters.

4. Where the nature of the Works requires the Contractor to use waterborne transport the provisions of paragraph (3) shall be construed as though "route" included a lock, dock, sea wall or other structure relating to a waterway and ‘vehicle’ included waterborne craft, and shall have effect accordingly.

15 Returns

The Contractor's agent shall provide the PM with a return, in the form the PM shall direct, of the number and description of workpeople and the plant employed each Day on the Works.

16 Not used

17 Covering work

1. The Contractor shall give reasonable notice to the PM whenever any work or Thing for incorporation is intended to be covered with earth or otherwise. In default of such notice, the Contractor shall, if required by the PM, uncover the work or Thing at his own expense.

2. The PM may, by prior written notice to the Contractor, specify any elements of the Works which shall not be covered up until the PM has been given 3 Days prior written notice by the Contractor. If any such element shall be covered up without such notice being given or before the notice has expired, then immediately upon demand by the PM such works shall be opened up at the Contractor's own expense and the Contractor shall not be entitled to an extension of time.
18 Measurement

(1) The Contractor's representative shall, when required on reasonable notice by the QS, attend at the Works to take jointly with the QS measurements of the work executed. These measurements and any differences in relation to them shall be recorded in the manner required by the QS.

(2) The Contractor shall without extra charge provide the appliances and other things necessary for measuring the work.

(3) If the Contractor's representative fails to attend when required in accordance with this Condition, the QS may proceed to take any measurements.

19 Loss or damage

(1) This Condition applies to any loss or damage, which arises out of, or is in any way connected with, the execution or purported execution of the Contract.

(2) The Contractor shall without delay and at his own cost reinstate, replace or make good to the satisfaction of the Employer or, if the Employer agrees, compensate the Employer for, any loss or damage.

(3) Where a claim is made, or proceedings are brought against the Employer in respect of any loss or damage, the Contractor shall reimburse the Employer any costs or expenses which the Employer may reasonably incur in dealing with, or in settling, that claim or those proceedings.

(4) The Employer shall notify the Contractor as soon as possible of any claim made, or proceedings brought, against the Employer in respect of any loss or damage.

(5) The Employer shall reimburse the Contractor for any costs or expenses which the Contractor incurs in accordance with paragraphs (2) and (3) to the extent that the loss or damage is caused by -

   (a) the neglect or default of the Employer or of any other contractor or agent of the Employer;

   (b) any Accepted Risk or Unforeseeable Ground Conditions.

   (c) any other circumstances which are outside of the control of the Contractor or of any of his subcontractors or suppliers and which could not have been reasonably contemplated under the Contract; provided that this subparagraph shall not apply where the loss or damage is loss or damage falling within subparagraph 6(c).

(6) In this Condition loss or damage includes -

   (a) loss or damage to property;

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

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

   (d) loss of profits or loss of use suffered because of any loss or damage.
20 Compliance with agreements associated with the Works (only applicable if stated in Abstract of Particulars)

(1) The Contractor acknowledges receipt of a copy of any extracts which are appended to the Abstract of Particulars and covenants with the Employer to so design (to the extent required under the Contract) and execute the Works so as not to put the Employer in breach of the obligations contained in the said extracts of the said agreements and to do everything reasonably necessary to facilitate the Employer's compliance with its obligations under the said agreements.

(2) The Contractor shall indemnify the Employer against all claims, demands, proceedings, damages, costs, loss, charge and expenses whatsoever arising from any breach by the Contractor of any of its obligations under this Condition, save in respect arising from delay, which shall be dealt with in accordance with Condition 55 (Liquidated damages).

21 Defects in the Maintenance Period

(1) In order that the Works and any Section, shall be in the condition required by the Contract by the expiry of the Maintenance Period (as stated in the Abstract of Particulars) or as soon as practicable thereafter, the Contractor shall -

(a) complete any work which is outstanding on the date stated in a Certificate of Completion within the time specified by the PM; and

(b) execute all work required to remedy defects or damage, imperfections or faults and complete outstanding items as may be notified by (or on behalf of) the Employer on or before the expiry date of the Maintenance Period or within 14 Days after its expiry.

(2) Any work required under paragraph (1)(b) shall be carried out by the Contractor at his own risk and expense if the Employer considers it is necessary due to the use of Things or any design or workmanship by the Contractor not being in accordance with the Contract or the neglect or failure on the part of the Contractor to comply with any obligation expressed or implied on the Contractor's part under this Contract or otherwise or due to any neglect or default by any agent, subcontractor or supplier or otherwise due to any circumstance within the control of the Contractor, or his agent or subcontractors or suppliers. After the completion of any work required under this paragraph the Employer shall reimburse the Contractor for any cost the Contractor has reasonably incurred to the extent that the Contractor demonstrates to the satisfaction of the Employer that the need for such work was not due to any such causes.

(3) If the Contractor fails to do any work required under paragraph (1), the Employer shall be entitled to carry out such work by his own workmen or by other contractors and the Employer shall be entitled to recover the cost incurred by the Employer in so doing from the Contractor and may deduct the same from any monies that are or may become due to the Contractor or the Employer may agree or determine a reasonable deduction in the Contract Sum or if the defect or damage deprives the Employer of substantially the whole benefit of the Works or any major part of the Works, determine the Contract as a whole, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights under the Contract or otherwise, the Employer shall then be entitled to recover all sums paid for the Works or for such part (as the case may be) plus planning costs and the costs of dismantling the Works, clearing the Site and returning Things to the Contractor.

(4) The Maintenance Period may be extended by the PM for a further 12 months from the date of remedy by the Contractor of any defect, damage, imperfection or fault or completion of an outstanding item only. This shall not apply to any defect, damage, imperfection or fault or completion of an outstanding item which, in the opinion of the PM, is of a very minor nature and does not prevent the Employer from having full, proper, economic and beneficial use of the Works at any time.
The Contractor shall if instructed by the PM in writing, carry out under the direction of the PM, such searches, tests or trials as may be necessary to determine the cause of any defect, damage, imperfection or fault. If the defect, damage, imperfection or fault is one for which the Contractor is liable, the cost of such searches, tests or trials carried out shall be borne by the Contractor and he shall in such case remedy such defect, damage, imperfection or fault at his own expense in accordance with this Condition.

If any defect, damage, imperfection or fault cannot be remedied expeditiously on the Site and the Employer gives consent, the Contractor may remove from the Site for the purposes of remedy such items or Things as are defective, damaged, suffer imperfections or faulty or incomplete. This consent may require the Contractor to increase the amount of the performance bond delivered in accordance with Condition 66 (Performance Bond) by the full replacement cost of these items, or to provide further appropriate security, which the Contractor hereby undertakes to procure.

If the work of remedying of any defect, damage, imperfection or fault may affect the performance of the Works, the Employer may require the repetition of any of the tests described in the Contract, including Tests on Completion and Performance Tests. The requirement shall be made by notice within 28 Days after the defect, damage, imperfection or fault is remedied. These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the party liable, under paragraph (2), for the cost of the remedial work.

When undertaking any work required under paragraph (1) which could affect the use of the Works or any part thereof, the Contractor shall observe all reasonable requirements that the Employer or the PM may make in regard to the safety and efficient operation thereof. Subject to the aforesaid and without prejudice to any other provision of this Contract, the Contractor shall, until the PM has issued the Maintenance Certificate, have the right of access, subject to the PM’s consent during normal working hours and at his own risk and expense, to all parts of the Works but not as may cause any inconvenience to the Employer, his servants or agents.

Upon the expiry of the Maintenance Period the PM shall issue to the Employer the Maintenance Certificate (with a copy to the Contractor) provided the Contractor has completed all his obligations in relation to the Works or part thereof, and all work referred to in this Condition. The date of the Maintenance Certificate shall be the date upon which such obligations shall have in the opinion of the PM have been so completed.

The issue of the Maintenance Certificate shall not be taken as relieving the Contractor from any liability towards the Employer arising out of or in any way connected with the performance of its obligations under the Contract and the Contractor shall remain liable for the fulfilment of any obligation incurred under the provisions of this Contract and, for the purposes of determining the nature and extent of any such obligation, this Agreement shall be deemed to remain in force between the parties to this Agreement.

22 Occupier's rules and regulations (only applicable if stated in Abstract of Particulars)

The Contractor shall comply with the occupier’s rules and regulations which have been provided to him or made available to him for inspection, both in respect of the Site and in respect of any larger premises of which the Site forms part. The Contractor shall comply with any changes to those rules and regulations notified to him as an Instruction under Condition 40 (PM's Instructions) during the execution of the Works.

23 Discrimination

(1) The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of all relevant legislation.
(2) The Contractor shall take all reasonable steps to ensure the observance of the provisions of paragraph (1) by all his employees, agents and subcontractors.

24 Corruption

(1) The Contractor shall not by himself, or in conjunction with any other person -

(a) corruptly solicit, receive or agree to receive, for himself or for any other person; or

(b) offer or agree to give to any person in the Employer’s service, or any consultant or contractor who has a contract with the Employer;

any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person, in relation to this Contract or any other contract to which the Employer is a party;

(c) enter into any contract with the Employer in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge unless, before any such contract is made, particulars of any such commission, and of the terms and conditions of any agreement for the payment thereof, have been disclosed in writing to the Employer.

(2) The Employer may by notice determine the Contract if -

(a) he is reasonably satisfied that the Contractor or anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) is in breach of this Condition; or

(b) the Contractor or anyone employed by him or acting on his behalf is convicted of any offence of or akin to corruption or bribery of a public servant under the Penal Code (R) or any other law in relation to this Contract or any other contract to which the Employer is a party.

(3) If the Employer so determines the Contract, then (without prejudice to any powers conferred by Condition 51 (Recovery of sums) the Employer shall be entitled to recover from the Contractor the amount or value of any such gift, consideration or commission.

(4) In this Condition, all references to the Employer or the Contractor shall be deemed to include a reference to each member of their respective Groups.

25 Records

(1) The Contractor shall for the purposes of the Contract keep such accounts and records as may be reasonably necessary for the QS, the PM or the Employer to ascertain or verify any claims made or to be made by the Contractor or any sums to be paid to the Contractor under or in connection with the Contract.

(2) In order that the PM and the QS may discharge their respective functions under the Contract, the Contractor shall afford them access to the records mentioned in paragraph (1) and supply them with the information (including the means to interpret the accounts and the records) they may require.
SECURITY

26 Site admittance

(1) The Contractor shall take the steps reasonably required by the PM to prevent unauthorised persons being admitted to the Site. If the PM gives the Contractor notice that any person is not to be admitted to the Site, the Contractor shall take all reasonable steps to prevent that person being admitted.

(2) If and when Instructed by the PM, the Contractor shall give to the PM 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 them, specifying the capacities in which they are so concerned, and giving such other particulars as the PM may reasonably require.

(3) The Contractor shall bear the cost of any notice, Instruction or decision of the PM under this Condition.

(4) Without prejudice to the Contractor's other obligations under the Contract, the Contractor shall permit access to the Site and provide all assistance and facilities to those persons notified by the PM, provided all such persons comply with the applicable Site health and safety regulations.

27 Passes (only applicable if stated in Abstract of Particulars)

Where passes are required for admission to the Site, the PM shall issue them to the Contractor. The Contractor shall submit to the Employer for his approval a list of the names of the workpeople and any other information the Employer reasonably requires for this purpose. The passes shall be returned at any time on the demand of the Employer and in any case on the completion of the Works.

28 Photographs

The Contractor shall submit with each monthly application for advances submitted in Condition 48(1) (Advances on account) request for payment (or as otherwise directed by the PM) photographs which record the progress of the Works (‘Progress Photographs’). Such Progress Photographs shall be taken only from points stipulated by the PM so as to fully record the progress of the Works and in such numbers as required by the PM. It shall be a condition of payment that the Progress Photographs are submitted in accordance with this Condition.

29 Official secrets and confidentiality

(1) The Contractor shall take all reasonable steps to ensure that all persons employed by him or his subcontractors in connection with the Contract are aware of the law relating to proprietary confidential information of the Employer, and that the law applies to them during the execution of the Works and after the completion of the Works or earlier determination of the Contract.

(2) Any information concerning the Contract obtained either by the Contractor or by any person employed by him in connection with the Contract is confidential and shall not be used or disclosed by the Contractor or by any such person except to the extent necessary for the purposes of the Contractor discharging his obligation under the Contract.
MATERIALS AND WORKMANSHP

30 Vesting

(1) The Works and any Things in connection with the Contract, shall become the property of and vest in the Employer in accordance with this Condition.

(2) Subject to Conditions 19 (Loss or damage) and 65 (Other works), the Employer shall not be responsible or chargeable for any Thing lost, stolen, damaged, destroyed or removed from the Site.

(3) The Contractor shall be responsible for the protection and preservation of the Works and any Things brought on the Site until the completion of the Works or Section or the determination of the Contract.

(4) In this Condition, all references to the Employer or the Contractor shall be deemed to include a reference to each member of their respective Group.

(5) No Things brought onto the Site by the Contractor shall be removed from the Site until completion of the whole of the Works in accordance with Condition 39 (Certifying completion) or, save for the circumstances mentioned in paragraph (6), without the prior consent in writing of the PM. The PM’s consent, if no further work appropriate to those Things remains to be done, shall not be unreasonably withheld. Upon completion as aforesaid, or removal with consent, the property in any Things not for incorporation shall be deemed to re-vest in the Contractor.

(6) Subject to Conditions 56 (Determination by the Employer) and 57 (Consequences of Determination by the Employer), the Contractor shall upon completion of the whole of the Works pursuant to Condition 39 (Certifying completion), remove all Things not for incorporation, Temporary Works or surplus material from the Site, save only such as may be necessary to complete any outstanding work or otherwise discharge his obligations under Condition 39 (Certifying completion) and Condition 21 (Defects in the Maintenance Period). Such removal shall be in such manner as not to disturb or inconvenience the Employer or the re-entry and beneficial occupation of the Works or any part thereof following completion.

(7) The Contractor shall upon written request by the PM produce to the PM all documents evidencing title to or the contractual basis of the Contractor’s right to use any Thing not for incorporation. In the event of failure to comply with such a request within 14 Days and without prejudice to any other rights or remedies available to the Employer, the Employer may withhold payments otherwise due in accordance with the Contract until such time as such failure or continuing breach is rectified or remedied to the satisfaction of the PM.

(8) The Employer may discharge the Contractor’s obligations under the documents referred to in paragraph (7) and shall be entitled to deduct (without prejudice to any other right of recovery) from any sums due or that may become due to the Contractor under the Contract any amount paid by the Employer under the terms of any such agreements.

(9) If the Contractor shall fail to remove any Things not for incorporation, Temporary Works or surplus materials from Site in such reasonable time after completion as may be allowed by the PM then the Employer may -

(a) remove, sell or otherwise dispose of any Thing not for incorporation, Temporary Works or surplus materials; and

(b) at the Contractor’s expense return to whomsoever from which it was hired, any hired, hire purchase or leased Things not for incorporation, Temporary Works or surplus materials;
and after deducting from any proceeds of sale the costs of such sale or return as aforesaid, shall pay the balance (if any) to the Contractor but to the extent that the proceeds of any sale are insufficient to meet all such costs, the excess shall be a debt due from the Contractor to the Employer and shall be deductible (without prejudice to any other right of recovery) by the Employer from any sum due or that may become due to the Contractor under the Contract.

(10) The Contractor shall when entering into any subcontract for the construction of any part of the Works incorporate in such subcontract (by reference or otherwise) the provisions of this Condition in relation to Things and/or Temporary Works to be supplied, delivered or manufactured by the subcontractor.

(11) The Works and any Things for incorporation shall become the property of the Employer at whichever is the earliest of the following times -

(a) when such Things are appropriated to the Contract; or

(b) when the Contractor becomes entitled to require that any sum be included in a monthly application for advances in respect of such Things; or

(c) when any such Thing is delivered to the Site.

(12) Where the property in any Thing for incorporation passes to the Employer prior to the delivery thereof to the Site, the Contractor shall so far as is practicable and to the reasonable satisfaction of the PM set the same aside and mark the same as the property of the Employer. In the event of the Contractor failing so to set aside and mark the Thing as aforesaid, the PM shall be entitled to exclude from the calculation of monies otherwise due in any payment certificate issued by the PM, his assessment of the value of such Thing as previously included in any such certificate. The Thing as aforesaid shall be in the care and possession of the Contractor solely for the purposes of the Contract and shall not be within the ownership or disposition of the Contractor and any payment certificate by the PM shall be without prejudice to the exercise of any power of the PM contained in the Contract to reject any Thing which is not in accordance with the Contract. Following such rejection, the PM shall be entitled to exclude from any payment certificate his assessment of the value of such Thing previously included in any payment certificate. Upon rejection as aforesaid, the property in any such rejected Thing shall be deemed to re-vest in the Contractor.

(13) The operation of this Condition shall not be deemed to imply any approval by the PM or the Employer of the Works and any Things or other matters referred to herein nor shall it prevent the rejection of any such Works and any Things at any time by the PM.

31 Quality

(1) The Contractor shall execute the Works in accordance with the Contract and -

(a) with diligence;

(b) in accordance with the Contract;

(c) with all reasonable skill and care; and

(d) in a workmanlike manner;

and shall provide all labour, including supervision thereof and Things required so far as the necessity for providing the same is specified or reasonably inferred from the Contract.

(2) The Contractor warrants that all Things for incorporation, with the sole exception of Things for incorporation chosen or selected by the Employer by means of a statement by or on behalf of
the Employer in the Contract or in a VI, shall be fit for their intended purposes, and shall conform to the requirements of the Specification, the Bills of Quantities and the Drawings.

(3) The Contractor shall notify the PM before incorporation of any Things that the Contractor considers should not be incorporated.

(4) The Contractor shall when requested by the PM demonstrate that he is performing his duties under paragraph (1). The PM shall have power at any time to inspect and examine any part of the Works or inspect, examine and test any Things for incorporation either on the Site, or at any factory or workshop or other place where any such Thing is being constructed or manufactured, or at any place where it is lying, or from which it is being obtained. The Contractor shall give the PM the assistance and facilities he may reasonably require for any such inspection and examination. The PM may reject any Thing for incorporation which does not conform with the Specification, Bills of Quantities or Drawings, or which even though conforming is not of good quality or is not fit for its purpose.

(5) The PM may arrange for an independent expert to test whether any Thing for incorporation is fit for use in the Works, of good quality, and conforms to the requirements of the Contract. The reasonable costs incurred by the Employer in arranging for an expert to carry out any test shall be borne by the Contractor if the test results disclose that the Thing tested does not conform with the provisions of the Contract. The Contractor shall also bear the reasonable cost of any further tests reasonably required to monitor quality, following negative test results.

(6) The Contractor shall, at his own cost, replace, rectify or reconstruct -

(a) the Works, or any part of them, which do not conform with the Contract; and

(b) any Things for incorporation which do not conform with the Contract, and which have been rejected by the PM.

(7) If the Contract requires that the Contractor shall be accredited in accordance with any quality control or assurance scheme or system, the Contractor warrants that he is so accredited, and undertakes that he will continue to be so accredited until the Contractor has complied with Condition 21 (Defects in the Maintenance Period). If the Contractor ceases for any reason to be so accredited during this period, he shall by notice immediately inform the PM, giving full particulars of the circumstances, and of his proposals to reinstate the relevant accreditation, or to obtain an alternative accreditation.

### 32 Excavations

(1) Except as otherwise provided by the Contract, material and objects of any kind obtained from work on the Site (including, without limitation, from excavations, demolition or dismantling) shall remain or become the property of the Employer.

(2) When the Employer’s property is permitted to be used in substitution for any Things (whether or not for incorporation), which the Contractor would otherwise have provided, the QS shall ascertain the amount of any saving in the cost of the execution of the Works. The Contract Sum shall be reduced by the amount of any saving.

(3) All objects which are, or appear to be, fossils, antiquities, or likely to have interest or value, found on the Site or in carrying out excavations in the execution of the Works, shall remain or become the property of the Employer. Upon the discovery of any such object, the Contractor shall forthwith -

(a) take all practicable measures not to disturb the object;

(b) cease work, if the continuance of work would endanger, or disturb, the object, or prevent or impede its excavation or removal;
(c) take all necessary steps to preserve the object in the exact position and condition in which it was found; and

(d) inform the PM of the discovery and precise location of the object.

(4) Any Instructions issued by the PM in relation to any object mentioned in paragraph (3) may require the Contractor to permit the examination, excavation or removal of the object by a third party.
COMMENCEMENT, PROGRAMME, DELAYS AND COMPLETION

33 Programme

(1) The Contractor warrants that the Programme shows the sequence in which the Contractor proposes to execute the Works, details of any Temporary Works, method of work, labour and Things not for incorporation proposed to be employed, and events, which, in his opinion, are critical to the satisfactory completion of the Works; that the Programme is achievable, conforms with the requirements of the Contract, permits effective monitoring of progress, and allows reasonable periods of time for the provision of information required from the Employer; and that the Programme is based on a period for the execution of the Works to the Date or Dates for Completion.

(2) Subject to Conditions 35 (Progress meetings), 37 (Early possession) and 38 (Acceleration and cost savings), the Contractor may at any time submit for the PM's review and comment proposals for the amendment of the Programme. The review and comment of the PM to any proposal for the amendment of the Programme shall not relieve the Contractor of any liability which he has under the Contract. In particular, without limitation, the submission by the Contractor of any proposal for the amendment of the Programme showing a period for the execution of the Works extending beyond the Date or any of the Dates for Completion shall not constitute a notice from the Contractor requesting an extension of time for the completion of the Works or of any Section; and the comment by the PM on any such amendment shall not constitute, or be evidence of, or in support of, any extension of time for the completion of the Works or of any Section.

(3) The Contractor shall as and whenever requested in writing by the PM, submit to the PM proposals for the amendment of the Programme by way of update to the said Programme, and such proposals shall take into account any delays to the Works (whether actual or anticipated), Instructions, extensions of time granted under Condition 36 (Extension of time), any changes to the proposed sequence in which the Works will be carried out or to the critical path and any other matter which the PM reasonably requests.

34 Commencement and completion

(1) The Employer shall notify the Contractor when he may take possession of the Site, or those parts of the Site defined in the Contract. The Contractor shall, subject to Condition 11 (Statutory notices) and paragraph (3) of this Condition, proceed with the Works with diligence and in accordance with the Contract or as may be Instructed by the PM, so that the whole of the Works or any relevant Section shall be completed in accordance with the Contract by the Date or Dates for Completion.

(2) The Contractor shall, at all times, keep the Site tidy and free from debris, litter, and rubbish and shall, not later than the completion of the Works, remove from the Site all Things for incorporation in the Works or any relevant Section which are unused, together with all Things not for incorporation. The Contractor shall, by the due date, clear and remove all rubbish and deliver up the Site and the Works in all respects to the satisfaction of the PM. The Contractor shall comply at his own cost with any Instructions relating to the removal of any Things and rubbish.

(3) The Contractor shall not be permitted to commence work until the submission or delivery by the Contractor of the documents to be submitted pursuant to Condition 33 (Programme), Condition 66 (Performance bond) (if applicable) and/or Condition 67 (Parent company guarantee) (if applicable). The Contractor shall not be entitled to an extension of time for completion of the Works or any Section in respect of any delays so caused.
35 Progress meetings

(1) The Contractor's agent shall attend regular progress meetings to assess the progress of the Works or any relevant Section, and to facilitate their due and satisfactory completion by the Date or Dates for Completion.

(2) An initial progress meeting shall be held, and thereafter progress meetings shall be held each fortnight unless Instructed to the contrary. The PM specify the time and place, and shall chair, record and distribute the minutes, of all progress meetings.

(3) The Contractor shall submit to the PM, 5 Days before each progress meeting, a written report which shall -

(a) describe the progress of the Works (including by reference to the Programme) and relevant Instructions;
(b) specify all outstanding requests by the Contractor for drawings, levels or other information;
(c) explain any new circumstances, arising since any previous progress meeting, which in his opinion have delayed, or may delay, completion of the Works or a Section, or may increase the cost to the Employer of the Works or a Section, estimating any increase in such cost;
(d) refer to any request for an extension of time under Condition 36 (Extensions of time) since the previous progress meeting; and
(e) set out any re-programming proposals to ensure that completion of the Works or any Section will be achieved by the relevant Date for Completion.

(4) The PM shall, within 7 Days after each progress meeting, give the Contractor a written statement which specifies -

(a) by reference to the Programme the extent to which he considers the Works are on time, delayed or early;
(b) the matters which the PM considers have delayed, or are likely to delay, due completion of the Works or Section, or may increase the cost to the Employer of the Works or a Section, estimating any increase in such cost;
(c) the steps which the PM has agreed with the Contractor to reduce or eliminate the effects of any such delay, or to reduce to eliminate any estimated increase in the cost to the Employer of the Works or a Section;
(d) the situation in respect of applications for, and awards of, extensions of time under Condition 36 (Extensions of time); and
(e) his response to outstanding requests for drawings, levels or other information.

36 Extensions of time

(1) If and whenever it becomes reasonably apparent that the progress of the Works or any Section is being or is likely to be delayed the Contractor shall forthwith, or in any event within 30 Days of it becoming apparent, give written notice of the cause or the causes of the delay to the PM and identify in such notice any event which in his opinion is a Delaying Event.

(2) It shall be a condition precedent to any extension of time by the PM under any provision of this Contract, that in respect of the notice given in accordance with paragraph (1), the Contractor shall in such notice, or otherwise in writing as soon as possible after such notice is given but in
any event not later than 14 Days after such notice is given or such longer period as the PM may in his absolute discretion determine, notify the PM in writing of any factors and the relevant Contract provision which he considers may entitle him to an extension of time together with a statement by reference to the Programme, where appropriate, of -

(a) particulars of the expected effects thereof;
(b) the reasons why delay has occurred or is likely to have occurred;
(c) an explanation of any measures that the Contractor proposes or intends to adopt to avoid or reduce or mitigate the consequences of the delay or impediment;
(d) a statement of which of the Delaying Events (if any) has caused the delay or impediment;
(e) details of any adverse effect on the ability of the Contractor to meet any requirements under the Contract;
(f) estimate the extent of the expected delay in completion of the Works or any Section beyond the Date(s) for Completion resulting therefrom;
(g) where a circumstance has a continuing effect or where the effect of a circumstance will actually cause delay to the Date(s) for Completion, a statement to that effect with reasons and interim written particulars (including details of the likely consequences of the circumstances on the progress of the Works and an estimate of the likelihood of and likely extent of the delay); the Contractor shall thereafter submit to the PM further interim written particulars at intervals of not more than 14 Days until the actual delay caused (if any) is ascertainable, when he shall thereafter within 14 Days submit to the PM full and detailed particulars of the cause and actual extent of the delay;
(h) details of the documents the Contractor proposes to prepare and maintain to support such claim including critical path networks and other documents as required by the PM in order to demonstrate entitlement;
(i) details of the measures which he has discussed and agreed with subcontractors to facilitate the reprogramming of the performance of the their services as a consequence of the delay; and
(j) provide whatever substantiation of any particulars and estimate as shall be reasonable or as the PM may reasonably request.

(3) The Contractor shall give such further written notices to the PM as may be reasonably necessary or as the PM may reasonably require for keeping up to date the particulars, estimates and substantiation referred to in paragraph (2).

(4) Upon receipt of any notice and particulars under paragraphs (1), (2) and (3) the PM shall consider whether -

(a) any of the events which are stated by the Contractor to be the cause of delay is a Delaying Event; and
(b) completion of the Works or any Section is likely to be delayed beyond the Date or Dates for Completion;

and then subject always to paragraph (9), the PM shall as soon as possible and in any event within 42 Days, give to the Contractor in writing, an extension of time by fixing such later date as the Date(s) for Completion for the Works or any Section as he estimates to be fair and reasonable.
(5) The PM may, in writing, fix the Date for Completion earlier than that previously fixed under paragraph (4) or that stated in the Contract if in his opinion the fixing of such earlier Date for Completion is fair and reasonable having regard to the omission of any work or obligations Instructed by the PM in a VI.

(6) Not later than the expiry of 42 Days after the issue of the last Certificate of Completion issued under Condition 39 (Certifying completion) the PM shall in writing to the Contractor either -

(a) fix a Date for Completion later than any previously fixed if in his opinion the fixing of such later Date for Completion is fair and reasonable having regard to any of the Delaying Events, whether upon reviewing a previous decision or otherwise; or

(b) fix a Date for Completion earlier than any previously fixed under this Condition or stated in the Contract if in his opinion the fixing of such earlier Date for Completion is fair and reasonable; or

(c) confirm to the Contractor a Date for Completion previously fixed.

(7) The Contractor may within 21 Days from receipt of a decision by the PM under paragraphs (4) to (6), submit a claim to the PM specifying the grounds which in his view entitle him to an extension or further extension of time, and the PM shall by notice give his decision on the Contractor's claim within 28 Days of its' receipt. In any event, no claim may be submitted after a period of 35 Days from the relevant decision.

(8) Provided always -

(a) the Contractor shall constantly use his best endeavours to prevent and/or minimise delay in the progress of the Works, howsoever caused, and to prevent completion of the Works or any Section being delayed or further delayed beyond its Date(s) for Completion;

(b) the Contractor shall not under an circumstances be entitled to any extension of time where the delay or likely delay is, or would be, attributable to the act, breach, default, neglect, improper conduct or lack of endeavour by the Contractor or by any employee, agent, subcontractor or supplier of his;

(c) the Contractor shall do all that may reasonably be required to the satisfaction of the PM to proceed with the Works; and

(d) if upon the request or claim by the Contractor for an extension of time for alleged delay to the progress of the Works or any Section, the PM is of the opinion that such delay was caused or materially contributed to by any concurrent or interacting cause or causes of delay which are not Delaying Events (or would have been caused or materially contributed to by such cause or causes had the Delaying Event not occurred), then in considering or revising any extension of time in respect of that delay, the PM may treat the said cause or causes as the operative cause of the delay, provided always that to the extent that the delay caused by a Delaying Event exceeds the period of delay which the PM under this Condition attributes to the operative cause of delay, the Contractor shall be entitled to an extension of time for that excess period.

(9) The following are the Delaying Events referred to in this Condition -

(a) compliance with a VI, and properly issued in accordance with Condition 40 (PM's Instructions);

(b) any circumstance (other than a breach of this Contract by the Contractor) entitling the Contractor to an extension of time for completion of the Works or any Section by reason of an express provision of this Contract;

(c) any act of prevention or breach of Contract by the Employer;
(d) any act, neglect or default of the Employer, the PM or any other person for whom the Employer is responsible (not arising because of any default or neglect by the Contractor or by any employee, agent, subcontractor or supplier of his);

(e) an Accepted Risk or Unforeseeable Ground Conditions;

(f) the PM suspending the Works in accordance with Condition 52(1) (Suspension of the Works).

(g) unavoidable delay to the Works caused by Abnormal Weather Conditions; and

(h) unavoidable delay to the Works resulting from the reasonable steps taken by the Contractor in complying with the instructions of the National Hurricane Committee following the issue of a Hurricane Alert, Hurricane Watch or Hurricane Warning announcement until the issue of the All Clear notice.

(10) Notwithstanding paragraphs (4) and (7) the PM shall not be obliged to take into account any circumstances which are not notified to him in accordance with the periods referred to in this Condition, but may upon the written request of the Contractor extend the said periods if he considers the request for such extension reasonable.

(11) The Contractor shall after consultation with the PM submit to the PM within 7 Days of the consultation for his review and comment, revisions to the Programme which the Contractor considers necessary as a consequence of the Delaying Event.

(12) The Contractor shall not be entitled to any costs, loss or expenses associated with any delay and/or extension of time in respect thereof except to the extent that he is expressly entitled to costs under any provision of this Contract.

(13) An extension of time granted in respect of one Section shall not of itself entitle the Contractor to an extension of time for any other Section or for the whole of the Works.

(14) If for any reason, which does not entitle to the an extension of time pursuant to paragraph (4), the rate of progress of the Works or any Section or any part thereof is at any time in the opinion of the PM too slow to ensure completion of the Works or any Section by its Date for Completion, the PM shall Instruct the Contractor accordingly and the Contractor shall thereupon take such steps, as the Contractor shall consider necessary and the Employer may approve, the expedite the progress so as to complete the Works or any Section by its Date for Completion. The Contractor shall not be entitled to any costs, loss or expenses for taking such steps.

37 Early possession

(1) The Employer shall be entitled, before the completion of the Works, to take possession of any part of the Works (in this Condition referred to as a ‘completed part’) which is certified by the PM as having been completed in accordance with the Contract and is either -

(a) a Section; or

(b) any other part of the Works in respect of which the PM has given an Instruction, that possession shall be given before the completion of the Works or the relevant Section;

and the completed part, on and after the date on which the certificate is given, shall no longer form part of the Works for the purposes of Conditions 19 (Loss or damage) and 30 (Vesting).

(2) The provisions of Condition 21 (Defects in the Maintenance Period) shall have effect in relation to a completed part as if the Maintenance Period in respect of the completed part, or any subcontract works comprised in it, commenced on the date of certification under paragraph (1).
(3) As soon as possible after certification under paragraph (1), the PM shall certify the value of the completed part and his estimates for the purposes of paragraphs (4) and (5).

(4) Condition 55 (Liqui dated damages) shall have effect notwithstanding that the Employer has taken possession of a completed part. Where the completed part comprises part of the Works as mentioned in subparagraph (1)(b), the rate of liquidated damages specified in the Abstract of Particulars in respect of the Works or the relevant Section shall be reduced by the same ratio as the value of the completed part bears to what the value of the Works or of the relevant Section will be when completed in accordance with the Contract, as estimated by the PM.

(5) The retention accumulated in accordance with Condition 48 (Advances on account) shall be apportioned by the PM with effect from the date of the certificate given under paragraph (1), so that the share of the retention apportioned in respect of a completed part shall bear the same ratio to the whole of the retention as the value of the completed part bears to the value of the Works which at that date have been completed in accordance with the Contract, as estimated by the PM.

(6) The Employer shall pay to the Contractor -

(a) one half of the share apportioned in accordance with paragraph (5) in respect of the completed part; and

(b) the remaining one half of that share, when the PM has certified that the Contractor has complied with Condition 21 (Defects in the Maintenance Period).

38 Acceleration and cost savings

(1) If the Employer wishes to achieve completion of the Works or any Section before the Date or Dates for Completion, he shall direct the Contractor to submit to him within the period specified in the direction -

(a) the Contractor's priced proposals for achieving the accelerated completion date, together with any consequential amendments to the Programme; or

(b) the Contractor’s explanation why he is unable to achieve the accelerated completion date.

(2) If the Employer accepts the Contractor's proposals, the PM shall specify -

(a) the accelerated Date for Completion of the Works or any relevant Section;

(b) the amendments to the Programme, including any relevant critical paths and any supporting documentation;

(c) the amount by which the Contract Sum shall be adjusted; and

(d) any other relevant amendment to the Contract which has been agreed with the Contractor.

(3) The Contractor may at any time submit to the Employer proposals for completing the Works or any Section before the Date(s) for Completion. The Employer undertakes to consider at his sole discretion any such proposals and if he accepts them to take action as stated in paragraph (2).

(4) The Contractor may, at any time during the carrying out of the Works, submit to the PM a written proposal which, in the Contractor’s opinion, will enhance the buildability of the Works, or reduce the cost of the Works, or the cost of maintenance, or increase the efficiency of the completed Works. Any proposal shall clearly state that it is submitted for consideration under
this Condition and shall include an estimate, for consideration by the Employer, of the amount to which the Contractor may be entitled on the basis that he and the Employer shall share equally any relevant savings as determined in accordance with Conditions 41 to 43 (Valuation of Instructions).

(5) The Contractor shall provide any further information relating to his proposal which either the PM or the Employer may require.

(6) The Contractor, having submitted such a proposal to the PM for consideration, shall continue with the expeditious carrying out of the Works.

(7) If the Employer accepts any such proposal, or agrees with the Contractor any amended proposal -

(a) the PM shall issue an Instruction to that effect;

(b) the Date or Dates for Completion, and the Programme, shall be amended accordingly; and

(c) the PM shall issue any agreed extension of time which is necessary.

38A Performance Tests and Tests on Completion (only applicable if stated in Abstract of Particulars)

(1) Subject to paragraph (2) the Contractor shall commence the Performance Tests for specified Things for incorporation by the dates specified in the Abstract of Particulars or any revision thereof under Condition 36 (Extensions of Time) or as provided and reviewed and commented by the PM in an amended Programme and shall proceed with the same so as to complete the Performance Tests (or any repetition thereof) by the dates specified in the Abstract of Particulars or any revision thereof under Condition 36 (Extensions of Time).

(2) Notwithstanding the provisions of paragraph (1), the Contractor shall not be permitted to commence the Performance Tests for any part of the Things for incorporation until consent in writing (which consent shall not be unreasonably withheld) has been applied for and obtained by the Contractor from the PM.

(3) The PM shall be entitled to order the cessation of any Performance Test if, in the PM's opinion, damage to the Works, personal injury or loss and damage to the Employer are likely to result from the continuation thereof.

(4) If any part of the Things for incorporation shall fail to pass any Performance Test (or any repetition thereof) or if any Performance Test is stopped before its completion such test shall be repeated as directed by the PM. The costs and expenses of the Employer associated with any repeated tests due to the failure of the Performance Test shall be ascertained by the PM and deducted from the Contract Sum or recovered as a debt due.

(5) The PM may, at his discretion, permit the Contractor to make adjustments or modifications to the Things for incorporation and/or perform the repetition of any Performance Test. Any such adjustment or modification shall be made by the Contractor in accordance with the directions of the PM and with all reasonable speed and at the Contractor's own expense. The Contractor shall, if so required by the PM, submit to the PM for his approval details of the adjustments or modifications which he proposes to make.

(6) The PM may notify the Contractor in writing that the Employer requires the carrying out of such adjustments or modifications permitted pursuant to the provisions of paragraph (5) to be postponed. In such event the Contractor shall remain liable to carry out the adjustments or modifications and commence the repetition of the Performance Tests within 14 Days of being notified to do so by the PM. In the event the PM does not notify the Contractor to resume carrying out the adjustments or modifications and the repetition of the Performance Tests within
14 Days of the date of the postponement, the Contractor shall be relieved of any such obligation to make any adjustments or modification or repeat the relevant Performance Test and that part of the Things for incorporation shall be deemed to have passed such Performance Test.

(7) The Contractor shall give to the PM, in writing, 14 Days notice of the date after which he will be ready to perform the Tests on Completion. Unless otherwise directed by the PM, the Tests on Completion shall take place within such period.

(8) If the PM shall fail to appoint a time within the 28 Day period referred to in paragraph (7) or to attend at any time or place duly appointed by him for performing the Tests on Completion, the Contractor shall be entitled to proceed in his absence and the Tests on Completion shall be deemed to have been performed in the presence of the PM.

(9) If the Things for incorporation or any part thereof shall fail to pass the Tests on Completion, such Tests on Completion shall, if required by the PM or the Contractor, be repeated within such time as the PM shall determine upon the same terms and conditions save that any expense incurred by the Employer due to the repetition of the Tests shall be ascertained by the PM and deducted from the Contract Sum or recovered as a debt due.

(10) The Performance Tests and the Tests on Completion shall be carried out by the Contractor under the supervision and subject to the direction of the PM and in accordance with the procedures and under the operating conditions prescribed in the Specification, or if none, as otherwise prescribed by the PM.

(11) The results of the Performance Tests and Tests on Completion shall be compiled by the Contractor and submitted to the PM for evaluation in accordance with the procedures prescribed in the Specification or, if no procedures are prescribed, in the manner and at the time required by the PM.

(12) If, in the opinion of the PM, the Performance Tests or Tests on Completion are being unduly delayed he may by notice in writing call upon the Contractor to commence the Performance Tests or Tests on Completion within 7 Days from the receipt of the said notice and the Contractor shall commence the Performance Tests or Tests on Completion on such day within the said 7 Days as the Contractor may fix and of which he shall give notice to the PM.

(13) If the Contractor shall fail to commence the Performance Tests or Tests on Completion within the time aforesaid in this Condition, the PM may proceed to arrange for others to perform the Performance Tests or Tests on Completion. All the Performance Tests and Tests on Completion so arranged by the PM shall be at the risk and expense of the Contractor and the expense thereof shall be ascertained by the PM and deducted from the Contract Sum unless the Contractor shall establish that the Performance Tests or Tests on Completion were not being unduly delayed in which case the tests so performed shall be at the risk and cost of the Employer and any additional Costs incurred by the Contractor shall be ascertained by the PM and added to the Contract Sum or recovered as a debt due.

(14) If the Things for incorporation or any part thereof fails to pass any of the Performance Tests or Tests on Completion (or the repetition thereof), the PM shall be entitled to -

(a) order a further or further repetitions of, the Performance Tests or Tests on Completion under the conditions of paragraph (5) or paragraph (9), respectively; or

(b) take over the Things for incorporation or any part thereof if the Employer so wishes subject to the deduction from the Contract Sum as the sum payable by the Contractor to the Employer as may be provided in the Contract in respect thereof, or the value thereof as ascertained by the PM.

(15) Unless otherwise approved by the PM, the Works or any Section shall not be considered complete for the purposes of Condition 39 (Certifying completion) until the Performance Tests and Tests on Completion have all been successfully completed.
39 Certifying completion

(1) The Contractor may make written application to the PM for a Certificate of Completion not earlier than 7 Days before the Works or any Section will, in the Contractor's opinion, be complete.

(2) The PM shall after receipt of the Contractor's application either -

(a) issue the Certificate of Completion to the Contractor with a copy to the Employer stating the date on which in his opinion the Works or any Section were complete in accordance with paragraph (3) hereof; or

(b) reject the application giving his reasons and specifying the work required to be done by the Contractor to enable a Certificate of Completion to be issued. For the avoidance of doubt such work shall include the repair, replacement and making good of all defects that may appear before the issue of the Certificate of Completion. The Contractor shall be entitled to receive such Certificate of Completion within 28 Days of completion, to the satisfaction of the PM, of work and once the PM is satisfied the Works or any Section were complete in accordance with paragraph (3) thereof.

(3) The Works and any Section shall not be regarded as complete unless they have reached the stage that, *inter alia* -

(a) the Employer can have full, proper and beneficial use of the Works or the relevant Section for their intended purpose, notwithstanding that there may be works of a very minor nature still to be fully executed provided that such works do not prevent or diminish the full, proper and beneficial use as aforesaid;

(b) the Contractor has given to the PM a written undertaking to complete any defective or outstanding work within a period approved by the PM without charge to the Employer;

(c) the Works or the relevant Section have passed any tests required in the Contract; and

(d) any training of any staff prescribed by the Contract has been completed;

(e) any manuals and drawings required by the Contract to be prepared before the completion of the Works or relevant Section have been completed and delivered to the Employer;

(f) all Manufacturers' Warranties for all Things for incorporation have been duly and properly assigned to the Employer; and

(g) the Contractor has complied with his obligation under Condition 2A(5) (Contractor's documents).

(4) The PM may, at the sole discretion of the Employer, issue a Certificate of Completion with a copy to the Employer, in respect of any Section or any other part of the Works which have been completed to the satisfaction of the PM, notwithstanding that any Section or any other part of the Works may not be complete in accordance with paragraph (3). Upon the issue of such Certificate of Completion, the Contractor shall be deemed to have undertaken to complete any outstanding tests and all defective and outstanding work within a period approved by the PM.

(5) A Certificate of Completion given in respect of any Section or part of the Works before completion of the Works shall not be deemed to certify completion of any ground or surfaces requiring reinstatement unless such certificate shall expressly so state.
INSTRUCTIONS AND PAYMENT

40 PM's Instructions

(1) The PM may from time to time issue further drawings, details, instructions, directions and explanations, all or any of which shall be treated for the purposes of the Contract as Instructions, including Variation Instructions. The Contractor shall comply forthwith with any Instruction.

(2) Instructions may be given in relation to all or any of the following matters -

(a) the variation or modification of all or any of the Specification, Drawings or Bills of Quantities, or the design, quality or quantity of the Works;

(b) any discrepancy in or between the Specification, Drawings and Bills of Quantities;

(c) the removal from the Site of any Things for incorporation and their substitution with any other Things;

(d) the removal and/or re-execution of any work executed by the Contractor;

(e) the order of execution of the Works or any part of them;

(f) the hours of working and the extent of overtime or night work to be adopted;

(g) the suspension of the execution of the Works or any part of them;

(h) the replacement of any person employed in connection with the Contract;

(i) the opening up for inspection of any work covered up;

(j) the amending and making good of any defects under Condition 21 (Defects in Maintenance Periods);

(k) cost savings under Condition 38 (Acceleration and cost savings);

(l) the execution of any emergency work as mentioned in Condition 54 (Emergency work);

(m) the use or disposal of material obtained from excavations, demolition or dismantling on the Site;

(n) the actions to be taken following discovery of fossils, antiquities or objects of interest or value;

(o) measures to avoid nuisance or pollution;

(p) quality control accreditation of the Contractor as mentioned in Condition 31 (Quality); and

(q) any other matter which the PM considers necessary or expedient.

(3) All Instructions shall be in writing. Written Instructions shall be given to the Contractor’s agent who shall immediately acknowledge receipt of any written Instruction.

(4) The Contractor shall not add to, omit from, or otherwise alter the Works except in accordance with an Instruction. Upon receipt of the PM's Variation Instruction, the Contractor shall immediately consider whether such VI is sufficiently detailed to allow proper execution. If the Contractor is of the opinion that the VI issued is not sufficiently detailed or presents a
construction impracticality he shall forthwith so advise the PM in writing, who shall thereupon decide whether or not the same shall be carried out. The PM may then -

(a) confirm the VI in writing; or
(b) modify the VI to such an extent as he considers justified;

provided always that until the PM so confirms or modifies the VI it shall be deemed not to have been given. No VI required by the PM or subsequently confirmed by him shall vitiate this Contract.

(5) The PM may include in a VI a requirement for the Contractor to submit to the QS not later than 21 Days from the receipt of that VI a written quotation of the lump sum total price for complying with it. The PM may make any VI conditional upon agreement of such a lump sum price, and, by reference to the Programme, the length of extension of time for completion of the Works or any Section to which he considers he will be entitled pursuant to Condition 36 (Extensions of time) or, as the case may be, the savings in cost or reduction of time envisaged, in respect of the intended VI providing all necessary documentation and supporting calculations in writing, pending which agreement the Contractor is not to begin complying with the VI.

(6) No Instruction shall be deemed a VI unless it shall on its face be confirmed as such by the PM. If the Contractor is of the opinion that any Instruction is properly a VI but has not been annotated by the PM as such, the Contractor shall within 7 Days of receipt of the relevant Instruction confirm his opinion to the PM, setting out his argument in support thereof. The PM shall then confirm whether the Instruction is or is not a VI or withdraw the Instruction.

(7) The PM may, in his absolute discretion, issue an Instruction in circumstances where, in the opinion of the PM, the Contractor has failed or will fail to meet any of his obligations under the Contract. The Contractor shall not be entitled to any extension of time or further payment in respect of or in connection with any such Instruction. Any savings made by the Contractor as a consequence of such Instruction shall be deducted from the Contract Sum or recoverable as a debt.

(8) The PM may instruct the Contractor at any time, whether before or after satisfaction of any of the provisions of this Condition, to comply with a VI forthwith.

41 Valuation of Instructions - Principles

(1) The value (if any) of any VI shall be determined in accordance with Condition 42 (Valuation of Variation Instructions) and the value (if any) of any other Instruction in accordance with Condition 43 (Valuation of other Instructions).

(2) The value of any VI shall include any disruption to or prolongation of both varied and unvaried work.

(3) The value of any VI shall be added to, or as the case may be deducted from, the Contract Sum, except where the Instruction was necessary because of any default or neglect by the Contractor or by any employee, agent or subcontractor of his.

(4) The Contractor shall supply the QS with any information required by the QS to enable him to value a VI or determine the expense (if any) of complying with any other Instruction.

(5) Adjustment of the Contract Sum as a consequence of other Instructions shall be dealt with in accordance with Condition 43 (Valuation of other Instructions).

42 Valuation of Variation Instructions

(1) The value of a VI shall be determined -
(a) by acceptance by the PM of a lump sum quotation prepared by the Contractor and submitted to the QS in accordance with Condition 40(5) (PM’s Instructions) or such other lump sum as may be agreed by negotiation on such a quotation; or

(b) by valuation by the QS in accordance with paragraphs (5) to (11).

(2) Any lump sum quotation submitted by the Contractor to the QS in accordance with Condition 40(5) (PM’s Instructions) shall indicate how the lump sum was calculated by showing separately the amounts attributable to -

(a) complying with that Instruction; and

(b) any disruption to or prolongation of varied and unvaried work consequential upon compliance with the VI.

(c) any other amounts consequential upon complying with the VI.

The Contractor shall include with his quotation such other information as will enable the QS to evaluate that quotation.

(3) The PM shall notify the Contractor, not later than 21 Days from the receipt of any such lump sum quotation, whether or not it is accepted or, if it is not acceptable, whether he is prepared to agree any other lump sum. If accepted, the aggregate amount specified in that quotation, or otherwise agreed between the Employer and the Contractor, shall be the full sum to which the Contractor is entitled for complying with that VI.

(4) Should -

(a) the Contractor fail to provide a lump sum quotation in accordance with Condition 40(5) (PM’s Instructions); or

(b) the Employer and the Contractor fail to agree by negotiation, and no agreement for independent assessment is reached;

then the PM shall in his absolute discretion, instruct the Contractor to comply with the VI and the Contractor shall forthwith so comply, or the PM may instruct the Contractor not to comply with the Instruction in which case the Contractor shall have no claim whatsoever arising out of or in connection with the Instruction or with any failure. In respect of any VI instructed by the PM under the provisions of this paragraph (4), the PM shall instruct the QS to value the VI.

(5) Where the QS is required to value a VI he shall do so -

(a) by measurement and valuation at the rates and prices in the Bills of Quantities for similar work; or

(b) if it is not possible to value as in subparagraph (a), then by measurement and valuation at rates and prices deduced or extrapolated from the rates and prices in such Bills; or

(c) if it is not possible to value as in subparagraph (b), then by measurement and valuation at fair rates and prices, having regard to current market prices; or

(d) if it is not possible to value by any of the preceding methods of measurement and valuation, then by the value of the materials used and plant and labour employed in accordance with the basis of charge for daywork described in the Contract.

(6) If, in the opinion of the QS, the VI prolongs and/or disrupts work not within the direct scope of the VI, then the QS shall adjust the rates for such work as he considers appropriate.
(7) The Contractor shall submit the information mentioned in Condition 41(4) (Valuation of Instructions - Principles) not later than 14 Days after its being requested by the QS.

(8) The QS shall, not later than 28 Days from the receipt of the information mentioned in paragraph (7), notify the Contractor of his valuation of the VI.

(9) If the Contractor disagrees with the whole or part of the QS’s valuation he shall, within 14 Days of the QS’s notification under paragraph (8), give his reasons for disagreement and his own valuation. In any other case he shall be treated as having accepted the notification under paragraph (8), and no further claim shall be made by him in respect of the VI.

(10) Any percentage or lump sum adjustments made in the pricing of the Bills of Quantities shall be deemed to be applicable to the pricing of all relevant VI’s.

(11) Where an alteration in, or addition to, the Works would otherwise be valued using rates and prices in the Bills of Quantities in accordance with subparagraphs (5)(a) or (b), but the QS is of the opinion that the relevant VI was issued at such a time or was of such content as to make it unreasonable for the alteration or addition to be so valued, he shall ascertain the value by measurement and valuation at fair rates and prices, having regard to current market prices.

(12) Where the QS has determined that work shall be valued in accordance with subparagraph (5)(d), the Contractor shall give reasonable notice to the QS before commencing the work, and shall deliver to him, by the end of the week following that in which the work was done, vouchers in the form required by the QS, which specify separately the labour, materials and plant for that week.

(13) Where, as a result of a VI, the Contractor makes a saving in the cost of executing the Works, the Contract Sum shall be decreased by the amount of the saving as determined by the QS.

43 Valuation of other Instructions

(1) Where as the result of an Instruction, not being a VI, the Contractor -

(a) properly and directly incurs any expense beyond that provided for in, or reasonably contemplated by, the Contract; or

(b) makes any saving in the cost of executing the Works;

the Contract Sum shall, subject to Condition 41(3) (Valuation of Instructions – Principles), be increased by the amount of the expense, or decreased by the amount of the saving, in either case as determined by the QS.

(2) The Contractor shall submit the information mentioned in Condition 41(4) (Valuation of Instructions - Principles) within 28 Days of complying with the relevant Instruction. Within 28 Days of receiving such information, the QS shall notify the Contractor of the amount he has determined.

(3) If the Contractor disagrees with the amount notified under paragraph (2), he shall within 14 Days of receipt notify the QS of his reasons for disagreement and of his own estimate of the correct amount. If the Contractor does not so notify, he shall be regarded as having accepted the amount determined by the QS, and may make no further claim in respect of the Instruction.

(4) In this Condition ‘expense’ shall mean money expended by the Contractor, but shall not include any sum expended, or loss incurred, by him by way of interest or finance charges however described.

44 Not used
46 Prolongation and disruption

(1) If the Contractor properly and directly incurs any expense which he would not otherwise have incurred by reason of -

(a) the execution of works pursuant to Condition 65 (Other works); or

(b) any delay in being given possession of the Site or part of it, or any delay in respect of any of the matters specified in paragraph (2);

which unavoidably results in the regular progress of the Works or of any part of them being materially disrupted or prolonged and which is beyond that provided for or reasonably contemplated by the Contract and is not a consequence of any default or neglect on the part of the Contractor, or by any employee, agent or subcontractor of his, the Contract Sum shall be increased by the amount of that expense as determined by the QS.

(2) The matters referred to in subparagraph (1)(b) are -

(a) any decisions, confirmations, consents, drawings or other information to be provided by the PM (other than in relation to a VI) are provided in a period beyond that which is in all the circumstances reasonable; and

(b) the execution of any work or the supply of any Thing by the Employer or ordered from somebody other than the Contractor.

(3) The Contract Sum shall not be increased under paragraph (1) unless -

(a) the Contractor, immediately upon becoming aware that the regular progress of the Works or any part of them has been or is likely to be disrupted or prolonged, has given notice to the PM specifying the circumstances causing or expected to cause that disruption or prolongation and stating that he is, or expects to be, entitled to an increase in the Contract Sum under that paragraph; and

(b) the Contractor, as soon as reasonably practicable, and in any case within 56 Days of incurring the expense, provides to the QS full details of all expenses incurred and evidence that the expenses directly result from the occurrence of one of the events described in paragraph (1).

(4) Subject to paragraph (3), the Contract Sum shall be increased in accordance with subparagraph (1)(b) only where the Employer has failed to supply an item or act -

(a) by a date agreed beforehand with the Contractor; or

(b) within any reasonable period specified in a notice given by the Contractor to the Employer or the PM for the supply of the item or taking the action.

(5) The QS shall, not later than 28 Days from the receipt of the information referred to in subparagraph (3)(b), notify the Contractor of his decision under this Condition.

(6) In this Condition ‘expense’ shall mean money expended by the Contractor, but shall not include any sum expended, or loss incurred, by him by way of interest or finance charges however described.
47 Finance charges

(1) The Employer shall pay the Contractor an amount by way of interest or finance charges (hereafter together called ‘finance charges’) only in the event that money is withheld from him under the Contract because either -

(a) the Employer, PM or QS has failed to comply with any time limit for payment specified in the Contract or, where the parties agree at any time to vary any such time limit, that time limit as varied;

(b) the QS varies any decision of his which he has previously notified to the Contractor.

(2) Finance charges shall be calculated as a percentage of the amounts which would have been paid to the Contractor if the events mentioned in paragraph (1) had not occurred. The rate at which finance charges shall be payable shall be the percentage stated in the Abstract of Particulars over the average Prime Rate of the leading high-street banks in the Cayman Islands, compounded with effect from 31 March, 30 June, 30 September and 31 December.

(3) Finance charges shall be payable in respect of any period commencing with the date on which, but for a failure or variation mentioned in paragraph (1), money properly due under the Contract should have been certified, and ending with the date on which it was certified for payment under Condition 50 (Certifying payments).

(4) When calculating finance charges the QS shall take into account any overpayment made to the Contractor as a result of circumstances described in subparagraph (1)(b).

(5) The Employer shall not be liable to pay any finance charges which result from -

(a) any act, neglect or default of the Contractor or any of his subcontractors;

(b) any failure by the Contractor or any of his subcontractors to supply the PM or the QS with any information; or

(c) any disagreement about the Final Account.

(6) The Employer and the Contractor agree that, when they entered into the Contract, neither of them had knowledge of any special facts or circumstances which would entitle the Contractor to be paid interest or finance charges, except in the circumstances mentioned in paragraph (1).

(7) The respective powers of the adjudicator and arbitrator to award interest shall be in addition to, and not in derogation from, this Condition.

48 Advances on account

(1) The Contractor shall following certification under Condition 50 (Certifying payments) be entitled to be paid advances during the execution of the Works.

(2) The amount of each advance to be certified shall, subject to Condition 48A (Retention payment bond), be the total of the following sums -

(a) 90% (or such other percentage as is stated in the Abstract of Particulars) of the value of the work executed on the Site (other than such work referred to in subparagraphs (b) and/or (c)); and 90% of the value of any Things for incorporation which have been reasonably delivered to the Site and are adequately stored and protected against damage by weather and other causes, but which have not been incorporated in the Works.
(ii) Where any Things for incorporation on account of which an advance has been made under this subparagraph are incorporated in the Works, the amount of such advance may be deducted from the next or any subsequent payment made under the Contract.

(iii) The Contractor shall submit applications in writing to the PM for payment of advances on account of work executed and Things for incorporation which have been delivered to the Site, supported by a valuation of such work and Things, not later than 7 Days before such certificate is due under Condition 50 (Certifying payments). Unless and until the Contractor timely submits such an application and valuation, he shall not be entitled to certification or payment of an advance in respect of the relevant work on Things. Paragraph (3) shall not apply.

(b) 100% of any amount agreed under Condition 42(1)(a) (Valuation of Variation Instructions) in respect of work completed in the relevant month.

(c) 100% of the agreed value or, failing agreement, 95% of the QS’s valuation, under Condition 42(5) (Valuation of Variation Instructions) and Condition 43 (Valuation of other Instructions) in respect of work completed in the relevant month.

(d) 100% of any amount determined by the QS under Condition 46 (Prolongation and disruption) in respect of the relevant month.

(e) 100% of any amount calculated under Condition 47 (Finance charges).

(f) 90% of any amount calculated under Condition 48C (Payment for Things off-Site) (if applicable).

(g) Less, in each case, any sum agreed to be credited by the Contractor for old materials, any advances previously certified by the PM and any other sums due to the Employer.

(3) Before the payment of any advance or the issue of the final certificate for payment the Contractor shall, if requested by the PM, demonstrate to him that any amount due to a subcontractor or supplier of Things for incorporation which is covered by any previous advance has been paid. In any case where the PM is not satisfied the Employer may withhold payment to the Contractor of the amount in question until the PM is satisfied.

(4) The Employer shall accumulate as a retention the balance of any sum withheld under paragraph (2) which is less than 100% and shall continue to hold the entire beneficial interest therein up to a value of 5% of the Contract Sum (or such other percentage as is stated in the Abstract of Particulars).

48A Retention payment bond (only applicable if stated in Abstract of Particulars)

If the Abstract of Particulars provides for the Employer to pay the Contractor advances on account without deduction of retention, provided that the amount of retention so foregone by the Employer shall not exceed the amount stated in the Abstract of Particulars (‘the Retention Payment’), the Contractor shall be entitled to be paid advances on account without deduction of retention, after fulfilling the following conditions precedent -

(a) delivery to the Employer of a retention payment bond in the form prescribed by the Contract from the surety or sureties named in the tender in the amount of the Retention Payment;

(b) such delivery to occur within 28 Days of the acceptance of the tender, in respect of which period time shall be of the essence.
48B Mobilisation payment (only applicable if stated in Abstract of Particulars)

(1) If the Abstract of Particulars provides for the Employer to pay the Contractor a mobilisation payment, the Contractor shall be entitled to be paid that payment within 14 Days of fulfilling the following conditions precedent -

(a) delivery to the Employer of a mobilisation payment bond in the form prescribed by the Contract from the surety or sureties named in the tender in the amount of the mobilisation payment;

(b) such delivery to occur within 28 Days of the acceptance of the tender, in respect of which period time shall be of the essence.

(2) The Employer shall be entitled to recover the mobilisation payment by deduction (in addition to any retention) of the percentage stated in the Abstract of Particulars from the cumulative value of the work executed on Site and of Things for incorporation delivered to the Site;

(3) Any part of the mobilisation payment not previously recovered by the Employer shall be immediately repayable by the Contractor to the Employer upon either -

(a) the certification by the PM under Condition 39 (Certifying completion) of the completion of the Works or the last Section thereof in respect of which completion is certified; or

(b) the determination of the Contract for any reason whatsoever, including (without limitation) breach by the Employer;

whichever occurs first.

48C Payment for Things off-Site (only applicable if stated in Abstract of Particulars)

(1) Where this Condition applies compulsorily, as specified in the Abstract of Particulars, the PM shall, and where this Condition applies voluntarily, as so specified, the PM may in his complete discretion, include in his certificates under Condition 50 (Certifying payments) 95% of his estimate of the value at that time (ascertained on the basis of fair and reasonable prices) of Things to which this Condition applies, and which have been vested in the Employer in accordance with this Condition. For the purposes of this Condition, Things shall mean any Things for incorporation which are manufactured, assembled or constructed off the Site and which the PM considers are in accordance with the Contract and substantially ready for incorporation in the Works. Any sum so certified and paid may, when the relevant Things have been delivered to the Site, or re-vest in the Contractor for any reason whatsoever, be deducted from any subsequent advance, without prejudice and in addition to any other rights and remedies of the Employer.

(2) In order to transfer the property in Things, the Contractor shall -

(a) ensure that the Things 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;

(b) ensure that the Things have been suitably marked or otherwise identified so as to show that their destination is the Site, that they are the property of the Employer and, where relevant, to whose order they are held; and

(c) provide to the PM documentary evidence that the property in the Things has vested unconditionally in the Contractor.

(3) Upon the PM confirming that the Contractor has complied with the requirements of paragraph (2), the property in the Things shall transfer to the Employer and the Things shall vest in and
become the absolute property of the Employer. The Things shall thenceforth be in the possession of the Contractor for the sole purpose of the performance of the Contract and delivering the completed Things to the Site for inclusion in the Works, and shall not be within the ownership or disposition of the Contractor.

(4) Approval by the PM for the purposes of this Condition shall be without prejudice to the power of the PM to reject any Things in accordance with Condition 31 (Quality). In the event of any Things being rejected by the PM in accordance with Condition 31 (Quality), they shall re-vest in the Contractor.

(5) The Contractor shall be responsible for, and shall take all responsible and proper steps for protecting, preserving and securing, any Things held off the Site.

(6) The Contractor shall comply with any statutory regulations (whether or not binding on the Cayman Islands Government) which govern the storage and use of all Things off the Site.

(7) The Contractor shall indemnify the Employer against all claims and proceedings made or brought against the Employer in respect of any loss and/or damage which arises out of, or is any way connected with, the manufacture, assembly, construction, storage or transportation of any Things. For the purpose of this Condition, loss or damage includes -

(a) loss or damage to property;

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

(c) loss or damage to any Things; and

(d) loss of profits or loss of use suffered because of any loss or damage.

(8) If the Contract is determined the Employer may give to the Contractor, before the expiration of 28 Days from the date on which such determination takes effect, one or more notices stating that the Employer elects that all or any Things which have not been delivered to the Site shall re-vest in the Contractor. The Things specified in the notice shall re-vest upon service of that notice.

(9) With regard to Things which the Employer does not elect shall re-vest in the Contractor under paragraph (8) -

(a) the Contractor shall hand over to the Employer the Things, and if he fails to do so, the Employer may enter any premises and remove the Things and recover the cost of doing so from the Contractor; and

(b) subject to the terms of the Contract (in particular, without limitation, Condition 57 (Consequences of determination by Employer), if applicable to the determination of the Contract) the Employer shall pay a fair and reasonable price for the Things which are handed over to him by the Contractor or otherwise come into his possession, but shall be given credit for any payment therefore previously made under this Condition or otherwise.

(10) Any payment made by the Employer in respect of any Things which re-vest in the Contractor under paragraphs (4) or (8) shall be a sum recoverable in accordance with Condition 51 (Recovery of sums).

(11) The Contractor shall incorporate provisions equivalent to those provided in this Condition in every subcontract in which provision is to be made for the manufacture, assembly or construction of Things off the Site.
49 Final Account

(1) Upon completion of the Works in accordance with the Contract the Employer shall as soon as reasonably possible pay to the Contractor an amount equal to the difference between -

(a) the amount estimated by the Employer to be the Final Sum less one half the retention accumulated under Condition 48(5) (Advances on account); and

(b) the total amount of advances paid under Condition 48 (Advances on account).

(2) Within 3 months of the certified completion of the Works or the last part thereof under Condition 39 (Certifying completion), the QS shall forward one copy of the draft final account to the Contractor. If the draft final account shows a Final Sum greater than the Final Sum estimated by the Employer under paragraph (1)(a), the Employer shall correct any payment made under paragraph (1) as soon as possible, in accordance with the Final Sum shown in the draft final account. The Contractor shall within 3 months of receipt of the draft final account notify his agreement or disagreement with the draft final account. The Contractor shall specify in any notice of disagreement his reasons for disagreement and his own valuation.

(3) If the Contractor does not give notice of disagreement or gives notice but fails to specify adequate grounds for disagreement he shall be deemed to have agreed the draft final account as the Final Account.

(4) If before the end of the Maintenance Period, or where there is more than one the end of the last Maintenance Period to expire, the Final Sum has been calculated and agreed or has been treated as having been agreed under paragraph (3), or in default of agreement has been determined in accordance with the Contract, then -

(a) if the unpaid balance of the Final Sum exceeds any retention which the Employer is for the time being entitled to retain the Employer shall forthwith pay the excess to the Contractor; and

(b) if the total amount paid to the Contractor exceeds the Final Sum the Contractor shall forthwith pay the excess to the Employer.

(5) If after the end of the Maintenance Period, or where there is more than one the end of the last Maintenance Period to expire, the PM has certified that the Contractor has complied with Condition 21 (Defects in Maintenance Periods), and the Final Sum has been calculated and agreed or has been treated as having been agreed under paragraph (3), or in default of agreement has been determined in accordance with the Contract, then -

(a) if the Final Sum exceeds the amount previously paid to the Contractor, the Employer shall forthwith pay the excess to the Contractor; or

(b) if the amount previously paid to the Contractor exceeds the Final Sum, the Contractor shall forthwith pay the excess to the Employer.

50 Certifying payments

(1) Subject to Conditions 59 (Adjudication) and 60 (Arbitration and choice of law), the PM shall certify in the prescribed form to the Employer, with a copy to the Contractor, all net sums (taking into account retention and all set-off or abatement to which the Employer is entitled) to which the Contractor is entitled.

(2) The first such certificate shall be issued on a date to be agreed by the Employer and the Contractor, not later than 28 Days after the commencement of the execution of the Works, and subsequent certificates shall be issued on the equivalent date of each subsequent month, if any sum is to be certified.
(3) If any date upon which a certificate should be issued is a Saturday or Sunday, or Christmas Day, Good Friday or a day which is a public holiday in the Cayman Islands, the relevant certificate shall be issued on the next working day.

(4) Any certificate may be modified or corrected by any subsequent certificate or by the final certificate for payment. No certificate (including without limitation, the Maintenance Certificate) of the PM or payment by the Employer shall of itself be conclusive evidence that any work or Things to which it relates are in accordance with the Contract.

(5) The Employer shall make payment to the Contractor within 30 Days of the date of issue of the certificate of payment of the amount certified by the PM less any sums which the Employer is entitled or authorised to withhold therefrom under the Contract.

51 Recovery of sums

Without prejudice and in addition to any other rights and remedies of the Employer, whenever under or in respect of the Contract, or under or in respect of any other contract between the Contractor or any other member of the Contractor’s Group and the Employer or any other member of the Employer’s Group, any sum of money shall be recoverable from or payable by the Contractor or any other member of the Contractor’s Group by or to the Employer or any other member of the Employer’s Group, it may be deducted by the Employer from any sum or sums then due or which at any time thereafter may become due to the Contractor or any other member of the Contractor’s Group under or in respect of the Contract, or under or in respect of any other contract between the Contractor or any other member of the Contractor’s Group and the Employer or any other member of the Employer’s Group. Without prejudice and in addition to any other rights and remedies of the Contractor, each member of the Contractor’s Group shall have rights reciprocal to those of each member of the Employer’s Group under this Condition.
PARTICULAR POWERS AND REMEDIES

52 Suspension of the Works

(1) The Contractor shall on the written instruction of the PM, and countersigned by the Employer -

(a) suspend the progress of the Works or any part thereof; and/or

(b) suspend delivery of any Things which is ready for delivery to the Site at the time for delivery specified in the Programme or, if no time is specified, at the time appropriate for it to be delivered; and/or

(c) suspend the installation of any Things for incorporation which have been delivered to Site;

for such time or times and in such manner as the PM may consider necessary and shall during such suspension so far as is necessary in the opinion of the PM, properly protect and secure the work or such part thereof and shall properly protect and secure all Things affected at the Works or elsewhere, as the case may be, against any deterioration, loss or damage.

(2) The costs (if any) incurred by the Contractor in giving effect to the PM’s Instructions under this Condition shall be added to the Contract Sum except to the extent that such suspension is -

(a) otherwise provided for in the Contract; or

(b) necessary by reason of weather conditions, not being Abnormal Weather Conditions; or

(c) necessary by reason of any default or neglect by the Contractor or by any employee, agent or subcontractor of his; or

(d) necessary for the proper execution of the Works or for the safety of the Works; or

(e) necessary by reason of the interruption of the Works on the grounds of national security, national interest or public interest.

53 Non-compliance with Instructions

If, after receipt of a notice from the PM requiring compliance with any Instruction within a period specified in the notice, the Contractor fails to comply, the Employer may, without prejudice to the exercise of his powers to determine the Contract, provide labour and/or any Things (whether or not for incorporation), or enter into a contract for the execution of any work which may be necessary to give effect to that Instruction. Any reasonable costs and expenses incurred by the Employer over and above those which would have been incurred had the Contractor complied promptly with the Instruction, shall be recoverable by the Employer from the Contractor.

54 Emergency work

(1) If the Contractor is unable or unwilling to carry out promptly any emergency work required by the PM, the Employer may make arrangements for that work to be carried out. If the work carried out by the Employer shall be such as the Contractor is liable under the Contract to carry out or execute at his own expense then the Contractor shall reimburse -

(a) any costs reasonably incurred by the Employer under this paragraph; and

(b) any loss suffered by the Employer because the Contractor has not carried out the work.
In this Condition emergency work means any work which becomes necessary during the execution of the Works or during any Maintenance Period -

(a) to prevent, or alleviate the effects of, any accident, failure or other event in connection with the performance of the Works;

(b) to secure the Works, the Site or any adjoining property from damage; or

(c) without prejudice to Condition 19 (Loss or damage), to repair any damaged or dangerous part of the Works.

55 Liquidated damages

(1) This Condition applies where a rate of liquidated damages for any delay in the completion of the Works or a Section has been specified in the Abstract of Particulars.

(2) If the Works or a Section are or is not completed by the relevant Date for Completion, the Contractor shall immediately become liable to pay to the Employer liquidated damages at the rate specified in the Abstract of Particulars for the period that the Works or any relevant Section remain or remains uncompleted.

(3) The Employer may -

(a) deduct any amount of any liquidated damages that becomes due under the provisions of this Condition from any sums due or which become due to the Contractor; or

(b) require the Contractor to pay any amount to the Employer forthwith notwithstanding any dispute between the Parties as to the amount due or the liability to make payment of the same.

(4) If the sum due as liquidated damages exceeds any advance payable to the Contractor under Condition 48 (Advances on account), the Contractor shall pay to the Employer the difference. That sum shall be recoverable in accordance with Condition 51 (Recovery of sums).

(5) No payment or concession to the Contractor, or Instruction or VI at any time given to the Contractor (whether before or after the Date or Dates for Completion), or other act or omission by or on behalf of the Employer, shall in any way affect the rights of the Employer to deduct or recover liquidated damages, or shall be deemed to be a waiver of the right of the Employer to recover such damages.

(6) If the PM grants any extension of time or further extension of time under this Contract or otherwise adjusts previous awards which would result in a change to the relevant Date for Completion, he shall re-calculate the amount of any liquidated damages to which the Employer is entitled and shall forthwith notify the Employer and the Contractor of the amount thereof, if any, of any adjustment applicable to any such amounts already notified, as the case may be. Insofar as any sums shall thereby be payable, by way of adjustment or otherwise, from the Employer to the Contractor (or vice versa), the Employer, or the Contractor (as applicable), shall within 30 Days of the PM's notice pay the same to the Contractor, or the Employer (as applicable).

(7) If the payment of liquidated damages is unenforceable by the Employer for any reason the Contractor shall be liable to pay the Employer's actual losses and costs caused or to the extent contributed to by the delay to the relevant Date for Completion for which the Contractor is responsible save that the Employer shall not be entitled to recover under this paragraph any sum which is greater than the amount which would have been recoverable as liquidated damages, had the same not been unenforceable.

(8) The Parties recognise the expense and inconvenience likely to be incurred from any need to prove the loss and damage that will be suffered by the Employer in the event of any such
default on the part of the Contractor. In consideration of the Employer agreeing to limit his damages as provided in this Condition 55 which damages and limitation the Contractor has had the opportunity to consider and to reflect in the Contract Sum, the Contractor acknowledges that such sum is reasonable compensation for and a genuine pre-estimate of the loss and damage that will be suffered by the Employer in the event of any such default on the part of the Contractor and irrevocably undertakes that he will not, whether by legal proceedings or otherwise, contend that such sums set out in this Condition 55 are not reasonable nor will he put the Employer to the proof hereof, nor further contend that his agreement to such sum and undertaking as aforesaid were arrived at by force, duress, coercion, mistake or misrepresentation on the part of the Employer.

56 Determination by Employer

(1) Without prejudice to any other power of determination, the Employer may determine the Contract by notice to the Contractor if -

(a) any ground mentioned in subparagraphs (6) (a), (b) or (e) has arisen; the Employer has given notice to the Contractor specifying the relevant ground and facts; and such ground was in existence 14 Days after such notice was given; or has arisen again at any subsequent time; or

(b) any ground mentioned in paragraph (6) has arisen, other than those mentioned in subparagraphs (6) (a), (b) and (e).

(2) The Employer shall specify in a notice of determination under paragraph (1) which of the grounds mentioned in paragraph (6) apply.

(3) The Employer may, after giving notice of determination under paragraphs (1) or (8), give directions 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.

(4) Any directions under paragraph (3) shall be given not later than 3 months from the date of the notice of determination under paragraphs (1) or (8) or the relevant Date for Completion, whichever is the sooner.

(5) The Contractor shall comply promptly with any directions given by the Employer under paragraph (3). The Contractor shall be paid for any work so performed as if the directions were Instructions.

(6) The grounds referred to in paragraph (1) are -

(a) the failure of the Contractor to comply with an Instruction within a reasonable period of its issue;

(b) the failure of the Contractor to execute work in a workmanlike or proper manner, or to proceed regularly and diligently with the Works, or the suspension by the Contractor of the Works (otherwise than in accordance with Condition 52 (Suspension of the Works)), so that in the opinion of the PM the Contractor has not completed or will be unable to secure the completion of the Works or any relevant Section by the Dates for Completion;

(c) where the Contractor is an individual, the insolvency of that individual or, where the Contractor is a partnership, the insolvency of any partner; in this subparagraph insolvency shall include the presentation of a bankruptcy petition where the petitioner is the debtor; the making of a bankruptcy order; the appointment of an interim receiver; the issue of proposals by the debtor to creditors for any arrangement or composition with creditors or for a conveyance or assignment for the benefit of creditors; where the Contractor is a partnership, insolvency shall also include the presentation of a petition by the members of the partnership to wind up the partnership as an unregistered
company under the Companies Law (2003 Revision); the making of an order to wind up the partnership as an unregistered company; the presentation by the members of the partnership of a petition for the making of an administration order in respect of the partnership; the making of an administration order; or the issue of proposals by the members of the partnership to its creditors for a voluntary arrangement; or entering into a trust deed for his or its creditors, or making a composition or arrangement with his or its creditors;

(d) where the Contractor is a company then (in respect of that company or any company which is for the time being a holding company of the Contractor) the presentation by the company or its directors of a petition for winding-up, or the passing of any resolution for the winding-up, of the relevant company (except for the purposes of amalgamation or reconstruction while solvent); the making by the court of a winding-up order; the appointment of a provisional liquidator: the presentation by the company or its directors of a petition for or the making of an administration order, or a railway administration order; the issue by the company of proposals to creditors for the making of any arrangement or composition with creditors; the appointment of an administrative receiver or a receiver or a receiver and manager in respect of the company or of any of its assets;

(e) failure by the Contractor to comply with Condition 26 (Site admittance) where the Employer determines that such failure is prejudicial to the interests of the Employer or any other member of the Employer’s Group;

(f) either of the situations described in Condition 24(2)(a) or (b) (Corruption);

(g) failure by the Contractor to comply with Condition 66 (Performance bond) (if applicable) or Condition 67 (Parent company guarantee) (if applicable), in respect of each of which Conditions time shall be of the essence; or

(h) any breach of the conditions set out in the invitation to tender relating to the Contract.

(7) All Things not for incorporation which are brought onto the Site at the Contractor’s expense shall (whether damaged or not) re-vest in and be removed by him as and when they cease to be required in connection with any directions given by the Employer under paragraph (3). From the date of determination the Employer shall be under no liability to the Contractor in respect of any loss or damage to any such Things caused by any of the Accepted Risks.

(8) Without prejudice to any other power of determination, the Employer may at will determine the Contract by notice to the Contractor. If the Employer purports to determine the Contract under paragraph (1), but no ground for determination under paragraph (1) had then arisen, or any such ground which had arisen had been waived by the Employer, the Employer shall be deemed to have decided to determine, and to have determined, the Contract under this paragraph.

57 Consequences of determination by Employer

(1) If the Employer shall determine the Contract for any reason mentioned in Condition 56(6) (Determination by Employer), the following provisions shall apply -

(a) all sums of money that may then be due or accruing due from the Employer to the Contractor shall cease to be due or to accrue due;

(b) the Employer may hire any person, employ other contractors, use any Things on the Site, and may purchase or do anything necessary for the completion of the Works, and the Contractor shall have no claim whatsoever in respect of any such action by the Employer;
the Contractor shall (except where determination occurs by reason of any of the circumstances described in Condition 56(6)(c) and (d) (Determination by Employer)) assign to the Employer, without further payment, the benefit of any subcontract or contract for the supply of any Thing for incorporation which he may have made in connection with the Contract;

(d) the Employer may pay to any subcontractor or supplier any amount due to him which the PM certifies as included in any previous advance to the Contractor, and the amount so paid shall be forthwith recoverable by the Employer from the Contractor: and

(e) the QS shall ascertain and the PM shall certify the cost to the Employer of completion of the Works.

(2) If the total of the following sums (hereafter called ‘the first amount’) exceeds the total of all the advances paid to the Contractor (or to which he is entitled) under Condition 48 (Advances on account) to the date of determination (hereafter called the ‘second amount’), the Employer shall, subject to paragraph (3), hold the amount of the excess. If the second amount exceeds the first amount the Contractor shall be liable to pay the Employer the amount of the excess. The individual sums are -

(a) the value of all the work carried out in accordance with the Contract up to the date of determination;

(b) the value of any work carried out or other things done in accordance with any direction given under Condition 56(3) (Determination by Employer); and

(c) the value (ascertained on the basis of fair and reasonable prices) of all Things for incorporation brought onto the Site, or in the course of preparation or manufacture off the Site, which the Employer elects to keep.

(3) If the total of the cost of completion as certified under subparagraph (1)(e) and the first amount determined in accordance with paragraph (2) exceeds the sum that would have been payable to the Contractor for due completion of the Works, then the Contractor shall pay the Employer the amount of the excess. If the total of the cost of completion as certified under subparagraph (1)(e) and the first amount determined in accordance with paragraph (2) is less than the sum that would have been payable to the Contractor for due completion of the Works, then the Employer shall pay the Contractor the amount of the shortfall.

(4) If the Employer shall determine, or shall be deemed to have determined, the Contract at will under Condition 56(8) (Determination by Employer), Condition 58(5) and (6) (Determination by Contractor) shall apply, as if the Contractor had determined the Contract under that Condition.

58 Determination by Contractor

(1) Without prejudice to any other power of determination, the Contractor may determine the Contract by notice to the Employer if -

(a) the ground mentioned in subparagraph (3)(a) has arisen; the Contractor has consequently suspended performance of his obligations under the Contract under Condition 52 (Suspension of the Works) for a continuous period of not less than 30 Days; following which period the Contractor has given notice to the Employer specifying the relevant ground and facts; such ground was in existence 14 Days after such notice was given; and the above suspension is still continuing, and has continued without a break since its commencement; or

(b) any ground mentioned in subparagraphs (3)(b) or (e) has arisen; the Contractor has given notice to the Employer specifying the relevant ground and facts; and such ground
was in existence 14 Days after such notice was given; or has arisen again at any subsequent time; or

\( (c) \) any ground mentioned in paragraph (3) (c) or (d) has arisen.

\( (2) \) The Contractor shall specify in a notice of determination which of the grounds mentioned in paragraph (3) apply.

\( (3) \) The grounds referred to in paragraph (1) are -

\( (a) \) the failure of the Employer to pay any sum certified by the PM for payment to the Contractor within the time allowed under Condition 50 (Certifying payments);

\( (b) \) the Employer obstructing, or interfering with, the issue of any certificate of the PM referred to in Condition 50(1) (Certifying payments);

\( (c) \) where the Employer is an individual, the insolvency of that individual or, where the Employer is a partnership, the insolvency of any partner; in this subparagraph insolvency shall include the occurrence in respect of the individual or partner of any of the matters referred to in Condition 56(6)(c) (Determination by Employer);

\( (d) \) where the Employer is a company, the occurrence in respect of that company or any company which is for the time being a holding company of the Employer of any of the matters referred to in Condition 56(6)(d) (Determination by Employer); or

\( (e) \) the suspension of the execution of the whole or substantially the whole of the Works (other than the making good of defects in the Works under Condition 21 (Defects in the Maintenance Period) for a continuous period of 182 Days (or such other period as is stated in the Abstract of Particulars)) by reason of -

\( (i) \) any Instruction, except where the Instruction was necessary because of any default or neglect by the Contractor or by any employee, agent or subcontractor of his; or

\( (ii) \) any of the matters referred to in Condition 46(1)(a), (b) or (c) (Prolongation and disruption).

\( (4) \) If the Contractor shall determine the Contract as mentioned in this Condition, or if the Employer shall determine, or shall be deemed to have determined, the Contract under Condition 56(8) (Determination by Employer) and Condition 57(4) (Consequences of determination by Employer) consequently applies, the following provisions shall apply.

\( (5) \) If the total of the following sums (hereafter called ‘the third amount’) exceeds the second amount determined in accordance with Condition 57(2) (Consequences of determination by Employer), the Employer shall be liable to pay the Contractor the amount of the excess. If the second amount exceeds the third amount the Contractor shall be liable to pay the Employer the amount of the excess. The individual sums are -

\( (a) \) the value of all the work carried out in accordance with the Contract up to the date of determination;

\( (b) \) the value of any work carried out or other things done in accordance with any direction given under Condition 56(3) (Determination by Employer);

\( (c) \) the value (ascertained on the basis of fair and reasonable prices) of all Things for incorporation brought onto the Site, or in the course of preparation or manufacture off the Site, which the Employer elects to keep;
(d) any reasonable sum expended by the Contractor because of the determination of the Contract in respect of -

(i) the uncompleted part of any subcontract and other contracts (including those for the hire of plant, services and insurance); and

(ii) any unavoidable contract of employment, entered into in connection with the Contract; and

(e) the Contractor’s other unavoidable losses or expense directly due to the determination (including, without limitation, loss of profit on the Contract).

(6) All Things not for incorporation which are brought onto the Site at the Contractor’s expense shall (whether damaged or not) re-vest in and be removed by him. From the date of determination the Employer shall be under no liability to the Contractor in respect of any loss or damage to any such Things caused by any of the Accepted Risks.

58A Determination following suspension of Works

(1) If the progress of the Works or any part thereof is suspended on the written Instruction of the PM pursuant to Condition 52 (Suspension of the Works), without prejudice to any other power of determination, either the Employer or the Contractor may determine the Contract by notice to the other of them in the event of the suspension of the execution of the whole or substantially the whole of the Works (other than the making good of defects in the Works under Condition 21 (Defects in the Maintenance Period)) for a continuous period of 182 Days (or such other period as is stated in the Abstract of Particulars), provided always that such suspension for that period was by reason of any circumstances -

(a) not arising because of any default or neglect by the Contractor or by any employee, agent or subcontractor of his;

(b) not arising because of any default or neglect of the Employer or the PM; and/or

(c) not necessary by reason of weather conditions, not being Abnormal Weather Conditions.

(2) The party giving notice of determination under paragraph (1) shall specify in the notice the grounds for such determination.

(3) If either the Employer or the Contractor shall determine the Contract as mentioned in this Condition, then Condition 58(5) and (6) (Determination by Contractor) shall apply, provided that the Contractor shall not be entitled to any loss of profit on the Contract.

59 Adjudication

(1) The Employer or the Contractor may at any time notify the other of intention to refer a dispute, difference or question arising under, out of, or relating to, the Contract to adjudication. Within 7 Days of such notice, the dispute may by further notice be referred to the adjudicator specified in the Abstract of Particulars.

(2) The notice of referral shall set out the principal facts and arguments relating to the dispute. Copies of all relevant documents in the possession of the party giving the notice of referral shall be enclosed with the notice. A copy of the notice and enclosures shall at the same time be sent by the party giving the notice to the PM, the QS and the other party.

(3)
(a) If the person named as the adjudicator in the Abstract of Particulars is unable to act, or ceases to be independent of the Employer, the Contractor, the PM and the QS, he shall be substituted as provided in the Abstract of Particulars.

(b) It shall be a condition precedent to the appointment of an adjudicator that he shall notify both parties that he will comply with this Condition and its time limits.

(c) The adjudicator, unless already appointed, shall be appointed within 7 Days of the giving of a notice of intention to refer a dispute to adjudication under paragraph (1). The Employer and the Contractor shall jointly proceed to use all reasonable endeavours to complete the appointment of the adjudicator and named substitute adjudicator. If either or both such joint appointments has not been completed within 28 Days of the acceptance of the tender, either the Employer or the Contractor alone may proceed to complete such appointments. If it becomes necessary to substitute as adjudicator a person not named as adjudicator or substitute adjudicator in the Abstract of Particulars, the Employer and Contractor shall jointly proceed to use all reasonable endeavours to appoint the substitute adjudicator. If such joint appointment has not been made within 28 Days of the selection of the substitute adjudicator, either the Employer or Contractor alone may proceed to make such appointment. For all such appointments, the form of adjudicator’s appointment prescribed by the Contract shall be used, so far as is reasonably practicable. A copy of each such appointment shall be supplied too each party. No such appointment shall be amended or replaced without the consent of both parties.

(4) The PM, the QS and the other party may submit representations to the adjudicator not later than 7 Days from the receipt of the notice of referral.

(5) The adjudicator shall notify his decision to the PM, the QS, the Employer and the Contractor not earlier than 10 and not later than 28 Days from receipt of the notice of referral, or such longer period as is agreed by the Employer and the Contractor after the dispute has been referred. The adjudicator may extend the period of 28 Days by up to 14 Days, with the consent of the party by whom the dispute was referred. The adjudicator’s decision shall nevertheless be valid if issued after the time allowed. The adjudicator’s decision shall state how the cost of the adjudicator’s fee or salary (including overheads) shall be apportioned between the parties, and whether one party is to bear the whole or part of the reasonable legal and other costs and expenses of the other, relating to the adjudication.

(6) The adjudicator may take the initiative in ascertaining the facts and the law, and the Employer and the Contractor shall enable him to do so. In coming to a decision the adjudicator shall have regard to how far the parties have complied with any procedures in the Contract relevant to the matter in dispute and to what extent each of them has acted promptly, reasonably and in good faith. The adjudicator shall act independently and impartially, as an expert adjudicator and not as an arbitrator. The adjudicator shall have all the powers of an arbitrator acting in accordance with Condition 60 (Arbitration and choice of law), and the fullest possible powers to assess and award damages and legal and other costs and expenses; and, in addition to, and notwithstanding the terms of, Condition 47 (Finance charges), to award interest. In particular, without limitation, the adjudicator may award simple or compound interest from such dates, at such rates and with such rests as he considers meet the justice of the case -

(a) on the whole or part of any amount awarded by him, in respect of any period up to the date of the award;

(b) on the whole or part of any amount claimed in the adjudication proceedings and outstanding at the commencement of the adjudication proceedings but paid before the award was made, in respect of any period up to the date of payment;

and may award such interest from the date of the award (or any later date) until payment, on the outstanding amount of any award (including any award of interest and any award of damages and legal and other costs and expenses).
Subject to the proviso to Condition 60(1) (Arbitration and choice of law), the decision of the adjudicator is binding until the dispute is finally determined by legal proceedings, by arbitration (if the Contract provides for arbitration, or the parties otherwise agree to arbitration), or by agreement and the parties do not agree to accept the decision of the adjudicator as finally determining the dispute.

In addition to his other powers, the adjudicator shall have power to vary or overrule any decision previously made under the Contract by the Employer, the PM or the QS, other than decisions in respect of the following matters -

(a) decisions by or on behalf of the Employer under Condition 26 (Site admittance);

(b) decisions by or on behalf of the Employer under Condition 27 (Passes) (if applicable);

(c) provided that the circumstances mentioned in Condition 56(1)(a) or (b) (Determination by Employer) have arisen, and have not been waived by the Employer, decisions of the Employer to give notice under Condition 56(1)(a), or to give notice of determination under Condition 56(1);

(d) decisions or deemed decisions of the Employer to determine the Contract under Condition 56(8) (Determination by Employer);

(e) provided that the circumstances mentioned in Condition 58A(1) (Determination following suspension of Works) have arisen, and have not been waived by the Employer, decisions of the Employer to give notice of determination under Condition 58A(1); and

(f) decisions of the Employer under Condition 61 (Assignment).

In relation to decisions in respect of those matters, the Contractor's only remedy against the Employer shall be financial compensation.

If requested by one of the parties to the dispute, the adjudicator shall provide reasons for his decision. Such requests may only be made within 14 Days of the decision being notified to the requesting party.

The adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator, unless the act or omission is in bad faith. Any employee or agent of the adjudicator is similarly protected from liability.

60 Arbitration and choice of law

The procedures for arbitration set out in this Condition shall be utilised by the Employer and the Contractor with regard to disputes, differences or questions between the Employer and the Contractor arising out of, or relating to, the Contract, whether during the course or after the determination thereof. The dispute, difference or question shall after notice by either party to the other be referred to the single arbitrator specified in the Abstract of Particulars. If the person named in the Abstract of Particulars is deceased or unwilling or unable to act as arbitrator, or is not or ceases to be independent of the Employer, the Contractor, the PM and the QS, he shall be substituted as provided in the Abstract of Particulars. It shall be a condition precedent to the appointment of an arbitrator that he shall notify both parties that he will forthwith commence his duties, and will comply with this Condition and its time limits. In addition to his other powers, the arbitrator shall have the fullest possible powers -

(a) to rectify the Contract

(b) to order inspections, measurements and valuations;
(c) to vary or overrule any decision previously made under the Contract by the Employer, the PM, the QS or an adjudicator, provided that the Contractor’s only remedy against the Employer in relation to decisions in respect of the matters listed in Condition 59(8)(a)-(f) (Adjudication) shall be financial compensation;

(d) to order consolidation of the proceedings with other proceedings; and/or that concurrent hearings shall be held; and to make such orders and directions relating to such consolidation and hearings as he thinks fit; and

(e) to make orders, directions and awards in the same way as if all the procedures of the Grand Court of the Cayman Islands (if the proper law of the Contract is the law of the Cayman Islands), including, without limitation, as to joining one or more defendants or defenders or joining co-defendants or co-defenders or third parties, were available to the parties and to the arbitrator.

Provided always, that where any dispute, difference or question has been referred to an adjudicator under Condition 59 (Adjudication), and the adjudicator has issued his decision thereon, a party shall not be entitled to refer such dispute, difference or question to arbitration, and the adjudicator’s decision thereon shall become unchallengeable, unless that party serves the above notice within 56 Days of receipt of notification of the adjudicator’s decision: and, for the avoidance of doubt, this proviso shall apply whether or not the adjudicator has notified his decision within the time limit specified in Condition 59(5) (Adjudication).

(2) Unless the parties otherwise agree -

(a) no reference shall be made under paragraph (1) until after the completion, alleged completion or abandonment of the Works, or the determination of the Contract;

(b) no reference shall be made under paragraph (1) in respect of a dispute, difference or question which has been referred to an adjudicator under Condition 59 (Adjudication), until the notification by the adjudicator of his decision thereon; or the expiry of 28 Days from the receipt by the adjudicator of the notice of referral under Condition 59(1), or such longer time as is allowed for the adjudicator’s decision in accordance with Condition 59; whichever is the earlier;

(c) the arbitrator shall hold a preliminary meeting with the parties forthwith on his acceptance of office and will fix a timetable for the delivery of points of claim, defence or counter-claim and any other pleadings, for the discovery and inspection of documents, for the inspection of the Works (if necessary) and for the hearing of any oral evidence (if necessary), which timetable shall not without the consent of the parties exceed a period of 6 months from the date of that preliminary meeting;

(d) the parties shall ensure that any evidence whether oral or written and any document or argument required to be submitted to the arbitrator is submitted to him in accordance with the timetable; and

(e) the arbitrator shall give his award not later than 3 months from the end of the period mentioned in subparagraph (c).

(3) (a) The proper law of the Contract shall be the law of the Cayman Islands, a reference to arbitration in accordance with this Condition shall be a reference to which the Arbitration Law (2003 Revision) applies, and the Arbitration Law (2003 Revision) shall have effect subject to the provisions of this Condition.
ASSIGNMENT, SUBLETTING, SUBCONTRACTING, SUPPLIER AND OTHER WORKS

61 Assignment

The Contractor shall not, without the consent in writing of the Employer, assign or transfer the Contract, or any part, share or interest under it. No sum of money to become payable under the Contract shall be payable to any person other than the Contractor without the Employer’s written consent. The Employer may assign or transfer the benefit of the Contract, or any part, share or interest under it.

62 Subletting

(1) The Contractor shall not subcontract the whole of the Works. The Contractor shall be fully responsible for the acts, defaults omissions and neglects of any subcontractor or supplier, sub-subcontractor and sub-suppliers, their agents, or servants and workmen, as fully as if they were the acts defaults omissions or neglects of the Contractor, his agents, servants or workmen.

(2) The Contractor shall provide such details of any subcontractor he wishes to engage, and (other than rates or prices) of any subcontract entered into, as the PM may require. No notice of any subcontractors or suppliers to the PM nor of the requirements of this Condition shall in any way whatever affect, limit or relieve the Contractor in any respect from his responsibility for such subcontracts or supply contracts nor from any of its obligations under this Contract.

(3) The Contractor shall ensure that each subcontract entered into will enable him to fulfil his obligations under the Contract. The Contractor shall procure that every subcontractor and supplier has knowledge of those terms of this Contract (other than the Contractor’s prices and rates), which are relevant to the subcontractor or supplier.

(4) The Contractor shall further procure that included in the subcontract or supply contract with each subcontractor and supplier are, inter alia, terms expressly providing the subcontractor or supplier shall observe, perform and comply with the terms and conditions of the Contract (whether or not this Contract expressly requires the Contractor to procure the subcontractor’s or compliance therewith) insofar as they relate to the subcontractor or supplier for that part of the Works (including without limiting the generality of the foregoing, any design, inspection, testing, quality control and assurance, insurance, safety requirements or environmental regulations thereof or relating thereto) which is to be designed and/or executed or supplied by the subcontractor or supplier and any subcontract terms and conditions or form of contract prescribed in the Abstract of Particulars. In particular but without limitation thereto, all subcontracts and supply contracts shall contain provisions requiring -

(a) the compliance of the subcontractor or supplier with obligations in respect of record keeping and providing for the PM’s and the Employer’s other duly authorised representatives to have the same rights of access to and inspection of accounts and records as they have in respect of the Contractor;

(b) such provisions as may be necessary to enable the Contractor to fulfil his obligations to the Employer under the Contract;

(c) such provisions as will impose on the person who enters into the subcontract or supply liabilities similar to those imposed on the Contractor under the Contract; and

(d) a provision to the effect that no part of the subcontract or supply work shall be further sublet without the consent of the Contractor.

(5) The Contractor shall provide sufficient superintendence whether on the Site or elsewhere to ensure that the work to be carried out by a subcontractor or supplier will comply with the requirements of the Contract. The Contractor shall be responsible for acts, defaults and
neglects of any subcontractor or supplier, their agents, servants, or workmen as fully as if they were the acts, defaults or neglects of the Contractor, his agents, servants or workmen.

(6) Nothing contained in the Contract shall render the Employer in any way liable to any subcontractor or supplier and the Contractor shall indemnify and keep indemnified the Employer against all and any liabilities to, and costs, claims and demands of whatsoever nature by any subcontractor or supplier.

(7) In the event of a subcontractor or supplier having undertaken towards the Contractor in respect of the work executed or the materials, equipment or any part thereof, or services supplied by such subcontractor or supplier, any continuing obligation extending for a period exceeding that of the Maintenance Period under the Contract, the Contractor shall procure that the benefit of such continuing obligation shall be assignable to the Employer and thence by the Employer to any nominee stipulated in writing by the Employer and shall at any time, after the expiration of the Maintenance Period, assign to the Employer, at the Employer's request and cost, the benefit of such obligation for the unexpired duration thereof. The Contractor shall procure that any manufacturer's or supplier's warranties to be given in respect of any part or parts of any Things for incorporation shall be assignable to the Employer and thence by the Employer to any nominee stipulated in writing by the Employer.

(8) No subcontract or supply agreement shall include any provision making payment under the subcontract or supply agreement conditional on the payer receiving payment from a third person unless that third person, or any other person payment by whom is under the subcontract (directly or indirectly) a condition of payment by that third person, is insolvent as defined by the Companies Law (2003 Revision). Each subcontract shall include -

(a) Power to determine the subcontract as a consequence of determination of this Contract under Conditions 56 (Determination by Employer), 57 (Consequences of determination by Employer), 58 (Determination by Contractor) or 58A (Determination following suspension of Works).

(b) A provision to the effect that from the commencement to the completion of the subcontract work 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 Contractor subject to any right of the Contractor to reject the same.

(c) Such provisions as may be necessary to enable the Contractor to fulfil his obligations to the Employer under the Contract.

(d) Such provisions as will impose on the person who enters into the subcontract liabilities similar to those imposed on the Contractor under the Contract.

(e) A provision to the effect that no part of the subcontract work shall be further sublet without the consent of the Contractor.

(f) Provisions similar to Condition 38(4)-(7) (Acceleration and cost savings), so that the Contractor shall share fairly and equitably with the subcontractor the Contractor's part of savings pursuant thereto; addressing the sharing of such savings between the Contractor and the subcontractor by reference to whether the relevant proposal for cost savings originated with the Contractor or the subcontractor.

(g) Provisions equivalent to Conditions 1A (Fair dealing and teamwork), 50A (Withholding payment), 52 (Suspension of the Works) and 59 (Adjudication).

(h) Provisions entitling the subcontractor to payment by installments, stage payments or other periodic payments for any work under the subcontract unless it is specified in the subcontract that the duration of the work is to be less than 45 Days; or it is agreed between the Contractor and the subcontractor that the duration of the work is estimated to be less than 45 Days; and stipulating the amounts of the payments and the intervals at which, or circumstances in which, they become due.
(i) Terms and conditions providing an adequate mechanism for determining what payments become due under the subcontract, and when; providing for a final date for payment in relation to any sum which becomes due; and stipulating how long the period (not longer than 30 Days) is to be between the date on which a sum becomes due and the final date for payment.

(j) Any subcontract terms and conditions, or form of subcontract, prescribed in the Abstract of Particulars.

(9) Without prejudice to the obligations of the Contractor under any of the provisions of the Contract, the Contractor shall, whenever requested to do so by the Employer, take any necessary action to ensure that a person who has entered into a subcontract complies with and performs all obligations imposed upon him.

(10) Where for any reason a subcontract is determined or assigned because of the default or failure of the subcontractor, the Contractor shall at his own expense secure completion of the subcontract work.

(11) The Contractor shall be responsible for any subcontractor or supplier employed by him in connection with the Works, whether or not approved by the Employer or the PM, or appointed by the Contractor in accordance with an Instruction or otherwise.

(12) The Contractor shall make good any loss suffered or expense reasonably incurred by the Employer by reason of any default or failure, whether total or partial, on the part of any subcontractor or supplier.

63 Not Used

64 Provisional sums

The full amount of any provisional lump sums included in the Contract and the net value annexed to each of the provisional items inserted in the Bills of Quantities shall be deducted from the Contract Sum, and the value of work ordered and executed thereunder shall be ascertained as provided by Condition 42 (Valuation of Variation Instructions). No work under these items is to be commenced without Instruction from the PM.

65 Other works

(1) The Employer shall have power at any time to execute other works (whether or not in connection with the Works) on the Site at the same time as the Works are being executed. The Contractor shall give reasonable facilities for these works.

(2) The Contractor shall not be responsible for damage done to other works except for damage caused by the negligence, omission or default of his workpeople, agents or subcontractors. Any damage done to the Works in the execution of other works shall, for the purposes of Condition 19 (Loss or damage), be deemed to be damage which is wholly caused by the neglect or default of the Employer or of any other contractor or agent of the Employer.
PERFORMANCE BOND, PARENT COMPANY GUARANTEE AND COLLATERAL WARRANTIES

66 Performance bond (only applicable if stated in Abstract of Particulars)

(1) Upon the execution of this Contract and (without prejudice to Condition 34(3) Commencement and Completion) as a condition precedent to the Contractor’s entitlement to payment of any sums under this Contract, the Contractor shall deliver to the Employer a performance bond in the form prescribed by the Contract from the surety or sureties named in the tender, in an amount of 10% of the Contract Sum (or such other percentage as is stated in the Abstract of Particulars).

(2) If seven (7) Days prior to the date of expiry stated in the performance bond delivered by the Contractor to the PM in accordance with paragraph (1), the Maintenance Certificate referred to in Condition 21(10) (Defects in Maintenance Period) shall not have been issued by the PM, the Contractor shall prior to the date of expiry of such performance bond, at his own expense renew or extend the period of such bond in the same form and amount save as to the expiry date therein contained so that the guarantee of the bank named in the bond shall remain in full force and effect for the benefit of the Employer until the PM shall have issued a Maintenance Certificate in accordance with Condition 21(10) (Defects in Maintenance Period).

67 Parent company guarantee (only applicable if stated in Abstract of Particulars)

The Contractor shall, upon the execution of this Contract and as a condition precedent to the Contractor’s entitlement to payment of any sums under this Contract, deliver to the Employer a parent company guarantee in the form prescribed by the Contract from its ultimate holding company (if any) named in the tender.

68 Collateral warranties (only applicable if stated in Abstract of Particulars)

(1) The Contractor shall procure that each subcontract or supply contract with any subcontractor or supplier, shall contain obligations on the relevant subcontractor or supplier to execute, in favour of the Employer, a Deed in the form prescribed by the Contract, or a similar form reasonably required by the Employer, and deliver the same to the Employer, together in each case (unless waived by the Employer) with a guarantee in the form prescribed by the Contract, or a similar form reasonably required by the Employer, from the ultimate holding company (if any) of the relevant subcontractor or supplier in respect of the subcontractor’s or supplier’s obligations pursuant to such Deed. The Contractor shall enforce such obligations, or such modified obligations as are referred to below.

(b) If the subcontractor or supplier will not accept such obligations, or will only accept them in a modified form, the Contractor shall notify the Employer, who may agree in writing that the relevant subcontract or supply contract need not contain such obligations, or that the relevant obligations may be in a modified form agreeable to the subcontractor or supplier

(c) Failing such agreement by the Employer in the case of any other subcontractor or supplier, the Contractor shall not enter into a relevant subcontract or supply contract with that subcontractor or supplier

(2) The above obligations for the provision of Deeds and guarantees shall continue notwithstanding determination of the Contract for any reason whatsoever, including (without limitation) breach by the Employer.
## SCHEDULE OF TIME LIMITS

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</tr>
<tr>
<td>66</td>
<td>Deliver performance bond</td>
<td>Upon execution of the Contract</td>
<td>Contractor</td>
</tr>
<tr>
<td>67</td>
<td>Deliver parent company guarantee</td>
<td>Upon execution of the Contract</td>
<td>Contractor</td>
</tr>
</tbody>
</table>

**NOTE:** Printed time limits can be extended by agreement within the terms of Condition 1(4). Days means calendar days - see Condition 1(1).