CONDITIONS OF CONTRACT

The Conditions here-in-before referred to:

1. Contractor's obligations

Contractor to carry out works

1.1 The Contractor shall upon and subject to these Conditions carry out and complete the Works shown upon the Contract Drawings and described by or referred to in the Contract Bills and in these conditions in every respect to the reasonable satisfaction of the Architects.

Discrepancy in or divergence between documents

1.2 If the Contractor shall find any discrepancy in or divergence between the Contract Drawings and/or the Contract Bills he shall immediately give to the Architects written notice specifying the discrepancy or divergence, and the Architects shall issue instructions in regard thereto.

Programme and progress charts

1.3 So soon as is possible after the execution of this Contract, the Contractor shall provide without charge to the Employer (unless he shall have been previously furnished) 6 copies of the master programme for the execution of the Works and within 14 working days of any decision by the Architects under clause 23 or 33 with 6 copies of any amendments and revision to take into account of that decision.

2. Architect's instructions

Compliance with Architect's instruction

2.1 The Contractor shall (subject to clause 2.2, 2.3 and 11.4) forthwith comply with all instructions issued to him by the Architects in regard to any matter in respect of which the Architects is expressly empowered by these conditions to issue instructions. If within 5 working days after receipt of written notice from the Architects requiring compliance with an instruction the Contractor does not comply therewith, then the Employer may employ and pay other persons to execute any work which may be necessary to give effect to such instruction and all costs incurred in connection with such employment shall be recoverable from the Contractor by the Employer as a debt or may be deducted by him from any monies due or to become due to the Contractor under this Contract.

Provisions empowering instruction

2.2 Upon receipt of what purports to be an instruction issued to him by the Architects, the Contractor may request the Architects to specify in writing the provision of these conditions which empowers the issue of the said instruction. The Architects shall forthwith comply with any such request and if the Contractor shall thereafter comply with the said instruction (neither party before such compliance having given to the other a written request to concur in the appointment of an Arbitrator under clause 35 in order that it may be decided whether the provision specified by the Architects empowers the issue of the said instruction) then the issue of the same shall be deemed for all the purposes of this Contract to have been empowered by the provision of these conditions specified by the Architects in answer to the Contractor's request.

Instruction to be in writing

2.3 All instructions issued by the Architects shall be in writing. Any instruction issued orally shall be of no immediate effect, but shall be confirmed in writing by the Architects within 5 working days. Provided always:

Statements in the minutes of a site meeting purporting to be an instruction

2.3.1 that any statement purported to be an instruction contained in the minutes of site meetings shall be deemed to be an oral instruction and shall be subject to confirmation as provided by clause 2.3

Channeling of instructions

2.3.2 that any instruction(s) purported to be issued to the Contractor by any other agent of the Employer shall be of no effect unless issued through the Architects.

3. Contract Documents (Amended)

Custody of Contract Bills and Contract Drawings

3.1 The Contract Drawings and the Contract Bills shall remain in the custody of the Employer. Certified true copies of the Contract Bills shall be given to the Contractor, the Architects and the Quantity Surveyor.

3.2 Immediately after the execution of this Contract, the Employer without charge to the Contractor, shall furnish him (unless he shall have been previously furnished) with:

3.2.1 one copy certified on behalf of the Employer of the Articles of Agreement and these Conditions,

3.2.2 two copies of the Contract Drawings, and

3.2.3 two copies of the unpriced Bills of Quantities and (if requested by the Contractor) one copy of the Contract Bills.

Specifications, descriptive, schedules etc

3.3 So soon as is possible after the execution of this Contract the Architects without charge to the Contractor shall furnish him (unless he shall have been previously furnished) with two copies of the specifications, descriptive schedules or other like documents necessary for use in carrying out the works.

Provided that nothing contained in the said Specifications, descriptive schedules or other documents shall impose any obligation beyond those imposed by the Contract Documents, namely: the Contract Drawings, the Contract Bills, the Articles of Agreement and these Conditions.

Drawings or details

3.4 As and when from time to time may be necessary the Architects without charge to the Contractor shall furnish him with two copies of such drawings or details as are reasonably necessary either to explain and amplify the Contract Drawings or to enable the Contractor to carry out and complete the Works in accordance with these Conditions.

Availability of Contract documents

3.5 The Contractor shall keep one copy of the Contract Drawings, one copy of the unpriced Bills of Quantities, one copy of the specifications, descriptive schedules or other documents referred to in clause 3.3 and one copy of the drawings and details referred to in clause 3.4 upon the Works so as to be available to the Architects and the Quantity Surveyor or their representatives at all reasonable times.

Return of drawings etc

3.6 Upon final payment under clause 30.6 the Contractor shall if so requested by the Architects forthwith return to the Architects all drawings, details, specifications, descriptive schedules and other documents of like nature which bear his name.

Limits to use of documents

3.7 None of the documents hereinbefore mentioned shall be used by the Contractor for any purpose other than this Contract and neither the Employer, the Architects nor the Quantity Surveyor shall divulge or use except for the purpose of this Contract any of the prices in the Contract Bills.

4. Statutory obligations, notices, fees and charges

Statutory requirements

4.1 The Contractor shall comply with and give all notices required by any legislation, or any regulation or bye-law of any local authority or of any statutory undertaker which has any jurisdiction with regard to the Works or with whose systems the same are or will be connected. The Contractor before making any variation from the Contract Drawings or Contract Bills necessitated by such compliance shall give to the Architects a written notice specifying and giving the reason for such variation and the Architects may issue instructions in regard thereto. If within 5 working days of receipt by the Architects of the said written notice the Contractor does not receive an instruction in regard to the matters therein specified he shall proceed with the work conforming to the legislation, instrument, rule, order, regulation or bye-law in questions and any variation thereby necessitated shall be deemed to be a variation required by the Architects.

Fees or charges

4.2 The Contractor shall pay and indemnify the Employer against liability in respect of any fees charges (including any rate or taxes) legally demandable under any legislation, or instrument, rule or order made under any legislation, or any regulation bye-law of any local authority or of any statutory undertaker in respect of the Works. Provided that the amount of any such fees or charges (including any rates or taxes) shall be added to the Contract Sum unless they:

4.2.1 arise in respect of work executed or materials or goods supplied by a local authority or statutory undertaker for which a prime cost sum has arisen as a result of Architect's instructions given under clause 2, or

4.2.2 are priced or stated by way of a provisional sum in the Contract bills.

5. Levels and setting out of the Works

The Architects shall determine any levels which may be required for the execution of the Works, and shall furnish to the Contractor by way of accurately dimensioned drawings such information as shall enable the Contractor to set out the Works at ground level. Unless the Architects shall otherwise instruct, in which case the Contract Sum shall be adjusted accordingly, the Contractor shall be responsible for and shall entirely at his own cost amend any errors arising from his own inaccurate setting out.

6. Quality of materials, goods and workmanship to conform to description, testing and inspection (Amended).

Kinds and standards

6.1 All materials, goods and workmanship shall so far as procurable be of the respective kinds and standards in the Contract Bills.

Vouchers materials and goods

6.2 The Contractor shall upon the request of the Architects furnish him with vouchers to prove that the materials and goods comply with clause 6.1.

Inspection - tests

6.3 The Architects may issue instructions requiring the Contractor to open up for inspection any work covered up or to arrange for or carry out any test of any materials or goods (whether or not already incorporated in the Works) or of any executed works and the cost of such opening up or testing (together with the cost of making good in consequence thereof) shall be added to the Contract Sum unless provided for in the Contract Bills or unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract.

Powers of Architects - work not in accordance with the Contract

6.4 The Architects may but not unreasonably or vexatiously issue instructions in regard to the removal from the Site of any work, materials or goods which are not in accordance with this Contract.

Exclusion from the Works of persons employed thereon

6.5 The Architects may but not unreasonably or vexatiously issue instructions to the Contractor requiring the exclusion from the Works of any person(s) employed thereon. The reasons for such instructions (such as negligence, poor workmanship, failure to adhere to reasonable instructions or any other) shall be clearly stated in writing. In the event of such an instruction being given, the Contractor shall replace the person(s) so removed forthwith and with immediate effect.

7. Royalties and patent rights

Treatment of royalties, etc indemnity to Employer

7.1 All royalties or other sums payable in respect of the supply and use in carrying out the Works as described by or referred to in the Contract Bills of any patented articles, processes or inventions shall be deemed to have been included in the Contract Sum and the Contractor shall indemnify the Employer from and against all claims, proceedings, damages, cost and expenses which may be brought or made against the Employer or to which he may be put by reason of the Contractor infringing or being held to have infringed any patent rights in relation to any such articles, processes or inventions.

Architect's instruction treatments of royalties, etc

7.2 Provided that where in compliance with the Architect's instructions the Contractor shall supply and use in carrying out the Works any patent articles, processes or inventions, which but for the Architect's instruction he would not have supplied and used or would not have had to supply and use to carry out the original Works, the Contractor shall not be liable in respect of any infringement or alleged infringement of any patent rights in relation to any such articles, processes or inventions and all royalties, damages or other monies which the Contractor may be liable to pay the persons entitled to such patent right shall be added to the Contract Sum.

8. Person-in-charge (Amended)

8.1 The Contractor shall constantly keep upon the Works a competent and English-speaking person-in-charge and any instructions given to him by the Architects shall be deemed to have been issued to the Contractor.

8.2 Where in the opinion of the Architects the person-in-charge does not satisfy any of the provisions of clause 8.1 the Architects shall issue an instruction for his replacement which instruction shall be complied forthwith and with immediate effect.

9. Access for Architects to the works

The Architects and his representative(s) shall at all times have access to the works and to the workshops or other places of the Contractor where work is being prepared for this Contract and when work is to be prepared in workshops or other places of a Sub-Contractor (whether or not a Named Sub-Contractor as defined in clause 27) the Contractor shall by a term in the Sub-Contract so far as possible, secure a similar right of access to those workshop or places for the Architects and his representative(s) and shall do all things reasonably necessary to make such rights effective.

10. Clerk of works

The Employer shall be entitled to appoint a clerk of works whose duty shall be to act solely as inspector on behalf of the Employer under the directions of the Architects

The Contractor shall afford every reasonable facility for the performance of that duty. If any direction is given to the Contractor or to his Site Agent upon the Works by the Clerk of Works, the same shall be of no effect unless given in regard to a matter in respect of which the Architects is expressly empowered by these Conditions to issue instructions and unless confirmed in writing by the Architects within 5 working days of it being given. If any such direction is so given and confirmed or is put into writing and sent by the Contractor to the Architects so as to reach the Architects within 2 working days of such direction having been given by the Clerk of Works and if not dissented from by the Architects within 5 working days of its receipt by him, then as from the date of the direction having been given by the Clerk of Works it shall be deemed to be an Architect's instruction.

11. Variations, provisional and prime cost sums (Amended)

Definition of variation

11.1 The term `Variation' as used in these Conditions means the alteration or modification of the design, quality and quantity of the Works as shown upon the Contract Drawings and described by or referred to in the Contract Bills. It includes the addition, omission, substitution or postponement of any work, the alteration of the kind or standard of any material or goods used or to be used in the Works and the removal from the Site of any work, materials or goods used or to be used in or brought to the Site by the Contractor for the purpose of the Works, other than work, materials or goods which are not in accordance with this Contract. It also includes the corrections of errors and omissions in the Contract Drawings.

Reasons for variations

11.2 Variations may arise due to the following reasons:

11.2.1 circumstances that could not have been reasonably foreseen before preparation of the Contract Bills

11.2.2 additional requirements of the Employer

11.2.3 compliance with new government orders or legislation

11.2.4 corrections of errors or omissions in the Contract Drawings

11.2.5 substitution of materials, goods and workmanship specified in the Contract.

Instructions requiring a variation

11.3 The Architects may issue instructions requiring a variation and he may sanction in writing any variation made by the Contractor otherwise than pursuant to the instructions of the Architects. No variation required by the Architects or subsequently sanctioned by him shall vitiate this Contract.

Limit to variations

11.4 Notwithstanding the provision of clause 11.3, any variation required by the Architects resulting in either a net addition to the Contract Sum in excess of the amount stated in the Appendix, or a cumulative adjustment to the Contract Sum in excess of the provisional sum (if any) allowed in the Contract Bills as contingency, shall be of no effect unless approved by the Employer in writing to the Architects and the Contractor within 14 working days of a written request by the Architects.

Instructions on provisional sums

11.5 The Architects shall issue instructions in regard to the expenditure of prime cost and provisional sums included in the Contract Bills.

Valuation of work on variations and provisional sums

11.5. 1 All variations required by the Architects or subsequently sanctioned by him in writing and all work executed in accordance with instructions by the Architects as to the expenditure of prime cost and provisional sums which are included in the Contract Bills shall be measured and valued by the Quantity Surveyor and such valuation (in these Conditions called `the Valuation') shall, unless otherwise agreed by the Employer and the Contractor be made in accordance with the following rules:

11.5. 1.1 where the work is of similar character to or is executed under similar conditions as and does not significantly change the quantity of work set out in the Contract Bills, the rates and prices for the work so set out shall determine the valuation;

11.5. 1.2 where the work is of similar character to work set out in the Contract Bills but is not executed under similar conditions thereto and/or significantly changes the quantity thereof the rate and prices for the work so set out shall be the basis for determining the valuation and the valuation shall include a fair allowance for such difference in condition and/or quantity;

11.5. 1.3 where the work is not of similar character to work set out in the Contract Bills the work shall be valued at fair rate and prices;

11.5 1.4 where work cannot properly be measured and valued, the Contractor shall be allowed day-work rates on the basis of the prime cost of materials, labour and plant used thereon together with percentage additions to each section of the prime cost at the rate set out by the Contractor in the Contract Bills and recorded in the Appendix. Provided that in any case vouchers specifying the time daily spent upon the work and if required by the Quantity Surveyor the workmen's names materials and plant employed shall be delivered for verification to the Quantity Surveyor or his authorized representative not later than the end of the week following that in which the work has been executed;

11.5. 1.5 the prices in the Contract Bills shall determine the valuation of items omitted, provided that if omissions substantially vary the conditions under which any remaining items of work are carried out the prices for such remaining items shall be valued under clause 11.5.1.2.

Contractors right to be present at the measurement

11.6 Where it is necessary to measure work for the purpose of the valuation, the Quantity Surveyor shall give to the Contractor an opportunity of being present at the time of such measurement and of taking such notes and measurements as the Contractor may require.

Valuations - addition to or deduction from Contract Sum

11.7 Effect shall be given to the measurement and valuation of variations under clause 11.5 in interim certificates and by adjustment of the Contract Sum; and effect shall be given to the measurement and valuation of work for which a provisional sum is included in the Contract Bills under the said clause in interim certificates and by adjustment of the Contract Sum in accordance with clause 30.5.3.

12. Contract Bills (Amended)

The quality and quantity of the work included in the Contract Sum shall be deemed to be that which is set out in the Contract Bills referred to in clause 3. The Contract Bills have been prepared in general accordance with the principles of the Standard Methods of Measurement of Building Works (Seventh Edition) last issued by the Royal Institution of Chartered Surveyors and the Building Employers Confederation, severally amended for use in Nigeria by Design Cost Associates.

Any error in description or in quantity or any omission of items from the Contract Bills shall not vitiate this Contract but shall be rectified and treated as a variation.

13. Contract Sum

The Contract Sum shall not be adjusted or altered in any way whatsoever otherwise than in accordance with the express provisions of these Conditions, and subject to clause 12 any error whether of arithmetic or not in the computation of the Contract Sum shall be deemed to have been accepted by the parties hereto.

14. Unfixed materials and goods

Unfixed material and goods intended for delivery to and placed on the Works or any other location approved by the Architects in consultation with the Employer shall not be removed except for use upon the Works unless the Architects has consented in writing to such removal which consent shall not be unreasonably withheld. Where the value of any such materials or goods has in accordance with clause 30.2 been included in any interim certificate under which the Contractor has received payment, such materials and goods shall become the property of the Employer, but subject to clause 20.2 or clause 20.3 (if applicable), the Contractor shall remain responsible for loss or damage therefor and for the cost of storage, handling and insurance of same.

15. Practical completion and defects liability

Certificate of Practical Completion

15.1 When in the opinion of the Architects the Works are practically completed, he shall forthwith issue a certificate to that effect and practical completion of the Works shall be deemed for all the purposes of this Contract to have taken place on the day named in such certificate.

15.2 If however, in the opinion of the Contractor practical completion of the Works has been achieved, he shall notify the Architects in writing and if within 14 days there is no letter to the contrary from the Architects then it shall be presumed that practical completion has been achieved.

Defects, shrinkages and other faults

15.3 Any defects, shrinkages or other faults which shall appear within the defects liability period stated in the Appendix and which are due to materials or workmanship not in accordance with this Contract or to exposure to sun or weather occurring before practical completion of the Works shall be specified by the Architects in a schedule of defects which he shall deliver to the Contractor not later than 14 days after the expiration of the said defects liability period, and within a reasonable time after receipt of such schedule, the defects, shrinkages and other faults therein specified shall be made good by the Contractor and (unless the Architects shall otherwise instruct in which case the Contract Sum shall be adjusted accordingly) entirely at his own cost.

Defects etc, Architect's instructions

15.4 Notwithstanding clause 15.3 the Architects may whenever he considers it necessary so to do, issue instructions requiring any defects, shrinkages or other faults which shall appear within the Defects Liability Period named in Appendix which are due to materials or workmanship not in accordance with this Contract or to exposure to sun or weather occurring before practical completion of the Works to be made good, and the Contractor shall within a reasonable time after receipt of such instructions comply with the same and (unless the Architects shall otherwise instruct, in which case the Contract Sum shall be adjusted accordingly) entirely at his own cost. Provided no such instructions shall be issued after delivery of a schedule of defects or after 14 days from the expiration of the Defects Liability Period.

Certificate of completion of making good defects

15.5 When in the opinion of the Architects any defects, shrinkages or other faults which he may have required to be made good under clauses 15.3 and 15.4 shall have been made good, he shall issue a certificate to that effect and completion of making good defects shall be deemed for all purposes of this Contract to have taken place on the date named in such certificate.

Damage by weather

15.6 In no case shall the Contractor be required to make good at his own cost any damage by sun or weather which may appear after practical completion of the Works, unless the Architects shall certify that such damage is due to injury which took place before practical completion of the works.

16. Sectional completion

Possession by Employer relevant part

16.1 If at anytime or times before practical completion of the Works the Employer with the consent of the Contractor shall take possession of any part or parts of the same (any such part being hereinafter in this clause referred to as the `relevant part') then notwithstanding anything expressed or implied elsewhere in this Contract:

Valuation - relevant part

16.1.1 within 7 days from the date on which the Employer shall have taken possession of the relevant part, the Architects shall issue a certificate stating his estimate of the approximate total value of the relevant part and for all the purposes of clause 16 (but no other) the value so stated shall be deemed to be the total value of the relevant part,

Practical completion relevant part

16.1.2 for the purposes of clause 15.3, 15.4 and 15.6 and clause 16.1.6.2 practical completion of the relevant part shall be deemed to have occurred and the Defect Liability Period in respect of the relevant part shall be deemed to have commenced on the date on which the Employer shall have taken possession thereof,

Defects, etc - relevant part

16.1.3 when in the opinion of the Architects any defects, shrinkages or other faults in the relevant part which he may have required to be made good under clause 15.3 or 15.4 shall have been made good, he shall issue a certificate to that effect,

Insurance - relevant part

16.1.4 the Contractor shall reduce the value insured under clause 20.1 (if applicable) by the full value of the relevant part and the said relevant part shall as from the date on which the Employer shall have taken possession thereof be at the sole risk of the Employer as regards any of the contingencies referred to in the said clause,

Sectional Completion

Liquidated damages relevant part

16.1.5 In lieu of any sum to be paid or allowed by the Contract under clause 22 in respect of any period during which the Works may remain incomplete occurring after the date on which the Employer shall have taken possession of the relevant part there shall be paid or allowed such sum as bears the same ratio to the sum which would be paid or allowed apart from the provisions of clause 16 as does the Contract Sum less the total value of the said relevant part to the Contract Sum,

Retention fund - relevant part

16.1. 6. 1 within 14 days of the date on which the Employer shall have taken possession of the relevant part there shall be paid to the Contractor from the sum(s) then retained under clause 30.3 (if any) one moiety of such amount as bears the same ratio to the unreduced amount named in the Appendix as Limit of Retention Fund as does the total value of the relevant part of the Contract Sum and the amount named in the Appendix as limit of retention shall be reduced by the amount of such moiety.

16.1. 6. 2 on the expiration of the Defects Liability Period named in the Appendix in respect of the relevant part or on the issue of the certificate of completion or making good defects in respect of the relevant part, whichever is the later, there shall be paid to the Contractor from the sum(s) then retained under clause 10.3 (if any) the other moiety of the amount referred to in clause 16.1.6.1 and the amount named in the Appendix as Limit Retention Fund shall be reduced by the amount of such moiety.

17. Assignment or sub-letting

Assignment by Employer

17.1 The Employer shall not without the written consent of the Contractor assign this Contract.

Assignment by Contractor

17.2 The Contractor shall not without the written consent of the Employer assign this Contract.

Sub-letting

17.3 The Contractor shall not without the written consent of the Employer or the Architects (which consent shall not be unreasonably withheld) sublet any portion of the Works which subletting shall not relieve the Contractor of his obligation(s) to the Employer under this Contract.

Determination of employment of Sub-Contractor

17.4 Provide that it shall be a condition in any sub-letting which may occur that the employment of the Sub-Contractor under the Sub-Contract shall determine immediately upon the determination for any reason of the Contractor's employment under this Contract. Nothing within this clause shall be deemed to affect the Contractor's employment of task workers.

18. Injury to persons and property and indemnity to Employer

Liability of Contractor for injury or damage to property indemnity to Employer

18.1 The Contractor shall be liable for, and shall indemnify the Employer against any expense, liability, loss, claim or proceedings whatsoever arising under any statute or at common law in respect of personal injury to or death of any person whomsoever arising out of or in the course of or caused by the carrying out of the Works, except to the extent that the same is due to any act or neglect of the Employer or of any person for whom the Employer is responsible including the persons employed or otherwise engaged by the Employer to whom clause 29 refers.

Liability of Contractor for injury or damage to property indemnity Employer

18.2 The Contractor shall subject to clause 18.3 and, where applicable clause 20.3, be liable for, and shall indemnify the Employer against any expense, liability, loss, claim or proceedings in respect of any injury or damage whatsoever to any property real or personal in so far as such injury or damage arises out of or by reason of or carrying out of the Works, and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor, his staff or agent(s) or of any person employed or engaged upon or in connection with the Works or any part thereof, his staff or agent(s) or of any other person who may properly be on the site upon or in connection with the Works or any part thereof, his staff or agent(s).

Injury or damage to property exclusion of the Works and site materials

18.3 The reference to real or personal property in clause 18.2 does not include the Works being executed, materials on site or any other location approved by the Architects or the Employer.

18.4 Upon the issue of the certificate of sectional completion of any portion of the Works, the relevant part shall become real or personal property.

19. Insurance against injury to persons or property

Contractor's insurance for personal injury or death injury or damage to property

19.1. 1. Without prejudice to his obligation to indemnify the Employer under clause 18, the Contractor shall take out and maintain and cause any Sub-Contractor to take out and maintain such insurances necessary to cover the liability of the Contractor, or as the case may be, of such Sub-Contractor in respect of personal injury or death arising out of or in the course of or caused by carrying out of the Works not due to any act or neglect of the Employer or of any person for whom the Employer is responsible including the persons employed or otherwise engaged by the Employer to whom clause 29 refers and in respect of injury or damage to property (real or personal), arising out of or in the course of or by reason of the carrying out of the Works and caused by negligence, omission or default of the Contractor, his staff or agent(s) or as the case may be of
such Sub-Contractor, his staff or agent(s) and also such insurances as are necessary against claims by third parties under public liability risks in respect of injury and/or damage to property (real or personal) including third party fire risk arising out of or in the course of or by reason of the carrying out of the Works and caused by any negligence, omission or default of the Contractor, his staff or agent(s) or, as the case may be, of such Sub-Contractor, his staff or agent(s).

19.1. 2 The insurance in respect of claim(s) for personal injury to, or death of any person under a Contract of service or apprenticeship with the Contractor or the Sub-Contractor as the case may be, and arising out of and in the course of such person's employment, shall comply with the appropriate law and statutory orders made thereunder or any amendment or re-enactment thereof. For all other claim(s) to which clause 19 applies, the insurance cover shall be the sum stated in the Appendix (or such greater sum as the Contractor may choose) for any one occurrence or series of occurrences arising out of one event.

19.1. 3 As and when he is reasonably required so to do by the Employer, the Contractor shall send and shall cause any Sub-Contractor to send to the Architects for inspection documentary evidence that the insurance(s) required by clause 19 have been taken out and are being maintained but at any time the Employer or the Architects may (but not unreasonably or vexatiously) require to have produced for his inspection the policy or policies and premium receipts in question.

Insurance against injury to persons or property

19.1. 4 If the Contractor defaults in taking out or in maintaining, or causing any Sub-Contractor to take out and maintain, insurance as provided in clause 19, the Employer may himself insure against any liability or expenses which he may incur arising out of such default and the sum(s) equivalent to the amount paid or payable by him in respect of premium(s) therefore may be deducted by him from any money or monies due or to become due to the Contractor under this Contract or such amount may be recoverable by the Employer from the Contractor as a debt.

Provisional sum for insurance

19.2 Where a provisional sum is included in the Contract Bills in respect of the insurance to which this clause refers the Contractor shall maintain in the joint names of the Employer and the Contractor insurance(s) for such amount(s) of indemnity as may be specified in the Contract Bills in respect of any expense, liability, loss, claim or proceedings which the Employer may incur or sustain by reason of damage to any property other than the Works caused by collapse, subsidence, vibration, weakening or removal of support or lowering of ground water arising out of or in the course of or by reason of the carrying out of the Works excepting damage as specified in clause 19.3.

19.2. 2 Any such insurance as is referred to in clause 19.2.1 shall be placed with insurers to be approved by the Employer and the Contractor shall send to the Architects for deposit with the Employer the policy or policies and the receipts in respect of premiums paid.

19.2. 3 The amount(s) expended by the Contractor to maintain the insurance(s) referred to in clause 19.2.1 shall be an adjustment to the Contract Sum.

Excepted risks

19.3. 1 Notwithstanding the provisions of clause 18.2 or clauses 19.1 and 19.2, the Contractor shall not be liable to indemnify the Employer or to insure against any damage, loss or injury caused to the Works, the site or any property by the effect of ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties or any explosive nuclear assembly or nuclear component thereof, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds. And also excepting damage:

19.3. 1.1 caused by the negligence, omission or default of the Contractor, his staff or agent(s),

1.2 attributable to errors or omissions in the designing of the Works,

19.3.

19.3. **1.3** which can reasonably be foreseen to be inevitable having regard to the nature of the work to be executed or the manner of its execution,

19.3 **1.4** which is the responsibility of the Employer to insure under clause 20.2 or 20.3 (if applicable).

20. Insurance of the Works - Erection of new buildings-All Risks Insurance of the Works by the Contractor

Contractor to take out and maintain a joint names policy

20.1 The Contractor shall take out and maintain in the joint names of the Employer and Contractor a policy for All Risks insurance to cover for full reinstatement value of the Works (plus the percentage, if any, to cover professional fees stated in the Appendix) and shall (subject to clause 16) maintain such policy up to and including the date of issue of the Certificate of Practical Completion or up to and including the date of determination of the employment of the Contractor under clause 25 or clause 26 (whether or not the validity of that determination is contested) whichever is the earlier.

Single policy of insurance approved by Employer and failure by Contractor to insure

20.2 The insurance referred to in clause 20.1 shall be taken out with insurers approved by the Employer and the Contractor shall send to the Architects for deposit with the Employer that policy and the premium receipt(s) thereof and also any relevant endorsement or endorsements thereof as may be required to comply with the obligation to maintain that policy set out in clause 20.1 and the premium receipt(s) thereof. If the Contractor defaults in taking out or in maintaining such policy the Employer may himself take out and maintain such policy any risk in respect of which the default shall have occurred and a sum or sums equivalent to the amount paid or payable by him in respect of premiums therefor may be deducted by him from any money or monies due or to become due to the Contractor under this Contract or such amount may be recoverable by the Employer from the Contractor as a debt.

Insurance of the Works - Erection of new buildings-All Risks
Insurance of the Works by the Contractor

Use of annual policy maintained by Contractor

20.3. 1 If the Contractor independently of his obligation under this Contract maintains a policy of insurance which provides (inter alia) All Risks Insurance to cover for the full reinstatement value of the Works (plus the percentage, if any, to cover professional fees stated in the Appendix) then the maintenance by the Contractor of such policy shall, if the Employer's interest in that policy of insurance is endorsed thereon be a discharge of the Contractor's obligation to take out and maintain a policy under clause 20.1 in the joint names of the Employer and the Contractor, if and so long as the Contractor is able to send for inspection by the Architects or the Employer as and when he is reasonably required to do so by the Employer documentary evidence that such a policy is being maintained, then the Contractor shall be discharged from his obligation under clause 20.2 to deposit the policy and the premium receipt(s) with the Employer but on any occasion the Employer may (but not unreasonably or vexatiously) require to have sent for inspection by the Architects or the Employer the policy to which this clause refers and the premium receipt(s) therefor. The annual renewal date as supplied by the Contractor of the insurance referred to in this clause is to be stated in the Appendix.

20.3. 2 The provisions of clause 20 shall apply in regard to any default in taking out or in maintaining insurance under clause 20.3.1.

Loss or damage to the Works insurance claims Contractor's obligations use of insurance monies

20.4. 1 If any loss or damage affecting work executed or any part thereof or any materials on site is occasioned by any one or more of the risks covered by such policy referred to in clauses 20.1, 20.2, and 20.3, then upon discovering the said loss or damage, the Contractor shall forthwith give notice in writing both to the Architects and to the Employer of the extent, nature and location thereof.

20.4. 2 The occurrence of such loss or damage shall be dis-regarded in computing any amount(s) payable to the Contractor under or by virtue of this Contract.

20.4. 3 After any inspection required by the insurers in respect of a claim under the policy referred to in clauses 20(A).1, 20.2, and 20.3 has been completed, the Contractor with due diligence shall restore such work damaged, replace or repair any such materials on site which have been lost or damaged, remove and dispose of any debris and proceed with the carrying out and completion of the Works.

Insurance of the Works - Erection of new buildings-All Risks
Insurance of the Works by the Contractor

20.4. 4 The Contractor, for himself and for all Named Sub-Contractors who are recognized as insured under the policy referred to in clause 20.1, 20.2, and 20.3, shall authorize the insurers to pay all money or monies from such insurance in respect of the loss or damage referred to in clause 20.1 to the Employer. The Employer shall pay such money or monies (less only the percentage, if any, to cover professional fees stated in the Appendix) to the Contractor by installments under certificates of the Architects issued at the period of interim certificates.

20.4. 5 The Contractor shall not be entitled to any payment in respect of the restoration, replacement or repair of such loss or damage and (when required) the removal and disposal of debris other than the money or monies received under the aforesaid insurance.

21. Possession, commencement, completion and postponement (Amended)

Date of Possession progress to completion date

21.1 Upon the appointment of the Contractor a date shall be fixed by which the Contractor should be fully mobilised.

The date so fixed shall be the date for commencement and the Contractor shall thereupon begin the Works and proceed regularly and diligently with the same and shall complete the same on or before the date for completion stated in the Appendix subject nevertheless to the provision for extension of time contained in clauses 23 and 33.1.3.

Architects's instructions postponement

21.2 Upon the application of either party to this Contract and without prejudice to any other rights and obligations under this Contract, the Architects may issue instructions in regard to the postponement of any work to be executed under the provisions of this Contract.

22. Liquidated and ascertained damages for non-completion (Amended)

22.1 If the Contractor fails to complete the Works by the date for completion stated in the Appendix or within any extended time fixed under clause 23 or clause 33.1.3 and the Architects certifies in writing that in his opinion the same ought reasonably so to have been completed, then the Contractor shall pay or allow to the Employer a sum calculated at the rate stated in the Appendix as liquidated and ascertained damages for the period during which the Works shall so remain or have remained incomplete, and the Employer may deduct such sum from any money or monies due to or to become due to the Contractor under this Contract.

Bonus for early completion

22.2 If the Contractor achieves completion of the Works prior to the Date for Completion stated in the Appendix, the Employer shall pay or allow to the Contractor a sum calculated at the rate stated in the Appendix as bonus for early completion for every week or part thereof which shall elapse between the date stated in the Certificate of Practical Completion issued in accordance with clause 15.1 and the Date for completion in accordance with clause 21.

23. Extension of time (Amended)

Notice by Contractor of delay to progress

23.1 Upon it becoming reasonably apparent that the progress of the Works is or will be delayed, the Contractor shall forthwith give written notice of the cause of the delay to the Architects and if in the opinion of the Architects completion of the Works has been delayed.

Relevant events

23.1. 1 by force majeure, or

23.1. 2 by reason of any exceptionally inclement weather, or

23.1. 3 by reason of loss or damage occasioned by any one or more of the contingencies referred to in clause 20, or

23.1. 4 by reason of civil commotion, local combination of workmen, strike or lockout affecting any of the trades engaged in the preparation, manufacture or transportation of any of the goods or materials required for the Works, or

23.1. 5 by reason of Architect's instructions issued under clauses 1.2, 11.1, 11.3, 21.2 and 34.2, or

23.1. 6 by reason of the Contractor not having received in due time necessary instructions, drawings, details, levels or approvals from statutory or other similar authorities and/or the Architects for which he specifically applied in writing on a date which having regard to the date for completion stated in the Appendix or to any extension of time then fixed under this clause or clause 33.1.3 was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same, or

23.1. 7 by the delayed completion of work by any Named Sub-Contractor provided that such delayed completion has been the subject of an extension of time granted to the Named Sub-Contractor in accordance with these conditions and provided also that such extension of time was not granted on the grounds of delay to the Named Sub-Contractor by the Contractor, or by the delayed delivery of materials supplied by a Named Supplier, provided that such delayed delivery has been the subject of an extension of delivery time granted by the Architects to the Named Supplier, or

23.1. 8 by delay on the part of artists, tradesmen or others engaged by the Employer in executing work not forming part of this Contract, or

Extension of time (Amended)

23.1. **9** by reason of the opening up for inspection of any work covered up or of the testing of any of the materials or goods in accordance with clause 6.3 (including making good in consequence of such opening up or testing), unless the inspection or test showed that the materials or goods were not in accordance with this Contract,
then the Architects shall so soon as he is able to estimate the length of the delay beyond the date or time aforesaid grant in writing a fair and reasonable extension of time for completion of Works. Provided always that the Contractor shall use constantly his best endeavours to prevent delay and shall do all that may reasonably be required to the satisfaction of the Architects to proceed with the Works.

Contractor not entitled to additional payment

23.2 The granting of an extension of time by virtue of this clause shall not entitle the Contractor to any additional payment unless he is thus entitled under any of the specific provisions of clause 24.

24. Loss and expense caused by disturbance of regular progress of the Works (Amended)

24.1 If an extension of time is granted pursuant to clause 23 and if such extension of time is due to any of the reasons specified in clauses 24.1.1 to 24.1.6 inclusive:

Matters materially affecting regular progress of the Works direct loss and/or expense

24.1. **1** the Contractor not having received in due time necessary instructions, drawings, details, levels or approvals from statutory or similar authorities and/or the Architects for which he specifically applied in writing on a date which having regard to the date for completion stated in the Appendix or to any extension of time then fixed under clause 23 or clause 33.1.3 was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same, or

24.1. **2** the opening up for inspection of any work covered up or the testing of any of the materials or goods in accordance with clause 6.3 (including making good in consequence of such opening up or testing), unless the inspection or test showed that the materials or goods were not in accordance with this Contract, or

24.1. **3** any discrepancy in or divergence between the Contract Drawings, or

24.1. **4** delay on the part of artists, tradesmen or others engaged by the Employer in executing work not forming part of this Contract, or

24.1. **5** Architect's instructions issued in regards to the postponement or suspension of any work to be executed under the provisions of the Contract, or

Then subject to the Contractor having given to the Architects the written notice required by clause 23 of these Conditions immediately upon it becoming apparent that the progress of the Works is or will be delayed, a sum calculated by the Quantity Surveyor at the rate stated by the Contractor in the Contract Bills as Liquidated and Ascertained Loss and Expense for the period of the said extension of time shall be added to the Contract Sum.

Amount ascertained added to Contract Sum

24.2 Any amount from time to time so ascertained in clause 24.1 shall be added to the Contract Sum, and if an interim certificate is issued after the date of ascertainment, such amount shall be added to the amount which would otherwise be stated as due in such certificate.

Loss and expense caused by disturbance of regular progress of the Works (Amended)

Limitation of rights and remedies of Contractor

24.3 The Contractor shall have no other rights and remedies for losses and expenses caused by disturbance of regular progress of the Works being delayed.

25. Determination by Employer

Default by Contractor

25.1 Without prejudice to any other rights or remedies which the Employer may possess, if the Contractor shall default in any one or more of the following respects, that is to say:

25.1. 1 if he without reasonable cause wholly suspends the carrying out of the Works before completion thereof, or

25.1. 2 if he fails to proceed regularly and diligently with the works, or

25.1. 3 if he refuses or persistently neglects to comply with a written notice from the Architects requiring him to remove defective work or improper materials or goods and by such refusal or neglect the Works are materially affected, or

25.1. 4 if he fails to comply with the provisions of clause 17,

then the Architects may give to him a notice by registered post or recorded delivery specifying the default and signed by the Employer. If the Contractor either shall continue such default for 7 days after receipt of such notice or shall at any time thereafter repeat such default (whether previously repeated or not), then the Employer without prejudice to any other rights or remedies, may within 7 days after such continuance or repetition give to him notice by registered post or recorded delivery and signed by the Employer to forthwith determine the employment of the Contractor under this Contract provided that such notice shall not be given unreasonably or vexatiously.

Contractor becoming bankrupt etc

25.2 In the event of the Contractor becoming bankrupt or making a composition or arrangement with his creditors or having a winding up order or (except for purposes of reconstruction) a resolution for voluntary winding up passed or a receiver or manager of his business or undertaking duly appointed, or possession taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the floating charge, the employment of the Contractor under this Contract shall be automatically determined but the said employment may be reinstated and continued if the Employer and the Contractor, his trustee in bankruptcy, liquidator, receiver or manager as the case may be shall so agree.

Determination by Employer

Corruption

25.3 The Employer shall be entitled to automatically determine the employment of the Contractor under this Contract. If the Contractor shall have offered or given or agreed to give to any person, agent or servant of the Employer any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done of forborne to do any action in relation to the obtaining or execution of this Contract with the Employer, or for showing or forbearing to show favour or disfavour to any person in relation to this Contract or any other Contract with the Employer, or if the like acts shall have been done by any person employed by the Contractor or acting on his behalf (whether with or without the knowledge of the Contractor), or if in relation to this Contract or any other Contract with the Employer, the Contractor or any person employed by him or acting on his behalf shall have committed an act liable for prosecution under section 494 of the Criminal Code and/or sections 115 through to 117 of the Penal Code of the Laws of the Federal Republic of Nigeria. Any dispute or difference of opinion arising in respect of this cause shall be decided by the Architects, whose decision shall be final, conclusive and binding on all the parties.

Rights and duties of Employer and Contractor

25.4 In the event of the employment of the Contractor being determined as aforesaid and so long as it has not been reinstated and continued, the following shall be the respective rights and duties of the Employer and Contractor:

25.4. **1** the Employer may employ and pay other persons to carry out and complete the Works and he or they may enter upon the Works and use all temporary buildings, plants, tools, equipment, materials and goods intended for, delivered to and placed on or adjacent to the Works and may purchase all materials and goods necessary for carrying out and completion of the Works,

25.4. 2 the Contractor shall, if so required by the Employer or Architects within 14 days of the date of determination, assign to the Employer without payment, the benefit of any agreement for the supply of materials or goods and/or for the execution of any work for the purposes of this Contract but on the terms that a supplier or a Sub-Contractor shall be entitled to make any reasonable objection to any further assignment thereof by the Employer. In any case, the Employer may pay any supplier or Sub-Contractor for any materials or goods delivered or works executed for the purposes of this Contract (whether before or after the date of determination) in so far as the cost price thereof has not already been paid by the Contractor. The Employer's rights under this clause are in addition to his rights to pay Named Sub-Contractors as provided in clause 27.3 and payments made under this clause may be deducted from any sum(s) due or to become due to the Contractor,

25.4. 3 the Contractor shall, as and when required in writing by the Architects so to do (but not before), remove from the Works any temporary buildings, plants, tools, and equipment, materials and goods belonging to or hired by him. If within a reasonable time after any such requirement has been made the Contractor has not complied therewith, then the Employer may (but without being responsible for any loss or damage), remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor,

25.4 4 without prejudice to any other rights or remedies which the Employer may possess under clause 25.4.5, the Architects shall instruct the Quantity Surveyor to prepare the Final Account for settlement in accordance with clause 30,

25.4. 5 the Contractor shall allow or pay to the Employer in the manner hereinafter appearing the amount of any direct loss and/or damage caused to the Employer by the determination. Until after completion of the Works under clause 25.4.1 the Employer shall not be bound by any provision of this Contract to make further payment to the Contractor, but upon such completion and the verification within a reasonable time of the accounts by the Quantity Surveyor thereof, the Architects shall certify the amount of expenses properly incurred by the Employer and the amount of any direct loss and/or damage caused to the Employer by the determination and if such amounts when added to the money or monies paid to the Contractor before the date of determination exceed the total amount which would have been payable on due completion in accordance with this Contract, the difference shall be a debt payable to the Employer by the Contractor; and if the said amount when added to the money or monies be less than the said total amount, the difference shall be a debt payable by the Employer to the Contractor.

26. Determination by Contractor

26.1 Without prejudice to any other rights and remedies which the Contractor may possess, if:

Acts etc. giving grounds for determination

26.1. 1 the Employer does not pay to the Contractor the amount due on any certificate within the Period for Honouring Certificates named in the Appendix and continues such default for 7 days after receipt by registered post or recorded delivery of a notice from the Contractor stating that notice of determination under this Condition will be serve if payment is not made within 7 days from receipt thereof, or

26.1. 2 the Employer interferes with or obstructs the issue of any certificate due under this Contract, or

26.1. 3 the carrying out of the whole or substantially of the uncompleted Works (other than the execution of work required under clause 15) is suspended for a continuous period of time named in the Appendix by reason of:

26.1. 3.1 force majeure, or

26.1. 3.2 loss or damage occasioned by any one or more of the contingencies referred to in clause 20.1 or clause 20.2 (as applicable), or

26.1. 3.3 civil commotion, or

26.1. 3.4 Architect's instructions issued under clauses 1.2, 11.1, 11.3, 21.2 or 34.2, or

26.1. 3.5 the Contractor not having received in due time necessary instructions, drawings, details or levels from the Architects for which he specifically applied in writing on a date which having regard to the date for completion stated in Appendix or to any extension of time then fixed under clause 23 or clause 33.1.3 was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same, or

26.1. 3.6 delay on the part of artists, tradesmen or others engaged by the Employer in executing work not forming part of this Works Contract, or

26.1. 3.7 the opening up for inspection of any work covered up or the testing of any of the work, materials or goods in accordance with clause 6.3 (including making good in consequence of such opening up or testing), unless the inspection or test showed that the work, materials or goods were not in accordance with this Contract,

then the Contractor may thereupon by registered post or recorded delivery to the Employer and copied to the Architects give 14 days notice of his intention to determine his employment under this Contract provided that such notice shall not be given unreasonably or vexatiously. Upon the expiration of the said notice the Contractor shall proceed to determine the Contract.

Rights and duties of Employer and Contractor

26.2 Upon such determination, then without prejudice to the accrued rights or remedies of either party to any liability of the classes mentioned in clause 18 which may accrue either before the Contractor or any Named Sub-Contractors shall have removed his or their temporary buildings, plants, tools, equipment, materials or goods or by reason of his or their so removing the same, the respective rights and liabilities of the Contractor and the Employer shall be as follows:

Determination by Contractor

26.2.1 the Contractor shall with all reasonable dispatch and in such manner and with such precautions as will prevent injury, death or damage of the classes in respect of which before the date of determination he was liable to indemnify the Employer under clause 18 remove from the Site all his temporary buildings, plants, tools, equipment, materials, and goods and shall give facilities for his Sub-Contractors to do the same, but subject always to the provisions of clause 26.2.2.4,

26.2.2 after taking into account amounts previously paid under this Contract the Contractor shall be paid by the Employer:

2.1 the total value of work completed at the date of determination,

26.2.2.2 **2.2** the total value of work begun and executed but not completed at the date of determination, the value being ascertained in accordance with clause 11.5 as if such work were a variation required by the Architects,

26.2.2.3 **2.3** any sum ascertained in respect of direct loss and/or expense under clauses 11.7, 24 and 34.3 (whether ascertained before or after the date of determination),

26.2.2.4 **2.4** the cost of materials or goods properly ordered for the Works for which the Contractor shall have paid or for which the Contractor is legally bound to pay, and on such payment by the Employer any materials or goods so paid for shall become the property of the Employer,

2.5 the reasonable cost of removal under clause 26.2.1,

26.2.2.5 **2.6** any direct loss and/or damage caused to the Contractor by the determination.

26.2.3

Provided that in addition to all other remedies the Contractor upon such determination may take possession of and shall have a lien upon all unfixed materials and goods which may have become the property of the Employer under clause 14 until payment of all money/monies due to the Contractor from the Employer.

27. Named Sub-Contractors

Definition of a Named Sub-Contractor

27.1 The following provisions of this condition shall apply where prime cost sums are included in the Contract Bills, or arise as a result of Architect's instruction(s) given in regard to the expenditure of provisional sums, in respect of persons to be Named by the Architects to supply and fix materials or goods or to execute works;

Procedures for nomination of a subcontractor

27.1. 1 such sums shall not include any cash discount and shall be expended in favour of such persons as the Architects shall instruct, and all specialists or others who are Named by the Architect's/Architect are hereby declared to be Sub-Contractors employed by the Contractor and are referred to in these Conditions as `Named sub-Contractors' Provided that the Architects shall not nominate any person as a Sub-Contractor against whom the Contractor shall make reasonable objection, or (save where the Architects and Contractor shall otherwise agree) who will not enter into a Sub-Contract with him which provides (inter alia):

27.1. 1.1 that the Named Sub-Contractor shall carry out and complete the Sub-Contract works in every respect to the reasonable satisfaction of the Contractor and of the Architects,

27.1. 1.2 that the Named Sub-Contractor shall observe, perform and comply with all the provisions of this Contract on the part of the Contractor to be observed, performed and complied with (other than clause 20(A) if applicable) so far as they relate and apply to the Sub-Contract works or to any portion of the same,

27.1. 1.3 that the Named Sub-Contractor shall indemnify the Contractor against the same liabilities in respect of the Sub-Contract works as those for which the Contractor is liable to indemnify the Employer under this Contract,

27.1. 1.4 that the Named Sub-Contractor shall indemnify the Contractor against claims in respect of any negligence, omissions or default of such Sub-Contractor, his staff or agent(s) or any misuse by him or them of any scaffolding or other plant and shall insure himself against any such claims and produce the policy or policies and receipt(s) in respect of premium(s) paid as and when required by either the Employer or the Contractor,

Named Sub-Contractors

27.1. 1.5 that the Sub-Contract works shall be completed within the period or (where they are to be completed in sections) periods therein specified, that the Contractor shall not without the written consent of the Architects grant any extension of time for the completion of the Sub-Contract works or any section of thereof, and that the Contractor shall inform the Architects of any representation made by the Named Sub-Contractor as to the cause of any delay in the progress or completion of the Sub-Contract works or of any section thereof,

27.1. **1.6** that if the Named Sub-Contractor shall fail to complete the Sub-Contract works or (where the Sub-Contract works are to be completed in sections) any section thereof within the period therein specified or within any extended time granted by the Contractor with the written consent of the Architects and the Architects certifies in writing to the Contractor that the same ought reasonably so to have been completed, the Named Sub-Contractor shall pay or allow to the Contractor either a sum calculated at the rate therein agreed as liquidated and ascertained damages for the period during which the said works or any section thereof as the case may be, shall so remain or have remained incomplete or (where no such rate is therein agreed) a sum equivalent to any loss or damage suffered or incurred by the Contractor and caused by the failure of the Named Sub-Contractor as aforesaid,

27.1. 1.7 that payment in respect of any work, materials or goods comprised in the Sub-Contract shall be made within 7 days after receipt of payment by the Contractor of money or monies due in any Architects's certificate under clause 30 which states as due an amount calculated by including the total value of such work, materials or goods, and shall when due be subject to the retention by the Contractor of the sums mentioned in clause 27.1.1.8,

Named Sub-Contractors

27.1. **1.8** that the Contractor shall retain from the sum directed by the Architects as having been included in the calculation of the amount stated as due in any certificate issued under clause 30 in respect of the total value of work, materials or goods executed or supplied by the Named Sub-Contractor, the percentage of such value named in the Appendix as percentage of certified value retained up to a total amount not exceeding a sum which bears the same ratio to the Sub-Contract price as the unreduced sum named in the Appendix as Limit of Retention Fund bears to the Contract Sum; and that the Contractor's interest in any sums so retained (by whomsoever held) shall be fiduciary as trustee for the Named Sub-Contractor and that the Named Sub-Contractor's beneficial interest in such sums shall be subject only to the right of the Contractor to have recourse thereto from time to time for payment of any amount which he is entitled under the Sub-Contract to deduct from any sum(s) due or to become due or any part thereof are released to the Named Sub-Contractor they shall be paid in full,

27.1. **1.9** that the Architects and his representative(s) shall have a right of access to the workshops and other places of the Named Sub-Contractor referred to in clause 9.

Payment of Named Sub-Contractor **27.2** The Architects shall direct the Contractor as to the total value of the work, materials or goods executed or supplied by a Named Sub-Contractor included in the calculation of the amount stated as due in any certificate issued under clause 30 and shall forthwith inform the Named Sub-Contractor in writing of the amount of the said total value. The sum representing such total value shall be paid by the Contractor to the Named Sub-Contractor within 7 days of receipt of payment by the Contractor on the said Architect's certificate less only any retention money which the Contractor may be entitled to deduct under the terms of the Sub-Contract and any sum to which the Contractor may be entitled in respect of delay in the completion of the Sub-Contract works or any section thereof.

Named Sub-Contractors

Direct payment of Named Sub-Contractor due to Contractors default **27.3** Before issuing any certificate under clause 30 the Architects may request the Contractor to furnish him with reasonable proof that all amounts included in the calculation of the amount stated as due in previous certificate(s) in respect of the total value of the work, materials or goods executed or supplied by any Named Sub-Contractor have been duly paid and if the Contractor fails to comply with any such requests the Architects shall issue a certificate to that effect and thereupon the Employer may himself pay such amounts to any Named Sub-Contractor concerned and deduct the same from any sums due or to become due to the Contractor.

Extension, of period for completion of Named Sub-Contract works **27.4.** **1** The Contractor shall not grant to any Named Sub-Contractor any extension of the period within which the Sub-Contract works or (where the Sub-Contract works are to be completed in sections) any section thereof is to be completed without written consent of the Architects provided always that the Contractor shall inform the Architects of any representation made by the Named Sub-Contractor as to the cause of any delay in the progress or completion of the Sub-Contract works or of any section thereof, and that the consent of the Architects shall not be unreasonably withheld.

Failure to complete Sub-Contract works **27.4** **2** If any Named Sub-Contractor fails to complete works or (where the Sub-Contract works are to completed in sections) any section thereof within the period specified in the Sub-Contract or within any extended time granted by the Contractor with the written consent of the Architect's then if the same ought reasonably so to have been completed, the Architects shall certify in writing accordingly; any such certificate shall be issued to the Contractor and immediately upon issue, the Architects shall send a duplicate copy thereof to the Named Sub-Contractor.

Named Sub-Contractors

Early final payment of Named Sub-Contractor after practical completion of Named Sub-Contract works

27.5 If the Architects desires to secure final payment to any Named Sub-Contractor before final payment is due to the Contractor, and if such Sub-Contractor has satisfactorily indemnified the Contractor against any latent defects, then the Architects may, in an interim certificate, include an amount to cover the said final payment, and thereupon the Contractor shall pay to such Named Sub-Contractor the amount so certified. Upon such final payment, the amount named in the Appendix as Limit of Retention Fund shall be reduced by the sum which bears the same ratio to the said amount as does such Named Sub-Contractor's Contract price to the Contract Sum, and save for latent defects the Contractor shall be discharge from all liability for work executed or materials or goods supplied by such Named Sub-Contractor under the Sub-Contract to which the payment relates.

Position of Employer in relation to Named Sub-Contractor

27.6 Neither the existence nor the exercise of the foregoing powers nor anything else contained in these Conditions shall render the Employer in any way liable to any Named Sub-Contractor.

Contractor's tender for works otherwise reserved for Named Sub-Contractor

27.7 Where the Contractor in the ordinary course of his business directly carries out works for which prime cost sums are included in the Contract Bills and where items of such works are set out in the Appendix and the Architects is prepared to receive tenders from the Contractor for such items, then the Contractor shall be permitted to tender for the same or any of these but without prejudice to the Employer's right to reject the lowest or any tender. If the Contractor's tender is accepted, he shall not sublet the work without the written consent of the Architects.

Provided that where a prime cost sum arises under Architect's/ Coordinator's instructions issued in clause 11.5 it shall be deemed for the purpose of this clause to have been included in the Contract Bills and the items of work to which it relates shall likewise be deemed to have been set out in the Appendix.

It shall be a condition of any tender accepted under clause 27 that clause 11 shall apply in respect of the items of work included in the tender as if the reference therein to the Contract Drawings and the Contract Bills there were references to the equivalent documents included in or referred to in the tender.

28. Named Suppliers

Architect's instruction

28.1 The following provisions of this condition shall apply where prime cost sums are included in the Contract Bills or arise as a result of the Architect's instructions given in regard to the expenditure of provisional sums, in respect of any materials or goods to be fixed by the Contractor,

Sums deemed to include 5 percent cash discount

28.1. 1 such sums shall be deemed to include 5 percent cash discount and the term `prime cost' when included or arising as aforesaid shall be understood to mean the net cost to be defrayed as a prime cost after deducting any trade or other discount (except the said discount of 5 percent), and shall include customs duty (where applicable), and the cost of packing, carriage and delivery. Provided that, where in the opinion of the Architects, the Contractor has incurred expense for special packing or special carriage, such special expense shall be allowed as part of the sum actually paid by the Contractor:

Definition of a Named Supplier

28.1. 2 such sums shall be expended in favour of such persons as the Architects shall instruct and all specialists, merchants, workmen or others who are Named by the Architects to supply materials or goods are hereby declared to be suppliers to the Contractor and are referred to in the Conditions as `Named Suppliers'. Provided that the Architects shall not (save where the Architects and Contractor shall otherwise agree) nominate as a supplier a person who will not enter into a Contract of sale which provide (inter alia):

28.1. 2.1 that the materials or goods to be supplied shall be to the reasonable satisfaction of the Architects,

Treatment of defects in materials or goods supplied

28.1. 2.2 that the Named supplier shall make good by replacement or otherwise any defects in the materials or goods supplied which appear within such period as is therein mentioned and shall bear any expenses reasonably incurred by the Contractor as a direct consequence of such defects, provided that:

Named Suppliers

28.1. 2. 2. 1 where the materials or goods have been used or fixed such defects are not such that examination by the Contractor ought to have revealed them before using or fixing,

2. 2. 2 such defects are due solely to defective workmanship or materials in the goods supplied and shall not have been caused by improper storage by the Contractor, or by misuse or by any act or neglect of either the Contractor, the Architects or the Employer or by any persons for whom they may be responsible,

Materials and goods to be supplied as directed by Contractor

28.1. 2.3 that delivery of the materials or goods supplied shall be commenced and completed as such times as the Contractor may reasonably direct.

Materials and goods not to be supplied after determination of the Contract

28.1. 2.4 that the Named Supplier shall not be obliged to make any delivery of materials or goods (except any which may have been paid for in full) after the determination (for any reason) of the Contractor's employment under this Contract,

All payments to be in full

28.1. **3** All payment by the Contractor for materials or goods supplied by a Named Supplier shall be in full and shall be paid within 30 days of the end of the month during which delivery is made.

29. **Artists and tradesmen**

The Contractor shall permit the execution of work not forming part of this Contract by artists, tradesmen or others engaged by the Employer. Every such person shall for the purposes of clause 18 be deemed to be a person for whom the Employer is responsible and not to be a Named Sub-Contractor.

30. Certificates and payments (As Agreed on Milestone)

Interim certificate and valuations

30.1 1 At the period of interim certificates named in the Appendix, the Quantity Surveyor shall prepare as Interim Valuation based on which the Architects shall issue a certificate stating the amount due to the Contractor from the Employer and the Contractor shall be entitled to payment therefor within the Period for Honouring Certificates named in the Appendix.

Interim certificates and valuations additional payments

30.1. 2 If the employer fails to honour an Architect's certificate within the period stated in the Appendix, the Contractor notwithstanding his other rights and remedies under this Contract, shall be entitled to receive additional payment as stated in the Appendix for the period during which the certified amount remains unpaid. The amount so due shall be ascertained by the Quantity Surveyor and included in the next valuation.

Ascertainment of amount due in interim certificates

30.2 The amount stated as due in an interim certificate shall, subject to any agreement between the parties as to stage payments, be the total value of the work properly executed and of the materials and goods delivered to or adjacent to the Works or stored in any other location approved by the Architects in consultation with the Employer for the use thereon less any amount which may be retained by the employer (as provided in clause 30.3) and less any installment(s) previously paid under these conditions. Provided that such certificate shall only include the value of the said materials and goods as and from such time as they are reasonably, properly and not prematurely brought to the Works or any other approved location, and then only if adequately protected against weather or other casualties.

Retention - Rules for ascertainment

30.3 The Employer may retain the percentage of the total value of the work, materials and goods referred to in clause 30.2 which is named in the Appendix as percentage of certified value retained. Provided always that when the sum of the amount so retained equals the amount named in the said Appendix as Limit of Retention Fund or that amount as reduced in pursuance of clause 16.1.6.1 and/or clause 16.1.6.2 as the case may be, no further amount(s) shall be retained by virtue of this clause.

Rules on treatment of retention

30.4 The amount(s) retained by virtue of clause 30.3 shall be subject to the following rules:

30.4. 1 The Employer's interest in any amount(s) so retained shall be fiduciary as trustee for the Contractor, and the Contractor's beneficial interest therein shall be subject only to the right of the Employer to have recourse thereto from time to time for payment of any amount(s) which he is entitled under the provisions of this Contract to deduct from any sum(s) due or to become due to the Contractor.

30.4. **2** on the issue of the Certificate of Practical Completion, the Architects shall issue a certificate for one moiety of the total amount(s) then so retained and the Contractor shall be entitled to payment of the said moiety within the Period for Honouring Certificates named in the Appendix,

30.4. 3 on the expiration of the Defects Liability Period named in the Appendix, or on the issue of the certificate of completion of making good defects, whichever is the later, the Architects shall issue a certificate for the residue of the amounts so retained and the Contractor shall be entitled to payment of the said residue within the Period for Honouring Certificate named in the Appendix.

Priced bills of variations to Contractor

30.5. 1 The measurement and valuation of the Works shall be completed within the Period of Final Measurement and Valuation stated in the Appendix and the Contractor shall be supplied with a copy of the priced bills of variations not later than the end of the said period and before the issue of the Final Certificate under clause 30.6

Final adjustment of Contract Sum - documents from Contractor

30.5.1 2 Either before or within a reasonable time after Practical Completion of the Works the Contractor shall send to the Quantity Surveyor all documents necessary for the purposes of the final adjustment of all Contract Sum required by these Conditions including all documents relating to the accounts of Named Sub-Contractors and Named Suppliers.

Items included in adjustment of Contract Sum

30.5. 3 In the settlement of accounts, the amount(s) paid or payable under the appropriate Contracts by the Contractor to Named Sub-Contractors or Named Suppliers, the amount(s) paid or payable by virtue of clause 4.2 in respect of fees or charges for which a provisional sum is included in the Contract Bills, the amount(s) paid or payable in respect of any insurances maintained in compliance with clause 19.2, the tender sum (or such other sum as is appropriate in accordance with the terms of the tender) for any work for which a tender made under clause 27.7 is accepted and the value of any work executed by the Contractor for which a provisional sum is included in the Contract Bills shall be set against the relevant prime cost of provisional sum mentioned in the Contract Bills or arising under Architect's instruction(s) issued under clause 11.5 as the case may be, and the balance after allowing in all cases pro-rata for the Contractor's profit at the rates shown in the Contract Bills, shall be added to or deducted from the Contract Sum.

Provided that no deduction shall be made in respect of all damage(s) paid or allowed to the Contractor by any Named Sub-Contractor or Named Supplier.

Issue of Final Certificate

30.6 So soon as is practicable but before the expiration of the period the length of which is stated in the Appendix from the end of the Defects Liability Period (also stated in the said Appendix) or from completion of making good defects under clause 15 or from receipt by the Quantity Surveyor of the documents referred to in clause 30.5.2 which is the latest, the Architects shall issue the Final Certificate. The Final Certificate shall state:

30.6. 1 the sum of the amounts paid to the Contractor under interim certificates and the amount named in the said Appendix as Limit of Retention Fund and

30.6. **2** the Contract sum adjusted as necessary in accordance with the terms of these conditions,

and the difference (if any) between the two sums shall be expressed in the said certificate as balance due to the Contractor from the Employer or to the Employer from the Contractor as the case may be, and subject to any deductions authorized by these Conditions, the said balance shall as from 28 days after the issue of the said certificate be a debt payable as the case may be by the Employer to the Contractor or by the Contractor to the Employer.

Effect of Final Certificate

30.7 Unless a written request to concur in the appointment of an Arbitrator shall have been given under clause 35 by either party before the Final certificate has been issued or by the Contractor within 28 days after such, the said certificate shall be conclusive evidence in any proceedings arising out of this Contract (whether by arbitration under clause 35 or otherwise) that the Works have been properly carried out and completed in accordance with the terms of this Contract and that any necessary effect has been given to all the terms of this Contract which require an adjustment to be made to the Contract Sum, except and in so far as any Sum mentioned in the said certificates is erroneous by reason of:

1 fraud, dishonesty or fraudulent concealment relating to the Works, or any part thereof, or to any matter dealt with in the said certificate, or

30.7. **2** any defect (including any omission) in the Works, or any part thereof which reasonable inspection or examination at any reasonable time during the carrying out of the Works or before the issue of the said certificate would not have disclosed, or

30.7.

3 any accidental inclusion or exclusion of any work, materials, goods, or figure in any computation or any arithmetical error in any computation.

30.7.

Effect of certificates other than Final Certificate

30.8 Save as aforesaid, no certificate of the Architects shall of itself be conclusive that any works, materials or goods to which it relates are in accordance with this Contract

Certificate to be issued to the Employer

30.9 Any certificate to be issued by the Architects under these Conditions shall, subject to clause 27.4 be issued to the Employer and immediately upon the issue of any certificate the Architects shall send a duplicate copy thereof to the Contractor.

31 Fluctuations (Amended) (Not Applicable on this Contract)

Approved terms **31.1** The Employer shall entertain fluctuations only in respect of increases or decreases in basic wages and emoluments and certain materials (forming part of the permanent works) or certain sections of the Works listed in the Appendix to the Contract.

Items included in adjustment of Contract Sums **31.2** The Contract Sum shall be deemed to have been calculated in the manner set out below and shall be subject to variation in the events specified hereunder:

31.2. **1** the prices contained in the Contract Bills are based upon the rates of wages and other emoluments and expenses (including the cost of employer's liability insurance and third party insurance) payable by the Contractor to workers engaged upon or in connection with the Works in accordance with the rates of wages fixed by the National Joint Industrial Council and the Federal Ministry of Labour, Employment and Productivity, current at the date of tender and applicable to the area concerned,

31.2. **2** if the said rates of wages and other emoluments and expenses (including the cost of employer's liability insurance and third party insurance) shall be increased or decreased after 'the date of tender' as a result of Government legislation and/or collective bargaining, the net increase or decrease of such wages and other emoluments and expenses shall be paid to or allowed by the Contractor,

31.2. **3** the prices contained in the Contract Bills are based on the market price of materials including purchase tax(es), import and/or excise duty or any other levy (if any) applicable at the date of tender' (hereinafter referred to as 'the basic prices'). Provided always the basic prices shall truly reflect market prices to the reasonable satisfaction of the Quantity Surveyor.

31.2. **4** if during the progress of the Works the market prices of materials used in the Works and listed in the Appendix to the Contract varies from 'the basic prices' thereof then the net difference in price thus arising shall be paid to or allowed by the Contractor.

Definition on date of tender **31.3.** The expression 'Date of Tender' as used in these Conditions means 10 days before the date fixed for the receipt of tenders by the Employer.

Contractor to give written notice **31.4** The Contractor shall within 7 days give written notice to the Quantity Surveyor of the happening of any of the events referred to in clause 31.2.
Fluctuations (Amended)

Adjustment not to alter profit to Contractor **31.5** No addition to or deduction from the Contract Sum made by virtue of this clause shall alter in any way the amount of profit or overheads, to the Contractor included in the Contract Sum.

32. Outbreak of hostilities

Notice of determination of the Contractor's employment

32.1 If during the currency of this Contract there shall be an outbreak of hostilities (whether war is declared or not) in which Nigeria shall be involved on a scale involving the general mobilization of the armed forces, then either the Employer or the Contractor may at any time by notice, by registered post or recorded delivery to the other, forthwith determine the employment of the Contractor under this Contract, provided that such a notice shall not be given:

32.1. 1 before the expiration of 28 days from the date on which the order is given for general mobilization as aforesaid, or

32.1. 2 after practical completion of the Works unless the Works or any part thereof shall have sustained war damage as defined in clause 33.4.

Parties may make further arrangements

32.2 The parties hereto, in the event of an outbreak of hostilities, may at any time by agreement between them make such further arrangements as they think fit to meet the circumstances.

Protective work, etc

32.3 The Architects may within 14 days after a notice under clause 32.1 shall have been given or received by the Employer issue instructions to the Contractor requiring the execution of such protective work as; shall be specified therein and/or continuation of the Works up to point of stoppage to be specified therein and the Contractor shall comply with such instructions as if the notice of determination had not been given.

Provided that if the Contractor shall for reasons beyond his control before completing the work to which the said instruction relate within 3 months from the date the instructions were issued, he may abandon such work.
Outbreak of hostilities

Payment

32.4 Upon the expiration of 14 days from the date on which a notice of determination shall have been given or received by the Employer under clause 32.1, or where works are required by the Architects under clause 32.3, or upon completion or abandonment as the case may be of any such works, the provisions of clause 26.2 (except clause 26.2.2.6) shall apply and the Contractor shall also be paid by the Employer the value of work executed pursuant to instructions given under clause 32.3 the value being ascertained in accordance with clause 11.5 as if such work were a variation required by the Architects.

33. War damage

Effect of war damage

33.1 In the event of the Works or any part thereof or any unfixed materials or goods intended for/or delivered to and placed on or adjacent to the Works sustaining war damage then notwithstanding anything expressed or implied elsewhere in the Contract:

33.1 1 the occurrence of such war damage shall be disregarded in computing any amount payable to the Contractor under or by virtue of this Contract.

33.1 2 the Architects may issue instructions requiring the Contractor to remove and/or dispose on any debris and/or to execute such protective works as shall be specified.

33.1 3 the Contractor shall reinstate or make good such war damage and shall proceed with the carrying out and completion of the works, and the Architects shall grant to the Contractor a fair and reasonable extension of time for completion of the Works.

33.1 4 the removal and disposal of debris or damaged work, the execution of protective works and reinstatement and making good of such war damage shall be deemed to be a variation required by the Architects.

War damage

Protective work, etc

33.2 If at any time after the occurrence of war damage as aforesaid either party serves notice of determination under clause 32, the expression `protective work' as used in the said clause shall in such case be deemed to include any matters in respect of which the Architects can issue instructions under clause 33.1.2 and any instructions issued under the said clause prior to the date on which notice of determination is given or received by the Employer and which shall not by then have been completely complied with shall be deemed to have been given under this clause.

Use of compensation for war damage

33.3 The Employer shall be entitled to any compensation which may at any time become payable out of the monies provided by Government in respect of war damage sustained by the Works or any part thereof or any fixed materials or goods intended for the Works which shall at any time have become the property of the Employer.

Definition of war damage

33.4 The expression `war damage' as used in these Conditions means damage occurring as the result or action taken by the enemy of action in combating the enemy.

34. Antiquities

Effect of find of Antiquities

34.1 All fossils, antiquities and other objects of interest or value which may be found on the site or in excavating the same during the progress of Works shall become the property of the Employer and upon discovery of such an object the Contractor shall forthwith:

34.1. **1** use his best endeavours not to disturb the object and shall cease work if and in so far as the continuance of work would endanger the object or impede it's excavation or it's removal,

34.1. **2** take all steps which may be necessary to preserve the object in the exact position and condition in which it was found and

34.1. **3** inform the Architects or the Clerk of Works of the discovery and precise location of the object.

Architect's instructions on antiquities found

34.2 The Architects shall issue instructions in regard to what is to be done concerning an object report by the Contractor under clause 34.1 and without prejudice to the generality of this power) such instructions may require the Contractor to permit the examination, excavation or removal of the object by a third party. Any such third party shall for the purpose of clause 18 be deemed to be a person for whom the Employer is responsible and not to be Named Sub-Contractor.

Direct loss and/or expense on antiquities found

34.3 If in the opinion of the Architects compliance with the provisions of clause 34.1 or with an instruction issued under clause 34.2 has involved the Contractor in direct loss and/or expense for which he would not be reimbursed by a payment made under any other provision in this Contract, then the Architects shall request the Quantity Surveyor to ascertain the amount of such loss and/or expense. Any amount from time to time so ascertained shall be added to the Contract Sum, and if an interim certificate is issued after the date of ascertainment, any such amount shall be added to the amount which would otherwise be stated as due in such a certificate.

35. Arbitration

Settlements of disputes notice to be in writing appointment of Arbitrator

35.1 Provided always that in case any dispute or difference shall arise between the Employer or the Architects on his behalf and Contractor, either during the progress or after completion or abandonment of the Works as to the construction of this Contract or as to any matter or thing of whatsoever nature arising thereunder or in connection therewith (including any matter or thing left by this Contract to the discretion of the Architects) or the withholding by the Architects of any certificate to which the Contractor may claim to be entitled or the measurement and valuation mentioned in clause 30.5.1 or the rights and liabilities of the parties under clauses 25, 26, 32 and 33, the same shall not be allowed to interfere with or delay the execution of the Works but either party shall forthwith give to the other notice in writing of such dispute or difference and such dispute or difference shall be and is hereby referred to the arbitration and final decision of a person to be agreed between the parties to act as Arbitrator. Such a person shall be an experienced professional in the building industry or failing agreement, a person appointed (at the request of either party) by the president of any of the under mentioned professional bodies: The Nigerian Institute of Architects (NIA), The Nigerian Institute of Quantity Surveyors (NIQS), The Nigerian Society of Engineers (NSE) and The Nigerian Institute of Building (NIOB).

Award to be final

35.2 The award of such Arbitrator shall be final and binding on the parties.

Law to apply

35.3 Whatever the nationality, residence or domicile of the Employer, the Contractor any Sub-Contractor or supplier or the Arbitrator, and wherever the Works or any part thereof are situated, the Law of the Federal Republic of Nigeria shall be the proper law of this Contract and shall apply to any arbitration under this Contract wherever the same or any part of it shall be conducted.