

M&E MAINTENANCE

**NATIONAL ARMY MUSEUM
CHELSEA & STEVENAGE**

VOLUME I

**CONDITIONS OF CONTRACT
AND FORM OF AGREEMENT**

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1 GENERAL CONDITIONS OF CONTRACT

1.1 Recitals

The employer desires to maintain a high level of reliability and availability of its plant equipment and services by operating a system of planned preventative maintenance with provision of response to callouts and breakdowns.

Following a successful tender, the employer has agreed to enter into a three year contract and subject to satisfactory performance, extend this agreement with the contractor for the contractor to undertake all such maintenance and responses for a comprehensive consideration.

The parties agree that their relationship shall be governed by the terms of this agreement.

1.2 Definition of Terms

"Employer" shall mean National Army Museum - Chelsea & Stevenage and shall include the Employer's legal representatives and the legal successors of the Employer, and the Employer's Representative or assignee of the Employer.

"Employer's representative" shall mean National Army Museum, 7 Swallow Place, London W1B 2AG or such other person for the time being or from time to time notified in writing by the Employer to the Contractor as the Employer's Representative for the purpose of the Maintenance Agreement.

"Contractor" shall mean the tenderer whose tender has been accepted by the Employer and shall include the Contractor's legal personal representative, successors and permitted assignees.

The "Contract" or "Agreement" shall mean the agreement between the Employer and the Contractor for the execution of the maintenance works, including therein all documents to which reference may properly be made in order to ascertain the rights and obligations of the parties under the said agreement.

"Contract Sum" shall mean the sum named in the Contract as the Contract Sum, which shall include establishment of site facilities, carry out all maintenance work and any provisional sums listed in the tender summary.

"Contract Price" shall mean that part of the Contract Sum adjusted to give effect to variations provided for in the Conditions of Contract.

"Plant and Equipment" shall mean the machinery, apparatus, materials, articles and things of all kinds, other than the maintenance works under this Agreement.

"Contractor's Equipment" shall mean such tools, tackle, stores and other things brought upon the site by the Contractor and required thereon for the purpose of carrying out the maintenance works, but not necessarily for incorporation therein which are the subject of the Agreement.

The "Works" or "Maintenance Works" shall mean the execution of maintenance procedures on Plant and Equipment forming the various services and systems which are the subject of the Contract and itemised in the relevant sections of the Specification document, including the provision of all Contractor's plant necessary to ensure correct and full implementation of the maintenance procedures.

The "Site" shall mean the actual place in which plant and equipment is located or where work is to be done by the Contractor, together with so much of the area surrounding the said place as the Contractor shall, with the consent of the Employer, actually use in connection with the works, other than for the sole purpose of access to the said place.

The "Sub-Contractor" shall mean any person or organisation, other than the Contractor named in the Contract, in connection with the provision of specialist service and/or advice to whom any part of the maintenance works has been sub-let with the written consent of the Employer, including the legal representatives, successors and assignees of such person or organisation, and as defined in Clause 1.35 "Nominated Sub-Contractors", or the Condition of Contract.

"Schedules" shall mean the Schedules annexed to, or issued with these Conditions of Contract.

"Drawings" shall mean the drawings referred to in the Schedules detailing the various items of plant and equipment which are subject of the Maintenance Contract.

"Cost" shall be deemed to include overhead costs wheresoever incurred.

"Month" shall mean calendar month.

"Day" shall mean calendar day.

Words importing persons shall include firms and corporations.

Words importing the singular shall also include the plural and vice versa.

"Shall" is mandatory.

1.3 EMPLOYERS REPRESENTATIVE

Upon formalisation of the Maintenance Agreement, the Employer's Representative will advise the Contractor of the person who shall be authorised to act on his behalf under the Terms and Conditions of the Contract.

1.4 ASSIGNMENT AND SUB-LETTING

The Contractor shall not, without the written consent of the Employer, assign the maintenance work either whole or in part.

Should the Contractor require to engage the services of specialist organisations in order to comply with the liabilities and responsibilities which will be undertaken under the Agreement, then the Contractor shall advise the Employer of such anticipated sub-letting at the time of Tender.

The Contractor shall be responsible for ensuring that any Sub-Contractor employed on the works will comply with the requirements of the Contract and Standards set down in Section 2.0 "General Conditions of Contract".

The Contractor shall be held responsible for any acts, defaults and negligence of the Sub-Contractors he employs, their agents, servants or workmen.

1.5 CONTRACT DOCUMENTS

1.5.1 Compliance with Laws

The Contractor shall in the execution of the Maintenance works be bound by and comply with the Laws of the United Kingdom, insofar as such Laws concern the execution of these works.

1.5.2 Documents Mutually Explanatory

Unless otherwise provided in the Contract, these Conditions shall prevail over those of any other document forming part of the Contract

Subject to the foregoing, the several documents forming the Contract are to be taken as mutually explanatory to each other.

1.6 OPERATING AND MAINTENANCE DOCUMENTS

A full and complete set of MEP Operating and Maintenance Manuals and as-fitted drawings will be handed over to the contractor on completion of the installation works as part of the new development.

1.7 MISTAKES IN INFORMATION

The Contractor shall be responsible for any errors, omissions or discrepancies in information supplied by him, whether such information has been approved by the Employer or not.

The Contractor shall be deemed to have taken all reasonable steps prior to the submission of his tender, to ensure that all information provided is correct and also have visited the site to ascertain conditions existing therein. Any subsequent claim by the Contractor in this respect submitted on the basis of lack of knowledge shall not be accepted.

1.8 ERRORS BY THE CONTRACTOR

The Contractor shall, at his own expense, carry out such alterations and remedial works as are necessary by reason of any error, omissions or discrepancy for which he is responsible.

1.9 OBLIGATIONS OF THE CONTRACTOR

1.9.1 General Obligations

The Contractor shall, subject to the provisions of the Contract, execute the Works as detailed in Volume II "Schedule of Maintenance Requirements" and Volume III "Maintenance Schedule" with all due care and diligence, particularly in respect of Clause 1.11 "Liability for Accident or Damage".

1.9.2 Contract Agreement

The Contractor shall, when called upon to do so, enter into and execute an Agreement with the Employer (to be prepared and completed at the cost of the Employer) in the form annexed with such modifications as may be necessary.

1.9.3 Performance Bond on Surety

If, for the due performance of the Contract, the Tender shall contain an undertaking by the Contractor to obtain, when so required as separately identified in writing where applicable, a bond or guarantee of an insurance company or bank or alternatively provide other approved sureties, to be jointly and severally bound with the Contractor to the Employer in the sum stated in the Letter of Acceptance and equal to the value defined in the Invitation to Tender and/or the Appendix to the Tender. The said insurance company or bank or sureties shall be approved by the Employer.

The terms of the said bond shall be such as shall be approved by the Employer and the obtaining guarantee of the provision of such sureties as are acceptable by the Employer and the cost of such bond or guarantee to be entered into shall be at the expense of the Contractor in all respects unless the Contract otherwise provides.

The validity of the bond, the procedure to be implemented if the bond is forfeit and the arrangement for its release shall be as detailed by the Employer in the Invitation to Tender for the Works.

1.9.4 Claims Under Bond

If the Employer shall consider himself entitled to any claim under the bond, he shall inform the Contractor, specifying the default of the Contractor on which he relies. Should the Contractor fail to remedy such default within a period specified by the Employer, the Employer shall be entitled to require the bond or surety to be forfeit to the extent of loss or damage incurred by the Employer by reason of the default.

1.9.5 Sufficiency of Tender

The Contractor, by tendering, shall be deemed to have satisfied himself as to all the conditions and circumstances affecting the Contract Sum as to the possibility of carrying out Works as described in the Contract, as to the general circumstances at the site of the Works, if access thereto has been made available to him, as to the general labour position at the site and have determined his prices accordingly. The Contractor shall be responsible for any misunderstanding or incorrect information, however obtained, except information given in writing by the Employer.

1.9.6 Employer's Decisions

The Contractor shall proceed with the Works in accordance with the decisions, instructions and orders given by the Employer in accordance with these conditions.

1.10 MAINTENANCE PROGRAMME

1.10.1 Programme to be Provided

The Contractor shall, prior to commencing the Maintenance Works or alternatively within 4 weeks following the start of site operations, submit to the Employer for his approval Planned Maintenance Programmes for the whole of the work involved under the Agreement. The programmes will be agreed with the Employer and based upon the work patterns so established, occupants within the various buildings and particular works areas involved shall be advised prior to the commencement of the maintenance works.

Where it is necessary for plant to be taken out of service for the purposes of maintenance, the execution of the work involved shall be agreed between the Contractor and the Employer, particularly with reference to the commencement time of the works prior to its implementation.

Where such items of plant directly serve occupied or sensitive areas of the complex, the Contractor shall not take out of service those items of plant and equipment without the prior approval of the Employer, except where such action is necessary due to the existence of an emergency situation.

1.10.2 Compliance with Programme

After approval of the Maintenance Programme by the Employer, the Contractor shall comply with the order of procedure stated therein and not vary such order of procedure and method without written permission of the Employer.

1.10.3 Progress of the Works

If at any time the progress of the works is subject to delay, the Contractor shall immediately advise the Employer of the occurrence and also the nature of reason for such delay. Upon the request of the Employer, the Contractor shall produce a revised programme, showing the modifications to the approved programme that are necessary to ensure completion of the works.

1.11 CONTRACTOR'S SUPERINTENDENCE

1.11.1 Contractor's Representative and Workmen

The Contractor shall employ one or more competent person or persons, whose names shall previously have been communicated to the Employer in writing, to act as the Contractor's accredited representative and to superintend the execution of the works in accordance with the requirement of Clause 2.3 of this document. The said representative, or where more than one is employed then one of such representatives, shall be present on Site during all hours worked and any instruction given by the Employer to such representative shall be deemed to have been given to the Contractor.

1.11.2 Notice of Objection

The employer shall be at liberty by notice in writing to the Contractor to object to any person or representative employed by the Contractor in the execution or otherwise of the works who shall in the opinion of the Employer misconduct himself or be incompetent or negligent and the Contractor shall remove such person or representative from the works.

1.11.3 Contractor's Equipment

The Contractor shall, at his own expense, provide all Contractor's equipment necessary for the execution of the works and shall keep such equipment in good repair and safe condition.

The Contractor shall include for all haulage and power required for the operation of the Contractor's equipment, but shall be allowed free use of power and water for the operation within the buildings of small hand tools and other similar equipment.

1.11.4 Security and Protection

Unless otherwise agreed with the Employer, the Contractor shall be responsible for providing and maintaining all security and protective barriers, lighting, guarding and watching of the services which are rendered necessary by reason of the works to protect all persons including owners and occupiers of adjacent property, members of the public and others from injury during the execution of maintenance work which are the subject of the Maintenance Agreement.

1.11.5 Naked Lights

No naked lights shall be used by the Contractor upon the works other than in the open air without specific permission in writing from the Employer, such permission shall not unreasonably be withheld.

1.11.6 Employer's Lifting Equipment

The Employer shall, at the request of the Contractor, and for the execution of the works, operate, or allow the Contractor to operate any suitable lifting equipment belonging to the Employer that may be available on site and the Contractor shall pay to the Employer such sum as may be reasonable in the circumstances. The Employer shall, during such operations, retain control of and be responsible for the

safe working of the lifting equipment, but shall not be responsible for any negligence of omission on the part of the Contractor.

1.11.7 Artists and Tradesmen

The Contractor shall, in accordance with the requirements of the Employer, permit the execution of works for forming part of the Maintenance Agreement by Artists, Tradesmen and others employed by the Employer and of any other duly constituted authorities who may be so employed on or near the site.

Every such person shall for the purpose of these Conditions be deemed to be a person from whom the Employer, the Contractor shall make available to such other Contractor, the Employer or any other such duly constituted authority, any Contractor's equipment or provide any other service of whatsoever nature, then the Employer shall pay to the Contractor for such use of service such sum as may be reasonable in the circumstances.

1.12 LIABILITY FOR ACCIDENT AND DAMAGE

1.12.1 Care of the Works

Upon commencement of the Contract Works, the Contractor shall take full responsibility for the care of the works and in case any damage or loss shall happen to the works or any portion thereof from any cause whatsoever show by the Employer to be the responsibility of the Contractor, the same shall also be liable subject to Clause 1.12.1 "Limitation of Liability" for any loss or damage to the works occasioned by him or by any Sub-Contractor in the course of any operations carried out by him or by his Sub-Contractors for the purpose of complying with his obligations under the Contract.

1.12.2 Damage not the Responsibility of the Contractor

In the event of loss or damage to the works adjusted by the Employer not to be the responsibility of the Contractor, the same shall, if required by the Employer, be made good by the Contractor but at the cost of the Employer at a price to be agreed between the Contractor and the Employer or in default of agreement to be settled by arbitration and such cost shall be included in the Contract Price.

1.12.3 Damage to Persons and Property

Contractors Responsibility

Without prejudice to his liability under the Contract, the Contractor shall during the currency of the Contract indemnify the Employer in respect of death or injury to any person and of all damage to any property arising from the execution of the Contract and against all actions, suits, claims, demands, costs, charge and expenses arising in connection therewith that shall be occasioned by the negligence of the Contractor, his servants or agents or by the negligence of any Sub-Contractor named in the Contract or his servants or agents.

1.12.4 Claims for Damages to Persons or Property

In the event of any claim being made against the Employer arising out of the matters referred to in respect of which the Contractor may be liable under Clause 1.11.3, the Contractor shall be promptly notified thereof and may at his own expense conduct all negotiations for the settlement of the same and any litigation that may arise there from. The conduct by the Contractor of such negotiations or litigation shall be conditional upon the Contractor having first given to the Employer such reasonable security as shall from time to time be required by the Employer to cover the amount for which the Employer may become liable. The Employer shall, at the request of the Contractor, afford all available assistance for any such purpose and shall be paid all reasonable cost incurred in so doing.

1.12.5 Accident or Injury to Workmen

The Contractor shall indemnify the Employer against all actions, suits, claims, demands, costs or expenses arising in connection with death or injuries suffered by persons employed by the Contractor or his Sub-Contractors on the works.

1.13 DAMAGE AND LOSS

1.13.1 Mitigation of Loss

In all cases the party establishing a breach of Contract shall be under duty to take all necessary measures to mitigate the loss which has occurred provided that he can do so without unreasonable inconvenience or cost. Should he fail to do so, the party in breach of the Contract may claim a reduction in the damages.

1.13.2 Limitation of Liability

The liability of the Contractor to the Employer under Clause 1.11 for any one act or default shall not exceed a cost agreed as fair and reasonable by the Employer and Contractor, such cost to be agreed before commencement of the Contract works.

1.14 INSURANCES

1.14.1 Insurance of the Works

Unless the Employer shall have approved in writing other arrangements, the Contractor shall, in the joint names of the Contractor and the Employer, from the date on which the Contract Agreement commences until such a time as the Agreement is terminated, and so far as reasonably practicable, insure against the Contractor's liability in respect of any loss or damage occurring whilst the Contractor is on site for the purpose of carrying out his duties and responsibilities under the terms and conditions of the Contract. Such insurances shall be effected with an insurer and terms to be approved by the Employer and the Contractor shall from time to time, when so required by the Employer, produce the policy and receipts for the premium or premiums or other satisfactory evidence of insurance cover. All monies received under any such policy shall be applied in or towards the replacement and repair of the works lost, damaged or destroyed, but this provision shall not affect the Contractor's liabilities under the Contract.

1.14.2 Third Party Insurance

The Contractor shall, prior to the commencement of any work on site by the Contractor pursuant to the Contract, insure against his liability for damage or injury occurring during the currency of the Contract works to any person (including any employee of the Employer) or any property (other than property forming part of the works) due to or arising out of the execution of the works. Such insurance shall be effected for an amount (not being less than the amount stated in the Appendix to the Tender) with the insurer and in terms to be approved by the Employer and the Contractor shall from time to time when so required by the Employer produce the policy and the receipts for the premiums or other satisfactory evidence of insurance cover. The terms of the policy shall include a provision whereby, in the event of any claim being made against the Employer in respect of which the Contractor would be entitled to indemnify under the policy, the insurer will indemnify the Employer against such claims and any costs, charges and expenses in respect thereof.

1.14.3 Insurance Against Accidents to Workmen

The Contractor shall insure and shall maintain insurance against his liability under Clause 1.11.5 "Accident or Injury to Workmen" and shall from time to time when so required by the Employer produce the policy and the receipts for the premiums or satisfactory evidence of insurance cover. The terms of any such policy shall also include the provision to indemnify the Employer as mentioned in Clause 1.13.2. Provided always that in respect of any persons employed by any Sub-Contractor, the Contractor's obligation under this Clause shall be satisfied if the Sub-Contractor shall have insured against the liability in respect of such persons in such a manner that the Employer is indemnified under the policy, but the Contractor shall require such Sub-Contractor to produce to the Employer when required the policy, the receipt for the premiums or other satisfactory evidence of insurance cover.

1.15 REGULATIONS AND STATUTES

1.15.1 Compliance with Statutes, Regulations, etc.

The Contractor shall, in all matters arising in the performance of the Contract, conform in all respects with the provision of any Statute, Ordinance or other Law or any Regulations or By-Law of any local or other duly constituted authority that shall affect the Contractor in the performance of his obligation under the Contract, and shall keep the Employer indemnified against all penalties and liability of every kind for breach of any such Statute, Ordinance, Law, Regulation or By-Law.

1.16 PATENT RIGHTS

1.16.1 Indemnification of Employer

The Contractor shall fully indemnify the Employer against all claims and proceedings for or on account of infringement or any letters, patent, registered design, copyright, trade mark or trade name or industrial property right protected at the date of the Contract arising by reason of the execution of the works or by the use of any plant supplied by the Contractor.

1.17 OBLIGATIONS OF THE EMPLOYER

1.17.1 Access to Plant and Equipment

The Employer shall provide within reason continual access for the Contractor to the plant and equipment which is the subject of this Agreement and ensure the availability of that plant and equipment. Should the Contractor find that for whatever reasons such access is not possible he shall immediately inform the Employer or his appointed representative of the existence of the situation together with the circumstances creating its existence. Failure by the Contractor to render such advice may result in the Contractor becoming liable for failing to carry out the maintenance work in accordance with the terms and conditions of the Contract.

1.17.2 Authority for Access

In the execution of the works, no person other than the Contractor or appointed Sub-Contractor and his and their employees shall be allowed access to the works except with the written permission of the Employer. Facilities to inspect the works at all times shall be afforded to the Employer and any other authorised officials or representatives of the Employer.

Such authority for access to the works shall be obtained by the Contractor from the Employer. All operatives/personnel engaged on site for purpose of the Maintenance Contract shall at all times display identification as deemed by the Employer.

1.17.3 Access Not Exclusive

The access to and possession of the works referred to in Clause 1.16.1 shall not be exclusive to the Contractor but only such as shall enable him to execute the works.

1.18 WORKING HOURS AND PROGRESS

1.18.1 Hours of Work

Unless otherwise provided elsewhere, the Employer shall give the Contractor facilities for carrying out the works continuously during the Normal Working Hours and generally the Contractor shall allow in his costs accordingly. Where the nature of the work is such that it cannot be carried out during Normal Working Hours then the Contractor shall be deemed to have included any additional costs that will be incurred by him out of hours working.

1.18.2 Normal Working Hours

For the purpose of Clause 1.17.1 Normal Working Hours shall be defined as 8.00am to 5.00pm continuously during the period Monday to Friday inclusive or any such period agreed in writing to the Contractor by the Employer.

1.18.3 Out of Hours Working

Where it is necessary, for whatever reason, for maintenance work to be conducted outside Normal Working Hours, the Contractor shall before commencing the work, advise the Employer regarding the nature of the work involved, the system concerned and the reason for the Out of Hours Working and agree with the Employer a programme for the execution of the work involved.

Where such work is carried out upon the instruction of the Employer, after consulting with the Contractor, or where the Employer may direct that work shall be done at other times if it shall be practicable in the circumstances for work to be done so, then the Employer shall pay to the Contractor such sum as may be reasonable under the circumstances unless such work has, by the default of the Contractor, become necessary to ensure completion of such works in accordance with the agreed programme for the work involved.

1.18.4 Night and Weekend Working

No work shall be carried out on site during the night or weekends without the consent in writing of the Employer except if the work is unavoidable or absolutely necessary for the saving of life or property or for the safety of the works, in which case the Contractor shall immediately advise the Employer. The Employer shall not unreasonably withhold any such consent nor do so if work at night or during weekends is considered by the Contractor to be necessary to comply with the requirements of the programme.

1.18.5 Progress of the Works

If, for any reason, the progress of the works, or any section thereof, is at any time in the opinion of the Employer not in accordance with the agreed programme, then the Employer shall so notify the Contractor and the Contractor shall thereupon take such steps as are necessary and the Employer may approve to expedite progress so as to complete the works or section thereof by the time required. The Contractor shall not be entitled to any additional payment for taking such steps.

1.18.6 Clearance of Waste Materials

From time to time during the progress of the works, the Contractor shall clear away and remove from the site all surplus materials and rubbish and on completion of the Agreement or any subsequent extension thereto all Contractor's equipment and leave the whole of the works in a clean and workmanlike condition to the satisfaction of the Employer.

1.19 LABOUR

1.19.1 Engagement of Labour

The Contractor shall be responsible for the engagement of all labour engaged on site in the execution of the Contract Agreement and will ensure that all such labour complies with the requirements of Clause 2.14 "Type of Labour to be Employed" of this Contract.

1.19.2 Trade Demarcation

Trade custom shall be followed by the Contractor, with particular regard to local lines of demarcation between the trade in various classes of work and/or trades.

Claims in respect of complying with the requirements of the Clause will not be accepted as constituting any additional charge to the works defined in these documents.

1.19.3 Cost of Labour

National Insurance, Pension contributions, etc.

The Contractor shall allow for the payment of National Insurance, Pension contributions and any other Employer's compulsory contribution in respect of work people and staff. In complying with this requirement the Contractor shall be deemed to have included for all costs incurred for complying with:

- National Insurance and National Insurance Industrial Injuries Act.
- The Health & Safety at Work Act 1974, current edition, both for his own plant and work and to ensure that all equipment supplied to this Contract is in accordance with this Act.
- Employer's Liability Insurances to Workmen.
- Contracts of Employment Act.
- Any other Act or Tax applicable and enforced for the time being during the period of this Contract i.e. Value Added Tax, etc.

Merit Payments, Allowances, Bonus Schemes, etc.

All costs shall be deemed to have been included in the tender for payment to workmen in respect of all skill, responsibility, discomfort, guaranteed working week, together with all other lodging and distance allowances, tool money and sick pay benefit as may be nationally or regionally agreed for trade concerned.

No bonus or payments by result system shall constitute a claim for extra payment or be reason to diminish the quality or quantity of the works required or implied by the Contract documents.

Holiday with Pay Agreement

The Contractor shall allow for the payment of all charges in connection with Holiday with Pay Agreement.

Transporting Work People

The Contractor shall allow for all costs incurred in transporting work people and staff to the site or the Contractor's workshops.

1.19.4 Disorderly Conduct

The Contractor shall, at all times, take all reasonable precautions to prevent any unlawful riotous or disorderly conduct by or amongst his employees and for the preservation of peace and protection of same. The use of radio's is not allowed on site at any time.

1.19.5 Observance by Sub-Contractors

The Contractor shall be responsible for observance by his Sub-Contractors of the foregoing provisions.

1.19.6 Other Customs

The Contractor shall advise any other conditions affecting labour and wages in Appendix II of the Form of Tender.

1.19.7 Notification of Contractor's Labour

The Contractor shall, if required by the Employer, deliver to the Employer a return in detail in such form and at such intervals as the Employer may prescribe, showing the supervisory staff and the numbers of the several classes of labour from time to time employed by the Contractor on the works.

1.20 MATERIALS AND WORKMANSHIP

All the materials, goods and the workmanship employed on the works shall be of the respective kinds and standards as those of the existing installations.

Upon the request of the Employer, the Contractor shall provide evidence to prove that the materials and goods used comply with the standards of the existing installation. Should any materials, goods or workmanship not comply with this requirement then the Contractor shall remove the sub-standard materials and carry out any remedial works as necessary. The Contractor shall not be entitled to any additional payment for carrying out such works.

The Contractor shall ensure that all materials necessary to service and maintain the plant and equipment in working order are available to the site.

1.21 SUSPENSION OF WORKS

1.21.1 Order to Suspend Progress

The Contractor shall, on written order of the Employer, suspend the progress of the works or any part thereof for such time or times and in such manner as the Employer may consider necessary and shall during such suspension properly protect and secure the work so far as is necessary in the opinion of the Employer.

The extra cost, if any including that occasioned by the subsequent resumption of work, incurred by the Contractor in giving effect to the Employer's instructions under this Clause shall be born and paid by the Employer unless such suspension is:

- Otherwise provide for in the Contract, or
- Necessary by reason of some default on the part of the Contractor, or
- Necessary by reason of climatic conditions on the site, or
- Necessary for the proper execution of the works or for the safety of the works or any part thereof.

Provided that the Contractor shall not be entitled to recover any such cost unless, within 28 days after receipt of the order to suspend progress of the works, he gives to the Employer notice in writing of this intention to make such a claim.

1.22 DEFECTS ON COMPLETION

If, upon completion of any maintenance work, or upon completion or termination of the Contract works, or at any time, it is shown by the Employer that any work done or plant supplied or materials used by the Contractor or any Sub-Contractor, is or are defective or not in accordance with the Contract, or that such section or portion of the works is defective or does not fulfil the requirements of the Contract (all such matters being hereafter in this Clause called "defects"), then as soon as reasonably practicable the Employer shall give the Contractor notice in writing of the said condition specifying particulars of the defects alleged and of where the same are alleged to exist or to have occurred and so far as may be necessary, place the plant at the Contractor's disposal.

Upon receipt of such notice, the Contractor shall, with all speed, at his own expense, make good the defects so specified. In case the Contractor shall fail so do to, the Employer may, provided he does so without undue delay, take at the cost of the Contractor such steps as may in all the circumstances be reasonable to make good such defects. All plant and equipment provided by the Employer to replace defective plant and equipment shall comply with the Contract and shall be obtained at reasonable prices and where reasonable practicable under competitive conditions. The Contractor shall be entitled to remove and retain all plant that the Employer may have replaced at the Contractor's cost. Nothing contained in this Clause shall affect any claim by the Employer under Clause 1.23 "Time for Completion".

1.23 TESTS ON COMPLETION

1.23.1 Tests to be Conducted

During, or upon completion of the Contract works or any additional work undertaken under Clause 1.25 "Variation", or as may be necessary from time to time, the Contractor shall conduct such tests as may be requested by the Employer to confirm the operational status of the plant and equipment concerned.

The test procedure to be adopted shall be as described in Clause 2.16 "Testing and Commissioning Procedures" of this Contract.

1.23.2 Notice of Tests

The Contractor shall give to the Employer 21 days notice in writing of the date after which he will be ready to make the tests on completion. Unless otherwise agreed, the tests shall take place within 10 days as the Employer shall notify the Contractor in writing.

1.23.3 Delayed Tests

If it is shown that the tests are being unduly delayed, the Employer may, by notice in writing, call upon the Contractor to make such tests within 21 days from the receipt of the said notice and the Contractor shall make the said tests on such days within the said 21 days as the Contractor may fix and of which he shall give notice to the Employer. If the Contractor fails to make such tests within the time aforesaid, the Employer may himself proceed to make the tests. All tests so made by the Employer shall be at the risk and expense of the Contractor, unless the Contractor shall establish that the tests were not being unduly delayed, in which case tests so made shall be at the expense of the Employer.

1.23.4 Repeat of Test

If any portion of the works fails to pass the tests, tests of the said portion shall, if required by the Employer or by the Contractor, be repeated within a reasonable time upon the same terms and conditions, save that all reasonable expenses to which the Employer may be put by the repetition of the test shall be deducted from the Contract sum.

1.23.5 Consequences of Failure to Pass Tests on Completion

If the works or any section thereof shall fail to pass the tests on the repetition thereof under Clause 1.22.4 the employer shall be entitled to:

- Order a further repetition of the test under the conditions of Clause 1.22.4, or
- Reject the works or section thereof in accordance with Clause 1.21 "Defects on Completion" if the results of the tests show that the works or the section fail to meet the performance guarantees or the agreed tolerances specified in the Contract, or if there are no such guarantee or tolerances, the results show that the works or the section are not in accordance with the Contract, or

- Issue a Completion Certificate, if the Employer so wishes, subject to such reduction in the Contract sum as may be provided within the Contract, or failing such provision, as may be agreed by the Employer and the Contractor, or failing agreement, as may be determined by arbitration.

1.24 TIME FOR COMPLETION

1.24.1 Completion to be in Accordance with Agreed Programme

The Contractor shall ensure that the Contract works are completed in accordance with the Maintenance Programme established under Clause 1.9 of this Contract and upon termination of the Contract works all works are duly completed by the termination date except as allowed for under Clause 1.23.2 of the Contract, for any extension of time required by the Contractor to complete such works.

1.24.2 Extension of Time for Completion

If by reason of extra or additional work, Employers instruction beyond those specified in this Contract, delay by any other Contractor engaged by the Employer, any suspension of the works under Clause 1.20, or any industrial dispute the Contractor shall have been delayed or impeded in the completion of the works, whether such delay or impediment occur before or after the time fixed for completion, provided that the Contractor shall without delay have given to the Employer notice in writing of this claim for an extension of time, the Employer shall on receipt of such notice and supporting detailed particulars of the claim, grant the Contractor from time to time in writing, either prospectively or retrospectively, such extension of time fixed by the Contract for the completion of the works as may be justified.

Any delay on the part of a Sub-Contractor which prevents the Contractor from completing the works within the time fixed by the Contract for the completion of the works shall entitle the Contractor to an extension thereof if such delay was due to any cause for which the Contractor himself would have been entitled to an extension of time under this Clause.

1.24.3 Delay in Completion

If the Contractor shall fail to complete the works or sections thereof in accordance with the Contract (save as regards his obligations under Clause 1.21 "Defects on Completion") and such tests as are to be made in accordance with Clause 1.22 "Tests on Completion" with the Time for Completion, the Employer shall be entitled to, on giving the Contractor within a reasonable time notice in writing, to a reduction of the Contract sum. Such reduction shall equal the percentage stated in the Appendix to Tender, of the Contract price of such portion or portions only of the works as cannot in consequence of the said failure be put to the use intended, for each complete week between the Time for Completion of the works as aforesaid and the actual date of completion, but the reduction shall not in any case exceed the maximum percentage of the Contract price stated in the said Appendix and except as provided in Clause 1.23.4 such reduction shall be to the exclusion of any other remedy of the Employer in respect of the Contractor's failure to complete as aforesaid, but shall not relieve the Contractor from any other of his obligations under the Contract.

1.24.4 Prolonged Delay

If any portion of the works in respect of which the Employer has become entitled to the maximum reduction under Clause 1.24.3 remain uncompleted, the Employer may, by notice in writing to the Contractor, require him to complete and by such notice fix a final time for completion which shall be reasonable having regard to such delay as has already occurred. If for any reason, other than one for which the Employer or some other Contractor employed by him is responsible, the Contractor fails to complete within such time, the Employer may by further written notice to the Contractor elect either (a) to require the Contractor to complete or (b) terminate the Contract and employ such other Contractors as may be necessary to complete the works.

The Employer may recover from the Contractor any loss suffered by the Employer by reason of the said failure up to an amount not exceeding the same named in the Appendix to tender or, if no sum is named, that part of the Contract sum that is properly apportionable to such portion of the works as cannot by reason of the Contractor's failure be put to the use intended.

1.25 DEFECTS AFTER COMPLETION

1.25.1 Making Good Defects

The Contractor shall be responsible for making good with all possible speed at his own expense any defect in or damage to any portion of the works, which may appear to occur during a period of 6 months from the date when the work was carried out and which arises either from any defective materials or workmanship, or from any act or omission by the Contractor done or omitted during the said period.

1.25.2 Notices of Defects

If any such defect shall appear or damage occur the Employer shall forthwith inform the Contractor thereof, stating the nature of the defect or damage. The provisions of Clause 1.24 shall apply to all replacements or renewals carried out by the Contractor to remedy defects and damage and shall be accepted by the Employer for maintenance purposes on the date they were completed to the satisfaction of the Employer, but such acceptance shall not extend the Defects Liability Period in respect thereof beyond two years from the date of completion.

1.25.3 Delay in Remedying Defects

If any such defect or damage not remedied within a reasonable time, the Employer may proceed to do the work at the contractors risk and expense.

1.25.4 Removal of Defective Works

The Contractor may, with the consent of the Employer, remove from the site any Portion of the Works which is defective or damaged if the nature of the defect or damage is such that repairs cannot be expeditiously carried out on site.

1.25.5 Further Tests of Completion

If the replacements or renewals are of such a nature that they may affect the efficiency of the works or any Portion thereof, the Employer may, within one month of such replacement or renewal, give the Contractor notice in writing requiring that Tests on Completion be made, in which case such tests shall be carried out as provided in Clause 1.22 "Test in Completion".

1.25.6 Contractor to Search

The Contractor shall, if required, by the Employer, search for the cause of any defect, imperfection or fault under the directions of the Employer. Unless such defect, imperfection or fault shall be of which the Contractor is liable under the Contract, the cost of the work carried out by the Contractor in searching as aforesaid shall be borne by the Employer. But if such defect, imperfection or fault shall be one for which the Contractor is liable as aforesaid, the cost of the work carried out in searching as aforesaid shall be borne by the Contractor.

1.26 VARIATION OF THE WORKS

1.26.1 Employer's Power to Vary

The Contractor shall not alter any of the Works except as directed in writing by the Employer. The Employer shall have full power from time to time during the execution of the Contract by notice in writing to direct the Contractor to alter, amend, omit, add to or otherwise vary any of the Works. The Contractor shall carry out such variations and be bound by the same conditions, so far as applicable, as though the said variations were stated in the schedules. In any case in which the Contractor has received any direction from the Employer which either then or later will, in the opinion of the Contractor, involve an addition to or deduction from the Contract Sum, the Contractor shall, as soon as reasonably possible and where practicable, before proceeding therewith, advise the Employer in writing to effect. The Contractor and Employer shall agree such costs before the work is implemented, except where such action is not possible.

1.26.2 Claims for Additional Payments for Variations

The Contractor shall send to the Employer once in every month, an account giving particulars (as full and detailed as possible) of all claims for additional payment to which the Contractor may consider himself entitled and of all extra or additional work ordered by the Employer which he has executed during the proceeding month. No claim for payment will be considered unless included in such account.

1.26.3 Variation of Contract Sum

The Contract Sum shall be amended to the extent of the total value of all variations ordered under the provisions of this clause. In the event of disagreement, the Employer shall negotiate with the contractor a sum to be mutually resolved to be reasonable and proper, having regard to all material and relevant factors including the Contractor's on costs and overheads.

1.26.4 Drawings

Where variations of the Works occur under the requirements of Clause 1.25 of the Conditions of Contract, any drawings necessary for the implementation and execution of such variations shall be produced by the Contractor and approved by the Employer before the work is carried out.

1.27 CONTRACTOR'S EQUIPMENT ON SITE

1.27.1 Removal of Contractor's Equipment

All Contractor's Equipment provided by the Contractor shall, when brought on to the Site, be deemed as to be exclusively intended for the execution of the Works and the Contractor shall not remove the same or any part thereof, except for the purpose of moving it from one part of site to another, without the consent in writing of the Employer.

1.27.2 Loss or Damage to Contractor's Equipment

The Contractor shall be liable for loss or damage to any of the Contractor's Equipment which may happen otherwise than through the default of the Employer.

1.28 PAYMENTS

1.28.1 Payment

The Contractor may, at the times and in the manner following, apply for monthly payments as referred to in Clause 1.29.1 "Terms of Payment" for variations executed under Clause 1.25 and for work executed on the Site under the Agreement.

1.28.2 Application for Monthly Payment

Applications for monthly payments shall be made as the work progresses. Each such application shall state the amount claimed and be accompanied by such evidence and documents as the Employer may reasonably require. Each other such application shall state the amount claimed and shall set forth in detail, particulars of the work executed.

1.29 ADDITIONAL SUMS

1.29.1 Additional Sum

"Additional Sum" means a sum included in the Contract for any agreed additional works to the maintenance schedules and so designated therein for the execution of work or the supply of goods, materials or services, or for contingencies, which sum may be used, in whole or in part, or not at all, at the direction and discretion of the Employer. The total sum paid to the Contractor shall include only such amount in respect of the work, supply or services to which such Additional Sums relate as the Employer shall approve or determine in accordance with this Clause.

1.29.2 Invoices and Receipts

The Contractor shall, produce all quotations, invoices, vouchers and accounts or receipts in connection with expenditure in respect of Provisional Sums and on the supply of materials.

1.30 CONDITIONS OF PAYMENT

1.30.1 Terms of Payment

Unless otherwise agreed the Employer shall pay to the Contractor in the following manner the Contract Sum adjusted to give effect to such addition thereto and such deductions there from as are provided for in these Conditions:

- In consideration of the provision of the agreed maintenance works, the employer shall pay the total annual price in 12 monthly instalments, monthly in areas from receipt of a valid invoice.
- Should, for any reason which the Employer shall communicate to the Contractor, the Employer judge that the Contractor is not entitled to receive the full amount of any application, then the Employer may mutually review with the contractor to resolve.

1.30.2 Suspension on Failure to Certify or Make Payment

If the Employer fails to make any payment as provided in Clause 1.29.1, the Contractor shall be entitled to stop the works, after giving 14 days notice in writing to the Employer of this intention so to, until the said payment be made, in which case the expenses of the Contractor occasioned by the stoppage and the subsequent resumption of work shall be included in the Contract Price.

1.30.3 Termination on Failure to Make Payment

In the case of the Employers failure to make payment properly due under the contract, the Contractor shall be entitled, after giving to the Employer one month's notice of his intention so to do, to terminate the Contract whether or not the contractor has stopped the Works or given notice of his intention so to do pursuant to Clause 1.29.2.

1.31 REMEDIES AND POWERS

1.31.1 Contractor's Default

If the Employer shall certify in writing to the Contractor that in his opinion the Contractor:

- Has abandoned the Contract, or
- Without reasonable excuse has failed to commence the works or has suspended the progress of the Works for 28 days after receiving from the Employer written notice to proceed, or
- Despite previous warnings be the Employer, in writing, is not executing the works in accordance with the Contract or is neglecting to carry out his obligation under the Contract so as seriously to affect the carrying out of the Works.

Then the Employer may, after giving 14 days notice in writing to the Contractor, enter upon the Site and expel the Contractor therefrom without thereby voiding the Contract, or releasing the Contractor from any of his obligations or liabilities under the Contract, or affecting the rights and powers conferred by the Contract on the Employer and may himself complete the Works or may employ any other Contractor to complete the Works without prejudice to any other remedy of the Employer. The Employer or such other Contractor shall have free use for such completion of so much of the Contractors Equipment as may be on the site in connection with the Works without being responsible to the Contractor for fair wear and tear thereof and to the exclusion of any right of the Contractor over the same.

1.31.2 Valuation at Date of Forfeiture

The Employer shall, as soon as may be practicable after any such entry and expulsion by the Employer, fix and determine by or after reference to the parties, or after such investigation or enquiries as he may think fit to make or institute and shall determine what amount, if any, had at the time of such entry or expulsion been reasonably earned by or would reasonably accrue to the Contractor in respect of work then actually done by him under the Contract and the value of any unused or partially used materials on the Site.

1.31.3 Payment after Forfeiture

If the Employer shall enter of expel the Contractor under this Clause, he shall not be liable to pay to the Contractor any money on account of the Contract until the costs of execution and all other expenses incurred by the Employer have been ascertained and the amount thereof certified by the Employer.

The Contractor shall then be entitled to receive only such sum or sums, if any, as the Employer may determine would have been payable to him upon due completion by him after deducting the said amount.

If such amount shall exceed the sum which would have been payable to the Contractor on due completion by him then the Contractor shall, upon demand, pay to the Employer the amount of such excess and it shall be deemed a debt due by the Contractor to the Employer and shall be recoverable accordingly.

1.31.4 Effect on Liability for Delay

If the Employer, pursuant to the Clause, takes the works or part thereof out of the Contractor's hands, the Contractor's liability under Clause 1.23.3 "Delay in Completion" shall immediately cease, without prejudice to any such liability that may at that time already be recoverable from the Contractor by the Employer.

1.31.5 Bankruptcy

If the Contractor shall become bankrupt or insolvent, or have a receiving order made against him, or compound with his creditors, or being a corporation commence to be wound up, not being members voluntary winding up for the purpose of amalgamation or reconstruction or carry on its business under a receiver for the benefit of its creditors or any of them, the Employer shall be at liberty:

- To terminate the Contract forthwith by notice in writing to the Contractor or to the receiver or liquidator or to any person in whom the Contract may become vested and to act in the manner provided in Clause 1.30.1 "Contractors Default" as though the last-mentioned noticed had been the notice referred to in such Clause and the Works has been taken out of the Contractors hands, or
- To give such receiver, liquidator or other person the option of carrying out the Contract subject to his providing a guarantee for the due and faithful performance of the Contract up to an amount to be agreed.

1.32 FRUSTRATION

If circumstances outside the control of both parties arise after the contract is made so that under the law governing the Contract the parties are released from further performance, then the sum payable by the Employer to the Contractor in respect of the work executed shall be agreed between the Employer and the Contractor.

1.33 NOTICES

1.33.1 Notices to Contractor

All certificates, notices or written orders to be given to the Contractor by the Employer under the terms of Contract shall be served by sending the same by post, email or fax to, or leaving the same at the Contractor's principal place of business or to such other address as the Contractor shall nominate for that purpose.

1.33.2 Notice to Employer

Any notice to be given to the Employer under the terms of the Contract shall be served by sending the same by post, email or fax to or leaving the same at the address nominated for that purpose in the Appendix of these Conditions.

1.33.3 Change of Address

Either party to the Contract may change its nominated address by prior written notice to the others.

1.34 DEFAULT BY THE EMPLOYER

1.34.1 Notice of Termination due to Default by the Employer

In the event of the Employer:

- Failing to pay the Contractor the amount due under any certificate of the Employer within the 30 days after the same shall have become due under the terms of the Contract subject to any deduction that the Employer is entitled to make under the Contract, or
- Becoming bankrupt or (being a company) going into liquidation other than for the purpose of a scheme of reconstruction or amalgamation, or
- Being unable to continue to meet his contractual obligations for unforeseen reasons due to economic dislocation, the Contractor shall be entitled without prejudice to any other rights or remedies (and in respect of the point above as an alternative to the provisions of Clause 1.29.1 "Terms of Payment") to terminate his employment under the contract by giving 14 days prior notice in writing to the Employer.

1.34.2 Removal of Contractor's Equipment

Upon the giving of such notice, the Contractor shall, with all reasonable dispatch, remove from the Site all contractors Equipment brought by him thereon.

1.34.3 Payment and Termination

In the event of such termination, the Employer shall be under the same obligations to the Contractor in regard to payment as specified in Clause 1.27 and 1.29, but in addition the Employer shall pay to the Contractor the amount of any reasonable loss or damage to the Contractor arising out of or in connection with or by consequence of such termination.

1.35 CHANGES IN COST AND LEGISLATION

1.35.1 Labour, Materials and Transport

Where adjustments are to be made to the contract Sum in respect of rise or fall in the cost of labour and/or materials or transport or any other matters affecting the cost of execution of the Works, these are as set out in Appendix II of the Form of Tender.

1.35.2 Statutory and other Regulations

If the cost to the contractor of the performance of the Contract shall be increased or reduced by reason of the making, after the date thirty days prior to the latest date of submission of tenders for the works, or any law or of any order, regulation or Bye-law having the force of law that shall affect the contractor in the performance of his obligations under the Contract, the amount of such increase or reduction shall be notified by the Contractor to the employer, certified by the Employer and added to or deducted from the Contract Sum as the case may be.

1.35.3 Health and Safety

The contractor/sub contractor shall undertake all works in accordance with current Health and Safety Regulations. The contractor/sub contractor shall fully comply with the clients, Health and Safety Policy and any addendum/future additions and/or variations.

1.36 NOMINATED SUB-CONTRACTORS

1.36.1 Definition

All specialists, merchants, tradesmen and other executing any work or supplying any goods, materials or services for which Provisional Sums are included in the Contract, who may have been or be nominated or selected or approved by the Employer and all persons to whom by virtue of the provisions of the Contract the Contractor is required to sub-let any work shall, in the execution of such work or the supply of such goods, materials or services, be deemed to be sub-contractors employed by the Contractor and are referred to in his Contract as "Nominated Sub-Contractors".

1.36.2 Conditions Governing Sub-Contractors

All Sub-Contractors shall be subject to the terms and conditions as the Contractor.

2 SPECIFIC CONDITIONS OF CONTRACT

2.1 OFFER TO INCLUDE

The Contract Sum against which the Maintenance Agreement is awarded shall be based upon the Conditions of Contract, Schedules contained in Volumes I, II and III of the documentation and shall be deemed to include:

- The cost of all labour necessary for the maintenance and repair of the various systems involved. (Full labour comprehensive contract).
- The cost of all consumable and replacement items for the works such as lubricating oil, gaskets, gland packing's, control actuators, refrigerant, electrical fuses and switches, drive belts and similar items required for the repair and maintenance of the various systems involved.
- The costs which may be incurred in providing the facility for dealing with Emergency Call-Out situations or repairs under the provision of Clause 2.6 "Emergency Call-Out Facility", any such cost incurred by carrying out such work being compiled from the charges detailed in Appendix III of the Form of Tender.
- All costs associated with the employment by the Contractor or such specialist as may be necessary in order to ensure the honouring of Contractual obligations.
- All establishment and payroll costs associated with the employment of maintenance staff engaged on the works, such costs being deemed to include the Contractor's required profit.
- All costs incurred in the initial setting up of site facilities including accommodation, equipment, secretarial and office staff, site transport, communications systems etc. required for the execution of the works.
- All costs associated with the provision of access equipment to be included within the Contractor's costs. No additional charges for scaffold, ladders, mobile equipment shall be considered as additional.
- All costs associated with providing landlords gas, water and electric meter readings and any meter readings related to tenants vacating the premises.
- All costs associated with ensuring optimum energy efficiency of plant operation and regular monitoring and targeting of low energy applications as actioned.
- All costs associated with monthly contract manager meetings and quarterly director meetings at the site.
- Policies of insurance covering public liability and employers liability for injury to persons or property with an indemnity level of £10 million per incident.

The formulation of the Contract Sum shall be based on the Schedules and associated data contained within this document. Also, it shall be deemed that the Contractor will have visited site when compiling the costs involved to confirm the location of the items of equipment detailed and ascertain that the information given is fully comprehensive as any claim due to lack of such knowledge will not be considered.

2.2 MAINTENANCE SERVICES

The contractor shall provide the services of multi-disciplined mechanical and electrical engineer(s) to carry out the defined contract requirements on planned preventative maintenance. The contractor shall allow for site attendance when necessary between the hours of 0700 to 1800 Monday to Friday excluding statutory bank holidays and Saturday and Sunday.

The contractor shall perform all the services reasonably required to maintain the satisfactory operation of the plant and equipment as identified in the agreed asset register. Apart from lamps*, the contractor shall allow for all consumables in maintaining the exact list of plant and equipment as listed on the asset register and may be subject to variation. The contractor shall perform the services required to maintain the asset listed plant and equipment, whether upon instructions from the employer or otherwise, which are reasonably required to ensure that the plant, equipment and services are maintained at a high level of availability and reliability.

*The labour to fit all lamps will be included in the contract but material costs shall be additional to contract at best purchase prices from the contractor with a schedule of prices to be supplied with the tender return.

Within 3 weeks of the commencement date, the contractor shall submit a detailed schedule to the employer and engineer showing dates when routine maintenance visits and planned repairs ("Annual Maintenance Planner") shall take place in respect of plant, equipment and services. The annual maintenance planner shall cover a period of 12 months and consequently a new annual maintenance planner shall be provided to the employer on or before each anniversary of the commencement date in respect of the following 12 month period.

An insurance company nominated by the employer shall carry out the statutory inspections of plant and equipment as required by the appropriate regulations. The employer shall submit copies of the insurance reports to the contractor for attention who shall acknowledge receipt in writing within 10 days.

The contractor shall obtain and keep on site a log book in respect of all plant and equipment containing any data to establish the performance criteria for each asset. Where this is not available the contractor shall establish the performance criteria of the plant and equipment and document as necessary. The performance criteria shall be checked and recorded.

2.3 PLANNED PREVENTATIVE MAINTENANCE PROGRAMME

- The contractor shall within three months of the commencement date programme all such resources and work on plant, equipment and services to achieve a service level agreement of 90% of tasks achieved by the end of each month.
- Where scheduled repairs are likely to take longer than half of one normal business day (that is four hours), approval must first be sought from the employer before the repair work in commenced.
- Where scheduled repairs to equipment resulting from a failure arises and it becomes clear that such will take longer than two hours to complete, the contractor shall inform the employer immediately and a forecast provided of the downtime which is anticipated.
- Should any items fail the inspection and/or cause damage to the building fabric, the contractor shall take immediate action to rectify such failure and/or damage and further shall inform the employer by telephone immediately and by email within two hours giving timescales for necessary repairs and reinstatement.

2.4 EMERGENCY CALLOUTS

On receipt of any request for assistance during normal business hours, the contractor's attendance shall be as soon as possible from contact by the employer and which shall be within 4 hours.

- Priority 1 – Immediate
- Priority 2 – Two hours
- Priority 3 – Three hours

On receipt of a call outside of normal working hours, the contractor shall confirm to the caller the estimated time of arrival of its engineer which shall be within 4 hours. Where there may be a delay in the arrival time, the contractor shall maintain regular updates with the employer.

The specified response times are to be achieved over a 7 day period each week.

All calls to the contractors emergency service shall be responded to promptly and an engineer is to be on site within the times specified above. If a call out is received by the contractor outside normal business hours and no entrapment or dangerous condition is involved, the contractor may, at the discretion of the employer, attend the site on the next working day and promptly attend to the matter the subject of the call out.

2.5 WITHDRAWAL OF OWN CONDITIONS

Any Contractors conditions printed on, or attached to, any tender submitted by the Contractor and not forming part of the Tender document prepared for the specific purpose of submitting a Tender, shall be void and of no effect and such conditions must be withdrawn in writing before any formal contract can be entered into.

In the event of any conflict between conditions or contract and any document prepared by the Contractor and forming part of the contract, the former shall prevail notwithstanding any condition or stipulation to the contrary made by the Contractor.

Any amendments or variations to this agreement may only be made in writing and signed by duly authorised representatives of each of the parties.

2.6 ENGINEER IN CHARGE

The Contractor will be required to provide the services of an experienced and competent Engineer, who shall take over all control of maintenance operations and will:

- Familiarise himself quickly with the Engineering system involved within the Contract and be aware of the inter-relationship of the various operating modes and the affect of adjustment or change to those modes.
- Ensure that all system functions are monitored in accordance with the requirements set down in FSG20 or equal, information so obtained is correctly analysed and interpreted for possible fault conditions and appropriate action implemented.
- Maintain an effective liaison between the employer's representative and the occupants of the building concerned.
- Be responsible for organising competent planned maintenance schedules and ensure that the work of both the contractors own operatives and those of any specialist organisations employed by the contractor on the works are properly supervised.
- Ensure that a diary or log is maintained on site with issues recorded and actions taken, basic equipment status, temperatures and the nature of any work carried out and/or adjustments made to the plant and equipment.
- Provide the employer with monthly status reports in which should be indicated in advance the need for major equipment repairs or replacements.
- Be authorised to receive and implement within the terms of the contract such instructions or reports as may be issued by the Employer concerning equipment malfunction or modifications to service which are the subject of the Maintenance Agreement.

2.7 HOLIDAYS AND SICKNESS

The Contractor shall ensure that during period when the Engineer in charge is absent from the site due to holiday commitments or reasons of sickness, then his replacement shall be of comparable ability and qualification and ensure that full supervision of the works as specified is available at all times to conduct the maintenance and monitoring of the systems involved.

2.8 RESPONSIBILITY FOR MAINTENANCE

Upon commencement of the Maintenance Agreement, the Contractor shall assume complete responsibility for the carrying out of maintenance works detailed in the documents associated with this contract in first class manner on all the mechanical and associated electrical system encompassed by the Maintenance Agreement.

In accepting this responsibility, the contractor will also ensure that the correct performance of all the various items of plant and equipment involved. The contractor shall not carry out any work or adjustment that will adversely affect the performance of plant and equipment he is maintaining.

The Services Contractor shall allow within the contract sum for cleaning and painting of all plant rooms and equipment where necessary. These works shall be carried out and completed within 3 months of the contract start date.

2.9 EMERGENCY CALL-OUT FACILITY

2.9.1 Facility to be Provided

The Contractor shall allow for providing a facility for the Employer to obtain the services of maintenance personnel due to the existence of an emergency/malfunction situation or similar unforeseen circumstances. The purpose of the service shall be to provide the Employer with the means of obtaining the emergency repair of any plant or equipment that has failed and which it is necessary that the Employer has in an operational condition. The facility shall be required for 24 hours over a 365 day period and will relate primarily to the system forming the subject of the Maintenance Agreement. It will be necessary for the Contractor to agree with the Employer the operational procedures to be adopted in this instance.

Maximum permissible downtime between receipt of request for Site Engineers attendance and arrival at site, shall be no greater than 3 hours at any time.

2.9.2 Payment of Additional Cost Involved

Any additional cost incurred by the Contractor due to his operatives being engaged in an emergency call-out situation, related to Clause 2.6.1 over and above any duration exceeding 8 hour period in 24 hours for any one call-out shall be paid by the Employer as an addition to the Contract Sum in accordance with the arrangements for such payments made in the Conditions of Contract. For this purpose the Contractor shall compile and agree with the Employer hourly charges for the various grades of operatives engaged on the works and such charges shall include all costs in respect of wages, allowance, travelling, subsistence, contractor's overheads and profit etc. as may be incurred and the Contractor shall, therefore, only levy charges for such time as his operatives are so engaged on the site for periods above the 8 hours duration included within this agreement in any day to day 24 hour period.

Where the use is required of materials additional to those that the Contractor would normally use during the carrying out of the maintenance Works, then the Employer shall pay to the Contractor the nett value of such materials plus a percentage which shall be inclusive of all delivery charges, handling costs, overhead expenses and profit and the Contractor shall indicate in Appendix III of the form of Tender the value of such percentage.

2.10 CONDITION OF EXISTING INSTALLATION

Within 45 days of the commencement of the Maintenance Agreement, the contractor shall be required to undertake an inspection of the various systems and associated plant and equipment forming the subject of the Agreement to confirm their operational status and provide the Employer with a comprehensive report on his findings, together with a costed list of any remedial works considered necessary to render any defective systems in a condition which would facilitate their acceptance into the Maintenance Agreement.

2.11 CLOSE-DOWN OF PLANT AND EQUIPMENT

It will not be permissible, without the expressed permission of the Employer, to close down any plant or equipment or any part of any of the systems for maintenance purpose except where this is required due to the existence of any emergency situation. The contractor must therefore allow for the carrying out of any maintenance repair work requiring the close-down of plant and equipment to be conducted in accordance with the agreed Maintenance Programme being either within or outside normal working hours as the work requires. For the purpose of this requirement, normal working hours are to be taken as being defined in Clause 1.17.2 of the Conditions of Contract.

2.12 MAINTENANCE RECORDS

The contractor shall be required to maintain on site a permanent record of maintenance work done, including any repair or replacement of and to equipment. These records shall be made available upon request by the Employer, or his appointed representative for inspection.

2.13 MAINTENANCE OF INTERNAL ENVIRONMENTAL CONDITIONS

Within the confines of the Maintenance Agreement, the Contractor shall be responsible for ensuring the correct function of the plant and equipment, thereby maintaining acceptable environmental conditions within the various areas of the buildings which are the subject of the Maintenance Agreement. The parameters within which the internal space conditions are to be maintained will be provided by the employer and agreed with the contractor upon commencement of the Maintenance Agreement, to assist the Contractor in ensuring the correct function of the plant and equipment concerned.

2.14 DISTRIBUTION SYSTEMS REPAIR OR REPLACEMENT

Replacement or repair of non-moving parts of equipment pertaining to services included in this agreement such as ventilation ductwork, unit cabinets, refractory materials etc, shall be the responsibility of the Employer. Maintenance or repair of electrical wiring, drains, plumbing, storage tanks and/or gas lines, water-carrying pipework, shall also be the responsibility of the Employer but excluding any valves and/or final connections to items of equipment, electrical switchgear, luminaires, controls, dampers etc, controlling and forming an integral part of the system and which are the subject of the Maintenance Agreement.

Should any repairs be required to these items, then upon receipt of an official instruction issued by the Employer under the terms and conditions of the Maintenance Agreement, the Contractor will be required to carry out the necessary remedial work subject to a prior agreement of any costs that will be incurred by the Contractor in complying with the Employers instructions.

The application of this clause pre-supposes that all major pieces of equipment are in an operational condition at the commencement of the Maintenance Agreement and in this respect reference is made to Clause 2.7 of this document.

2.15 MAJOR MAINTENANCE WORKS AND REPLACEMENT OF CENTRAL PLANT

Should it become necessary for major items of equipment to be replaced, or where equipment requires major servicing and/or reconstruction which is additional to the works detailed in Clause 2.1 of these conditions, then the Contractor shall immediately inform the Employer under the provisions of Clause 2.7 "Condition of Existing Installation" and provide the Employer with a comprehensive report and costed list of the work involved. The Contractor shall first obtain the written permission of the Employer before proceeding with the work. All additional costs incurred by the Employer in authorising the carrying out of such works shall be subject to the provisions of Clause 1.25 "Variations to the Works".

2.16 ACCOMMODATION

Prior to commencement of the maintenance works, the Contractor shall establish in an area allocated by the Employer within the complex sufficient accommodation to provide office, workshop, storage and welfare facilities, as necessary, that will be required by the Contractor in order to fulfil his obligations and responsibilities under the terms and conditions of the Agreement.

The cost for the provision of necessary furnishing and equipment shall be itemised separately in the tender Summary by the contractor.

The Contractor shall be responsible for the security of his own accommodation and storage area and shall make all arrangements necessary in this respect.

2.17 TYPE OF LABOUR TO BE EMPLOYED

The contractor shall employ skilled tradesmen as required and shall not employ boys or labourers in place of skilled or semi-skilled tradesmen. The number of semi-skilled tradesmen employed shall not at any time exceed the number of skilled, fully paid tradesmen.

The Contractor's workmen shall occupy or be about only that part of the building and site necessary for the performance of the works and special instructions shall be given by the Contractor to enforce this provision.

The Contractor is informed that all existing buildings and stores, if any, are out of bounds to the staff and operatives of the contractor or his sub-contractor, except only insofar as is necessary in connection with the execution of the contract and the Contractor shall conform to any reasonable security or other arrangements, as may be ordered by the Employer.

Restriction placed on the Contractor in this connection shall also apply to any sub-contractors employed on the works.

2.18 EQUIPMENT AND PROTECTIVE CLOTHING

The Contractor shall issue to all maintenance staff all protective clothing necessary for the execution of their duties. The protective clothing will take the form of overalls, caps, safety helmets, protective eye goggles, protective hand gloves, work shoes etc. required for their protection and safety while they are carrying out their duties.

The protective clothing shall also ensure that the operatives are identifiable at all times should they be required to operate in public areas.

The Contractor shall issue to each operative as required, a standard maintenance kit comprising of all tools necessary to conduct basic maintenance and repair operations. The Contractor shall also ensure that any specialist tools or equipment necessary for the operative to carry out his work are readily available as and when required.

All items plant and equipment, including hand tools, used by the Contractor on and about the works shall be suppressed or protected such that their operation does not interfere or adversely affect the function of equipment used by the occupants of the building in the course of their business. Any items used by the Contractor that do cause any adverse affect to the building occupant's equipment, particularly of an electrical nature, will be immediately replaced.

2.19 TESTING AND COMMISSIONING PROCEDURES

2.19.1 Requirements for Tests

During or upon completion of the maintenance Agreement, major servicing of plant and equipment or additional works instructed under Clause 1.25 "Variations" of this contract, or at the request of the Employer to confirm the correct operation of equipment of which the Contractor is responsible, then the Contractor shall conduct such tests as are required under the circumstance and detailed in Clauses 2.16.2 "Test requirements for Mechanical Systems" and 2.16.3 "Test Requirements for Electrical System" of this contract.

2.19.2 Test Requirements for Mechanical Systems

Where test procedures are to be implemented to confirm the correct status and operation of mechanical systems, they shall be as detailed in the commissioning codes issued by the Chartered Institution of Building Services as detailed below:

- Series A for Air Distribution
- Series B for Boiler Plant
- Series C for Automatic Controls
- Series W for Water Distribution Systems

2.19.3 Test Requirements for Electrical Systems

Where test procedures are to be implemented to confirm the correct status and operation of electrical systems, they shall be as detailed in the current edition of the Regulations for Electrical Installation by the Institution of Electrical Engineers BS 7671.

2.19.4 Test Engineer

The Contractor shall provide the services of competent test engineer to carry out the required test procedures and will be required to demonstrate to the Employer that the required test procedures have been duly implemented.

2.20 MAINTENANCE OF BUILDING STRUCTURE

The Employer shall be responsible for ensuring that the maintenance of the building fabric including plantroom space containing the various installations and equipment are kept in a sound state of repair.

2.21 FUEL, WATER AND ELECTRICITY FOR THE OPERATION OF THE PLANT AND EQUIPMENT

The Employer will be responsible for the provision of all necessary fuel, water and electricity required to operate the plant and equipment and also the payments of any costs levied by the respective supply authority.

2.22 RECOMMENDED SPARE PARTS

The Contractor shall be required to advise the Employer concerning spares within three months of the contract commencement date. The advise shall be in the form of a costed list of recommended spare parts which may be held on site or would be immediately available from the Contractors own stores.

The Contractor shall ascertain that all the required replacement parts or compatible equivalents are available from the outset of and for the duration of the agreement.

The Contractor shall also advise the Employer of the storage area and facilities required for the purposes of agreeing the accommodation necessary for this function.

The Contractor shall indicate in his submission of recommended spare parts those items which will be withdrawn from the Employers stores or alternatively those stores which shall be taken over and administered by the Contractor under the Maintenance Agreement.

2.23 RENEWAL ADJUSTMENT OF CONTRACT SUM

At each anniversary of the maintenance Agreement, that element of the contract sum appertaining to the cost of labour, materials and establishment costs incurred by the Contractor in performing his obligations under the agreement shall be increased or reduced by reason of any rise or fall in the rates of wages payable to labour or in the costs of materials or transport above or below such rates and costs ruling at the date of tender. The amount of such increase or reduction shall, by agreement with the employer, be added to or deducted from the contract price as the case may be, provided that no account shall be taken of any amount by which any costs incurred by the Contractor has been increased by the default or negligence of the Contractor. For the purpose of this Clause, "the cost of material" shall be construed as including any duty or tax by whosoever payable, which is payable under or by virtue of any statute relating to the import, purchase, sale, appropriation, processing or use of such material.

For the purpose of his calculation, the Contractor shall establish the costs of all relative items upon which the tender costs were compiled.

2.24 PHOTOGRAPHS AND ADVERTISING

The Contractor shall not take any photographs of the works for any purpose whatsoever or use the Contract for the purpose of advertising without first obtaining a written permission of the Employer.

2.25 INTERPRETATION

Within the schedule of maintenance requirement the wording "check" specifically means check and rectify any defect or fault found.

3 FORM OF AGREEMENT

Between National Army Museum - Chelsea & Stevenage, SW3 4HT

(Hereinafter called the Contractor) on the other part.

Whereas the Employer is desirous that certain works should be undertaken by the Contractor for the maintenance of the mechanical and electrical services as described in the Conditions of Contract, Schedule of Maintenance Requirements and Maintenance Schedules in the sum of:

(£) hereinafter called the contract sum, to cover a 12 month period and to be valid for a 3 year term.

For the purposes of this agreement, the Employer has appointed

As his appointed representative under Clause 1.2 of the General Conditions of Contract as per Volume I, Section 1 of this document.

Now this agreement witnesseth as follows:

In this agreement words and expressions shall have the same meanings as are respectively assigned to them in Section 1 of the General Conditions of Contract hereon after referred to.

The following documents shall be deemed to form and be read and constructed as part of this agreement.

- The said Tender contained in Volume IV Form of Tender.
- The General Conditions of Contract contained in Volume I, Section 1.
- The Specific Conditions of Contract contained in Volume I, Section 2.
- Volume II Schedule of Maintenance Requirements.
- Volume III Maintenance Schedules.
- The Letter of Acceptance.

In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute the works and remedy defects therein in conformity in all respects with the provisions of the contract.

The Employer hereby covenants to pay the Contractor in consideration of the execution of the works and the remedying of defects therein the contract sum or such other sum as may become payable under the provisions of the contract at the times and in the manner prescribed by the contract.

The agreement shall commence on _____ (hereinafter called the Commencement Date) and be for a period of three years fixed price determinable by either party at any time upon 4 weeks notice.

It is agreed that notwithstanding Clause 5 of the form of Agreement, should there be a change of ownership or leasing arrangements of any or all of the buildings detailed within the schedule and/or unsatisfactory performance by the contractor and/or sub-contractors, then the agreement may be terminated upon the receipt by the Contractor of one months notice in writing from the Employer.

In witness whereof the parties hereto have caused this agreement to be executed from the commencement date above written.

Signed _____

Designation _____

For and on behalf of:

National Army Museum - Chelsea & Stevenage, SW3 4HT

Signed _____

Designation _____

For and on behalf of _____

In the presence of:

Name _____

Address _____

Designation _____

This _____ day of _____ 2017