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**ICD 2016**  
**Intermediate Building Contract**  
**with contractor's design 2016**

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**2016**  
**INTERMEDIATE BUILDING CONTRACT**

## Intermediate Building Contract with contractor's design (ICD)

Appropriate:

- where the proposed building works are of simple content involving the normal, recognised basic trades and skills of the industry, without building service installations of a complex nature or other complex specialist work;
- where the works are designed, the requirements for the contractor's design of discrete part(s) are detailed by or on behalf of the Employer, and the Contractor is required to design those part(s) of the work (Contractor's Designed Portion);
- where fairly detailed contract provisions are necessary and the Employer is to provide drawings and bills of quantities, a specification or work schedules to define adequately the quantity and quality of the work; and
- where an Architect/Contract Administrator and Quantity Surveyor are to administer the conditions.

This contract is more detailed and contains more extensive control procedures than the Minor Works Building Contract with contractor's design (MWD) but is less detailed than the Standard Building Contract (SBC).

Can be used:

- where the works are to be carried out in sections;
- by both private and local authority employers;
- where provisions are required to cover named specialists.

Not suitable:

- as a design and build contract.

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For 2016 Edition changes, see the Intermediate Building Contract Guide (IC/G) and the Tracked Change Document.

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**Insurance Option B**

(New Buildings – All Risks Insurance of the Works by the Employer)

**Insurance Option C**

(Joint Names Insurance by the Employer of Existing Structures and Works in or Extensions to them)

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# Agreement

## This Agreement

is made the \_\_\_\_\_ 20\_\_\_\_\_

## Between

### The Employer

Newquay Town Council

of Municipal Offices  
Marcus Hill  
Newquay  
TR7 1AF

## And

### The Contractor

[\_\_\_\_\_]

(Company No. [\_\_\_\_\_] )<sup>[1]</sup>

of/whose registered office is at

[\_\_\_\_\_]

**[1]** Where the Employer or Contractor is neither a company incorporated under the Companies Acts nor a company registered under the laws of another country, delete the references to Company number and registered office. In the case of a company incorporated outside England and Wales, particulars of its place of incorporation should be inserted immediately before its Company number. As to execution by foreign companies and matters of jurisdiction, see the Intermediate Building Contract Guide.



## Recitals

### Whereas

#### First

the Employer wishes to have the following work carried out<sup>[2]</sup>:

Proposed regeneration of Killacourt including construction of 12 no. business units, cafe, refurbishment to existing bandstand and various public realm improvement works.

at

Killacourt Field The Crescent Newquay Cornwall TR7 1DT ('the Works')  
and has had drawings and bills of quantities or a specification or work schedules prepared which show and describe the work to be done;

#### Second

the Works include the design and construction of<sup>[3]</sup>

The refurbishment of the existing bandstand, including installation of the Greenroof in accordance with preliminary detailed design Ref drawings: M430.DR.5001 - M430.DR.5010  
The retaining walls identified on drawing M430.DR.L.1002  
Drainage design. Schematic design identified on drawing M430.DR.L.1002  
Electrical design. Schematic design identified on drawing M430.DR.L.1002 ('the Contractor's Designed Portion');

#### Third

the drawings are numbered M430.DR.L.1000.T - M430.DR.L.1106.T annexed to this Contract ('the Contract Drawings') and have for identification been signed or initialled by or on behalf of each Party<sup>[4]</sup>;

#### Fourth

the Employer has supplied to the Contractor:

the Bills of Quantities<sup>[5]</sup>

the Specification<sup>[5]</sup>

other documents showing or describing or otherwise stating his requirements for the design and construction of the Contractor's Designed Portion ('the Employer's Requirements')

[2] State nature and location of intended works.

[3] State nature of work in the Contractor's Designed Portion. If the space here is insufficient a separate list should be prepared, signed or initialled by or on behalf of each Party and identified here, either as a specified Annex to this Contract or by its reference number, date or other identifier. The Contractor's Designed Portion **must not** include any element of the Works or their design which is to be carried out by a Named Sub-Contractor – see the Intermediate Building Contract Guide.

[4] State the identifying numbers of the Contract Drawings or identify the schedule of drawings or other document listing them, which should be annexed to this Contract, and make the appropriate deletions. The drawings themselves should be signed or initialled by or on behalf of each Party.

[5] Delete as appropriate.

## Fifth

---

the Contractor has:

- (A) priced the Bills of Quantities/Specification/Work Schedules<sup>[6]</sup> (as priced, 'the Priced Document'), the total of such pricing being the Contract Sum stated in Article 2 ('Pricing Option A'); or
- (B) stated the sum he will require for carrying out the Works shown on the Contract Drawings and described in the Specification, that sum being the Contract Sum stated in Article 2, and has supplied to the Employer a Contract Sum Analysis in accordance with the stated requirements of the Employer or a Schedule of Rates on which that sum is based ('the Priced Document') ('Pricing Option B');

and has provided the Employer with the priced schedule of activities annexed to this Contract ('the Activity Schedule')<sup>[6]</sup>;

the Priced Document, the priced Activity Schedule, where provided, and (where Pricing Option B applies) the (unpriced) Specification have each for identification been signed or initialled by or on behalf of each Party;

## Sixth

---

in response to the Employer's Requirements the Contractor has supplied to the Employer:

- documents showing and describing the Contractor's proposals for the design and construction of the Contractor's Designed Portion ('the Contractor's Proposals'); and
- an analysis of the portion of the Contract Sum relating to the Contractor's Designed Portion ('the CDP Analysis');

## Seventh

---

the Employer has examined the Contractor's Proposals and, subject to the Conditions, is satisfied that they appear to meet the Employer's Requirements.<sup>[7]</sup> The Employer's Requirements, the Contractor's Proposals and the CDP Analysis have each for identification been signed or initialled by or on behalf of each Party and particulars of each are given in the Contract Particulars;

## Eighth

---

for the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004, the status of the Employer is, as at the Base Date, that stated in the Contract Particulars;

## Ninth

---

the Employer has provided the Contractor with a schedule ('the Information Release Schedule') which states the information the Architect/Contract Administrator will release and the time of that release<sup>[8]</sup>;

## Tenth

---

for the purposes of the Construction (Design and Management) Regulations 2015 (the 'CDM Regulations') the status of the project that comprises or includes the Works is stated in the Contract Particulars;

---

[6] Delete these lines if a priced Activity Schedule is not provided.  
In the Activity Schedule, each activity should be priced, so that the sum of those prices equals the Contract Sum excluding Provisional Sums and the value of work for which Approximate Quantities are included in the priced Bills of Quantities.

[7] Where the Employer has accepted a divergence from his requirements in the proposals submitted by the Contractor, the divergence should be removed by amending the Employer's Requirements before the Contract is executed.

[8] Delete the Ninth Recital if an Information Release Schedule is not provided.

---

**Eleventh**

---

the division of the Works into Sections is shown in the Bills of Quantities/Specification/Work Schedules and/or the Contract Drawings or in such other documents as are identified in the Contract Particulars<sup>[9]</sup>;

---

**Twelfth**

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where so stated in the Contract Particulars, this Contract is supplemented by the Framework Agreement identified in those particulars;

---

**Thirteenth**

---

whether any of Supplemental Provisions 1 to 6 apply is stated in the Contract Particulars;

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---

[9] Delete the Eleventh Recital if the Works are not divided into Sections.

## Articles

### Now it is hereby agreed as follows

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**Article 1 Contractor's obligations**

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The Contractor shall carry out and complete the Works in accordance with the Contract Documents.

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**Article 2 Contract Sum**

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The Employer shall pay the Contractor at the times and in the manner specified in the Conditions the VAT-exclusive sum of

[ ] (£[ ]) ('the Contract Sum')

or such other sum as becomes payable under this Contract.

---

**Article 3 Architect/Contract Administrator**

---

For the purposes of this Contract the Architect/Contract Administrator is

MeiLoc Landscape Architects

of

67 Lemon Street, Truro, Cornwall, TR1 2PN

or, if he ceases to be the Architect/Contract Administrator, such other person as the Employer nominates in accordance with clause 3.4 of the Conditions.

---

**Article 4 Quantity Surveyor**

---

For the purposes of this Contract the Quantity Surveyor<sup>[10]</sup> is

Ed Crossley Associates

of

67 Lemon Street, Truro, Cornwall, TR1 2PN

or, if he ceases to be the Quantity Surveyor, such other person as the Employer nominates in accordance with clause 3.4 of the Conditions.

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**Article 5 Principal Designer**

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The Principal Designer for the purposes of the CDM Regulations is the Architect/Contract Administrator or such replacement as the Employer at any time appoints to fulfil that role.

---

**Article 6 Principal Contractor**

---

The Principal Contractor for the purposes of the CDM Regulations is the Contractor or such

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**[10]** If the Architect/Contract Administrator is to exercise the Quantity Surveyor's functions under the Conditions, his name should be inserted in Article 4.

replacement as the Employer at any time appoints to fulfil that role.

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**Article 7                      Adjudication**

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If any dispute or difference arises under this Contract, either Party may refer it to adjudication in accordance with clause 9.2.<sup>[11]</sup>

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**Article 8                      Arbitration**

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Where Article 8 applies<sup>[12]</sup>, then, subject to Article 7 and the exceptions set out below, any dispute or difference between the Parties of any kind whatsoever arising out of or in connection with this Contract shall be referred to arbitration in accordance with clauses 9.3 to 9.8 and the JCT 2016 edition of the [Construction Industry Model Arbitration Rules](#) (CIMAR). The exceptions to this Article 8 are:

- any disputes or differences arising under or in respect of the Construction Industry Scheme or VAT, to the extent that legislation provides another method of resolving such disputes or differences; and
- any disputes or differences in connection with the enforcement of any decision of an Adjudicator.

---

**Article 9                      Legal proceedings<sup>[12]</sup>**

---

Subject to Article 7 and (where it applies) to Article 8, the English courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.

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**[11]** As to adjudication in cases where the Employer is a residential occupier within the meaning of section 106 of the Housing Grants, Construction and Regeneration Act 1996, see the Intermediate Building Contract Guide.

**[12]** If it is intended, subject to the right of adjudication and exceptions stated in Article 8, that disputes or differences should be determined by arbitration and not by legal proceedings, the Contract Particulars **must** state that Article 8 and clauses 9.3 to 9.8 apply and the words "do not apply" **must** be deleted. If the Parties wish any dispute or difference to be determined by the courts of another jurisdiction the appropriate amendment should be made to Article 9 (see also clause 1.12).

## Contract Particulars

**Note: An asterisk \* indicates where selection has been or should have been made.**

### Fourth Recital

Employer's Requirements  
(State reference numbers and dates or other identifiers of the relevant documents.)<sup>[13]</sup>

### Sixth Recital

Contractor's Proposals  
(State reference numbers and dates or other identifiers of the relevant documents.)<sup>[13]</sup>

CDP Analysis  
(State reference numbers and dates or other identifiers of the relevant documents.)<sup>[13]</sup>

### Eighth Recital and clause 4.6

Construction Industry Scheme (CIS)

Employer at the Base Date  
\* is a 'contractor'/is not a 'contractor'  
for the purposes of the CIS

### Tenth Recital

CDM Regulations<sup>[14]</sup>

the project  
\* is/is not notifiable

### Eleventh Recital

Description of Sections (if any)  
(If not shown or described in the Bills of Quantities/Specification/Work Schedules or the Contract Drawings, state the reference numbers and dates or other identifiers of documents in which they are shown.)<sup>[13]</sup>

### Twelfth Recital

Framework Agreement (if applicable)  
(State date, title and parties.)

**[13]** If the relevant document or set of documents takes the form of an Annex to this Contract, it is sufficient to refer to that Annex.

**[14]** Under the CDM Regulations 2015 a project is notifiable if the construction work on a construction site is scheduled either to last longer than 30 working days and have more than 20 workers working simultaneously at any point in the project or to exceed 500 person days.

[ ]

### Thirteenth Recital and Schedule 5

#### Supplemental Provisions<sup>[15]</sup>

*(Where neither entry against one of Supplemental Provisions 1 to 6 below is deleted, that Supplemental Provision applies.)*

- Supplemental Provision 1: Collaborative working  
\* applies/does not apply
- Supplemental Provision 2: Health and safety  
\* applies/does not apply
- Supplemental Provision 3: Cost savings and value improvements  
\* applies/does not apply
- Supplemental Provision 4: Sustainable development and environmental considerations  
\* applies/does not apply
- Supplemental Provision 5: Performance Indicators and monitoring  
\* applies/does not apply
- Supplemental Provision 6: Notification and negotiation of disputes  
\* applies/does not apply

Where Supplemental Provision 6 applies, the respective nominees of the Parties are

Employer's nominee

[ ]

Contractor's nominee

[ ]

or such replacement as each Party may notify to the other from time to time

### Article 8

#### Arbitration

*(If neither entry is deleted, Article 8 and clauses 9.3 to 9.8 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must be stated that Article 8 and clauses 9.3 to 9.8 apply.)<sup>[16]</sup>*

- Article 8 and clauses 9.3 to 9.8 (Arbitration)  
\* apply/do not apply

### 1.1

#### Base Date

#### BIM Protocol (where applicable)

*(State title, edition, date or other identifiers of the relevant documents.)*

[ ]

**[15]** Supplemental Provision 7 (Transparency) applies only where the Employer is a Local or Public Authority or other body to whom the Freedom of Information Act 2000 applies; Supplemental Provision 8 (The Public Contracts Regulations 2015) applies only where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations.

**[16]** On factors to be taken into account by the Parties in considering whether disputes are to be determined by arbitration or by legal proceedings, see the Intermediate Building Contract Guide. See also footnote [12].

Sections: Dates for Completion of Sections<sup>[17]</sup>

Section [ ] : [ ]

1.7

Addresses for service of notices by the Parties

*(If none is stated, the address in each case, subject to clause 1.7.3, shall be that shown at the commencement of the Agreement.)<sup>[18]</sup>*

Employer

Contractor

2.4

Sections: Dates of Possession of Sections<sup>[17]</sup>

Section [ ] : [ ]

2.5

Sections: deferment of possession of Sections

Clause 2.5  
\* applies/does not apply

Maximum period of deferment (if less than 6 weeks) is<sup>[17]</sup>

Section [ ] : [ ]

2.23.2

Sections: rate of liquidated damages for each Section<sup>[17]</sup>

Section [ ] : £[ ] per [ ]

2.29

Sections: Section Sums<sup>[17]</sup>

Section [ ] : £[ ]

2.30

Sections: Rectification Periods<sup>[17]</sup>

*(If no other period is stated, the period is 6 months.)*

Section [ ] : [ ] months  
from the date of practical completion of each Section

[17] Continue on further sheets if necessary, which should be signed or initialled by or on behalf of each Party and then be annexed to this Contract.

[18] As to service of notices etc. outside the United Kingdom, see the Intermediate Building Contract Guide.



### 2.34.3

Contractor's Designed Portion: limit of Contractor's liability for loss of use etc. (if any)

£

### 4.3 and 4.9

Fluctuations Provision

*(Unless another provision or entry is selected, Schedule 4 applies.)*

- \* Schedule 4 (Contribution, levy and tax fluctuations) applies
- \* no Fluctuations Provision applies
- \* the following Fluctuations Provision applies

[ ]

Percentage addition for Schedule 4 (paragraph 12) (if applicable)

[ ] per cent

### 4.8.1

Interim payments – Interim Valuation Dates

*(If no date is stated, the first Interim Valuation Date is one month after the Date of Possession.)*

The first Interim Valuation Date is

and thereafter the same date in each month or the nearest Business Day in that month<sup>[19]</sup>

### 4.9.1

Interim payments – percentages of value

Where the Works, or those works in a Section, have not achieved practical completion, the percentage of total value in respect of the works that have not achieved practical completion is

*(The percentage is 95 per cent unless a different rate is stated.)*

per cent<sup>[20]</sup>

Where the Works, or those works in a Section or Relevant Part, have achieved practical completion, the percentage in respect of the completed works is

*(The percentage is 97½ per cent unless a different rate is stated.)*

per cent<sup>[20]</sup>

### 4.10.4

Listed Items – uniquely identified

*(Delete the entry if no bond is required.)*

- \* For uniquely identified Listed Items a bond in respect of payment for such items is required for

£[ ]

[19] The first Interim Valuation Date should not be more than one month after the Date of Possession.

[20] An insertion is needed here only if the default position is not to apply. If no retention is required, insert '100' in the entries for clause 4.9.1.

#### 4.10.5

---

Listed Items – not uniquely identified  
(Delete the entry if clause 4.10.5 does not apply.)

- \* For Listed Items that are not uniquely identified a bond in respect of payment for such items is required for

£[ ]

#### 6.4.1

---

Contractor's Public Liability insurance: injury to persons or property – the required level of cover is not less than

£  
for any one occurrence or series of occurrences arising out of one event

#### 6.5.1

---

Insurance – liability of Employer  
(Not required unless it is stated that it may be required and the minimum amount of indemnity is stated)

- Insurance  
\* may be required/is not required

Minimum amount of indemnity for any one occurrence or series of occurrences arising out of one event<sup>[21]</sup>

£[ ]

#### 6.7 and Schedule 1

---

Works insurance – Insurance Option applicable

- Schedule 1:
  - \* Insurance Option A applies
  - \* Insurance Option B applies
  - \* Insurance Option C applies

Percentage to cover professional fees  
(If no other percentage is stated, it shall be 15 per cent.)

[ ] per cent

Where Insurance Option A applies and cover is to be provided under the Contractor's annual policy (paragraph A.2), the annual renewal date is  
(as supplied by the Contractor)

[ ]

---

[21] If the indemnity is to be for an aggregate amount and not for any one occurrence or series of occurrences the entry should be amended to make this clear.

Where Insurance Option C applies, paragraph C.1<sup>[22]</sup>

*(Unless otherwise stated, paragraph C.1 applies. If it is not to apply, state the reference number and date or other identifier of the replacement document(s).)*

\* applies

\* is replaced by the provisions of the following document(s)

[ ]

(the 'C.1 Replacement Schedule')

## 6.10 and Schedule 1

---

Terrorism Cover – details of the required cover

*(Unless otherwise stated, Pool Re Cover is required.)<sup>[23]</sup>*

are set out in the following document(s)

## 6.15

---

The Joint Fire Code

\* applies/does not apply<sup>[24]</sup>

If the Joint Fire Code applies, state whether the insurer under Insurance Option A, B or C (paragraph C.2) has specified that the Works are a 'Large Project':

\* Yes/No<sup>[24]</sup>

## 6.18

---

Joint Fire Code – amendments/revisions

*(The cost shall be borne by the Contractor unless otherwise stated.)*

The cost, if any, of compliance with amendment(s) or revision(s) to the Joint Fire Code shall be borne by

\* the Employer/the Contractor

## 6.19

---

Contractor's Designed Portion (CDP) Professional Indemnity insurance

Level of cover

*(If an alternative is not selected the amount shall be the aggregate amount for any one period of insurance. A period of insurance for these purposes shall be one year unless otherwise stated.)*

---

**[22] Insurance Option C** is for use in the case of alterations of or extensions to Existing Structures. Under that option, the **Employer** is required to take out a Joint Names Policy for All Risks Insurance for the Works and also, if paragraph C.1 applies, a Joint Names Policy to insure the Existing Structures and their contents owned by him or for which he is responsible against loss or damage by the Specified Perils. Some Employers (e.g. tenants and some homeowners) may not be able readily to obtain the Joint Names cover required under paragraph C.1. Where that is the case, alternative arrangements and amendments will be necessary. See the Intermediate Building Contract Guide.

**Where there are Existing Structures, it is vital that any prospective Employer who is not familiar with Insurance Option C – in particular any Employer who is a tenant or domestic homeowner – or an appropriate member of the Employer's professional team, should consult specialist insurance advisers prior to the tender stage. Any Employer who is a tenant should also consult his insuring landlord prior to that stage.**

**[23]** Obtaining Terrorism Cover for the Works, which unless otherwise agreed is necessary in order to comply with the requirements of Insurance Option A, B or C, will involve an additional premium and in certain situations has been difficult to effect. If any difficulty might arise, there should be immediate pre-contract discussion between the Parties and their insurance advisers. See the Intermediate Building Contract Guide.

**[24]** Where Insurance Option A applies these entries are made on information supplied by the Contractor.

- Amount of indemnity required
- \* relates to claims or series of claims arising out of one event
  - \* is the aggregate amount for any one period of insurance

*(If no amount is stated, insurance under clause 6.19 shall not be required.)*

and is

£[\_\_\_\_\_]

Cover for pollution and contamination claims

*(If no amount is stated, such cover shall not be required; unless otherwise stated, the required limit of indemnity is an annual aggregate amount.)*

- \* is required, with a sub-limit of indemnity of

£[\_\_\_\_\_]

- \* is not required

Expiry of required period of CDP Professional Indemnity insurance is

*(If no period is selected, the expiry date shall be 6 years from the date of practical completion of the Works.)*

- \* 6 years
- \* 12 years
- \* [\_\_\_\_\_] years  
(not exceeding 12 years)

#### 7.2.1

Performance bond or guarantee from bank or other approved surety<sup>[25]</sup>

*(If this entry is not completed or the required form is not specified, a performance bond or guarantee is not required.)*

- \* is required/is not required

The required form of the bond or guarantee is set out in

[\_\_\_\_\_]

Initial value

[\_\_\_\_\_] per cent of the Contract Sum

Period of validity – if not specified in the required form, the expiry date of the performance bond or guarantee is to be  
*(If no entry is selected, the date shall be the date of practical completion of the Works.)*

- \* the date of practical completion of the Works
- \* 2 weeks after the date of expiry of the Rectification Period for the Works
- \* the date for issue of the certificate of making good for the Works under clause 2.31

Reduction in value – if not specified in the required form and if expiring later than the date of practical completion of the Works, the percentage reduction in the initial value on that date is  
*(If no other percentage is stated, it shall be 50 per cent.)*

[\_\_\_\_\_] per cent

#### 7.2.2

Guarantee from the Contractor's parent company

- \* is required/is not required

Parent company's name and registration number

---

**[25]** If a performance bond is required, the identity of the issuer as well as the operative terms of the bond should be agreed prior to execution of the contract.

[ ]

The required form of the guarantee is set out in

[ ]

### 7.3

Collateral Warranties – details of the requirements for the grant by the Contractor and sub-contractors of P&T Rights, Funder Rights and/or (in the case of sub-contractors) Employer Rights in respect of the Works by collateral warranties ('Rights Particulars') are set out in the following document<sup>[26]</sup>  
(State reference number and date or other identifier of the relevant document.)

### 8.9.2

Period of suspension  
(If none is stated, the period is 2 months.)

### 8.11.1.1 to 8.11.1.5

Period of suspension  
(If none is stated, the period is 2 months.)

### 9.2.1

Adjudication<sup>[27]</sup>

The Adjudicator is [ ]

Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)<sup>[28]</sup>  
(Where an Adjudicator is not named and a nominating body has not been selected, the nominating body shall be one of the bodies listed below selected by the Party requiring the reference to adjudication.)

- \* Royal Institute of British Architects
- \* The Royal Institution of Chartered Surveyors
- \* [constructionadjudicators.com](http://constructionadjudicators.com)<sup>[29]</sup>
- \* Chartered Institute of Arbitrators

[26] The relevant Rights Particulars should identify the beneficiaries (by name, class or description) and the sub-contractors who are also required to grant rights by way of Collateral Warranties, state in those cases where the default provision is not to apply which alternative provision is to apply in its place and give any other details required to complete the terms of the warranties that are to be given. A Model Form for the Rights Particulars is included in the Intermediate Building Contract Guide and is also available on the JCT website [www.jcttd.co.uk](http://www.jcttd.co.uk).

Employers should be selective in identifying the sub-contractors (or categories of sub-contractor) from whom collateral warranties may be required and should **not** include any Named Sub-Contractor since such matters are intended to be dealt with by the Intermediate Named Sub-Contractor/Employer Agreement ICSUB/NAM/E and not to be governed by the Intermediate Named Sub-Contract itself (ICSUB/NAM). Directions may be needed as to mode of execution of sub-contracts and/or collateral warranties by relevant sub-contractors. See also the Intermediate Building Contract Guide.

[27] The Parties should either name the Adjudicator and select the nominating body or, alternatively, select only the nominating body. The Adjudication Agreement (Adj) and the Adjudication Agreement (Named Adjudicator) (Adj/N) have been prepared by JCT for use when appointing an Adjudicator.

[28] Delete all but one of the nominating bodies asterisked.

[29] [constructionadjudicators.com](http://constructionadjudicators.com) is a trading name of Contractors Legal Grp Ltd.

#### 9.4.1

---

Arbitration<sup>[30]</sup> – appointor of Arbitrator (and of any replacement)<sup>[31]</sup>

*(If no appointor is selected, the appointor shall be the President or a Vice-President of the Royal Institute of British Architects.)*

President or a Vice-President:

- \* Royal Institute of British Architects
- \* The Royal Institution of Chartered Surveyors
- \* Chartered Institute of Arbitrators

DRAFT

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**[30]** This only applies where the Contract Particulars state (against the reference to Article 8) that Article 8 and clauses 9.3 to 9.8 (*Arbitration*) apply.

**[31]** Delete all but one of the bodies asterisked.

## Attestation

### Note on Execution

This Agreement should be executed by both the Employer and the Contractor either under hand or as a deed. As to factors relevant to that choice, see the Intermediate Building Contract Guide.

#### Execution under hand

If this Agreement is to be executed under hand, use the form set out on the following page. Each Party or his authorised representative should sign where indicated in the presence of a witness who should then sign and set out his name and address.

#### Execution as a Deed

If this Agreement is to be executed as a deed, each Party should use the relevant form marked 'Execution as a Deed' in accordance with the notes provided.

#### Other forms of Attestation

In cases where the forms of attestation set out are not appropriate, e.g. in the case of certain housing associations and partnerships or if a Party wishes an attorney to execute this Agreement on his behalf, the appropriate form(s) may be inserted in the vacant space opposite and/or below.

*Execution under hand*

## As witness

the hands of the Parties  
or their duly authorised representatives

Signed by or on behalf of  
the Employer

in the presence of:

\_\_\_\_\_  
*witness' signature*

\_\_\_\_\_  
*witness' name*

\_\_\_\_\_  
*witness' address*

Signed by or on behalf of  
the Contractor

in the presence of:

\_\_\_\_\_  
*witness' signature*

\_\_\_\_\_  
*witness' name*

\_\_\_\_\_  
*witness' address*



## Notes on Execution as a Deed

- 1 For the purposes of execution as a deed, two forms are provided for execution, one for the Employer and the other for the Contractor. Each form provides four methods of execution, **(A)** to **(D)**, for use as appropriate. The full name of the Employer or Contractor (whether an individual, a company or other body) should be inserted where indicated at the commencement of the relevant form. This applies irrespective of the method used.
- 2 For public and private companies incorporated and registered under the Companies Acts, the three principal methods of execution as a deed are:
  - (A)** through signature by a Director and the Company Secretary or by two Directors;
  - (B)** by affixing the company's common seal in the presence of a Director and the *Company* Secretary or of two Directors or other duly authorised officers; or
  - (C)** signature by a single Director in the presence of a witness who attests the signature.

Methods **(A)** and **(C)** are available to public and private companies whether or not they have a common seal. (Method **(C)** was introduced by section 44(2)(b) of the Companies Act 2006.) Methods **(A)** and **(C)** are not available under companies legislation to local authorities or to certain other bodies corporate, e.g. bodies incorporated by letters patent or private Act of Parliament that are not registered under companies legislation and such bodies may only use method **(B)**.
- 3 Where method **(A)** is being used, delete the inappropriate words and insert in the spaces indicated the names of the two Directors, or of the Director and the Company Secretary, who are to sign.
- 4 If method **(B)** (affixing the common seal) is adopted in cases where either or both the authorised officers attesting its affixation are not themselves a Director or the *Company* Secretary, their respective office(s) should be substituted for the reference(s) to Director and/or to *Company* Secretary/Director. (In the case of execution by bodies that are not companies, the reference to "*Company*" under the second signature should be deleted where appropriate.)
- 5 Method **(C)** (execution by a single Director) has been introduced primarily, but not exclusively, for 'single officer' companies. The Director should sign where indicated in the presence of a witness who should then sign and set out his name and address.
- 6 Where the Employer or Contractor is an individual, he should use method **(D)** and sign where indicated in the presence of a witness who should then sign and set out his name and address.

*Execution as a Deed*

**Executed as a Deed by the Employer**

namely <sup>1</sup> Newquay Town Council

- (A) acting by a Director and the Company Secretary/two Directors **of the company** <sup>2,3</sup>

\_\_\_\_\_  
(Print name of signatory)

\_\_\_\_\_  
Signature Director

and

\_\_\_\_\_  
(Print name of signatory)

\_\_\_\_\_  
Signature Company Secretary/Director

- (B) by affixing hereto the common seal **of the company/other body corporate** <sup>2,4</sup>

in the presence of

\_\_\_\_\_  
Signature Director

\_\_\_\_\_  
Signature Company Secretary/Director

[Common seal of company]

- (C) by attested signature of a single Director **of the company** <sup>2,5</sup>

\_\_\_\_\_  
Signature Director

in the presence of

\_\_\_\_\_  
Witness' signature (Print name)

\_\_\_\_\_  
Witness' address

- (D) by attested signature **of the individual** <sup>6</sup>

\_\_\_\_\_  
Signature

in the presence of

\_\_\_\_\_  
Witness' signature (Print name)

\_\_\_\_\_  
Witness' address

*Note: The numbers on this page refer to the numbered paragraphs in the Notes on Execution as a Deed.*

*Execution as a Deed*

**Executed as a Deed by the Contractor**

namely <sup>1</sup>

- (A) acting by a Director and the Company Secretary/two Directors **of the company** <sup>2,3</sup>

\_\_\_\_\_  
(Print name of signatory)

\_\_\_\_\_  
Signature Director

and

\_\_\_\_\_  
(Print name of signatory)

\_\_\_\_\_  
Signature Company Secretary/Director

- (B) by affixing hereto the common seal **of the company/other body corporate** <sup>2,4</sup>

in the presence of

\_\_\_\_\_  
Signature Director

\_\_\_\_\_  
Signature Company Secretary/Director

[Common seal of company]

- (C) by attested signature of a single Director **of the company** <sup>2,5</sup>

\_\_\_\_\_  
Signature Director

in the presence of

\_\_\_\_\_  
Witness' signature (Print name)

\_\_\_\_\_  
Witness' address

- (D) by attested signature **of the individual** <sup>6</sup>

\_\_\_\_\_  
Signature

in the presence of

\_\_\_\_\_  
Witness' signature (Print name)

\_\_\_\_\_  
Witness' address

*Note: The numbers on this page refer to the numbered paragraphs in the Notes on Execution as a Deed.*

# Conditions

## Section 1 Definitions and Interpretation

### Definitions

#### 1.1 Definitions

Unless the context otherwise requires or the Agreement or these Conditions specifically provide otherwise, the following words and phrases, where they appear in capitalised form in the Agreement or these Conditions, shall have the meanings stated or referred to below:

**Activity Schedule:** see the **Fifth Recital**.

**Adjudicator:** an individual appointed under **clause 9.2** as the Adjudicator.

**Agreement:** the Agreement to which these Conditions are annexed, including its Recitals, Articles and Contract Particulars.

**All Risks Insurance:** see **clause 6.8**.

**Approximate Quantity:** a quantity in any Contract Bills there identified as an approximate quantity.

**Arbitrator:** an individual appointed under **clause 9.4** as the Arbitrator.

**Architect/Contract Administrator:** the person named in **Article 3** or any successor nominated or otherwise agreed under **clause 3.4**.

**Article:** an article in the **Agreement**.

**Base Date:** the date stated as such in the **Contract Particulars** (against the reference to **clause 1.1**)<sup>[32]</sup>.

**BIM Protocol:** (where applicable) the document identified as such in the **Contract Particulars** (against the reference to **clause 1.1**).

**Business Day:** any day which is not a Saturday, a Sunday or a Public Holiday.

**C.1 Replacement Schedule:** (where applicable) the insurance schedule and/or other documents identified as such in the **Contract Particulars** (against the reference to **clause 6.7** and **Schedule 1**).

**CDM Regulations:** the Construction (Design and Management) Regulations 2015.

**CDP Analysis:** see the **Sixth Recital** and the **Contract Particulars**.

**CDP Works:** that part of the Works comprised in the Contractor's Designed Portion.

**Completion Date:** the Date for Completion of the Works or of a Section as stated in the **Contract Particulars** or such other date as is fixed under **clause 2.19**.

**Conditions:** the clauses set out in sections 1 to 9 of these Conditions, together with and including the Schedules hereto.

**Construction Industry Scheme (or 'CIS'):** see the **Eighth Recital**.

[32] The Base Date is relevant (inter alia) to clause 2.15.2.1 (changes in Statutory Requirements) and the JCT fluctuations provision (Schedule 4) and it helps to determine the edition/issue and/or version of documents relevant to this Contract, e.g. the Measurement Rules and definitions of the prime cost of daywork (clause 5.4).

**Construction Phase Plan:** the plan referred to in regulation 2 of the CDM Regulations, including any updates and revisions.

**Consultants:** see **clause 7.3.2**.

**Contract Bills:** (where Pricing Option A applies and Bills of Quantities form the Priced Document) those bills as priced by the Contractor (see the **Fourth** and **Fifth Recitals**).

**Contract Documents:** the Agreement, these Conditions, the Contract Drawings, the Employer's Requirements, the Contractor's Proposals and the CDP Analysis, together with:

(where applicable) the BIM Protocol;

(where Pricing Option A applies) the Priced Document or (where Pricing Option B applies) the Specification; and

any Invitation to Tender and Tender to and by a Named Sub-Contractor in forms ICSUB/NAM/IT and ICSUB/NAM/T as referred to in the Fourth Recital.

**Contract Drawings:** the drawings referred to in the **Third Recital**.

**Contract Particulars:** the particulars in the **Agreement** and there described as such, including the entries made by the Parties.

**Contract Sum:** the sum stated in **Article 2**.

**Contract Sum Analysis:** see the **Fifth Recital**.

**Contractor:** the person named as Contractor in the **Agreement**.

**Contractor's Design Documents:** the drawings, details and specifications of materials, goods and workmanship and other related documents and information prepared by or for the Contractor in relation to the Contractor's Designed Portion (including such as are contained in the Contractor's Proposals or referred to in clause 2.10.2), together, where applicable, with any other design documents or information to be provided by him under the BIM Protocol.

**Contractor's Designed Portion:** see the **Second Recital**.

**Contractor's Persons:** the Contractor's employees and agents, all other persons employed or engaged on or in connection with the Works or any part of them and any other person properly on the site in connection therewith, excluding the Architect/Contract Administrator, the Quantity Surveyor, the Employer, Employer's Persons and any Statutory Undertaker.

**Contractor's Proposals:** see the **Sixth Recital** and the **Contract Particulars**.

**Date for Completion:** the date stated as such date in the **Contract Particulars** (against the reference to **clause 1.1**) in relation to the Works or a Section.

**Date of Possession:** the date stated as such date in the **Contract Particulars** (against the reference to **clause 2.4**) in relation to the Works or a Section.

**Design Submission Procedure:** such procedure as is specified by the BIM Protocol or, where that is not applicable, the procedure set out in **Schedule 6**, subject to any modifications of that procedure specified in the Contract Documents.

**Employer:** the person named as Employer in the **Agreement**.

**Employer Rights:** any rights in favour of the Employer to be granted by sub-contractors in accordance with the Rights Particulars, by way of JCT collateral warranty SCWa/E.

**Employer's Persons:** all persons employed, engaged or authorised by the Employer, excluding the Contractor, Contractor's Persons, the Architect/Contract Administrator, the Quantity Surveyor and any Statutory Undertaker.

**Employer's Requirements:** see the **Fourth Recital** and the **Contract Particulars**.

**Excepted Risks:** see **clause 6.8**.

**Existing Structures:** any and all existing structures within which the Works or part of them are to be executed or to which they are to form an extension, together with any Section for which a Section

Completion Certificate has been issued and, as from the Relevant Date, any Relevant Part taken into possession under clause 2.25.

**Final Certificate:** see **clauses 1.9** and **4.21**.

**Finance Agreement:** the agreement between the Funder and the Employer for the provision of finance for the Works.

**Fluctuations Provision:** the provision (if any) specified by the **Contract Particulars** (against the reference to **clauses 4.3** and **4.9**).

**Funder:** the person named or otherwise sufficiently identified as such (whether by class or description) in or by the Rights Particulars.

**Funder Rights:** the rights in favour of the Funder to be granted by the Contractor by JCT collateral warranty CWa/F or those to be granted by sub-contractors in accordance with the Rights Particulars.

**Information Release Schedule:** the schedule referred to in the **Ninth Recital**.

**Insolvent:** see **clause 8.1**.

**Insurance Options A, B and C:** the provisions relating to insurance of the Works and (where applicable) Existing Structures set out in **Schedule 1**.

**Interest Rate:** a rate 5% per annum above the official bank rate of the Bank of England current at the date that a payment due under this Contract becomes overdue.

**Interim Certificate:** any of the certificates to which **clause 4.8.2** refers.

**Interim Valuation Date:** each date as specified by the **Contract Particulars** (against the reference to **clause 4.8.1**).

**Joint Fire Code:** the Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Renovation, published by Construction Industry Publications Ltd and the Fire Protection Association, current at the Base Date.

**Joint Names Policy:** see **clause 6.8**.

**Listed Items:** materials, goods and/or items prefabricated for inclusion in the Works which are listed as such items by the Employer in a list supplied to the Contractor and annexed (where Pricing Option A applies) to the Priced Document or (where Pricing Option B applies) to the Specification.

**Local or Public Authority:** a body that is a 'contracting authority' as defined by the PC Regulations.

**Measurement Rules:** the RICS New Rules of Measurement – Detailed Measurement for Building Works (NRM2), in the form published at the Base Date, unless otherwise stated in the Contract Documents.

**Named Sub-Contract Conditions:** Intermediate Named Sub-Contract Conditions ICSu/NAM/C (as incorporated by reference in an Intermediate Named Sub-Contract Agreement ICSu/NAM/A).

**Named Sub-Contractor:** see the **Fourth Recital** and **clause 3.7**.

**P&T Rights:** the rights in favour of a Purchaser or Tenant to be granted by the Contractor by JCT collateral warranty CWa/P&T or those to be granted by sub-contractors in accordance with the Rights Particulars.

**Parties:** the Employer and the Contractor together.

**Party:** either the Employer or the Contractor.

**Pay Less Notice:** see **clauses 4.12.5** and **4.13.1**.

**Payment Application:** see **clause 4.11.1**.

**Payment Certificate:** an Interim Certificate or the Final Certificate.

**Payment Notice:** see **clause 4.11.2**.

**PC Regulations:** the Public Contracts Regulations 2015.

**Practical Completion Certificate:** see **clause 2.21**.

**Priced Document:** see the **Fifth Recital**.

**Pricing Options A and B:** see the **Fifth Recital**.

**Principal Contractor:** the Contractor or other contractor named in **Article 6** or any successor appointed by the Employer.

**Principal Designer:** the Architect/Contract Administrator or other person named in **Article 5** or any successor appointed by the Employer.

**Provisional Sum:** where the Contract Documents include Contract Bills, includes a sum provided in such bills for work, whether or not identified as being for defined or undefined work within the meaning of paragraph 2.9.1 of the Measurement Rules; and

where the Contract Documents do not include Contract Bills, includes a sum provided for work that the Employer may or may not decide to have carried out, or which cannot be accurately specified in the Contract Documents.

**Public Holiday:** Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.<sup>[33]</sup>

**Purchaser:** any person named or otherwise sufficiently identified as such (whether by class or description) in or by the Rights Particulars to whom the Employer transfers or agrees to transfer his interest in all or part of the Works.

**Quantity Surveyor:** the person named in **Article 4** or any successor nominated or otherwise agreed under **clause 3.4**.

**Recitals:** the recitals in the **Agreement**.

**Rectification Period:** the period stated as such period in the **Contract Particulars** (against the reference to **clause 2.30**) in relation to the Works or (where applicable) a Section.

**Relevant Date:** see **clause 2.25**.

**Relevant Event:** see **clause 2.20**.

**Relevant Matter:** see **clause 4.17**.

**Relevant Part:** see **clause 2.25**.

**Rights Particulars:** see **clause 7.3** and the **Contract Particulars** for that clause.

**Schedule of Rates:** see the **Fifth Recital**.

**Scheme:** Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998.

**Sections:** (where applicable) the Sections into which the Works have been divided, as referred to in the **Eleventh Recital** and the **Contract Particulars**.

**Section Completion Certificate:** see **clause 2.21.2**.

**Section Sum:** see **clause 2.29** and the **Contract Particulars**.

**Site Materials:** all unfixed materials and goods delivered to and placed on or adjacent to the Works which are intended for incorporation therein.

**Specification:** where applicable under Pricing Option A, the specification as priced and, where Pricing Option B applies, the unpriced specification. (See the **Fourth** and **Fifth Recitals**.)

**Specified Perils:** see **clause 6.8**.

**Statutory Requirements:** any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Works or performance of any obligations under this Contract and any regulation or bye-law of any local authority or statutory undertaker which

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[33] Amend as necessary if different Public Holidays are applicable.

has any jurisdiction with regard to the Works or with whose systems the Works are, or are to be, connected.

**Statutory Undertaker:** any local authority or statutory undertaker where executing work solely in pursuance of its statutory obligations, including any persons employed, engaged or authorised by it upon or in connection with that work.

**Tenant:** any person named or otherwise sufficiently identified as such (whether by class or description) in or by the Rights Particulars to whom the Employer grants or agrees to grant a leasehold interest in all or part of the Works.

**Terrorism Cover:** see clause 6.8.

**Valuation:** a valuation by the Quantity Surveyor in accordance with the Valuation Rules, pursuant to clause 5.2.

**Valuation Rules:** see clauses 5.3 to 5.7.

**Variation:** see clause 5.1.

**VAT:** Value Added Tax.

**Works:** the works briefly described in the **First** and **Second Recitals**, as more particularly shown, described or referred to in the Contract Documents, including any changes made to those works in accordance with this Contract.

**Works Insurance Policy:** the Joint Names Policy or policies covering the Works and Site Materials to be effected and maintained under whichever of Insurance Options A, B or C applies under this Contract.

**Work Schedules:** where applicable under Pricing Option A, the work schedules as priced (see the **Fourth** and **Fifth Recitals**).

## Interpretation

### 1.2 Reference to clauses etc.

Unless otherwise stated, a reference in the Agreement or in these Conditions to a clause or Schedule is to that clause in or Schedule to these Conditions and, unless the context otherwise requires, a reference in a Schedule to a paragraph is to that paragraph of that Schedule.

### 1.3 Agreement etc. to be read as a whole

The Agreement and these Conditions are to be read as a whole. Nothing contained in any other Contract Document or any Framework Agreement, irrespective of their terms, shall override or modify the Agreement or these Conditions.

### 1.4 Headings, references to persons, legislation etc.

In the Agreement and these Conditions, unless the context otherwise requires:

- 1.4.1 the headings, notes and footnotes are included for convenience only and shall not affect the interpretation of this Contract;
- 1.4.2 the singular includes the plural and vice versa;
- 1.4.3 a gender includes any other gender;
- 1.4.4 a reference to a 'person' includes any individual, firm, partnership, company and any other body corporate;
- 1.4.5 a reference to a statute, statutory instrument or other subordinate legislation ('legislation') is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification, and including corresponding legislation in any other relevant part of the United Kingdom; and
- 1.4.6 references to documents shall, where there is a BIM Protocol or other protocol relating to the supply of documents or information, be deemed to include information in a form or medium conforming to that protocol.



## **1.5 Reckoning periods of days**

Where under this Contract an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include a day which is a Public Holiday that day shall be excluded.

## **1.6 Contracts (Rights of Third Parties) Act 1999**

Notwithstanding any other provision of this Contract, nothing in this Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

## **1.7 Notices and other communications**

- 1.7.1 Any notice or other communication between the Parties, or by or to the Architect/Contract Administrator or Quantity Surveyor, that is expressly referred to in the Agreement or these Conditions (including, without limitation, each application, approval, consent, confirmation, counter-notice, decision, instruction or other notification) shall be in writing.
- 1.7.2 Subject to clause 1.7.4, each such notice or other communication and any documents to be supplied may or (where so required) shall be sent or transmitted by the means (electronic or otherwise) and in such format as the Parties have agreed or may from time to time agree in writing for the purposes of this Contract.<sup>[34]</sup>
- 1.7.3 Subject to clauses 1.7.2 and 1.7.4, any notice, communication or document may be given or served by any effective means and shall be duly given or served if delivered by hand or sent by pre-paid post to:
  - 1.7.3.1 the recipient's address stated in the Contract Particulars, or to such other address as the recipient may from time to time notify to the sender; or
  - 1.7.3.2 if no such address is then current, the recipient's last known principal business address or (where a body corporate) its registered or principal office.
- 1.7.4 Any notice expressly required by this Contract to be given in accordance with this clause 1.7.4 shall be delivered by hand or sent by Recorded Signed for or Special Delivery post. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.
- 1.7.5 If in an emergency any communication is made orally with respect to health and safety, risk of damage to property or insurance matters, written confirmation of it shall be sent as soon thereafter as is reasonably practicable.

## **1.8 Issue of Architect/Contract Administrator's certificates**

Each certificate to be issued by the Architect/Contract Administrator under these Conditions shall be issued to the Employer and the Contractor at the same time.

## **1.9 Effect of Final Certificate**

- 1.9.1 Subject to clause 1.9.2 (and save in respect of fraud), the Final Certificate shall have effect in any proceedings under or arising out of or in connection with this Contract (whether by adjudication, arbitration or legal proceedings) as conclusive evidence that:
  - 1.9.1.1 where and to the extent that any particular quality of any materials or goods or any particular standard of an item of workmanship was expressly described in the Contract Documents, in any instruction issued by the Architect/Contract Administrator under these Conditions or in any drawings or details issued by him under clause 2.9 or 2.10, to be for his approval, the particular quality or standard was to his reasonable satisfaction, but the Final Certificate shall not be conclusive evidence that they or any other materials, goods or workmanship comply with any other requirement or term of this Contract;
  - 1.9.1.2 necessary effect has been given to all the terms of this Contract that require an adjustment to be made to the Contract Sum save where there has been an erroneous inclusion or exclusion of any item or an arithmetical error in any computation, in which event the Final Certificate shall have effect as conclusive

**[34]** In cases where there is no BIM Protocol, the Parties should agree a communications protocol on or before entering into the Contract, or as soon thereafter as is practicable. See the Intermediate Building Contract Guide.

evidence as to all other computations;

1.9.1.3 all and only such extensions of time, if any, as are due under clause 2.19 have been given; and

1.9.1.4 the reimbursement of direct loss and/or expense, if any, due to the Contractor as agreed, ascertained or valued in accordance with these Conditions is in final settlement of all and any claims which the Contractor has or may have arising out of the occurrence of any Relevant Matters, whether such claim be for breach of contract, duty of care, statutory duty or otherwise.

1.9.2 The effects of the Final Certificate specified in clause 1.9.1 shall in relation to the subject matter of any adjudication, arbitration or other proceedings be suspended pending the conclusion of such proceedings, and shall thereafter be subject to the terms of any decision, award or judgment in and any settlement of those proceedings:

1.9.2.1 where those proceedings are commenced before or within 28 days after the date of issue of the Final Certificate; or

1.9.2.2 in the case of an adjudication commenced within the period referred to in clause 1.9.2.1 in which the Adjudicator gives his decision after the date of issue of the Final Certificate, where arbitration or legal proceedings to determine the dispute or difference in question are commenced within 28 days of the date of that decision

but not otherwise.

1.9.3 For the purposes of clause 1.9.2 any proceedings shall be treated as concluded if during any period of 12 months commencing on or after the issue of the Final Certificate neither Party takes a further step in them.

#### **1.10 Effect of certificates other than Final Certificate**

Save as stated in clause 1.9 no certificate of the Architect/Contract Administrator shall of itself be conclusive evidence that any works, any materials or goods to which the certificate relates are in accordance with this Contract.

#### **1.11 Consents and approvals**

1.11.1 Where consent or approval of either Party or the Architect/Contract Administrator is expressly required under these Conditions and is requested, then, except as provided in clause 1.11.2, such consent or approval shall not be unreasonably delayed or withheld.

1.11.2 In the following cases the giving of consent or approval shall be at the sole discretion of the Party from whom it is sought and clause 1.11.1 shall not apply, namely the Employer's consent under clause 2.9 or 2.30 and either Party's consent under clause 7.1.

#### **1.12 Applicable law**

This Contract shall be governed by and construed in accordance with the law of England.<sup>[35]</sup>

[35] Where the Parties do not wish the law applicable to this Contract to be the law of England appropriate amendments should be made.

## Section 2 Carrying out the Works

### Contractor's Obligations

#### 2.1 General obligations

The Contractor shall carry out and complete the Works in a proper and workmanlike manner and in compliance with the Contract Documents, the Construction Phase Plan and Statutory Requirements, and shall give all notices required by the Statutory Requirements. In relation to the Contractor's Designed Portion, the Contractor shall:

- 2.1.1 complete the design for the Contractor's Designed Portion, including the selection of any specifications for the kinds and standards of the materials, goods and workmanship to be used in the CDP Works, so far as not described or stated in the Employer's Requirements or the Contractor's Proposals;
- 2.1.2 comply with the Architect/Contract Administrator's directions for the integration of the design of the Contractor's Designed Portion with the design of the Works as a whole, subject to the provisions of clause 3.8.2; and
- 2.1.3 in complying with this clause 2.1, comply with regulations 8 to 10 of the CDM Regulations.

#### 2.2 Materials, goods and workmanship

- 2.2.1 Insofar as the quality of materials or goods or standards of workmanship are stated to be a matter for the Architect/Contract Administrator's approval, such quality and standards shall be to his reasonable satisfaction. To the extent that the quality of materials and goods or standards of workmanship are neither described in the Contract Documents nor stated to be a matter for such approval or satisfaction, they shall in the case of the Contractor's Designed Portion be of a standard appropriate to it and shall in any other case be of a standard appropriate to the Works.
- 2.2.2 The Contractor shall take all reasonable steps to encourage Contractor's Persons to be registered cardholders under the [Construction Skills Certification Scheme](#) (CSCS) or qualified under an equivalent recognised qualification scheme.

#### 2.3 Fees and charges

The Contractor shall pay all fees and charges in respect of the Works legally recoverable from him. The amount of any such fees or charges (including any rates or taxes other than VAT) shall be added to the Contract Sum unless they are required by the Priced Document or Specification to have been included in the Contract Sum or relate solely to the Contractor's Designed Portion.

### Possession

#### 2.4 Date of Possession – progress

On the Date of Possession possession of the site or, in the case of a Section, possession of the relevant part of the site shall be given to the Contractor who shall thereupon begin the construction of the Works or Section and regularly and diligently proceed with and complete the same on or before the relevant Completion Date. For Works insurance purposes the Contractor shall retain possession:

- 2.4.1 of the site and the Works up to and including the date of issue of the Practical Completion Certificate; or
- 2.4.2 of each Section and the relevant part of the site up to and including the date of issue of the Section Completion Certificate for that Section and, in respect of any balance of the site, up to and including the date of issue of the Practical Completion Certificate

and, subject to clause 2.25 and section 8, the Employer shall not be entitled to take possession of any part or parts of the Works or Section until such date.

## **2.5 Deferment of possession**

If the Contract Particulars state that clause 2.5 applies in respect of the Works or any Section, the Employer may defer the giving of possession of the site or relevant part of it for a period not exceeding 6 weeks or lesser period stated in the Contract Particulars, calculated from the relevant Date of Possession.

## **2.6 Early use by Employer**

2.6.1 Notwithstanding clause 2.4, the Employer may, with the Contractor's consent, use or occupy the site or the Works or part of them, whether for storage or otherwise, before the date of issue of the Practical Completion Certificate or relevant Section Completion Certificate. Before the Contractor gives his consent to such use or occupation, the Party responsible for the Works Insurance Policy and/or, where there are Existing Structures, for any insurance cover relating to them shall notify the insurers and obtain confirmation that such use or occupation will not prejudice the insurance.

2.6.2 Where Insurance Option A applies and/or the Contractor is to cover his own or any other risks in relation to any Existing Structures and any insurers' confirmation is conditional on an additional premium being paid, the Contractor shall notify the Employer of its amount. If the Employer continues to require such use or occupation, any additional premium shall be added to the Contract Sum and the Contractor shall if requested produce the receipt for it to the Employer.

## **2.7 Work not forming part of the Contract**

In regard to any work not forming part of this Contract which the Employer requires to be carried out by the Employer himself or by any Employer's Person:

2.7.1 where the Contract Documents provide the information necessary to enable the Contractor to carry out and complete the Works or each relevant Section in accordance with this Contract, the Contractor shall permit the execution of such work;

2.7.2 where the Contract Documents do not provide the information referred to in clause 2.7.1, the Employer may with the Contractor's consent arrange for the execution of that work.

## **Supply of Documents, Setting Out etc.**

### **2.8 Contract Documents**

2.8.1 The Contract Documents and (where Pricing Option B applies) the Priced Document shall remain in the custody of the Employer and shall be available at all reasonable times for inspection by the Contractor.

2.8.2 Immediately after the execution of this Contract the Architect/Contract Administrator, without charge to the Contractor, shall (unless previously provided or unless the BIM Protocol or other communications protocol requires otherwise) provide him with:

2.8.2.1 one copy, certified on behalf of the Employer, of the Contract Documents; and

2.8.2.2 two further copies of the Contract Drawings and the Contract Bills/Specification/ Work Schedules.

2.8.3 None of the documents referred to in this clause 2.8 that are provided to the Contractor shall be used by him for any purpose other than this Contract, and (subject only to clause 2.8.4) the Employer, the Architect/Contract Administrator and the Quantity Surveyor shall not divulge or use except for the purposes of this Contract any of the rates or prices in the Priced Document.

2.8.4 Where the Employer is a Local or Public Authority or other body of the type mentioned in Supplemental Provision 7, his obligations of confidentiality shall be subject to that Supplemental Provision.

### **2.9 Levels and setting out of the Works**

The Architect/Contract Administrator shall determine any levels required for the execution of the Works and, subject to clause 2.10.2.2, shall provide the Contractor by way of accurately dimensioned drawings with such information as shall enable the Contractor to set out the Works. The Contractor

shall be responsible for, and shall at no cost to the Employer amend, any errors arising from his own inaccurate setting out. With the Employer's consent, the Architect/Contract Administrator may instruct that such errors shall not be amended and an appropriate deduction may be made from the Contract Sum for those that are not required to be amended.

## **2.10 Construction information**

- 2.10.1 Unless prevented by an act or default of the Contractor or any Contractor's Person, the Architect/Contract Administrator shall ensure that the information referred to in the Information Release Schedule is released at the time stated in that schedule. The Employer and Contractor may agree to vary any such time, such agreement not to be unreasonably withheld.
- 2.10.2 In relation to the CDP Works, the Contractor, in addition to complying with clause 2.1, shall as and when necessary from time to time and without charge provide the Architect/Contract Administrator with such Contractor's Design Documents as are reasonably necessary to explain or amplify the Contractor's Proposals, including:
- 2.10.2.1 such related calculations and information as may be requested; and
- 2.10.2.2 all levels and setting out dimensions which the Contractor prepares or uses for the purposes of carrying out and completing the Contractor's Designed Portion.
- 2.10.3 The Contractor's Design Documents to be provided pursuant to clause 2.10.2 shall be submitted to the Architect/Contract Administrator in accordance with the Design Submission Procedure and the Contractor shall not commence any work to which such a document relates before that procedure has been complied with.

## **2.11 Further drawings, details and instructions**

- 2.11.1 Where not included in the Information Release Schedule, the Architect/Contract Administrator shall from time to time, without charge to the Contractor, provide him with such further drawings or details as are reasonably necessary to explain and amplify the Contract Drawings and shall issue such instructions (including those for or in regard to the expenditure of Provisional Sums) as are necessary to enable the Contractor to carry out and complete the Works in accordance with this Contract.
- 2.11.2 The further drawings, details and instructions shall be provided or given at the time the Contractor reasonably requires them, having regard to the progress of the Works, or, if in the Architect/Contract Administrator's opinion practical completion of the Works or relevant Section is likely to be achieved before the relevant Completion Date, having regard to that Completion Date.
- 2.11.3 Where the Contractor has reason to believe that the Architect/Contract Administrator is not aware of the time by which the Contractor needs to receive such further drawings, details or instructions, he shall, so far as reasonably practicable, give such advance notice to the Architect/Contract Administrator as should enable the Architect/Contract Administrator to comply with that requirement.

## **Errors, Inconsistencies and Divergences**

### **2.12 Bills of Quantities**

- 2.12.1 Where there are Contract Bills, then, unless in respect of any specified item or items it is otherwise specifically stated in them, those bills are to have been prepared in accordance with the Measurement Rules.
- 2.12.2 If in the Contract Bills there is any unstated departure from the method of preparation referred to in clause 2.12.1 or any error in description or in quantity or any omission of items (including any error in or omission of information in any item which is the subject of a Provisional Sum for defined work), the departure, error or omission shall be corrected. Where the description of a Provisional Sum for defined work does not provide the information required by the Measurement Rules, the description shall be corrected so that it does provide that information.

### **2.13 Instructions on errors, omissions and inconsistencies**

- 2.13.1 The Architect/Contract Administrator shall issue instructions in regard to any such

departure, error or omission as is referred to in clause 2.12 and in relation to any error in description or quantity, any omission or any inconsistency in or between any of the following, namely:

- 2.13.1.1 the Contract Documents;
  - 2.13.1.2 any instruction issued by the Architect/Contract Administrator under these Conditions;
  - 2.13.1.3 any drawings or documents issued by the Architect/Contract Administrator under any of clauses 2.9 to 2.11; and
  - 2.13.1.4 the Contractor's Design Documents.
- 2.13.2 No such departure, error, omission or inconsistency shall vitiate this Contract.
- 2.13.3 If the Contractor becomes aware of any such departure, error, omission or inconsistency as is referred to in clause 2.12 or 2.13.1:
- 2.13.3.1 he shall immediately give notice to the Architect/Contract Administrator with appropriate details; and
  - 2.13.3.2 in the case of an inconsistency within the Employer's Requirements that is not dealt with in the Contractor's Proposals in a manner consistent with Statutory Requirements or in the case of an inconsistency within or between the Contractor's Proposals and/or other Contractor's Design Documents, he shall as soon as practicable after its discovery make proposals for the necessary amendments.
- 2.13.4 Where an inconsistency within the Employer's Requirements is dealt with in the Contractor's Proposals in a manner consistent with Statutory Requirements, the Contractor's Proposals shall prevail.

## **2.14 Instructions – additions to Contract Sum, exceptions**

Where instructions under clause 2.13.1 vary the quality or quantity of work included in the Contract Sum, as referred to in clause 4.1, or in any other manner constitute a Variation, they shall be valued in accordance with section 5, save and provided always that no extension of time shall be given and there shall be no addition to the Contract Sum in respect of:

- 2.14.1 instructions for the correction of any error, omission or inconsistency within or between the Contractor's Proposals and/or other Contractor's Design Documents or requiring a Variation of work not comprised in the Contractor's Designed Portion that is necessitated by any such error, omission or inconsistency or its correction; or
- 2.14.2 any delay or suspension caused by the Contractor's failure to comply with clause 2.1.3 or to provide in due time any Contractor's Design Documents or related calculations or information either:
  - 2.14.2.1 as required by clause 2.10.3; or
  - 2.14.2.2 in response to a request from the Architect/Contract Administrator that specifies the documents or information and date by which it is reasonably necessary for him to receive them, having regard to the progress of the Works.

## **2.15 Divergences from Statutory Requirements**

- 2.15.1 If the Contractor or Architect/Contract Administrator becomes aware of a divergence between the Statutory Requirements and a document referred to in clause 2.13, he shall immediately give the other notice specifying the divergence and, where it is between the Statutory Requirements and the Employer's Requirements, the Contractor's Proposals or other Contractor's Design Documents, the Contractor shall notify the Architect/Contract Administrator of his proposed amendment for removing it.
- 2.15.2 Within 7 days of becoming aware of such divergence (or, where applicable, within 14 days of receipt of the Contractor's proposed amendment), the Architect/Contract Administrator shall issue instructions in that regard, in relation to which:
  - 2.15.2.1 if the divergence is between the Statutory Requirements and the Employer's

Requirements, the Contractor's Proposals or other Contractor's Design Documents, the Contractor shall comply at no cost to the Employer unless after the Base Date there is a change in the Statutory Requirements which necessitates an alteration or modification to the Contractor's Designed Portion, in which event the instruction shall to that extent be treated as a Variation of the Employer's Requirements; and

2.15.2.2 in any other case, if and insofar as those instructions require the Works to be varied, they shall be treated as a Variation.

2.15.3 Provided the Contractor is not in breach of clause 2.15.1, the Contractor shall not be liable under this Contract if the Works (other than the CDP Works) do not comply with the Statutory Requirements to the extent that the non-compliance results from the Contractor having carried out work in accordance with any of the documents referred to in clauses 2.13.1.1 to 2.13.1.3, other than the Employer's Requirements, the Contractor's Proposals or other Contractor's Design Documents.

## **2.16 Emergency compliance with Statutory Requirements**

2.16.1 If in an emergency compliance with the Statutory Requirements necessitates the Contractor supplying materials and/or executing work before receiving instructions under clause 2.15.2, the Contractor shall supply such limited materials and execute such limited work as are reasonably necessary to secure immediate compliance.

2.16.2 The Contractor shall forthwith notify the Architect/Contract Administrator of the emergency and the steps that he is taking under clause 2.16.1.

2.16.3 Where the emergency arises from a divergence between the Statutory Requirements and any of the documents referred to in clauses 2.13.1.1 to 2.13.1.3 other than the Employer's Requirements, the Contractor's Proposals or other Contractor's Design Documents, then, provided that the Contractor has complied with clause 2.16.2, the execution and supply of work and materials under clause 2.16.1 shall be treated as a Variation.

## **Unfixed Materials and Goods – property, risk etc.**

### **2.17 Materials and goods – on site**

Site Materials shall not be removed from storage on or adjacent to the Works except for use on the Works without the Architect/Contract Administrator's consent. Where their value has in accordance with clause 4.9.1.2 been included in any Interim Certificate under which the amount properly due to the Contractor has been paid by the Employer, they shall upon such payment become the Employer's property, but, subject to Insurance Option B or C (if applicable), the Contractor shall remain responsible for loss or damage to them.

### **2.18 Materials and goods – off site**

Where the value of any Listed Items has in accordance with clause 4.10 been included in any Interim Certificate under which the amount properly due to the Contractor has been paid by the Employer, those items shall become the Employer's property and thereafter the Contractor shall not, except for use upon the Works, remove or cause or permit them to be moved or removed from the premises where they are. The Contractor shall be responsible for any loss of or damage to them and for the cost of their storage, handling and insurance until they are delivered to and placed on or adjacent to the Works. As from such delivery the provisions of clause 2.17 (except the words "Where their value" to "Employer's property, but,") shall apply to such items.

## **Adjustment of Completion Date**

### **2.19 Notice of delay – extensions**

2.19.1 If and whenever it becomes reasonably apparent that the progress of the Works or any Section is being or is likely to be delayed the Contractor shall forthwith give the Architect/Contract Administrator notice of the cause of the delay. If in the Architect/Contract Administrator's opinion completion of the Works or Section has been, is being or is likely to be delayed beyond the relevant Completion Date by any of the Relevant Events, then, save where these Conditions expressly provide otherwise, the Architect/Contract Administrator, as soon as he is able to estimate the length of the delay beyond that date,

shall by notice to the Contractor give a fair and reasonable extension of time for completion of the Works or Section.

- 2.19.2 If any Relevant Event referred to in clauses 2.20.1 to 2.20.6 occurs after the relevant Completion Date but before practical completion is achieved, the Architect/Contract Administrator, as soon as he is able to estimate the length of the delay, if any, to the Works or any Section resulting from that event, shall by notice give a fair and reasonable extension of time for completion of the Works or Section.
- 2.19.3 At any time up to 12 weeks after the date of practical completion of the Works or Section, the Architect/Contract Administrator may give an extension of time in accordance with the provisions of this clause 2.19, whether on reviewing a previous decision or otherwise and whether or not the Contractor has given notice as referred to in clause 2.19.1. Such an extension of time shall not reduce any extension previously given.
- 2.19.4 Provided always that the Contractor shall:
- 2.19.4.1 constantly use his best endeavours to prevent delay and do all that may reasonably be required to the satisfaction of the Architect/Contract Administrator to proceed with the Works or Section; and
- 2.19.4.2 provide such information required by the Architect/Contract Administrator as is reasonably necessary for the purposes of this clause 2.19.
- 2.19.5 In this clause 2.19 and, so far as relevant, in the other clauses of these Conditions, any reference to delay or extension of time includes any further delay or further extension of time.

## **2.20 Relevant Events**

The following are the Relevant Events referred to in clause 2.19:

- 2.20.1 Variations and any other matters or instructions which under these Conditions are to be treated as, or as requiring, a Variation;
- 2.20.2 Architect/Contract Administrator's instructions:
- 2.20.2.1 under any of clauses 2.13, 3.12 or 3.13 (excluding, where there are Contract Bills, an instruction for expenditure of a Provisional Sum for defined work);
- 2.20.2.2 (to the extent provided therein) under clause 3.7 and Schedule 2; or
- 2.20.2.3 for the opening up for inspection or testing of any work, materials or goods under clause 3.14 or 3.15.1 (including making good), unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract;
- 2.20.3 deferment of the giving of possession of the site or any Section under clause 2.5;
- 2.20.4 the execution of work for which an Approximate Quantity is not a reasonably accurate forecast of the quantity of work required;
- 2.20.5 suspension by the Contractor under clause 4.14 of the performance of any or all of his obligations under this Contract;
- 2.20.6 any impediment, prevention or default, whether by act or omission, by the Employer, the Architect/Contract Administrator, the Quantity Surveyor or any Employer's Person, except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or any Contractor's Person;
- 2.20.7 the carrying out by a Statutory Undertaker of work in pursuance of its statutory obligations in relation to the Works, or the failure to carry out such work;
- 2.20.8 exceptionally adverse weather conditions;
- 2.20.9 loss or damage occasioned by any Specified Peril;
- 2.20.10 civil commotion or the use or threat of terrorism and/or the activities of the relevant authorities in dealing with such event or threat;



- 2.20.11 strike, lock-out or local combination of workmen affecting any trade employed upon the Works or engaged in the preparation, manufacture or transportation of any of the goods or materials required for them or any persons engaged in design work for the Contractor's Designed Portion;
- 2.20.12 the exercise after the Base Date by the United Kingdom Government or any Local or Public Authority of any statutory power that is not occasioned by a default of the Contractor or any Contractor's Person but which directly affects the execution of the Works;
- 2.20.13 force majeure.

## Practical Completion, Lateness and Liquidated Damages

### 2.21 Practical completion and certificates

When in the Architect/Contract Administrator's opinion practical completion of the Works or a Section is achieved and the Contractor has complied sufficiently with clauses 2.32 and 3.18 in respect of the supply of documents and information, then:

- 2.21.1 in the case of the Works, the Architect/Contract Administrator shall forthwith issue a certificate to that effect ('the Practical Completion Certificate');
- 2.21.2 in the case of a Section, he shall forthwith issue a certificate of practical completion of that Section (a 'Section Completion Certificate');

and practical completion of the Works or the Section shall be deemed for all the purposes of this Contract to have taken place on the date stated in that certificate.

### 2.22 Certificate of non-completion

If the Contractor fails to complete the Works or a Section by the relevant Completion Date, the Architect/Contract Administrator shall issue a certificate to that effect. If an extension of time is made after the issue of such a certificate, the extension shall cancel that certificate and the Architect/Contract Administrator shall where necessary issue a further certificate.

### 2.23 Liquidated damages for non-completion

- 2.23.1 Provided:
  - 2.23.1.1 the Architect/Contract Administrator has issued a certificate under clause 2.22; and
  - 2.23.1.2 the Employer has notified the Contractor before the date of the Final Certificate that he may require payment of, or may withhold or deduct, liquidated damages, the Employer may, not later than 5 days before the final date for payment of the amount payable under clause 4.21, give notice to the Contractor in the terms set out in clause 2.23.2.
- 2.23.2 A notice from the Employer under clause 2.23.1 shall state that for the period between the Completion Date and the date of practical completion of the Works or that Section:
  - 2.23.2.1 he requires the Contractor to pay liquidated damages at the rate stated in the Contract Particulars, or lesser rate stated in the notice, in which event the Employer may recover the same as a debt; and/or
  - 2.23.2.2 that he will withhold or deduct liquidated damages at the rate stated in the Contract Particulars, or at such lesser stated rate, from sums due to the Contractor.<sup>[36]</sup>
- 2.23.3 If the Employer in relation to the Works or a Section has notified the Contractor in accordance with clause 2.23.1.2 that he may require payment of, or may withhold or deduct, liquidated damages, then, unless the Employer states otherwise in writing, clause 2.23.1.2 shall remain satisfied in relation to the Works or Section, notwithstanding the cancellation of any certificate and issue of any further certificate under clause 2.22.

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[36] In addition to the notice under clause 2.23.2, the Employer, if he intends to withhold or deduct all or any of the liquidated damages payable, must give the appropriate Pay Less Notice under clause 4.12.5.

## **2.24 Repayment of liquidated damages**

If after the operation of clause 2.23 an extension of time is given and the relevant certificate under clause 2.22 is cancelled the Employer shall pay or repay to the Contractor any amounts deducted or recovered under clause 2.23 in respect of the period of the extension.

## **Partial Possession by Employer**

### **2.25 Contractor's consent**

If at any time or times before the date of issue by the Architect/Contract Administrator of the Practical Completion Certificate or relevant Section Completion Certificate the Employer wishes to take possession of any part or parts of the Works or a Section and the Contractor's consent has been obtained, then, notwithstanding anything expressed or implied elsewhere in this Contract, the Employer may take possession of such part or parts. The Architect/Contract Administrator shall thereupon give the Contractor notice on behalf of the Employer identifying the part or parts taken into possession and giving the date when the Employer took possession ('the Relevant Part' and 'the Relevant Date' respectively).

### **2.26 Practical completion date**

Practical completion of the Relevant Part shall be deemed to have occurred, and the Rectification Period in respect of the Relevant Part shall be deemed to have commenced, on the Relevant Date.

### **2.27 Defects etc. – Relevant Part**

When in the Architect/Contract Administrator's opinion any defects, shrinkages or other faults in the Relevant Part which he has required to be made good under clause 2.30 have been made good, he shall issue a certificate to that effect.

### **2.28 Insurance – Relevant Part**

As from the Relevant Date the Works insurance obligation under Insurance Option A, B or C.2, whichever applies, shall cease in respect of the Relevant Part (but not otherwise) and the Existing Structures (if any) shall from that date be deemed to include the Relevant Part.

### **2.29 Liquidated damages – Relevant Part**

As from the Relevant Date, the rate of liquidated damages stated in the Contract Particulars in respect of the Works or Section containing the Relevant Part shall reduce by the same proportion as the value of the Relevant Part bears to the Contract Sum or to the relevant Section Sum, as shown in the Contract Particulars.

## **Defects**

### **2.30 Rectification**

Any defects, shrinkages or other faults in the Works or a Section which appear and are notified by the Architect/Contract Administrator to the Contractor not later than 14 days after the expiry of the Rectification Period, and which are due to materials, goods or workmanship not in accordance with this Contract, shall at no cost to the Employer be made good by the Contractor unless the Architect/Contract Administrator with the Employer's consent shall otherwise instruct. If he does so otherwise instruct, an appropriate deduction shall be made from the Contract Sum in respect of the defects, shrinkages or other faults not made good.

### **2.31 Certificate of making good**

The Architect/Contract Administrator shall, when in his opinion the Contractor's obligations under clause 2.30 have been discharged, issue a certificate to that effect.

## **CDP Design Work**

### **2.32 As-built Drawings**

The Contractor, in addition to his obligations under the CDM Regulations in relation to information for the health and safety file, shall, before practical completion of the Works or relevant Section and

without further charge to the Employer, supply for retention and use by the Employer such Contractor's Design Documents and related information as is specified in the Contract Documents or as the Employer may reasonably require that show or describe the Contractor's Designed Portion as built or relate to the maintenance and operation of it or its installations.

### **2.33 Copyright and use**

- 2.33.1 Subject to all sums due and payable under this Contract to the Contractor having been paid, the Employer shall have an irrevocable, royalty-free, non-exclusive licence to copy and use the Contractor's Design Documents and to reproduce the designs and content of them for any purpose relating to the Works including, without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Works. That licence shall enable the Employer to copy and use the Contractor's Design Documents for an extension of the Works but shall not include any right or licence to reproduce the designs contained in them for any such extension.
- 2.33.2 The licence shall be assignable to any owner from time to time of the Works or any part of them and may be sub-licensed to any owner or tenant of the Works or part of them and to any person engaged for the purposes permitted by clause 2.33.1.
- 2.33.3 The Contractor shall not be liable for any use by the Employer of any of the Contractor's Design Documents for any purpose other than that for which they were prepared.

### **2.34 Design liabilities and limitation**

- 2.34.1 Insofar as the design of the Contractor's Designed Portion is comprised in the Contractor's Proposals and in what he is to complete in accordance with the Employer's Requirements and these Conditions (including any further design that he is required to carry out as a result of a Variation), the Contractor shall in respect of any inadequacy in such design have the same liability to the Employer, whether under statute or otherwise, as would an architect or other appropriate professional designer who holds himself out as competent to take on work for such design and who, acting independently under a separate contract with the Employer, has supplied such design for or in connection with works to be carried out and completed by a building contractor who is not the supplier of the design.
- 2.34.2 Where and to the extent that this Contract involves the Contractor in taking on work for or in connection with the provision of a dwelling or dwellings, the clause 2.34.1 reference to the Contractor's liability includes liability under the Defective Premises Act 1972.
- 2.34.3 Where or to the extent that this Contract does not involve the Contractor in taking on work for or in connection with the provision of a dwelling or dwellings to which that Act applies, the Contractor's liability for loss of use, loss of profit or other consequential loss arising in respect of the liability of the Contractor referred to in clause 2.34.1 shall be limited to the amount, if any, stated in the Contract Particulars; but such a limitation shall not apply to or be affected by any liability for liquidated damages under clause 2.23.
- 2.34.4 Subject to clause 2.15, the Contractor shall not be responsible for the contents of the Employer's Requirements or for verifying the adequacy of any design contained within them.
- 2.34.5 If an inadequacy is found in any design in the Employer's Requirements and the Contractor under clause 2.34.4 is not responsible for verifying its adequacy, then, if or to the extent that that inadequacy is not dealt with in the Contractor's Proposals, the Employer's Requirements shall be altered or modified accordingly and, subject to clause 2.15, any such correction, alteration or modification shall be treated as a Variation.

## Section 3 Control of the Works

### Access and Representatives

#### 3.1 Access for Architect/Contract Administrator

The Architect/Contract Administrator and any person authorised by him shall at all reasonable times have access to the Works and elsewhere to any work which is being prepared for or is to be utilised in the Works but subject to any reasonable restrictions necessary to protect any proprietary rights.

#### 3.2 Person-in-charge

The Contractor shall ensure that at all reasonable times he has on the site a competent person-in-charge and any instructions given to that person by the Architect/Contract Administrator shall be deemed to have been issued to the Contractor.

#### 3.3 Clerk of works

The Employer shall be entitled to appoint a clerk of works whose duty shall solely be to act as inspector on behalf of the Employer under the Architect/Contract Administrator's directions.

#### 3.4 Replacement of Architect/Contract Administrator or Quantity Surveyor

3.4.1 If the Architect/Contract Administrator or Quantity Surveyor at any time ceases to hold that post, the Employer shall within 14 days of the cessation nominate a replacement. Except where the Employer is a Local or Public Authority and the nominated replacement is an official of it, if the Contractor objects for reasons considered sufficient by a person appointed under the dispute resolution procedures of this Contract, the Employer shall nominate an acceptable replacement.

3.4.2 No replacement Architect/Contract Administrator appointed for this Contract shall be entitled to disregard or overrule any certificate, opinion, decision, consent or instruction given by any predecessor in that post, save to the extent that that predecessor if still in the post would then have had power under this Contract to do so.

### Sub-Contracting

#### 3.5 Consent to sub-contracting

The Contractor shall not without the Architect/Contract Administrator's consent sub-contract the whole or any part of the Works other than in accordance with clause 3.7 or sub-contract the design for the CDP Works. In no case shall any such consent or any sub-contracting in any way affect the Contractor's obligations under any other provision of this Contract.

#### 3.6 Conditions of sub-contracting

Where considered appropriate, the Contractor shall engage the sub-contractor using the relevant version of the JCT Intermediate Building Sub-Contract. It shall be a condition of any sub-contract that<sup>[37]</sup>:

3.6.1 the sub-contractor's employment under the sub-contract shall terminate immediately upon the termination (for any reason) of the Contractor's employment under this Contract;

3.6.2 the sub-contract shall provide:

3.6.2.1 that, except for use on the Works, no Site Materials delivered to the Works by or for the sub-contractor shall be removed without the Contractor's written consent (such consent not to be unreasonably delayed or withheld) and (in addition to

[37] The JCT Intermediate Sub-Contracts (ICSub and ICSub/D) meet the requirements of clause 3.6 and also those of paragraph 3 of the JCT fluctuations provision (Schedule 4).

any provision for earlier vesting in the Contractor of title to any Listed Items for the purposes of clause 4.10.2.1 of these Conditions) that:

- 3.6.2.1.1 where, in accordance with clauses 4.8 and 4.9 of these Conditions, the value of any Site Materials has been included in any Interim Certificate under which the amount properly due to the Contractor has been paid to him, they shall upon such payment become, and the sub-contractor shall not deny that they have become, the Employer's property;
- 3.6.2.1.2 if the Contractor pays the sub-contractor for any Site Materials before their value is included in an Interim Certificate, they shall upon such payment become the Contractor's property;
- 3.6.2.2 that the sub-contractor shall give access to work in accordance with clause 3.1 of these Conditions;
- 3.6.2.3 that each party to the sub-contract shall in relation to the Works and the site comply with applicable CDM Regulations;
- 3.6.2.4 in terms equivalent to those of clause 4.12.6 of these Conditions, that if by a final date for payment under the sub-contract the Contractor fails to pay the sub-contractor any amount that should properly have been paid, the Contractor shall, in addition to that amount, pay simple interest on it at the Interest Rate for the period from the final date for payment until such payment is made;
- 3.6.2.5 that where the Rights Particulars provide for the execution and delivery of collateral warranties by the sub-contractor:
  - 3.6.2.5.1 the sub-contract and, where applicable, those collateral warranties shall if those particulars require be executed as deeds;
  - 3.6.2.5.2 any collateral warranty required shall be executed and delivered by the sub-contractor within 14 days of receipt of the Contractor's notice requiring execution;
  - 3.6.2.5.3 the terms of and those governing such collateral warranties shall in each case be consistent with those of clause 2.18 of the JCT Intermediate Sub-Contract Conditions;
- 3.6.3 where documents or information and/or the grant of licences are or may be required from the sub-contractor for the BIM Protocol, where applicable, and/or for the purposes of clauses 2.32 and 3.18 of these Conditions, the sub-contract shall also provide for the supply and grant to and by the sub-contractor of all information and licences reasonably necessary for that purpose.

The Contractor shall not give such consent as is referred to in clause 3.6.2.1 without the Architect/Contract Administrator's prior consent under clause 2.17 of these Conditions.

### **3.7 Named Sub-Contractors**

Where it is stated in the Contract Bills/Specification/Work Schedules that work described therein for pricing by the Contractor is to be executed by a named person who is to be employed by the Contractor as a sub-contractor (the 'Named Sub-Contractor') the Contractor shall not later than 21 days after entering into this Contract enter into a sub-contract with such person using the Intermediate Named Sub-Contract Agreement ICSUB/NAM/A. The provisions of Schedule 2 shall apply with respect to any such sub-contract and with respect to an instruction as to the expenditure of a Provisional Sum under clause 3.13 where the Architect/Contract Administrator requires work to be executed by a named person.

## **Architect/Contract Administrator's Instructions**

### **3.8 Compliance with instructions**

The Contractor shall forthwith comply with all instructions issued to him which these Conditions empower the Architect/Contract Administrator to issue, save that:

- 3.8.1 where an instruction requires a Variation of the type referred to in clause 5.1.2, the

Contractor need not comply to the extent that he notifies a reasonable objection to it to the Architect/Contract Administrator;

- 3.8.2 if the Contractor considers that compliance with any direction under clause 2.1.2 or any instruction would adversely affect the efficacy of the design of the Contractor's Designed Portion or his compliance with applicable CDM Regulations and if within 7 days of receipt of the direction or instruction he gives notice to the Architect/Contract Administrator specifying that adverse effect, the direction or instruction shall not take effect unless and until confirmed by the Architect/Contract Administrator.

### **3.9 Non-compliance with instructions**

Subject to clause 3.8, if within 7 days after receipt of a notice from the Architect/Contract Administrator requiring compliance with an instruction the Contractor does not comply, the Employer may employ and pay other persons to execute work of any kind that may be necessary to give effect to that instruction. The Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and an appropriate deduction may be made from the Contract Sum.

### **3.10 Provisions empowering instructions**

On receipt of an instruction the Contractor may request the Architect/Contract Administrator to notify him which provision of these Conditions empowers its issue and the Architect/Contract Administrator shall forthwith comply with the request. If the Contractor thereafter complies with that instruction with neither Party then having invoked any dispute resolution procedure under this Contract to establish the Architect/Contract Administrator's powers in that regard, the instruction shall be deemed to have been duly given under the specified provision.

### **3.11 Instructions requiring Variations**

- 3.11.1 The Architect/Contract Administrator may issue instructions requiring a Variation.
- 3.11.2 Any instruction of the type referred to in clause 5.1.2 shall be subject to the Contractor's right of reasonable objection set out in clause 3.8.1.
- 3.11.3 In respect of the Contractor's Designed Portion, any instruction requiring a Variation shall be an alteration to or modification of the Employer's Requirements.
- 3.11.4 The Architect/Contract Administrator may sanction in writing any Variation made by the Contractor otherwise than pursuant to an instruction.
- 3.11.5 No Variation required or sanctioned by the Architect/Contract Administrator shall vitiate this Contract.

### **3.12 Postponement of work**

The Architect/Contract Administrator may issue instructions in regard to the postponement of any work to be executed under this Contract.

### **3.13 Instructions on Provisional Sums**

The Architect/Contract Administrator shall issue instructions in regard to the expenditure of Provisional Sums included in the Contract Bills/Specification/Work Schedules or in the Employer's Requirements.

### **3.14 Inspection – tests**

The Architect/Contract Administrator 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 work. The cost of that opening up or testing (including the cost of making good) shall be added to the Contract Sum unless provided for in the Contract Bills/Specification/Work Schedules or unless the inspection or test shows that the materials, goods or work are not in accordance with this Contract.

### **3.15 Work not in accordance with the Contract**

- 3.15.1 If during the carrying-out of the Works any work, materials or goods are found not to be in accordance with this Contract, the Contractor shall forthwith notify the Architect/Contract Administrator of the action which the Contractor proposes immediately to take, at no cost to the Employer, to establish that there is no similar failure in work already executed or

materials or goods already supplied (whether or not incorporated in the Works). If the Architect/Contract Administrator:

- 3.15.1.1 has not received such notification within 7 days of the finding; or
- 3.15.1.2 is not satisfied with the action proposed by the Contractor; or
- 3.15.1.3 because of safety considerations or statutory obligations, is unable to wait for the Contractor's written proposals,

he may issue instructions requiring the Contractor at no cost to the Employer 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 any executed work to establish that there is no similar failure, including making good thereafter. The Contractor shall forthwith comply with any such instruction.

- 3.15.2 If within 10 days of receipt of an instruction under clause 3.15.1, and without affecting his obligation to comply with it, the Contractor gives notice to the Architect/Contract Administrator, objecting to compliance and stating his reasons, and if within 7 days of receipt of that objection the Architect/Contract Administrator does not notify withdrawal of the instruction or its modification to remove the Contractor's objection, then any dispute or difference as to whether the nature or the extent of the opening up for inspection or testing instructed by the Architect/Contract Administrator was reasonable in all the circumstances shall be referred to a person appointed under the dispute resolution procedures of this Contract.
- 3.15.3 If and to the extent that the person appointed finds the instruction was not reasonable he shall decide the amount, if any, to be paid by the Employer to the Contractor in respect of compliance (including making good) and the consequent extension of time, if any, for completion of the Works or any relevant Section.

### **3.16 Instructions as to removal of work etc.**

- 3.16.1 The Architect/Contract Administrator may issue instructions in regard to the removal from the site of any work, materials or goods which are not in accordance with this Contract.
- 3.16.2 If any work is not carried out in a proper and workmanlike manner the Architect/Contract Administrator may issue such instructions to the Contractor as are in consequence reasonably necessary and the Contractor shall comply with them at no cost to the Employer.

### **3.17 Exclusion of persons from the Works**

The Architect/Contract Administrator may (but shall not unreasonably or vexatiously) issue instructions requiring the exclusion from the site of any person employed thereon.

## **CDM Regulations**

### **3.18 CDM Regulations**

Each Party undertakes to the other that in relation to the Works and site he will duly comply with applicable CDM Regulations. In particular but without limitation:

- 3.18.1 the Employer shall ensure that the Principal Designer carries out his duties and, where the Contractor is not the Principal Contractor, shall ensure that the Principal Contractor carries out his duties under those regulations;
- 3.18.2 the Contractor in addition to any obligations under clause 2.1.3 shall comply with regulation 15 and, where he is the Principal Contractor, with regulations 12 to 14;<sup>[38]</sup>
- 3.18.3 whether or not the Contractor is the Principal Contractor, compliance by the Contractor with his duties under the regulations, including any such directions as are referred to in regulation 15(3), shall be at no cost to the Employer and shall not entitle the Contractor to an extension of time;

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[38] Where the Employer is a domestic client, as defined in regulation 2, the Principal Contractor may also be responsible for carrying out certain of the client's duties under regulations 4, 6 and 8. (As to the CDM Regulations generally, see the Intermediate Building Contract Guide.)

- 3.18.4 if the Employer appoints a replacement for the Principal Designer or Principal Contractor, the Employer shall immediately upon that appointment notify the Contractor with details of the new appointee.

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## Section 4 Payment

### Contract Sum and Adjustment

#### 4.1 Work included in Contract Sum

- 4.1.1 Where there are Contract Bills, the quality and quantity of the work included in the Contract Sum shall be that set out in those bills and in the Employer's Requirements, the Contractor's Proposals, the CDP Analysis and other Contractor's Design Documents.
- 4.1.2 Where there are no Contract Bills and save insofar as quantities are given in the Specification or Work Schedules, the quality and quantity of the work included in the Contract Sum shall be that set out in the Contract Documents taken together, provided that if there is any inconsistency between work as stated or shown on the Contract Drawings and any description of that work in the Specification or Work Schedules, the Contract Drawings shall prevail.
- 4.1.3 Where there are no Contract Bills, but quantities are given for any items in the Specification or Work Schedules, the quality and quantity of the work included in the Contract Sum for those items shall be that set out in the Specification or Work Schedules.

#### 4.2 Adjustment only under the Conditions

The Contract Sum shall not be adjusted or altered in any way other than in accordance with clause 4.3 and other express provisions of these Conditions and, subject to clause 2.13, any error in the computation of the Contract Sum is accepted by the Parties.

#### 4.3 Adjustment of Contract Sum

The Contract Sum shall be adjusted by:

- 4.3.1 any amount agreed by the Employer and the Contractor in respect of Variations and other work of the types referred to in clause 5.2 and the amount of each Valuation;
- 4.3.2 (where the Contract Particulars state that a Fluctuations Provision applies) any amounts payable or allowable under that provision;
- 4.3.3 any other amounts referred to in clause 4.9.2 and the deductions referred to in clause 4.9.3, each as finally ascertained;
- 4.3.4 the deduction of all Provisional Sums and the value of any work for which an Approximate Quantity is included in the Contract Documents; and
- 4.3.5 any other amount which under this Contract is to be added to the Contract Sum or may be deducted from it.

#### 4.4 Fluctuations – Named Sub-Contractors

In respect of any amount included in the Contract Sum for work to be executed by a Named Sub-Contractor, the Contract Sum shall be adjusted by the net amount payable to or allowable by him under any applicable fluctuations provision of the Named Sub-Contract Conditions excluding any amount that arises from any extension of the period or periods for completion of the Sub-Contract Works due to an impediment, prevention or default, whether by act or omission, by the Contractor or any of the Contractor's Persons.

### Taxes

#### 4.5 VAT

- 4.5.1 The Contract Sum is exclusive of VAT and in relation to each payment to the Contractor under this Contract, the Employer shall in addition pay the amount of any VAT properly chargeable in respect of it.

- 4.5.2 If after the Base Date the supply of any goods or services to the Employer becomes exempt from VAT there shall be paid to the Contractor an amount equal to the input tax on the supply to the Contractor of goods and services that contribute to the Works which as a consequence of that exemption the Contractor cannot recover.

#### 4.6 Construction Industry Scheme (CIS)

If the Employer is or at any time up to the payment of the Final Certificate becomes a 'contractor' for the purposes of the CIS<sup>[39]</sup>, his obligation to make any payment under this Contract is subject to the provisions of the CIS.

### Payments, Certificates and Notices – general provisions

#### 4.7 Not applicable

#### 4.8 Interim payments – due dates and certificates

- 4.8.1 During the period up to the due date for the final payment fixed under clause 4.21.3, the monthly due dates for interim payments by the Employer shall in each case be the date 7 days after the relevant Interim Valuation Date.
- 4.8.2 The Architect/Contract Administrator shall not later than 5 days after each due date issue an Interim Certificate, stating the sum that he considers to be or have been due to the Contractor at the due date, calculated in accordance with clause 4.9, and the basis on which that sum has been calculated.
- 4.8.3 Interim valuations shall be made by the Quantity Surveyor whenever the Architect/Contract Administrator considers them necessary for ascertaining the sum due in an interim payment.

#### 4.9 Interim payments – calculation of sums due

The amount of each interim payment to be certified under clause 4.8.2 shall, subject to any agreement between the Parties as to stage payments, be the total of the amounts referred to in clauses 4.9.1 and 4.9.2, less the deductions referred to in clause 4.9.3, each calculated as at the Interim Valuation Date, less the cumulative total of the amounts of any advance payment that have then become due for reimbursement to the Employer in accordance with the terms stated in the Contract Particulars for clause 4.7 and less the total of sums stated as due in previous Interim Certificates and any sums paid in respect of any Payment Notice given after the issue of the latest Interim Certificate. The amounts referred to are:

- 4.9.1 the applicable percentage, as stated in the Contract Particulars, of the total value of:
- 4.9.1.1 the work properly executed by the Contractor, including any work so executed for which a value has been agreed pursuant to clause 5.2.1 or which has been valued under the Valuation Rules, but excluding any reinstatement work under clause 6.13.4, as referred to in clause 4.9.2;
  - 4.9.1.2 Site Materials, provided they are adequately protected against weather and other casualties and are not on the Works prematurely; and
  - 4.9.1.3 Listed Items (if any) for which the conditions set out in clause 4.10 are satisfied;
- those values shall be adjusted, where appropriate, in accordance with any applicable Fluctuations Provision and, where there is an Activity Schedule, the value to be included in respect of the work in each activity to which it relates shall be a proportion of the price stated for the work in that activity equal to the proportion of the work in that activity that has then been properly executed;
- 4.9.2 the full amount (100%) (to the extent then ascertained) payable to the Contractor or to be added to the Contract Sum in respect of:
- Fees and charges (clause 2.3);
  - Inspection and testing (clauses 3.14 and 3.15.3);
  - Contractor's right of suspension – costs and expenses (clause 4.14);
  - Fluctuations – Named Sub-Contractors (clause 4.4);

[39] See the Contract Particulars (Eighth Recital and clause 4.6).

Fluctuations under any applicable Fluctuations Provision, other than by means of an adjustment under clause 4.9.1;  
Loss and Expense (clause 4.15);  
Insurance premiums (clauses 2.6, 6.5, 6.10, 6.11, 6.12.2 and 6.18);  
Reinstatement etc. of loss or damage – where Insurance Option B or C applies or to the extent that the work is under clause 6.13.5.3 to be treated as a Variation, reinstatement work under clause 6.13.4;

- 4.9.3 the ascertained amount of any deductions to be made under clause 2.9 (*Levels*), 2.30 (*Rectification*), 3.9 (*Non-compliance with instructions*), 4.4 (*Fluctuations – Named Sub-Contractors*), (in the event of a reduction in the premium) 6.10 (*Terrorism Cover premiums*), 6.12.2 (*Evidence of insurance*) or 6.17.2 (*Breach of Joint Fire Code – Remedial Measures*) or any amount under any applicable Fluctuations Provision other than by means of an adjustment under clause 4.9.1.

#### 4.10 Listed Items

The conditions for inclusion of the value of a Listed Item in the amount of an interim payment to be certified under clause 4.8.2 before its delivery to or adjacent to the Works as referred to in clause 4.9.1.3 are:

- 4.10.1 the Listed Item is in accordance with this Contract;
- 4.10.2 the Contractor has provided the Architect/Contract Administrator with reasonable proof that:
- 4.10.2.1 property in the Listed Item is vested in the Contractor; and
- 4.10.2.2 the Listed Item is and will remain insured against loss or damage for its full value under a policy of insurance protecting the interests of the Employer and the Contractor in respect of the Specified Perils until delivered to, or adjacent to, the Works;
- 4.10.3 at the premises where the Listed Item is situated pending delivery, there is in relation to that item clear identification of:
- 4.10.3.1 the Employer as the person to whose order it is held; and
- 4.10.3.2 the Works as its destination,
- each item being either set apart or clearly and visibly marked, individually or as a set, by letters, figures or a pre-determined code; and
- 4.10.4 for uniquely identified Listed Items, the Contractor, if it is stated in the Contract Particulars as required, has provided a bond in favour of the Employer from a surety approved by the Employer in the terms set out in Part 2 of Schedule 3 ('the required bond') in the amount specified in the Contract Particulars for this clause 4.10.4; or
- 4.10.5 for Listed Items that are not uniquely identified, the Contractor has provided the required bond in the amount specified in the Contract Particulars for this clause 4.10.5.

#### 4.11 Contractor's Payment Applications and Payment Notices

- 4.11.1 In relation to any interim payment the Contractor may not later than its Interim Valuation Date or, in the case of the final payment, may at any time prior to issue of the Final Certificate make an application to the Quantity Surveyor (a 'Payment Application'), stating the sum that the Contractor considers to be due to him at the relevant due date, as fixed in accordance with clause 4.8 or 4.21.3, and the basis on which that sum has been calculated.
- 4.11.2 If a Payment Certificate is not issued in accordance with clause 4.8.2 or 4.21.1, then:
- 4.11.2.1 where the Contractor has made a Payment Application in accordance with clause 4.11.1, that application is for the purposes of these Conditions a Payment Notice; or
- 4.11.2.2 where the Contractor has not made a Payment Application, he may at any time after the last date for issue of the Payment Certificate give a Payment Notice to the Quantity Surveyor, stating the sum that the Contractor considers to have become due to him under clause 4.9 or 4.21.2 at the relevant due date and the

basis on which that sum has been calculated.

#### **4.12 Interim and final payments – final date and amount**

- 4.12.1 Subject to clause 4.12.4, the final date for payment of each interim payment and the final payment shall be 14 days from its due date.
- 4.12.2 Subject to any Pay Less Notice given by the paying Party under clause 4.12.5, the paying Party shall pay the sum stated as due in the Payment Certificate on or before the final date for payment.
- 4.12.3 If a Payment Certificate is not issued in accordance with clause 4.8.2 or 4.21.1, but a Payment Notice has been or is then given, the Employer shall, subject to any Pay Less Notice under clause 4.12.5, pay the Contractor the sum stated as due in the Payment Notice.
- 4.12.4 Where a Payment Notice is given under clause 4.11.2.2, the final date for payment of the sum specified in it shall for all purposes be regarded as postponed by the same number of days as the number of days after the last date for issue of the Payment Certificate that the Payment Notice is given.
- 4.12.5 Where:
- 4.12.5.1 the Employer intends to pay less than the sum stated as due from him in a Payment Certificate or Payment Notice; or
- 4.12.5.2 if the Final Certificate shows a balance due to the Employer, the Contractor intends to pay less than the sum stated as due,
- the Party by whom the payment is stated to be payable shall not later than 5 days before the final date for payment give the other Party notice of that intention in accordance with clause 4.13.1 (a 'Pay Less Notice'). Where a Pay Less Notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated in it as due.
- 4.12.6 If either Party fails to pay a sum, or any part of it, due to the other Party under these Conditions by its final date for payment, he shall, in addition to any unpaid amount that should properly have been paid, pay the other Party simple interest on that amount at the Interest Rate for the period from the final date for payment until payment is made.
- 4.12.7 Any such unpaid amount and any interest under clause 4.12.6 shall be recoverable as a debt. Acceptance of a payment of interest shall not in any circumstances be construed as a waiver either of the recipient's right to proper payment of the principal amount due or of the Contractor's rights to suspend performance under clause 4.14 or terminate his employment under section 8.

#### **4.13 Pay Less Notices and other general provisions**

- 4.13.1 A Pay Less Notice given by either Party shall specify the sum he considers to be due to the other Party at the date the notice is given and the basis on which that sum has been calculated. Such notice:
- 4.13.1.1 (where it is to be given by the Employer) may be given on his behalf by the Architect/Contract Administrator or Quantity Surveyor or by any other person who the Employer notifies the Contractor as being authorised to do so but, in the case of a payment for which a Payment Certificate is not issued in due time, may not be given until the Contractor has in respect of the payment given a Payment Notice;
- 4.13.1.2 (where it is to be given by the Contractor) shall be sent to the Employer, with a copy to the Architect/Contract Administrator.
- 4.13.2 In relation to the requirements for the issue of Payment Certificates and the giving of Pay Less Notices, it is immaterial that the amount then considered to be due may be zero.
- 4.13.3 Where the Employer is not a Local or Public Authority, the Employer's interest in the percentage of the total value not included in the amounts of the interim payments to be certified under clause 4.8.2 shall be fiduciary as trustee for the Contractor (but without obligation to invest) and the Contractor's beneficial interest in that sum shall be subject

only to the right of the Employer to have recourse to it from time to time for payment of any amount which he is entitled under the provisions of this Contract to withhold or deduct from sums due or to become due to the Contractor.

#### **4.14 Contractor's right of suspension**

- 4.14.1 If the Employer fails to pay a sum payable to the Contractor in accordance with clause 4.12 (together with any VAT properly chargeable in respect of that payment) by the final date for payment and the failure continues for 7 days after the Contractor has given notice to the Employer, with a copy to the Architect/Contract Administrator, of his intention to suspend the performance of his obligations under this Contract and the grounds for such suspension, the Contractor, without affecting his other rights and remedies, may suspend performance of any or all of those obligations until payment is made in full.
- 4.14.2 Where the Contractor exercises his right of suspension under clause 4.14.1, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of exercising the right.
- 4.14.3 Applications in respect of any such costs and expenses shall be made to the Architect/Contract Administrator and the Contractor shall with his application or on request submit such details of them as are reasonably necessary for ascertaining the amount in question.

### **Loss and Expense**

#### **4.15 Matters materially affecting regular progress**

- 4.15.1 If in the execution of this Contract the Contractor incurs or is likely to incur any direct loss and/or expense as a result of any deferment of giving possession of the site or part of it under clause 2.5 or because regular progress of the Works or any part of them has been or is likely to be materially affected by any Relevant Matter, he shall, subject to clause 4.15.2 and compliance with the provisions of clause 4.16 be entitled to reimbursement of that loss and/or expense.
- 4.15.2 No such entitlement arises where these Conditions provide that there shall be no addition to the Contract Sum or otherwise exclude the operation of this clause 4.15 or to the extent that the Contractor is reimbursed for such loss and/or expense under another provision of these Conditions.

#### **4.16 Notification and ascertainment**

- 4.16.1 The Contractor shall notify the Architect/Contract Administrator as soon as the likely effect of a Relevant Matter on regular progress or the likely nature and extent of any loss and/or expense arising from a deferment of possession becomes (or should have become) reasonably apparent to him.
- 4.16.2 That notification shall be accompanied or, as soon as reasonably practicable, followed by the Contractor's initial assessment of the loss and/or expense incurred and any further amounts likely to be incurred, together with such information as is reasonably necessary to enable the Architect/Contract Administrator or Quantity Surveyor to ascertain the loss and/or expense incurred.
- 4.16.3 The Contractor shall thereafter, in such form and manner as the Architect/Contract Administrator may reasonably require, update that assessment and information at monthly intervals until all information reasonably necessary to allow ascertainment of the total amount of such loss and expense has been supplied.
- 4.16.4 Within 28 days of receipt of the initial assessment and information and 14 days of each subsequent update of them the Architect/Contract Administrator or Quantity Surveyor shall notify the Contractor of the ascertained amount of the loss and/or expense incurred, each ascertainment being made by reference to the information supplied by the Contractor and in sufficient detail to enable the Contractor to identify differences between it and the Contractor's assessment.

#### **4.17 Relevant Matters**

The following are the Relevant Matters:

- 4.17.1 Variations (including any other matters or instructions which under these Conditions are to be treated as a Variation);
- 4.17.2 Architect/Contract Administrator's instructions:
  - 4.17.2.1 under clause 3.12 or 3.13 (excluding, where there are Contract Bills, an instruction for expenditure of a Provisional Sum for defined work);
  - 4.17.2.2 (to the extent provided therein) under clause 3.7 and Schedule 2;
  - 4.17.2.3 for the opening up for inspection or testing of any work, materials or goods under clause 3.14 (including making good), unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract; or
  - 4.17.2.4 in relation to errors, omissions and inconsistencies in or between the Contract Documents and/or other documents referred to in clause 2.13;
- 4.17.3 the execution of work for which an Approximate Quantity is not a reasonably accurate forecast of the quantity of work required;
- 4.17.4 any impediment, prevention or default, whether by act or omission, by the Employer, the Architect/Contract Administrator, the Quantity Surveyor or any Employer's Person, except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or any Contractor's Person.

#### **4.18 Amounts ascertained – addition to Contract Sum**

Amounts ascertained under clause 4.16 shall be added to the Contract Sum.

#### **4.19 Reservation of Contractor's rights and remedies**

The provisions of clauses 4.15 to 4.18 shall not limit or affect any other rights and remedies of the Contractor.

### **Final Adjustment and Final Payment**

#### **4.20 Final adjustment**

4.20.1 Not later than 6 months after the issue of the Practical Completion Certificate or last Section Completion Certificate, the Contractor shall provide the Architect/Contract Administrator or (if so instructed) the Quantity Surveyor, with all documents necessary for the adjustment of the Contract Sum.

4.20.2 Not later than 3 months after receipt of the documents referred to in clause 4.20.1:

4.20.2.1 the Architect/Contract Administrator, or, if he so instructs, the Quantity Surveyor, shall ascertain the amount of any loss and/or expense notified by the Contractor under clause 4.16 and not previously ascertained;

4.20.2.2 the Quantity Surveyor shall prepare a statement showing all adjustments to be made to the Contract Sum under clause 4.3,

and the Architect/Contract Administrator shall within that 3 month period send to the Contractor copies of that statement and any such ascertainment.

4.20.3 If after expiry of the 6 month period referred to in clause 4.20.1 the Contractor has not supplied the necessary documents, the Architect/Contract Administrator may at any time give the Contractor one month's notice requiring their supply. Failing the supply of such documents, any ascertainment of loss and expense not then completed and the statement of adjustments may be completed on the basis of information in the Architect/Contract Administrator's or Quantity Surveyor's possession. Following preparation or completion of those documents, copies of them shall promptly be sent to the Contractor.

#### **4.21 Final Certificate and final payment<sup>[40]</sup>**

4.21.1 The Architect/Contract Administrator shall issue the Final Certificate not later than 28 days

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[40] The effect of the Final Certificate is set out in clause 1.9.

after whichever of the following occurs last:

- 4.21.1.1 the end of the Rectification Period in respect of the Works or (where there are Sections) the last such period to expire;
  - 4.21.1.2 the date of issue of the certificate of making good under clause 2.31 or (where there are Sections) the last such certificate to be issued; or
  - 4.21.1.3 the date on which the Architect/Contract Administrator sends to the Contractor copies of the statement and any ascertainment under clause 4.20.2 or 4.20.3.
- 4.21.2 The Final Certificate shall state:
- 4.21.2.1 the Contract Sum as adjusted in accordance with clause 4.3; and
  - 4.21.2.2 the sum of amounts already stated as due in Interim Certificates plus the amount of any advance payment made under clause 4.7 and (where relevant) any sums paid in respect of any such Payment Notice as is referred to in clause 4.9
- and (without affecting the rights of the Contractor in respect of any interim payment not paid in full by the Employer by its final date for payment) the final payment shall be the difference (if any) between the two sums, which shall be shown in the Final Certificate as a balance due to the Contractor from the Employer or vice versa. The Final Certificate shall state the basis on which that amount has been calculated.
- 4.21.3 The due date for the final payment shall be the date of issue of the Final Certificate or, if that certificate is not issued within the 28 day period referred to in clause 4.21.1, the last day of that period.

## Section 5 Variations

### General

#### 5.1 Definition of Variations

The term 'Variation' means:

- 5.1.1 the alteration or modification of the design, quality or quantity of the Works including:
  - 5.1.1.1 the addition, omission or substitution of any work;
  - 5.1.1.2 the alteration of the kind or standard of any of the materials or goods to be used in the Works;
  - 5.1.1.3 the removal from the site of any work executed or Site Materials other than work, materials or goods which are not in accordance with this Contract;
- 5.1.2 the imposition by the Employer of any obligations or restrictions in regard to the following matters or any addition to or alteration or omission of any such obligations or restrictions that are so imposed or are imposed by the Contract Documents in regard to:
  - 5.1.2.1 access to the site or use of any specific parts of the site;
  - 5.1.2.2 limitations of working space;
  - 5.1.2.3 limitations of working hours; or
  - 5.1.2.4 the execution or completion of the work in any specific order.<sup>[41]</sup>

#### 5.2 Valuation of Variations and provisional sum work

The value of:

- 5.2.1 all Variations required by Architect/Contract Administrator's instructions or subsequently sanctioned by him in writing;
- 5.2.2 all work which under these Conditions is to be treated as a Variation;
- 5.2.3 all work executed by the Contractor in accordance with Architect/Contract Administrator's instructions as to the expenditure of Provisional Sums included in the Priced Document or in the Employer's Requirements; and
- 5.2.4 all work executed by the Contractor for which an Approximate Quantity has been included in the Priced Document or in the Employer's Requirements

shall be such amount as is agreed by the Employer and the Contractor or, where not agreed, the amount valued by the Quantity Surveyor (a 'Valuation'). Each Valuation shall be made in accordance with clauses 5.3 to 5.7 ('the Valuation Rules'), such Valuation insofar as it relates to the Contractor's Designed Portion being in accordance with clause 5.7.

### The Valuation Rules

#### 5.3 Measurable Work

- 5.3.1 To the extent that a Valuation relates to the execution of additional or substituted work which can properly be valued by measurement or to the execution of work for which an Approximate Quantity is included in Contract Bills and subject to clause 5.7 in the case of CDP Works, such work shall be measured and shall be valued in accordance with the following rules:

[41] See clauses 3.8.1 and 3.8.2 for the Contractor's right of reasonable objection to Variations within clause 5.1.2.



- 5.3.1.1 where the additional or substituted work is of similar character to, is executed under similar conditions as, and does not significantly change the quantity of, work set out in the Contract Documents, the rates and prices for the work set out in the Priced Document shall determine the valuation;
- 5.3.1.2 where the additional or substituted work is of similar character to work set out in the Contract Documents but is not executed under similar conditions thereto and/or significantly changes its quantity, the rates and prices for the work set out in the Priced Document shall be the basis for determining the valuation and the Valuation shall include a fair allowance for such difference in conditions and/or quantity;
- 5.3.1.3 where the additional or substituted work is not of similar character to work set out in the Priced Document, the work shall be valued at fair rates and prices;
- 5.3.1.4 where the Approximate Quantity is a reasonably accurate forecast of the quantity of work required the rate or price for the Approximate Quantity shall determine the valuation; and
- 5.3.1.5 where the Approximate Quantity is not a reasonably accurate forecast of the quantity of work required, the rate or price for that Approximate Quantity shall be the basis for determining the valuation and the Valuation shall include a fair allowance for such difference in quantity.

Provided that clauses 5.3.1.4 and 5.3.1.5 shall apply only to the extent that the work has not been altered or modified other than in quantity.

- 5.3.2 To the extent that a Valuation relates to the omission of work set out in the Contract Documents and subject to clause 5.7 in the case of CDP Works, the rates and prices for such work therein set out shall determine the valuation of the work omitted.
- 5.3.3 In any valuation of work under clauses 5.3.1 and 5.3.2:
  - 5.3.3.1 measurement shall be in accordance with the same principles as those governing the preparation of Contract Bills, as referred to in clause 2.12;
  - 5.3.3.2 allowance shall be made for any percentage or lump sum adjustments in the Priced Document; and
  - 5.3.3.3 allowance, where appropriate, shall be made for any addition to or reduction of preliminary items of the type referred to in the Measurement Rules, provided that no such allowance shall be made in respect of compliance with an Architect/Contract Administrator's instruction for the expenditure of a Provisional Sum for defined work.

## 5.4 Daywork

Where the execution of additional or substituted work cannot be valued in accordance with clause 5.3 or 5.7, as applicable, the Valuation shall comprise:

- 5.4.1 the prime cost of such work (calculated in accordance with the 'Definition of Prime Cost of Daywork carried out under a Building Contract' issued by The Royal Institution of Chartered Surveyors (RICS) and Construction Industry Publications Ltd as current at the Base Date) together with Percentage Additions to each section of the prime cost at the rates stated in the Priced Document or, if they apply in respect of labour, at the All-Inclusive Rates stated therein; or
- 5.4.2 where the work is within the province of any specialist trade and the RICS and the appropriate body representing the employers in that trade have agreed and issued a definition of prime cost of daywork<sup>[42]</sup>, the prime cost of such work calculated in accordance with that definition current at the Base Date, together with Percentage Additions on the prime cost at the rates stated in the Priced Document or, if they apply in respect of labour, at the All-Inclusive Rates stated therein.

Provided that in any case vouchers specifying the time daily spent upon the work, the workmen's

[42] There are currently three definitions to which clause 5.4.2 refers, namely those agreed between the RICS and the Electrical Contractors Association, the RICS and the Electrical Contractors Association of Scotland and the RICS and the Building and Engineering Services Association.

names, the plant and the materials employed shall be delivered for verification to the Architect/Contract Administrator or his authorised representative not later than 7 Business Days after the work has been executed.

## **5.5 Change of conditions for other work**

If as a result of:

- 5.5.1 compliance with any instruction requiring a Variation;
- 5.5.2 compliance with any instruction as to the expenditure of a Provisional Sum for undefined work;
- 5.5.3 compliance with any instruction as to the expenditure of a Provisional Sum for defined work, to the extent that the instruction for that work differs from the description given for such work in Contract Bills; or
- 5.5.4 the execution of work for which an Approximate Quantity is included in Contract Bills, to the extent that the quantity is more or less than the quantity ascribed to that work in Contract Bills,

there is a substantial change in the conditions under which any other work is executed (including CDP Works), that other work shall be treated as a Variation and shall be valued in accordance with the provisions of this section 5.

## **5.6 Additional provisions**

- 5.6.1 To the extent that a Valuation does not relate to the execution of additional or substituted work or the omission of work or to the extent that the valuation of any work or liabilities directly associated with a Variation cannot reasonably be effected in the Valuation by the application of clauses 5.3 to 5.5 and 5.7, a fair valuation shall be made.
- 5.6.2 No allowance shall be made under the Valuation Rules for any effect upon the regular progress of the Works or of any part of them or for any other direct loss and/or expense for which the Contractor would be reimbursed by payment under any other provision in these Conditions.

## **5.7 Contractor's Designed Portion – Valuation**

Valuations relating to the Contractor's Designed Portion shall be made under this clause 5.7.

- 5.7.1 Allowance shall be made in such Valuations for the addition or omission of the relevant design work.
- 5.7.2 The valuation of additional or substituted work shall be consistent with the values of work of a similar character set out in the CDP Analysis, making due allowance for any change in the conditions under which work is carried out and/or any significant change in the quantity of the work so set out. Where there is no work of a similar character set out in the CDP Analysis a fair valuation shall be made.
- 5.7.3 The valuation of the omission of work set out in the CDP Analysis shall be in accordance with the values therein for such work.
- 5.7.4 Clauses 5.3.3.2, 5.3.3.3, 5.4 and 5.5 shall apply so far as is relevant.

## Section 6 Injury, Damage and Insurance

### Personal Injury and Property Damage

#### 6.1 Contractor's liability – personal injury or death

The Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings whatsoever in respect of personal injury to or the death of any person 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, any Employer's Person or any Statutory Undertaker.

#### 6.2 Contractor's liability – loss, injury or damage to property

Subject to clause 6.3, the Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal in so far as such loss, injury or damage arises out of or in the course of or by reason of the 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 or any Contractor's Person.

#### 6.3 Loss or damage to Existing Structures or their contents

- 6.3.1 Where paragraph C.1 of Insurance Option C applies, the Contractor's liability and indemnity under clause 6.2 excludes any loss or damage to Existing Structures or to any of their contents required to be insured under that option that is caused by any of the risks or perils required or agreed to be insured against under that option.
- 6.3.2 The exclusion in clause 6.3.1 shall apply notwithstanding that the loss or damage is or may be due in whole or in part to the negligence, breach of statutory duty, omission or default of the Contractor or any Contractor's Person.
- 6.3.3 Where Insurance Option C applies but a C.1 Replacement Schedule applies in lieu of paragraph C.1, the Contractor's liability and indemnity under clause 6.2 shall, in respect of loss, injury or damage to the Existing Structures and their contents due to the causes specified in that clause, be subject only to such limitations or exclusions as are specified in that schedule.
- 6.3.4 The reference in clause 6.2 to 'property real or personal' does not include the Works, work executed or Site Materials up to and including the date of issue of the Practical Completion Certificate or, if earlier, the date of termination of the Contractor's employment, except that:
- 6.3.4.1 after the date of issue of a Section Completion Certificate, the Section to which it relates shall no longer be regarded as 'the Works' or 'work executed' for these purposes; and
- 6.3.4.2 if partial possession is taken under clause 2.25, the Relevant Part shall no longer be so regarded after the Relevant Date.

### Insurance against Personal Injury and Property Damage

#### 6.4 Contractor's insurance of his liability

- 6.4.1 Without limiting or affecting his indemnities to the Employer under clauses 6.1 and 6.2, the Contractor shall effect and maintain insurance in respect of claims arising out of the liabilities referred to in those clauses which:
- 6.4.1.1 in respect of claims for personal injury to or the death of any employee of the Contractor arising out of and in the course of such person's employment, shall comply with all relevant legislation; and

6.4.1.2 for all other claims to which clause 6.4.1 applies<sup>[43]</sup>, shall indemnify the Employer in like manner to the Contractor (but only to the extent that the Contractor may be liable to indemnify the Employer under the terms of this Contract) and shall for any one occurrence or series of occurrences arising out of one event be in a sum not less than that stated in the Contract Particulars for clause 6.4.1.<sup>[44]</sup>

6.4.2 As to evidence that such insurances have been effected and are being maintained and the consequences of failure to comply, clause 6.12 shall apply.

## **6.5 Contractor's insurance of liability of Employer**

6.5.1 If the Contract Particulars state that insurance under clause 6.5.1 may be required, the Contractor shall if instructed by the Architect/Contract Administrator effect and maintain a policy of insurance in the names of the Employer and the Contractor for the amount of indemnity there stated in respect of any expense, liability, loss, claim or proceedings which the Employer may incur or sustain by reason of injury or damage to any property caused by collapse, subsidence, heave, 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, excluding injury or damage:

6.5.1.1 for which the Contractor is liable under clause 6.2; or

6.5.1.2 which is attributable to errors or omissions in the designing of the Works; or

6.5.1.3 which can reasonably be foreseen to be inevitable having regard to the nature of the work to be executed and the manner of its execution; or

6.5.1.4 (if Insurance Option C applies) which it is the responsibility of the Employer to insure under paragraph C.1 of Schedule 1; or

6.5.1.5 to the Works and Site Materials except where the Practical Completion Certificate has been issued or in so far as any Section is the subject of a Section Completion Certificate; or

6.5.1.6 which arises from any consequence of war, invasion, act of foreign enemy, hostilities (whether war is declared or not), civil war, rebellion or revolution, insurrection or military or usurped power; or

6.5.1.7 which is directly or indirectly caused by or contributed to by or arises from the Excepted Risks; or

6.5.1.8 which is directly or indirectly caused by or arises out of pollution or contamination of buildings or other structures or of water or land or the atmosphere happening during the period of insurance, save that this exception shall not apply in respect of pollution or contamination caused by a sudden identifiable, unintended and unexpected incident which takes place in its entirety at a specific moment in time and place during the period of insurance (all pollution or contamination which arises out of one incident being considered for the purpose of this insurance to have occurred at the time such incident takes place); or

6.5.1.9 which results in any costs or expenses being incurred by the Employer or in any other sums being payable by the Employer in respect of damages for breach of contract, except to the extent that such costs or expenses or damages would have attached in the absence of any contract.

6.5.2 Any insurance under clause 6.5.1 shall be placed with insurers approved by the Employer, and the Contractor shall upon its issue deposit the policy with the Architect/Contract Administrator or, if so directed, the Employer.

6.5.3 Amounts expended by the Contractor to effect and maintain that insurance shall on production of receipts be added to the Contract Sum, and clause 6.12 shall apply.

[43] It should be noted that the cover granted under Public Liability policies taken out pursuant to clause 6.4.1 may not be co-extensive with the indemnity given to the Employer in clauses 6.1 and 6.2: for example, each claim may be subject to an excess and cover may not be available in respect of loss or damage due to gradual pollution.

[44] The Contractor may, if he wishes, insure for a sum greater than that stated in the Contract Particulars.

## 6.6 Excepted Risks

Notwithstanding clauses 6.1, 6.2 and 6.4.1, the Contractor shall neither be liable to indemnify the Employer nor obliged to insure against any personal injury to or the death of any person or any damage, loss or injury to the Works, Site Materials, work executed, the site or any other property, caused by the effect of an Excepted Risk.

## Insurance of the Works and Existing Structures

### 6.7 Insurance Options and period

6.7.1 Insurance Options A, B and C are set out in Schedule 1. The Insurance Option that applies to this Contract is that stated in the Contract Particulars.<sup>[45]</sup>

6.7.2 In each case the Party responsible for effecting a Joint Names Policy under the Insurance Option that applies (the 'Works Insurance Policy') shall maintain that policy up to and including the date of issue of the Practical Completion Certificate, or last Section Completion Certificate, or (if earlier) the date of termination of the Contractor's employment, except that the obligation to maintain a Works Insurance Policy:

6.7.2.1 shall not apply in relation to a Section after the date of issue of its Section Completion Certificate; and

6.7.2.2 if partial possession is taken under clause 2.25, shall not as from the Relevant Date apply in relation to the Relevant Part.

### 6.8 Related definitions

In these Conditions the following phrases shall have the following meanings:

**All Risks Insurance**<sup>[46]</sup>: insurance which provides cover against any physical loss or damage to work executed and Site Materials and against the reasonable cost of the removal and disposal of debris and of any shoring and propping of the Works which results from such physical loss or damage but excluding the cost necessary to repair, replace or rectify:

(a) property which is defective due to:

(i) wear and tear,

(ii) obsolescence, or

(iii) deterioration, rust or mildew;

(b) any work executed or any Site Materials lost or damaged as a result of its own defect in design, plan, specification, material or workmanship or any other work executed which is lost or damaged in consequence thereof where such work relied for its support or stability on such work which was defective<sup>[47]</sup>;

[45] Insurance Options A and B are for use in the case of new buildings. Insurance Option A is applicable where the Contractor is required to take out a Joint Names Policy for All Risks Insurance of the Works or to include them on that basis within his Annual Construction policy; Insurance Option B is applicable where the Employer has elected to take out that Joint Names Policy.

Insurance Option C is for use in the case of alterations of or extensions to Existing Structures. Under that option, the Employer is required to take out a Joint Names Policy for All Risks Insurance for the Works and also, if paragraph C.1 applies, a Joint Names Policy to insure the Existing Structures and their contents owned by him or for which he is responsible against loss or damage by the Specified Perils. Some Employers (e.g. tenants and some homeowners) may not be able readily to obtain the Joint Names cover required under paragraph C.1. Where that is the case, alternative arrangements through use of a C.1 Replacement Schedule or as otherwise described in the Intermediate Building Contract Guide will be necessary.

Where there are Existing Structures, it is vital that any prospective Employer who is not familiar with Insurance Option C – in particular any Employer who is a tenant or domestic homeowner – or an appropriate member of the Employer's professional team, should consult specialist insurance advisers prior to the tender stage. Any Employer who is a tenant should also consult his insuring landlord prior to that stage.

[46] The risks and costs that All Risks Insurance is required to cover are defined by exclusions. Policies issued by insurers are not standardised; the way in which insurance for these risks is expressed varies and in some cases it may not be possible for insurance to be taken out against certain of the risks required to be covered. In the case of Terrorism Cover, where the extension of cover will involve an additional premium and may in certain situations be difficult to effect, the requirement is now expressly limited to Pool Re Cover or such other cover as is agreed and set out in the Contract Particulars. That extension and any other relevant details of Works insurance also require discussion and agreement between the Parties and their insurance advisers at an early stage, prior to entering into the Contract. See the Intermediate Building Contract Guide.

- (c) loss or damage caused by or arising from:
  - (i) any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation, commandeering, nationalisation or requisition or loss or destruction of or damage to any property by or under the order of any government *de jure* or *de facto* or public, municipal or local authority,
  - (ii) disappearance or shortage if such disappearance or shortage is only revealed when an inventory is made or is not traceable to an identifiable event, or
  - (iii) an Excepted Risk.

**Excepted Risks:** the risks comprise:

- (a) ionising radiations 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 of any explosive nuclear assembly or nuclear component thereof (other than such risk insofar, but only insofar, as it is included in the Terrorism Cover from time to time required to be taken out and maintained under this Contract);
- (b) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; and
- (c) any act of terrorism that is not within the Terrorism Cover from time to time required to be taken out and maintained under this Contract.

**Joint Names Policy:** a policy of insurance which includes the Employer and the Contractor as composite insured and under which the insurers have no right of recourse against any person named as an insured, or, pursuant to clause 6.9, recognised as an insured thereunder.

**Pool Re Cover:** such insurance against loss or damage to work executed and Site Materials caused by or resulting from terrorism as is from time to time generally available from insurers who are members of the Pool Reinsurance Company Limited scheme or of any similar successor scheme.<sup>[48]</sup>

**Specified Perils:** fire, lightning, explosion, storm, flood, escape of water from any water tank, apparatus or pipe, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion, but excluding Excepted Risks.

**Terrorism Cover:** Pool Re Cover or other insurance against loss or damage to work executed and Site Materials (and/or, for the purposes of clause 6.11.1, to an Existing Structure and/or its contents) caused by or resulting from terrorism.<sup>[48]</sup>

## 6.9 Sub-contractors – Specified Perils cover under Works Insurance Policies

6.9.1 The Contractor, where Insurance Option A applies, and the Employer, where Insurance Option B or C applies, shall ensure that the Works Insurance Policy either:

- 6.9.1.1 provides for recognition of each sub-contractor as an insured under the policy; or
- 6.9.1.2 includes a waiver by the insurers of any right of subrogation which they may have against any such sub-contractor

in respect of loss or damage by the Specified Perils to the Works or relevant Section, work executed and Site Materials and that this recognition or waiver continues up to and including the date of issue of any certificate or other document which states that in relation to the Works, the sub-contractor's works are practically complete or, if earlier, the date of termination of the sub-contractor's employment. Where there are Sections, the recognition

[47] In an All Risks Insurance policy for the Works, cover should not be reduced by any exclusion that goes beyond the terms of paragraph (b) in this definition. For example, an exclusion in terms that 'This Policy excludes all loss of or damage to the property insured due to defective design, plan, specification, materials or workmanship' would not be in accordance with the terms of the relevant Insurance Options or that definition. In relation to design defects, wider All Risks cover than that specified may be available, though it is not standard.

[48] As respects Terrorism Cover and the requirements of Insurance Options A, B and C, see footnote [46] and the Intermediate Building Contract Guide.

or waiver for a sub-contractor in relation to a Section shall cease upon the issue of such certificate or other document for his work in that Section.

- 6.9.2 Clause 6.9.1 applies also in respect of any Works Insurance Policy taken out in default under clause 6.12.2.
- 6.9.3 Where paragraph C.1 of Insurance Option C applies or Insurance Option C applies but a C.1 Replacement Schedule applies in lieu of paragraph C.1, the Employer shall also ensure that the policy of insurance referred to in that paragraph or the provisions of that schedule shall provide for recognition of any Named Sub-Contractor as an insured under that policy or schedule or include a waiver in respect of that Named Sub-Contractor in the terms referred to in clause 6.9.1.2, in either case up to and including the date of issue of such certificate or other document as is referred to in clause 6.9.1 or earlier date of termination of the Named Sub-Contractor's employment.<sup>[49]</sup>

#### **6.10 Terrorism Cover – policy extensions and premiums**

- 6.10.1 To the extent that the Works Insurance Policy excludes (or would otherwise exclude) loss or damage caused by terrorism, the Contractor, where Insurance Option A applies, or the Employer, where Insurance Option B or C applies, shall unless otherwise agreed effect and maintain, either as an extension to the Works Insurance Policy or as a separate Joint Names Policy, in the same amount and for the same period as the Works Insurance Policy, such Terrorism Cover as is specified in or by the Contract Particulars, subject to clauses 6.10.4 and 6.11.
- 6.10.2 Where Insurance Option A applies and the Contractor is required to take out and maintain Pool Re Cover, the cost of that cover and its renewal shall be deemed to be included in the Contract Sum save that, if at any renewal of the cover there is a variation in the rate on which the premium is based, the Contract Sum shall be adjusted by the net amount of the difference between the premium paid by the Contractor and the premium that would have been paid but for the change in rate.
- 6.10.3 Where Insurance Option A applies and Terrorism Cover other than Pool Re Cover is specified as required, the cost of such other cover and of its renewal shall be added to the Contract Sum.
- 6.10.4 Where Insurance Option A applies and the Employer is a Local or Public Authority, if at any renewal of the Terrorism Cover (of any type) there is an increase in the rate on which the premium is based, he may instruct the Contractor not to renew the Terrorism Cover. If he so instructs, clause 6.13.5.3 shall apply with effect from the renewal date.

#### **6.11 Terrorism Cover – non-availability – Employer's options**

- 6.11.1 If the insurers named in any Joint Names Policy notify either Party that, with effect from a specified date (the 'cessation date'), Terrorism Cover will cease and will no longer be available or will only continue to be available with a reduction in the scope or level of such cover, the recipient shall immediately notify the other Party.
- 6.11.2 The Employer, after receipt of such notification but before the cessation date, shall give notice to the Contractor either:
- 6.11.2.1 that, notwithstanding the cessation or reduction in scope or level of Terrorism Cover, the Employer requires that the Works continue to be carried out; or
- 6.11.2.2 that on the date stated in the Employer's notice (which shall be a date after the date of the insurers' notification but no later than the cessation date) the Contractor's employment under this Contract shall terminate.
- 6.11.3 Where Insurance Option A applies and the Employer gives notice under clause 6.11.2.1 requiring continuation of the Works, he may instruct the Contractor to effect and maintain any alternative or additional form of Terrorism Cover then reasonably obtainable by the Contractor; the net additional cost to the Contractor of any such cover and its renewal shall be added to the Contract Sum.
- 6.11.4 If the Employer gives notice of termination under clause 6.11.2.2, then upon and from such

**[49]** As to Insurance Option C, paragraph C.1 and the alternative arrangements that may be made through use of a C.1 Replacement Schedule generally see footnote [45]. Where using a C.1 Replacement Schedule, the Employer should consider how the requirements in clause 6.9.3 are to be dealt with and should obtain specialist insurance advice as appropriate.

termination the provisions of clause 8.12 (excluding clause 8.12.3.5) shall apply.

- 6.11.5 If the Employer does not give notice of termination under clause 6.11.2.2, but work executed and/or Site Materials thereafter suffer physical loss or damage caused by terrorism, clauses 6.13 and 6.14 shall as appropriate apply.

## **6.12 Evidence of insurance**

- 6.12.1 Where a Party is required by this Contract to effect and maintain an insurance policy or cover under any of clauses 6.4, 6.5, 6.7 and 6.10, or is responsible for ensuring that it is effected and maintained, that Party shall at the request of the other Party supply such documentary evidence as the other Party may reasonably require that the policy or cover has been effected and remains in force.
- 6.12.2 If a Party required to provide such documentary evidence fails to provide it within 7 days of a request being made, the other Party may assume that there has been a failure to insure, and may insure against any risk, liability or expense to which he may be exposed as a consequence, but shall not be obliged to do so. If the other Party insures, the defaulting Party shall be liable in the case of insurance under clause 6.4, 6.7 or 6.10 for the costs or, in the case of insurance required under clause 6.5, any additional cost that the other Party incurs in taking out and maintaining that insurance. Any costs payable to the Contractor shall be added to the Contract Sum; any costs payable to the Employer may be deducted from any sums due or to become due to the Contractor or shall be recoverable from the Contractor as a debt.

## **6.13 Loss or damage – insurance claims and reinstatement**

- 6.13.1 If during the carrying out of the Works any loss or damage affecting any executed work or Site Materials is occasioned by any of the risks covered by the Works Insurance Policy or an Excepted Risk or there is any loss of or damage of any kind to any of the Existing Structures or their contents, the Contractor shall forthwith upon it occurring or becoming apparent give notice both to the Architect/Contract Administrator and to the Employer of its nature, location and extent.
- 6.13.2 Subject to clauses 6.13.5.1 and 6.13.6, the occurrence of such loss or damage to executed work or Site Materials shall be disregarded in calculating any amounts payable to the Contractor under this Contract.
- 6.13.3 The Contractor, for himself and for all his sub-contractors recognised as an insured under the Works Insurance Policy, shall authorise the insurers to pay to the Employer all monies from such insurance, and from any policies covering Existing Structures or their contents that are effected by the Employer.
- 6.13.4 Where loss or damage affecting executed work or Site Materials is occasioned by any risk covered by the Works Insurance Policy, and subject to clause 6.14 where relevant, the Contractor shall after any inspection required by the insurers under the Works Insurance Policy and with due diligence restore the damaged work, replace or repair any lost or damaged Site Materials, remove and dispose of any debris (collectively 'reinstatement work') and proceed with the carrying out and completion of the Works.
- 6.13.5 Where Insurance Option A applies:
- 6.13.5.1 the Employer shall pay all monies from such insurance to the Contractor by instalments under separate reinstatement work certificates issued by the Architect/Contract Administrator at the same dates as those for Interim Certificates under clause 4.8 but without deduction of retention and less only the amounts referred to in clause 6.13.5.2;
- 6.13.5.2 the Employer may retain from those monies any amounts properly incurred by the Employer and notified by him to insurers in respect of professional fees up to the aggregate amount of the percentage cover for those fees or (if less) the amount paid by insurers in respect of those fees;
- 6.13.5.3 in respect of reinstatement work, the Contractor shall not be entitled to any payment other than amounts received under the Works Insurance Policy except where there has been a cessation of or reduction in Terrorism Cover under clause 6.10.4 or 6.11 and loss or damage is then caused by or results from terrorism, in which case the reinstatement work shall, to the extent that its cost is no longer recoverable under the policy, be treated as a Variation and under



clause 4.9.2 or 6.13.5.1 included in Interim Certificates. In neither case shall there be any reduction in any amount payable by reason of any act or neglect of the Contractor or of any sub-contractor which may have contributed to the physical loss or damage.

- 6.13.6 Where Insurance Option B or paragraph C.2 of Insurance Option C applies or where loss or damage is caused by an Excepted Risk, reinstatement work shall be treated as a Variation.

#### **6.14 Loss or damage to Existing Structures – right of termination**

If there is material loss of or damage to any of the Existing Structures, the Employer shall be under no obligation to reinstate those structures, but either Party may, if it is just and equitable, terminate the Contractor's employment under this Contract by notice given to the other in accordance with clause 1.7.4 within 28 days of the occurrence of that loss or damage. If such notice is given, then:

- 6.14.1 unless within 7 days of receiving the notice (or such longer period as may be agreed) the Party to whom it is given invokes a dispute resolution procedure of this Contract to determine whether the termination is just and equitable, it shall be deemed to be so;
- 6.14.2 upon the giving of that notice or, where a dispute resolution procedure is invoked within that period, upon any final upholding of the notice, the provisions of clause 8.12 (except clause 8.12.3.5) shall apply.

### **Joint Fire Code – compliance**

#### **6.15 Application of clauses**

Clauses 6.16 to 6.18 apply where the Contract Particulars state that the Joint Fire Code applies.

#### **6.16 Compliance with Joint Fire Code**

The Parties shall comply with the Joint Fire Code and any amendments or revisions to it; the Employer shall ensure such compliance by all Employer's Persons and the Contractor shall ensure such compliance by all Contractor's Persons.

#### **6.17 Breach of Joint Fire Code – Remedial Measures**

- 6.17.1 If a breach of the Joint Fire Code occurs and the insurers under the Works Insurance Policy specify by notice to the Employer or the Contractor the remedial measures they require (the 'Remedial Measures'), the Party receiving the notice shall send copies of it to the other and to the Architect/Contract Administrator, and then:

6.17.1.1 subject to clause 6.17.1.2, where the Remedial Measures relate to the obligation of the Contractor to carry out and complete the Works, the Contractor shall ensure that the Remedial Measures are carried out by such date as the insurers specify; and

6.17.1.2 to the extent that the Remedial Measures require a Variation to the Works as described in the Contract Documents or in an Architect/Contract Administrator's instruction, the Architect/Contract Administrator shall issue such instructions as are necessary to enable compliance. If, in an emergency, compliance with the Remedial Measures in whole or in part requires the Contractor to supply materials or execute work before receiving instructions under this clause 6.17.1.2, the Contractor shall supply the materials and execute the work reasonably necessary to secure immediate compliance. The Contractor shall forthwith notify the Architect/Contract Administrator of the emergency and of the steps he is taking. Save to the extent they relate to the Contractor's Designed Portion, the work and materials reasonably necessary shall be treated as if executed and supplied under a Variation instruction.

- 6.17.2 If the Contractor, within 7 days of receipt of a notice specifying Remedial Measures not requiring an Architect/Contract Administrator's instruction under clause 6.17.1.2, does not begin to carry out or thereafter fails without reasonable cause regularly and diligently to proceed with the Remedial Measures, then the Employer may employ and pay other persons to carry out those Remedial Measures. The Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and an appropriate deduction shall be made from the Contract Sum.

#### **6.18 Joint Fire Code – amendments/revisions**

Where the Joint Fire Code is, under a Joint Names Policy, applicable to the Works and amendments or revisions are made to it after the Base Date, any cost of compliance by the Contractor with amendments or revisions made after that date shall be borne as stated in the Contract Particulars. If the cost is to be borne by the Employer, it shall be added to the Contract Sum.

### **CDP Professional Indemnity Insurance**

#### **6.19 Obligation to insure**

The Contractor shall:

- 6.19.1 forthwith after this Contract has been entered into, take out (unless he has already done so) a Professional Indemnity insurance policy with limits of indemnity of the types and in amounts not less than those stated in the Contract Particulars<sup>[50]</sup>;
- 6.19.2 thereafter, provided it is available at commercially reasonable rates, maintain such insurance until the expiry of the period stated in the Contract Particulars from the date of practical completion of the Works; and
- 6.19.3 as and when reasonably requested to do so by the Employer or the Architect/Contract Administrator, produce for inspection documentary evidence that such insurance has been effected and/or is being maintained.

#### **6.20 Increased cost and non-availability**

If the insurance referred to in clause 6.19 ceases to be available at commercially reasonable rates, the Contractor shall immediately give notice to the Employer so that the Contractor and the Employer can discuss the means of best protecting their respective positions in the absence of such insurance.

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**[50]** See the Intermediate Building Contract Guide.

## Section 7 Assignment, Performance Bonds and Guarantees and Collateral Warranties

### Assignment

#### 7.1 Assignment

Neither the Employer nor the Contractor shall without the consent of the other assign this Contract or any rights thereunder.

### Performance Bonds and Guarantees

#### 7.2 Performance Bonds and Guarantees

The Contractor shall on the execution of this Contract provide to the Employer whichever of the following the Contract Particulars state as being required:

7.2.1 a performance bond or guarantee of the Contractor's due performance of the Contract from a bank or other surety approved by the Employer in an amount equal to the percentage of the Contract Sum and for the period stated in the Contract Particulars;

7.2.2 a guarantee by the Contractor's parent company identified in the Contract Particulars;

any such bond or guarantee, unless otherwise agreed by the Employer, being substantially in the form of the document identified by the Contract Particulars.

### Collateral Warranties

#### 7.3 Rights Particulars

The requirements for the grant of P&T Rights and Funder Rights by the Contractor and sub-contractors and any requirement for the grant of Employer Rights by any sub-contractors ('Rights Particulars') are set out in the document(s) identified in the Contract Particulars against the reference to clause 7.3.<sup>[51]</sup> As respects those requirements:

7.3.1 such rights are conferred only on persons sufficiently identified (by name, class or description) in the Rights Particulars;

7.3.2 unless otherwise stated in the Rights Particulars, the term 'the Consultants' shall in all collateral warranties to be given mean the Architect/Contract Administrator and the Quantity Surveyor (including any replacements), together with any other consultants providing design services to the Employer in connection with the Works.

#### 7.4 Notices

Each notice to the Contractor referred to in clauses 7.6 to 7.8 shall be given in accordance with clause 1.7.4.

[51] The relevant Rights Particulars should identify the beneficiaries (by name, class or description) and the sub-contractors who are also required to grant rights by way of Collateral Warranties, state in those cases where the default provision is not to apply which alternative provision is to apply in its place and give any other details required to complete the terms of the warranties that are to be given. A Model Form for the Rights Particulars is included in the Intermediate Building Contract Guide and is also available on the JCT website [www.jcttd.co.uk](http://www.jcttd.co.uk).

Employers should be selective in identifying the sub-contractors (or categories of sub-contractor) from whom collateral warranties may be required and should **not** include any Named Sub-Contractor since such matters are intended to be dealt with by the Intermediate Named Sub-Contractor/Employer Agreement ICSUB/NAM/E and not to be governed by the Intermediate Named Sub-Contract itself (ICSUB/NAM). Directions may be needed as to mode of execution of sub-contracts and/or collateral warranties by relevant sub-contractors. See also the Intermediate Building Contract Guide.

## **7.5 Execution of Collateral Warranties**

Where this Contract is executed as a deed, any collateral warranty to be entered into by the Contractor pursuant to clause 7.6 or 7.7 shall be executed as a deed. Where this Contract is executed under hand, any such warranty may be executed under hand.<sup>[52]</sup>

## **7.6 Contractor's Warranties – Purchasers and Tenants**

Where the Rights Particulars state that the Contractor shall confer P&T Rights on a Purchaser or Tenant by way of collateral warranty, the Employer may by notice to the Contractor, identifying the Purchaser or Tenant and his interest in the Works, require that the Contractor within 14 days from receipt of that notice enter into a Collateral Warranty with such Purchaser or Tenant in the form CWa/P&T, completed in accordance with the relevant Rights Particulars.

## **7.7 Contractor's Warranty – Funder**

Where the Rights Particulars state that the Contractor shall confer Funder Rights on a Funder by way of collateral warranty, the Employer may by notice to the Contractor require that the Contractor within 14 days from receipt of the Employer's notice enter into a Collateral Warranty with the Funder in the form CWa/F, completed in accordance with the relevant Rights Particulars.

## **7.8 Sub-Contractors' Warranties**

Where the Rights Particulars state that a sub-contractor shall execute and deliver a Collateral Warranty in favour of a Purchaser, Tenant or Funder and/or the Employer:

- 7.8.1 the Contractor shall comply with the Contract Documents as to the obtaining of such warranties including:
  - 7.8.1.1 on receipt of notice from the Employer (or Architect/Contract Administrator on his behalf) identifying in each case the sub-contractor, type of warranty and beneficiary, promptly giving notice under clause 2.18.2 of the JCT Intermediate Sub-Contract Conditions or other equivalent sub-contract condition to each sub-contractor identified in the Employer's notice; and
  - 7.8.1.2 in the case of each Collateral Warranty specified in the Employer's notice and within 21 days of receipt of that notice, taking such steps as are required to obtain each warranty, promptly forwarding the executed document to the Employer or as he may direct and, where Collateral Warranty SCWa/F is required, having himself also executed and delivered the document;
- 7.8.2 any amendment to the form of any collateral warranty proposed by a sub-contractor shall require approval by both the Contractor and the Employer.

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**[52]** See the footnote to clause 7.3 above.

## Section 8 Termination

### General

#### 8.1 Meaning of insolvency

For the purposes of these Conditions:

- 8.1.1 a company becomes Insolvent:
  - 8.1.1.1 when it enters administration within the meaning of Schedule B1 to the Insolvency Act 1986;
  - 8.1.1.2 on the appointment of an administrative receiver or a receiver or manager of its property under Chapter I of Part III of that Act, or the appointment of a receiver under Chapter II of that Part;
  - 8.1.1.3 on the passing of a resolution for voluntary winding-up without a declaration of solvency under section 89 of that Act; or
  - 8.1.1.4 on the making of a winding-up order under Part IV or V of that Act.
- 8.1.2 a partnership becomes Insolvent:
  - 8.1.2.1 on the making of a winding-up order against it under any provision of the Insolvency Act 1986 as applied by an order under section 420 of that Act; or
  - 8.1.2.2 when sequestration is awarded on the estate of the partnership under section 12 of the Bankruptcy (Scotland) Act 1985 or the partnership grants a trust deed for its creditors.
- 8.1.3 an individual becomes Insolvent:
  - 8.1.3.1 on the making of a bankruptcy order against him under Part IX of the Insolvency Act 1986; or
  - 8.1.3.2 on the sequestration of his estate under the Bankruptcy (Scotland) Act 1985 or when he grants a trust deed for his creditors.
- 8.1.4 a person also becomes Insolvent if:
  - 8.1.4.1 he enters into an arrangement, compromise or composition in satisfaction of his debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction); or
  - 8.1.4.2 (in the case of a partnership) each partner is the subject of an individual arrangement or any other event or proceedings referred to in this clause 8.1.

Each of clauses 8.1.1 to 8.1.4 also includes any analogous arrangement, event or proceedings in any other jurisdiction.

#### 8.2 Notices under section 8

- 8.2.1 Notice of termination of the Contractor's employment shall not be given unreasonably or vexatiously.
- 8.2.2 Such termination shall take effect on receipt of the relevant notice.
- 8.2.3 Each notice referred to in this section shall be given in accordance with clause 1.7.4.

#### 8.3 Other rights, reinstatement

- 8.3.1 The provisions of clauses 8.4 to 8.7 are without prejudice to any other rights and remedies

of the Employer. The provisions of clauses 8.9 and 8.10 and (in the case of termination under either of those clauses) the provisions of clause 8.12, are without prejudice to any other rights and remedies of the Contractor.

- 8.3.2 Irrespective of the grounds of termination, the Contractor's employment may at any time be reinstated if and on such terms as the Parties agree.

## Termination by Employer

### 8.4 Default by Contractor

- 8.4.1 If, before practical completion of the Works, the Contractor:
- 8.4.1.1 without reasonable cause wholly or substantially suspends the carrying out of the Works; or
  - 8.4.1.2 fails to proceed regularly and diligently with the Works; or
  - 8.4.1.3 refuses or neglects to comply with a notice or instruction from the Architect/Contract Administrator requiring him to remove any work, materials or goods not in accordance with this Contract and by such refusal or neglect the Works are materially affected; or
  - 8.4.1.4 fails to comply with clause 3.5, 3.7 or 7.1; or
  - 8.4.1.5 fails to comply with clause 3.18,
- the Architect/Contract Administrator may give to the Contractor a notice specifying the default or defaults (a 'specified' default or defaults).
- 8.4.2 If the Contractor continues a specified default for 14 days from receipt of the notice under clause 8.4.1, the Employer may on, or within 21 days from, the expiry of that 14 day period by a further notice to the Contractor terminate the Contractor's employment under this Contract.
- 8.4.3 If the Employer does not give the further notice referred to in clause 8.4.2 (whether as a result of the ending of any specified default or otherwise) but the Contractor repeats a specified default (whether previously repeated or not), then, upon or within a reasonable time after such repetition, the Employer may by notice to the Contractor terminate that employment.

### 8.5 Insolvency of Contractor

- 8.5.1 If the Contractor is Insolvent, the Employer may at any time by notice to the Contractor terminate the Contractor's employment under this Contract.
- 8.5.2 The Contractor shall immediately notify the Employer if he makes any proposal, gives notice of any meeting or becomes the subject of any proceedings or appointment relating to any of the matters referred to in clause 8.1.
- 8.5.3 As from the date the Contractor becomes Insolvent, whether or not the Employer has given such notice of termination:
- 8.5.3.1 clauses 8.7.3 to 8.7.5 and (if relevant) clause 8.8 shall apply as if such notice had been given;
  - 8.5.3.2 the Contractor's obligations under Article 1 and these Conditions to carry out and complete the Works shall be suspended; and
  - 8.5.3.3 the Employer may take reasonable measures to ensure that the site, the Works and Site Materials are adequately protected and that such Site Materials are retained on site; the Contractor shall allow and shall not hinder or delay the taking of those measures.

### 8.6 Corruption and regulation 73(1)(b) of the PC Regulations

The Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment under this or any other contract with the Employer if, in relation to this or any other such contract, the

Contractor or any person employed by him or acting on his behalf shall have committed an offence under the Bribery Act 2010, or, where the Employer is a Local or Public Authority, shall have given any fee or reward the receipt of which is an offence under sub-section (2) of section 117 of the Local Government Act 1972, or, where this Contract is one to which regulation 73(1) of the PC Regulations applies, the circumstances set out in regulation 73(1)(b) of the PC Regulations apply.

## **8.7 Consequences of termination under clauses 8.4 to 8.6**

If the Contractor's employment is terminated under clause 8.4, 8.5 or 8.6:

- 8.7.1 the Employer may employ and pay other persons to carry out and complete the Works and to make good any defects of the kind referred to in clause 2.30, and he and they may enter upon and take possession of the site and the Works and (subject to obtaining any necessary third party consents) may use all temporary buildings, plant, tools, equipment and Site Materials for those purposes;
- 8.7.2 the Contractor shall:
  - 8.7.2.1 when required in writing by the Architect/Contract Administrator to do so (but not before), remove or procure the removal from the Works of any temporary buildings, plant, tools, equipment, goods and materials belonging to the Contractor or Contractor's Persons;
  - 8.7.2.2 without charge provide the Employer with copies of all Contractor's Design Documents then prepared, whether or not previously provided;
  - 8.7.2.3 if so required by the Employer (or by the Architect/Contract Administrator on his behalf) within 14 days of the date of termination, assign (so far as assignable and so far as he may lawfully be required to do so) to the Employer, without charge, 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<sup>[53]</sup>;
- 8.7.3 no further sum shall become due to the Contractor under this Contract other than any amount that may become due to him under clause 8.7.5 or 8.8.2 and the Employer need not pay any sum that has already become due either:
  - 8.7.3.1 insofar as the Employer has given or gives a Pay Less Notice under clause 4.12.5; or
  - 8.7.3.2 if the Contractor, after the last date upon which such notice could have been given by the Employer in respect of that sum, has become insolvent within the meaning of clauses 8.1.1 to 8.1.3;
- 8.7.4 following the completion of the Works and the making good of defects in them (or of instructions otherwise, as referred to in clause 2.30), an account of the following shall within 3 months thereafter be set out in a certificate issued by the Architect/Contract Administrator or a statement prepared by the Employer:
  - 8.7.4.1 the amount of expenses properly incurred by the Employer, including those incurred pursuant to clause 8.7.1 and, where applicable, clause 8.5.3.3, and of any direct loss and/or damage caused to the Employer and for which the Contractor is liable, whether arising as a result of the termination or otherwise;
  - 8.7.4.2 the amount of payments made to the Contractor; and
  - 8.7.4.3 the total amount which would have been payable for the Works in accordance with this Contract;
- 8.7.5 if the sum of the amounts stated under clauses 8.7.4.1 and 8.7.4.2 exceeds the amount stated under clause 8.7.4.3, the difference shall be a debt payable by the Contractor to the Employer or, if that sum is less, by the Employer to the Contractor.

## **8.8 Employer's decision not to complete the Works**

- 8.8.1 If within the period of 6 months from the date of termination of the Contractor's employment the Employer decides not to have the Works carried out and completed, he shall forthwith notify the Contractor. Within a reasonable time from the date of such notification, or if no

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[53] Clause 8.7.2.3 may not be effectual in cases of Contractor's insolvency.

notification is given but within that 6 month period the Employer does not commence to make arrangements for such carrying out and completion, then within 2 months of the expiry of that 6 month period, the Employer shall send to the Contractor a statement setting out:

- 8.8.1.1 the total value of work properly executed at the date of termination or date on which the Contractor became Insolvent, ascertained in accordance with these Conditions as if that employment had not been terminated, together with any amounts due to the Contractor under these Conditions not included in such total value; and
  - 8.8.1.2 the aggregate amount of any expenses properly incurred by the Employer and of any direct loss and/or damage caused to the Employer and for which the Contractor is liable, whether arising as a result of the termination or otherwise.
- 8.8.2 After taking into account amounts previously paid to the Contractor under this Contract, if the amount stated under clause 8.8.1.2 exceeds the amount stated under clause 8.8.1.1, the difference shall be a debt payable by the Contractor to the Employer or, if the clause 8.8.1.2 amount is less, by the Employer to the Contractor.

## Termination by Contractor

### 8.9 Default by Employer

- 8.9.1 If the Employer:
- 8.9.1.1 does not pay by the final date for payment the amount due to the Contractor in accordance with clause 4.12 and/or any VAT properly chargeable on that amount; or
  - 8.9.1.2 interferes with or obstructs the issue of any certificate due under this Contract; or
  - 8.9.1.3 fails to comply with clause 7.1; or
  - 8.9.1.4 fails to comply with clause 3.18,
- the Contractor may give to the Employer a notice specifying the default or defaults (a 'specified' default or defaults).
- 8.9.2 If before practical completion of the Works the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for a continuous period of the length stated in the Contract Particulars by reason of:
- 8.9.2.1 Architect/Contract Administrator's instructions under clause 2.13, 3.11 or 3.12; and/or
  - 8.9.2.2 any impediment, prevention or default, whether by act or omission, by the Employer, the Architect/Contract Administrator, the Quantity Surveyor or any Employer's Person
- (but in either case excluding such instructions as are referred to in clause 8.11.1.2), then, unless in either case that is caused by the negligence or default of the Contractor or any Contractor's Person, the Contractor may give to the Employer a notice specifying the event or events (a 'specified' suspension event or events).
- 8.9.3 If a specified default or a specified suspension event continues for 14 days from the receipt of notice under clause 8.9.1 or 8.9.2, the Contractor may on, or within 21 days from, the expiry of that 14 day period by a further notice to the Employer terminate the Contractor's employment under this Contract.
- 8.9.4 If the Contractor for any reason does not give the further notice referred to in clause 8.9.3, but (whether previously repeated or not):
- 8.9.4.1 the Employer repeats a specified default; or
  - 8.9.4.2 a specified suspension event is repeated for any period, such that the regular progress of the Works is or is likely to be materially affected thereby,



then, upon or within a reasonable time after such repetition, the Contractor may by notice to the Employer terminate the Contractor's employment under this Contract.

#### **8.10 Insolvency of Employer**

- 8.10.1 If the Employer is Insolvent, the Contractor may by notice to the Employer terminate the Contractor's employment under this Contract;
- 8.10.2 the Employer shall immediately notify the Contractor if he makes any proposal, gives notice of any meeting or becomes the subject of any proceedings or appointment relating to any of the matters referred to in clause 8.1;
- 8.10.3 as from the date the Employer becomes Insolvent, the Contractor's obligations under Article 1 and these Conditions to carry out and complete the Works shall be suspended.

### **Termination by either Party and regulations 73(1)(a) and 73(1)(c) of the PC Regulations**

#### **8.11 Termination by either Party and regulations 73(1)(a) and 73(1)(c) of the PC Regulations**

- 8.11.1 If, before practical completion of the Works, the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for the relevant continuous period of the length stated in the Contract Particulars by reason of one or more of the following events:
  - 8.11.1.1 force majeure;
  - 8.11.1.2 Architect/Contract Administrator's instructions under clause 2.13, 3.11 or 3.12 issued as a result of the negligence or default of any Statutory Undertaker;
  - 8.11.1.3 loss or damage to the Works occasioned by any risk covered by the Works Insurance Policy or by an Excepted Risk;
  - 8.11.1.4 civil commotion or the use or threat of terrorism and/or the activities of the relevant authorities in dealing with such event or threat; or
  - 8.11.1.5 the exercise by the United Kingdom Government or any Local or Public Authority of any statutory power that is not occasioned by a default of the Contractor or any Contractor's Person but which directly affects the execution of the Works,then either Party, subject to clause 8.11.2, may upon the expiry of that relevant period of suspension give notice to the other that, unless the suspension ceases within 7 days after the date of receipt of that notice, he may terminate the Contractor's employment under this Contract. Failing such cessation within that 7 day period, he may then by further notice terminate that employment.
- 8.11.2 The Contractor shall not be entitled to give notice under clause 8.11.1 in respect of the matter referred to in clause 8.11.1.3 where the loss or damage to the Works was caused by the negligence or default of the Contractor or any Contractor's Person.
- 8.11.3 Where this Contract is one to which regulation 73(1) of the PC Regulations applies the Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment under this Contract where the grounds set out in regulation 73(1)(a) or 73(1)(c) of the PC Regulations apply.

### **Consequences of Termination under clauses 8.9 to 8.11, etc.**

#### **8.12 Consequences of Termination under clauses 8.9 to 8.11, etc.**

If the Contractor's employment is terminated under any of clauses 8.9 to 8.11 or under clause 6.11.2.2 or 6.14:

- 8.12.1 no further sums shall become due to the Contractor otherwise than in accordance with this clause 8.12;
- 8.12.2 the Contractor shall:
  - 8.12.2.1 with all reasonable dispatch remove or procure the removal from the site of any

temporary buildings, plant, tools and equipment belonging to the Contractor and Contractor's Persons and, subject to the provisions of clause 8.12.5, all goods and materials (including Site Materials); and

- 8.12.2.2 without charge provide to the Employer copies of the documents referred to in clause 2.32 then prepared;
- 8.12.3 where the Contractor's employment is terminated under clause 8.9 or 8.10, the Contractor shall as soon as reasonably practicable prepare and submit an account or, where terminated under clause 8.11, 6.11.2.2 or 6.14, the Contractor shall at the Employer's option either prepare and submit that account or, not later than 2 months after the date of termination, provide the Employer with all documents necessary for the Employer to do so, which the Employer shall do with reasonable dispatch (and in any event within 3 months of receipt of such documents). The account shall set out the amounts referred to in clauses 8.12.3.1 to 8.12.3.4 and, if applicable, clause 8.12.3.5, namely:
- 8.12.3.1 the total value of work properly executed at the date of termination of the Contractor's employment, ascertained in accordance with these Conditions as if the employment had not been terminated, together with any other amounts due to the Contractor under these Conditions;
- 8.12.3.2 any sums ascertained in respect of direct loss and/or expense under clause 4.16 (whether ascertained before or after the date of termination);
- 8.12.3.3 the reasonable cost of removal under clause 8.12.2;
- 8.12.3.4 the cost of materials or goods (including Site Materials) properly ordered for the Works for which the Contractor then has paid or is legally bound to pay;
- 8.12.3.5 any direct loss and/or damage caused to the Contractor by the termination;
- 8.12.4 the account shall include the amount, if any, referred to in clause 8.12.3.5 only where the Contractor's employment is terminated either:
- 8.12.4.1 under clause 8.9 or 8.10; or
- 8.12.4.2 under clause 8.11.1.3, if the loss or damage to the Works was caused by the negligence or default of the Employer or any Employer's Person;
- 8.12.5 after taking into account amounts previously paid to the Contractor under this Contract, the Employer shall pay to the Contractor (or vice versa) the amount properly due in respect of the account within 28 days of its submission to the other Party, without deduction of any retention. Payment by the Employer for any such materials and goods as are referred to in clause 8.12.3.4 shall be subject to those materials and goods thereupon becoming the Employer's property.

## Section 9 Settlement of Disputes

### Mediation

#### 9.1 Mediation

Subject to Article 7, if a dispute or difference arises under this Contract which cannot be resolved by direct negotiations, each Party shall give serious consideration to any request by the other to refer the matter to mediation.<sup>[54]</sup>

### Adjudication

#### 9.2 Adjudication

If a dispute or difference arises under this Contract which either Party wishes to refer to adjudication, the Scheme shall apply, subject to the following:

- 9.2.1 for the purposes of the Scheme the Adjudicator shall be the person (if any) and the nominating body shall be that stated in the Contract Particulars;
- 9.2.2 where the dispute or difference is or includes a dispute or difference relating to clause 3.15 and as to whether an instruction issued thereunder is reasonable in all the circumstances:
  - 9.2.2.1 the Adjudicator to decide such dispute or difference shall (where practicable) be an individual with appropriate expertise and experience in the specialist area or discipline relevant to the instruction or issue in dispute;
  - 9.2.2.2 if the Adjudicator does not have the appropriate expertise and experience, the Adjudicator shall appoint an independent expert with such expertise and experience to advise and report in writing on whether or not the instruction under clause 3.15 is reasonable in all the circumstances.

### Arbitration

#### 9.3 Conduct of arbitration

Any arbitration pursuant to Article 8 shall be conducted in accordance with the JCT 2016 edition of the [Construction Industry Model Arbitration Rules](#) (CIMAR), provided that if any amendments to that edition of the Rules have been issued by the JCT the Parties may, by a joint notice in writing to the Arbitrator, state that they wish the arbitration to be conducted in accordance with the Rules as so amended. References in clause 9.4 to a Rule or Rules are references to such Rule(s) as set out in the JCT 2016 edition of [CIMAR](#).<sup>[55]</sup>

#### 9.4 Notice of reference to arbitration

- 9.4.1 Where pursuant to Article 8 either Party requires a dispute or difference to be referred to arbitration, that Party shall serve on the other Party a notice of arbitration to such effect in accordance with Rule 2.1 identifying the dispute and requiring the other Party to agree to the appointment of an arbitrator. The Arbitrator shall be an individual agreed by the Parties or, failing such agreement within 14 days (or any agreed extension of that period) after the notice of arbitration is served, appointed on the application of either Party in accordance with Rule 2.3 by the person named in the Contract Particulars.
- 9.4.2 Where two or more related arbitral proceedings in respect of the Works fall under separate arbitration agreements, Rules 2.6, 2.7 and 2.8 shall apply.

[54] See the Intermediate Building Contract Guide.

[55] Arbitration or legal proceedings are **not** an appeal against the decision of the Adjudicator but are a consideration of the dispute or difference as if no decision had been made by an Adjudicator.

- 9.4.3 After the Arbitrator has been appointed either Party may give a further notice of arbitration to the other Party and to the Arbitrator referring any other dispute which falls under Article 8 to be decided in the arbitral proceedings and Rule 3.3 shall apply.

**9.5 Powers of Arbitrator**

Subject to the provisions of Article 8 and clause 1.9, the Arbitrator shall, without prejudice to the generality of his powers, have power to rectify this Contract so that it accurately reflects the true agreement made by the Parties, to direct such measurements and/or valuations as may in his opinion be desirable in order to determine the rights of the Parties and to ascertain and award any sum which ought to have been the subject of or included in any certificate and to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice had been given.

**9.6 Effect of award**

Subject to clause 9.7 the award of the Arbitrator shall be final and binding on the Parties.

**9.7 Appeal – questions of law**

The Parties hereby agree pursuant to section 45(2)(a) and section 69(2)(a) of the Arbitration Act 1996 that either Party may (upon notice to the other Party and to the Arbitrator):

- 9.7.1 apply to the courts to determine any question of law arising in the course of the reference; and
- 9.7.2 appeal to the courts on any question of law arising out of an award made in an arbitration under this arbitration agreement.

**9.8 Arbitration Act 1996**

The provisions of the Arbitration Act 1996 shall apply to any arbitration under this Contract wherever the same, or any part of it, shall be conducted.

# Schedules

## Schedule 1 Insurance Options

(Clause 6.7)

### Insurance Option A

(New Buildings – All Risks Insurance of the Works by the Contractor)<sup>[56]</sup>

#### Contractor to effect and maintain a Joint Names Policy

- A.1** The Contractor shall effect and for the period specified in clause 6.7.2 maintain with insurers approved by the Employer a Joint Names Policy for All Risks Insurance with cover no less than that specified in clause 6.8 for the full reinstatement value of the Works or (where applicable) Sections (plus the percentage, if any, stated in the Contract Particulars to cover professional fees).

#### Use of Contractor's annual policy – as alternative

- A.2** If and so long as the Contractor independently of this Contract maintains an annual insurance policy which in respect of the Works or Sections:

A.2.1 provides (inter alia) All Risks Insurance with cover and in amounts no less than those specified in paragraph A.1; and

A.2.2 is a Joint Names Policy,

that policy shall satisfy the Contractor's obligations under paragraph A.1. The annual renewal date of the policy, as supplied by the Contractor, is stated in the Contract Particulars.

#### Loss or damage

- A.3** Where there is loss or damage affecting any executed work and/or Site Materials, the provisions of clause 6.13 shall as relevant apply.

[56] **Insurance Options A and B** are for use in the case of new buildings. **Insurance Option A** is applicable where the **Contractor** is required to take out a Joint Names Policy for All Risks Insurance of the Works or to include them on that basis within his Annual Construction policy; **Insurance Option B** is applicable where the **Employer** has elected to take out that Joint Names Policy. **Insurance Option C** is for use in the case of alterations of or extensions to Existing Structures. Under that option, the **Employer** is required to take out a Joint Names Policy for All Risks Insurance for the Works and also, if paragraph C.1 applies, a Joint Names Policy to insure the Existing Structures and their contents owned by him or for which he is responsible against loss or damage by the Specified Perils. Some Employers (e.g. tenants and some homeowners) may not be able readily to obtain the Joint Names cover required under paragraph C.1. Where that is the case, alternative arrangements through use of a C.1 Replacement Schedule or as otherwise described in the Intermediate Building Contract Guide will be necessary. **Where there are Existing Structures, it is vital that any prospective Employer who is not familiar with Insurance Option C – in particular any Employer who is a tenant or domestic homeowner – or an appropriate member of the Employer's professional team, should consult specialist insurance advisers prior to the tender stage. Any Employer who is a tenant should also consult his insuring landlord prior to that stage.**

## **Insurance Option B**

(New Buildings – All Risks Insurance of the Works by the Employer)<sup>[56]</sup>

### **Employer to effect and maintain a Joint Names Policy**

- B.1** The Employer shall effect and for the period specified in clause 6.7.2 maintain a Joint Names Policy for All Risks Insurance with cover no less than that specified in clause 6.8 for the full reinstatement value of the Works or (where applicable) Sections (plus the percentage, if any, stated in the Contract Particulars to cover professional fees).

### **Loss or damage**

- B.2** Where there is loss or damage affecting any executed work and/or Site Materials, the provisions of clause 6.13 shall as relevant apply.

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## Insurance Option C

(Joint Names Insurance by the Employer of Existing Structures and Works in or Extensions to them)<sup>[57]</sup>

### Existing Structures and contents – Joint Names Policy for Specified Perils

- C.1** The Employer shall unless otherwise stated by the Contract Particulars for clause 6.7 and this Schedule effect and for the period specified in clause 6.7.2 maintain a Joint Names Policy in respect of the Existing Structures together with the contents of them owned by him or for which he is responsible, for the full cost of reinstatement, repair or replacement of loss or damage due to any of the Specified Perils.

### The Works – Joint Names Policy for All Risks

- C.2** The Employer shall effect and for the period specified in clause 6.7.2 maintain a Joint Names Policy for All Risks Insurance with cover no less than that specified in clause 6.8 for the full reinstatement value of the Works or (where applicable) Sections (plus the percentage, if any, stated in the Contract Particulars to cover professional fees).

### Loss or damage

- C.3** If during the carrying out of the Works there is any loss of or damage of any kind to any executed work, Site Materials and/or to any Existing Structures or their contents the provisions of clauses 6.13 and 6.14 shall as relevant apply.

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**[57] Insurance Option C** is for use where there are Existing Structures. It can be used in its existing printed form by those Employers who are able to effect the Joint Names, Specified Perils cover for the Contractor in respect of the Existing Structures and those contents that are owned by the Employer or for which he is responsible.

However, the Joint Names Policy required by paragraph C.1 or the extension of a subsisting structure and contents policy to being a Joint Names Policy may not be readily available – and that provision is often not now appropriate for – refurbishment projects or alterations by tenant Employers where Existing Structures insurance is the landlord's responsibility.

Joint Names cover may also not be readily available to some domestic owner-occupiers looking to undertake refurbishments or extensions to their property.

The Contract Particulars for clause 6.7 and Schedule 1 therefore expressly allow the Parties in those circumstances to disapply paragraph C.1 and, by means of a C.1 Replacement Schedule, to include in place of that paragraph provisions that are tailored to their particular requirements.

**In JCT's view the preparation of such replacement provisions must be assigned to insurance professionals.**

An explanatory summary of the alternative arrangements generally adopted to overcome those difficulties is, however, contained in the Intermediate Building Contract Guide.

## Schedule 2      Named Sub-Contractors

(Clause 3.7)

- 1      The Contractor shall notify the Architect/Contract Administrator of the date on which he enters into the sub-contract with the Named Sub-Contractor.
- 2      If the Contractor is unable to enter into a sub-contract in accordance with clause 3.7 and the particulars given in the Contract Documents, he shall immediately notify the Architect/Contract Administrator, specifying which of the particulars prevent the execution of the sub-contract. If the Architect/Contract Administrator is reasonably satisfied that the specified particulars have prevented execution, he shall issue an instruction which may:
  - 2.1      change the particulars so as to remove the impediment to execution; or
  - 2.2      omit the work; or
  - 2.3      omit the work from the Contract Documents and substitute a provisional sum.
- 3      An instruction under paragraph 2.1 or 2.2 shall be regarded as an instruction under clause 3.11 requiring a Variation and shall be valued under clause 5.2 and the provisions of clauses 2.19 (*Adjustment of Completion Date*) and 4.15 and 4.16 (*Loss and Expense*) shall as relevant apply. Where the instruction is under paragraph 2.2 the Employer may, subject to the terms of clause 2.7, have the omitted work executed in accordance with that clause. An instruction under paragraph 2.3 shall be dealt with in accordance with paragraph 5.
- 4      At any time prior to the Contractor entering into a sub-contract in accordance with clause 3.7 the Architect/Contract Administrator may issue an instruction that the work is to be carried out by a person other than the person named in the Contract Bills/Specification/Work Schedules. Such instruction shall omit the work from the Contract Documents and substitute a provisional sum which shall be dealt with in accordance with paragraph 5.
- 5
  - 5.1      In an instruction as to the expenditure of a provisional sum under clause 3.13 the Architect/Contract Administrator may require work to be executed by a person named in the instruction, who shall then be employed by the Contractor as a Named Sub-Contractor.
  - 5.2      Any such instruction shall incorporate a description of the work and all particulars of the tender of the named person for that work in an Intermediate Named Sub-Contract Invitation to Tender and Tender (ICSub/NAM/IT and ICSub/NAM/T) as completed, together with the Tender Documents referred to therein.
  - 5.3      Unless the Contractor makes reasonable objection to entering into a sub-contract with the named person within 14 days of the date of issue of the instruction, he shall enter into a sub-contract with him for the execution of the work, using the Intermediate Named Sub-Contract Agreement (ICSub/NAM/A) and incorporating the Named Sub-Contract Conditions.
- 6      The Contractor shall not terminate a Named Sub-Contractor's employment otherwise than under clause 7.4, 7.5 or 7.6 of the Named Sub-Contract Conditions, nor without the prior consent of the Architect/Contract Administrator accept termination or repudiation of the sub-contract by the Named Sub-Contractor. In either case the Contractor shall notify the Architect/Contract Administrator as soon as is reasonably practicable of any events likely to lead to termination of the Named Sub-Contractor's employment, however arising.
- 7      Whether or not the notification referred to in paragraph 6 has been given, if the Named Sub-Contractor's employment terminates before completion of the sub-contract work, the Contractor shall notify the Architect/Contract Administrator, giving particulars of the circumstances. The Architect/Contract Administrator shall issue instructions as may be necessary in which he shall:
  - 7.1      name another person to execute the work, or the outstanding balance of it, in accordance with paragraph 5.2 and subject to paragraph 5.3; or



- 7.2 instruct the Contractor to make his own arrangements for the execution of the work or the outstanding balance of the work, in which case the Contractor may sub-contract the work in accordance with clause 3.5; or
- 7.3 omit the work or the outstanding balance of work.
- 8 Where an instruction is issued under paragraph 7 in respect of a Named Sub-Contractor who was named in the Contract Bills/Specification/Work Schedules and whose employment has been terminated either under clause 7.4, 7.5 or 7.6 of the Named Sub-Contract Conditions or with the Architect/Contract Administrator's consent:
- 8.1 an instruction under paragraph 7.1 shall be regarded as a Relevant Event for the purposes of clause 2.19 (*Adjustment of Completion Date*), but not as a Relevant Matter for the purposes of clauses 4.15 and 4.16 (*Loss and Expense*), and the Contract Sum shall be adjusted by the amount of the increase or the reduction in the price of the second Named Sub-Contractor for the work not carried out by the first Named Sub-Contractor when compared with the first Named Sub-Contractor's price for that work. In that adjustment there shall be excluded from the price of the second Named Sub-Contractor any amount included for the repair of defects in the work of the first Named Sub-Contractor;
- 8.2 an instruction under paragraph 7.2 or 7.3 shall be regarded as one requiring a Variation to be valued under clause 5.2 and both as a Relevant Event for the purposes of clause 2.19 and a Relevant Matter for the purposes of clauses 4.15 and 4.16.
- Where the instruction is under paragraph 7.3 the Employer may, subject to the terms of clause 2.7, have the omitted work executed in accordance with that clause.
- 9 Where an instruction is issued under paragraph 7 in respect of a Named Sub-Contractor who was named in an instruction as to the expenditure of a Provisional Sum under paragraph 5 and whose employment has been terminated under clause 7.4, 7.5 or 7.6 of the Named Sub-Contract Conditions or with the Architect/Contract Administrator's consent, such instruction shall be regarded as a further instruction issued in relation to the Provisional Sum.
- 10
- 10.1 Where the employment of a Named Sub-Contractor is terminated otherwise than under clause 7.4, 7.5 or 7.6 of the Named Sub-Contract Conditions and without the Architect/Contract Administrator's consent, the provisions of paragraph 8.1, 8.2 or 9 (as appropriate) shall apply in respect of the instructions under paragraph 7, but only to the extent that they result in a reduction in the Contract Sum and the instruction shall not be regarded as a Relevant Event or Relevant Matter for the purposes of clauses 2.19, 4.15 and 4.16.
- 10.2 Where the Named Sub-Contractor's employment is terminated under clause 7.4, 7.5 or 7.6 of the Named Sub-Contract Conditions or with the Architect/Contract Administrator's consent:
- 10.2.1 the Contractor shall take such reasonable action as is necessary to recover from the Named Sub-Contractor, whether under clause 7.7 of the Named Sub-Contract Conditions or otherwise, any additional amounts payable to the Contractor by the Employer as a result of the application of paragraph 8.1, 8.2 or 9 together with an amount equal to any liquidated damages that would have been payable or allowable by the Contractor to the Employer under clause 2.23 but for the application of any of those paragraphs;
- 10.2.2 the Contractor shall account to the Employer for any amounts so recovered;
- 10.2.3 in taking such action the Contractor shall not be required to invoke the dispute resolution procedures under the sub-contract unless the Employer shall have agreed to indemnify the Contractor against any legal costs reasonably incurred in relation thereto;
- 10.2.4 if the Contractor fails to comply with this paragraph 10.2 he shall repay to the Employer any additional amounts paid as a result of the application of paragraph 8.1, 8.2 or 9 and shall pay or allow an amount equal to the liquidated damages referred to in paragraph 10.2.1.

- 11.1 Whether or not a Named Sub-Contractor is responsible to the Employer for exercising reasonable care and skill in:
- 11.1.1 the design of the sub-contract works insofar as they have been or are to be designed by the Named Sub-Contractor;
  - 11.1.2 the selection of the kinds of materials and goods for the sub-contract works insofar as such materials and goods have been or will be selected by him; or
  - 11.1.3 the satisfaction of any performance specification or requirement relating to the sub-contract works,
- the Contractor shall not be responsible to the Employer under this Contract for anything to which such terms relate, nor, through the Contractor, shall the Named Sub-Contractor be so responsible; provided that this shall not be construed as affecting the obligations of the Contractor or any sub-contractor in regard to the supply of goods, materials and workmanship.
- 11.2 The provisions of paragraph 11.1 shall apply notwithstanding that the Sub-Contract Sum stated in Article 2 of the Intermediate Named Sub-Contract Agreement referred to in clause 3.7 or paragraph 5.3 included for the supply of any design, selection or satisfaction as referred to in paragraph 11.1, and that such Sub-Contract Sum is included within the Contract Sum or the Contract Sum as finally adjusted.
- 12 Clause 3.7 and this Schedule shall not apply to the execution of any part of the Works by a Statutory Undertaker executing work solely in that capacity.
- 13 Save as expressly stated in this Schedule, the Contractor shall remain wholly responsible for carrying out and completing the Works in all respects in accordance with clause 2.1 notwithstanding the naming of a Named Sub-Contractor for the execution of any such work.

## Schedule 3 Forms of Bonds

(Clauses 4.7 and 4.10)

(Agreed between the JCT and the British Bankers' Association)

### Part 1: Advance Payment Bond<sup>[58]</sup>

Not applicable

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<sup>[58]</sup> Not applicable where the Employer is a Local Authority or other public sector body.

## Part 2: Bond in respect of payment for off-site materials and/or goods

1 THE parties to this Bond are:

\_\_\_\_\_

whose registered office is at \_\_\_\_\_

\_\_\_\_\_ ('the Surety'), and

\_\_\_\_\_ of \_\_\_\_\_

\_\_\_\_\_ ('the Employer')

2 The Employer and \_\_\_\_\_ ('the Contractor')

have agreed to enter into a contract ('the Contract') for building works ('the Works') at \_\_\_\_\_

3 Subject to the relevant provisions of the Contract as summarised below but with which the Surety shall not at all be concerned:

3.1 the Employer has agreed to include the amount stated as due in Interim Certificates (as defined in the Contract) for payment by the Employer the value of those materials or goods or items pre-fabricated for inclusion in the Works listed by the Employer in a list which has been included as part of the Contract ('the Listed Items'), before their delivery to or adjacent to the Works; and

3.2 the Contractor has agreed to insure the Listed Items against loss or damage for their full value under a policy of insurance protecting the interests of the Employer and the Contractor during the period commencing with the transfer of the property in the items to the Contractor until they are delivered to or adjacent to the Works; and

3.3 this Bond shall exclusively relate to the amount paid to the Contractor in respect of the Listed Items which have not been delivered to or adjacent to the Works.

4 The Employer shall in making any demand provide to the Surety a Notice of Demand in the form of the **Schedule** attached hereto which shall be accepted as conclusive evidence for all purposes under this Bond. The signatures on any such demand must be authenticated by the Employer's bankers.

5 The Surety shall within 5 Business Days after receiving the demand pay to the Employer the sum so demanded. 'Business Day' means the day (other than a Saturday or a Sunday) on which commercial banks are open for business in London.

6 Payments due under this Bond shall be made notwithstanding any dispute between the Employer and the Contractor and whether or not the Employer and the Contractor are or might be under any liability one to the other. Payment by the Surety under this Bond shall be deemed a valid payment for all purposes of this Bond and shall discharge the Surety from liability to the extent of such payment.

7 The Surety consents and agrees that the following actions by the Employer may be made and done without notice to or consent of the Surety and without in any way affecting changing or releasing the Surety from its obligations under this Bond and the liability of the Surety hereunder shall not in any way be affected hereby. The actions are:

7.1 waiver by the Employer of any of the terms, provisions, conditions, obligations and agreements of the Contractor or any failure to make demand upon or take action against the Contractor;

- 7.2 any modification or changes to the Contract; and/or
- 7.3 the granting of an extension of time to the Contractor without affecting the terms of clause 9.2 below.
- 8 The Surety's maximum aggregate liability under this Bond shall be \*                    ].
- 9 The obligations of the Surety under this Bond shall cease upon whichever is the earlier of:
- 9.1 the date on which all the Listed Items have been delivered to or adjacent to the Works as certified in writing to the Surety by the Employer; or
- 9.2 *[longstop date to be given]*,
- and any claims hereunder must be received by the Surety in writing on or before such earlier date.
- 10 The Bond is not transferable or assignable without the prior written consent of the Surety. Such written consent will not be unreasonably withheld.
- 11 Notwithstanding any other provisions of this Bond nothing in this Bond confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.
- 12 This Bond shall be governed and construed in accordance with the laws of England and Wales.

\*The value stated in the Contract which the Employer considers will be sufficient to cover him for maximum payments to the Contractor for the Listed Items that will have been made and not delivered to the site at any one time.

**IN WITNESS** whereof this Deed of Guarantee has been duly executed and delivered on the date below:

Signed as a Deed by: \_\_\_\_\_

as the Attorney and on behalf of the Surety: \_\_\_\_\_

In the presence of:

\_\_\_\_\_  
*witness' signature*

\_\_\_\_\_  
*witness' name*

\_\_\_\_\_  
*witness' address*

Date: \_\_\_\_\_

## Schedule to Bond

(clause 4 of the Bond)

### Notice of Demand

Date of Notice: \_\_\_\_\_

Date of Bond: \_\_\_\_\_

Employer: \_\_\_\_\_

Surety: \_\_\_\_\_

We hereby demand payment of the sum of £ \_\_\_\_\_  
being the amount stated as due in respect of Listed Items included in the amount stated as due in an  
Interim Certificate(s) for payment which has been duly made to the Contractor by the Employer but  
such Listed Items have not been delivered to or adjacent to the Works.

Address for payment: \_\_\_\_\_

This Notice is signed by the following persons who are authorised by the Employer to act for and on  
his behalf:

Signed by \_\_\_\_\_

Name: \_\_\_\_\_

Official Position: \_\_\_\_\_

Signed by \_\_\_\_\_

Name: \_\_\_\_\_

Official Position: \_\_\_\_\_

**The above signatures to be authenticated by the Employer's bankers**

## Schedule 4      Fluctuations – Contribution, levy and tax fluctuations

(Clauses 4.3 and 4.9)

### Deemed calculation of Contract Sum – labour

- 1 The Contract Sum shall be deemed to have been calculated in the manner set out below and shall be subject to adjustment in the events specified hereunder.
  - 1.1 The Contract Sum is based upon the types and rates of contribution, levy and tax payable by a person in his capacity as an employer and which at the Base Date are payable by the Contractor. A type and a rate so payable are in paragraph 1.2 referred to as a 'tender type' and a 'tender rate'.
  - 1.2 If any of the tender rates other than a rate of levy payable by virtue of the Industrial Training Act 1982 is increased or decreased, or if a tender type ceases to be payable, or if a new type of contribution, levy or tax which is payable by a person in his capacity as an employer becomes payable after the Base Date, then in any such case the net amount of the difference between what the Contractor actually pays or will pay in respect of:
    - 1.2.1 workpeople engaged upon or in connection with the Works either on or adjacent to the site; and
    - 1.2.2 workpeople directly employed by the Contractor who are engaged upon the production of materials or goods for use in or in connection with the Works and who operate neither on nor adjacent to the site and to the extent that they are so engagedor because of his employment of such workpeople and what he would have paid had the alteration, cessation or new type of contribution, levy or tax not become effective shall, as the case may be, be paid to or allowed by the Contractor.
  - 1.3 There shall be added to the net amount paid to or allowed by the Contractor under paragraph 1.2, in respect of each person employed by the Contractor who is engaged upon or in connection with the Works either on or adjacent to the site and who is not within the definition of workpeople in paragraph 11.3, the same amount as is payable or allowable in respect of a craftsman under paragraph 1.2 or such proportion of that amount as reflects the time (measured in whole working days) that each such person is so employed.
  - 1.4 For the purposes of paragraph 1.3:
    - 1.4.1 no period of less than 2 whole working days in any week shall be taken into account and periods of less than a whole working day shall not be aggregated to amount to a whole working day;
    - 1.4.2 "the same amount as is payable or allowable in respect of a craftsman" shall refer to the amount in respect of a craftsman employed by the Contractor (or by any domestic sub-contractor under a sub-contract to which paragraph 3 refers) under the rules or decisions or agreements of the Construction Industry Joint Council or other wage-fixing body and, where those rules or decisions or agreements provide for more than one rate of wage, emolument or other expense for a craftsman, shall refer to the amount in respect of a craftsman employed as aforesaid to whom the highest rate is applicable; and
    - 1.4.3 "employed by the Contractor" shall mean an employment to which the Income Tax (Pay As You Earn) Regulations 2003 apply.
  - 1.5 The Contract Sum is based upon the types and rates of refund of the contributions, levies and taxes payable by a person in his capacity as an employer and upon the types and rates of premium receivable by a person in his capacity as an employer being in each case types and rates which at the Base Date are receivable by the Contractor. Such a type and such a rate are in paragraph 1.6 referred to as a 'tender type' and a 'tender rate'.
  - 1.6 If any of the tender rates is increased or decreased or if a tender type ceases to be payable

or if a new type of refund of any contribution, levy or tax payable by a person in his capacity as an employer becomes receivable or if a new type of premium receivable by a person in his capacity as an employer becomes receivable after the Base Date, then in any such case the net amount of the difference between what the Contractor actually receives or will receive in respect of workpeople as referred to in paragraphs 1.2.1 and 1.2.2 or because of his employment of such workpeople and what he would have received had the alteration, cessation or new type of refund or premium not become effective shall, as the case may be, be paid to or allowed by the Contractor.

- 1.7 The references in paragraphs 1.5 and 1.6 to premiums shall be construed as meaning all payments howsoever they are described which are made under or by virtue of an Act of Parliament to a person in his capacity as an employer and which affect the cost to an employer of having persons in his employment.
- 1.8 Where employer's contributions are payable by the Contractor in respect of workpeople as referred to in paragraphs 1.2.1 and 1.2.2 whose employment is contracted-out employment within the meaning of the Pension Schemes Act 1993, the Contractor shall for the purpose of recovery or allowance under this paragraph 1 be deemed to pay employer's contributions as if that employment were not contracted-out employment.
- 1.9 The references in paragraph 1 to contributions, levies and taxes shall be construed as meaning all impositions payable by a person in his capacity as an employer howsoever they are described and whoever the recipient which are imposed under or by virtue of an Act of Parliament and which affect the cost to an employer of having persons in his employment.

#### **Deemed calculation of Contract Sum – materials**

- 2 The Contract Sum shall be deemed to have been calculated in the manner set out below and shall be subject to adjustment in the events specified hereunder.

- 2.1 The Contract Sum is based upon the types and rates of duty, if any, and tax, if any (other than any VAT which is treated, or is capable of being treated, as input tax by the Contractor), by whomsoever payable which at the Base Date are payable on the import, purchase, sale, appropriation, processing, use or disposal of the materials, goods, electricity, fuels, materials taken from the site as waste or any other solid, liquid or gas necessary for the execution of the Works by virtue of any Act of Parliament. A type and a rate so payable are in paragraph 2.2 referred to as a 'tender type' and a 'tender rate'.
- 2.2 If, in relation to any materials or goods or any electricity or fuels or materials taken from the site as waste or any other solid, liquid or gas necessary for the execution of the Works including temporary site installations for those Works, a tender rate is increased or decreased or a tender type ceases to be payable or a new type of duty or tax (other than any VAT which is treated, or is capable of being treated, as input tax by the Contractor) becomes payable on the import, purchase, sale, appropriation, processing, use or disposal of any of the above things after the Base Date, then in any such case the net amount of the difference between what the Contractor actually pays in respect of those materials, goods, electricity, fuels, materials taken from the site as waste or any other solid, liquid or gas and what he would have paid in respect of them had the alteration, cessation or imposition not occurred shall, as the case may be, be paid to or allowed by the Contractor. In this paragraph 2.2 "a new type of duty or tax" includes an additional duty or tax and a duty or tax imposed in regard to any of the above in respect of which no duty or tax whatever was previously payable (other than any VAT which is treated, or is capable of being treated, as input tax by the Contractor).

#### **Sub-contract work – incorporation of provisions to like effect**

- 3
- 3.1 If the Contractor sub-contracts any portion of the Works to a sub-contractor other than a Named Sub-Contractor he shall incorporate in the sub-contract provisions to the like effect as the provisions of this Schedule 4 (excluding this paragraph 3) including the percentage stated in the Contract Particulars pursuant to paragraph 12 which are applicable for the purposes of this Contract.
- 3.2 If the price payable under such a sub-contract as referred to in paragraph 3.1 is increased above or decreased below the price in such sub-contract by reason of the operation of the said incorporated provisions, then the net amount of such increase or decrease shall, as



the case may be, be paid to or allowed by the Contractor under this Contract.

#### **Notification by Contractor**

4

4.1 The Contractor shall notify the Architect/Contract Administrator of the occurrence of any of the events referred to in such of the following provisions as are applicable for the purposes of this Contract:

4.1.1 paragraph 1.2;

4.1.2 paragraph 1.6;

4.1.3 paragraph 2.2;

4.1.4 paragraph 3.2.

4.2 Any notification required to be given under paragraph 4.1 shall be given within a reasonable time after the occurrence of the event to which it relates, and notification in that time shall be a condition precedent to any payment being made to the Contractor in respect of the event in question.

#### **Agreement – Quantity Surveyor and Contractor**

5

The Quantity Surveyor and the Contractor may agree what shall be deemed for all the purposes of this Contract to be the net amount payable to or allowable by the Contractor in respect of the occurrence of any event such as is referred to in any of the provisions listed in paragraph 4.1.

#### **Fluctuations added to or deducted from Contract Sum**

6

Any amount which from time to time becomes payable to or allowable by the Contractor by virtue of paragraphs 1 and 2 or paragraph 3 shall, as the case may be, be added to or deducted from:

6.1 the Contract Sum; and

6.2 any amounts payable to the Contractor and which are calculated in accordance with clause 8.12.3.1.

The addition or deduction to which this paragraph 6 refers shall be subject to the provisions of paragraphs 7 to 9.1.

#### **Evidence and computations by Contractor**

7

As soon as is reasonably practicable the Contractor shall provide such evidence and computations as the Architect/Contract Administrator or the Quantity Surveyor may reasonably require to enable the amount payable to or allowable by the Contractor by virtue of paragraphs 1 and 2 or paragraph 3 to be ascertained; and in the case of amounts payable to or allowable by the Contractor under paragraph 1.3 (or paragraph 3 for amounts payable to or allowable under the provisions in the sub-contract to the like effect as paragraphs 1.3 and 1.4) – employees other than workpeople – such evidence shall include a certificate signed by or on behalf of the Contractor each week certifying the validity of the evidence reasonably required to ascertain such amounts.

#### **No alteration to Contractor's profit**

8

No addition to or deduction from the Contract Sum made by virtue of paragraph 6 shall alter in any way the amount of profit of the Contractor included in that Sum.

#### **Position where Contractor in default over completion**

9

9.1 Subject to the provisions of paragraph 9.2 no amount shall be added or deducted in the computation of the amount stated as due in an Interim Certificate or in the Final Certificate in respect of amounts otherwise payable to or allowable by the Contractor by virtue of paragraphs 1 and 2 or paragraph 3 if the event (as referred to in the provisions listed in paragraph 4.1) in respect of which the payment or allowance would be made occurs after the Completion Date.

9.2 Paragraph 9.1 shall not be applied unless:

- 9.2.1 the printed text of clauses 2.19 and 2.20 is unamended and forms part of the Conditions; and
- 9.2.2 the Architect/Contract Administrator has, in respect of every notification by the Contractor under clause 2.19, notified the Contractor of the extension of time, if any, that he considers to be in accordance with that clause.

**Work etc. to which paragraphs 1 to 3 not applicable**

**10** Paragraphs 1 to 3 shall not apply in respect of:

- 10.1 work for which the Contractor is allowed daywork rates under clause 5.4;
- 10.2 work executed by any named person as a sub-contractor under clause 3.7 (fluctuations in relation to such sub-contractors shall be dealt with under any provision in relation thereto which may be included in the appropriate sub-contract);
- 10.3 changes in the rate of VAT charged on the supply of goods or services by the Contractor to the Employer under this Contract.

**Definitions**

**11** In this Schedule 4:

- 11.1 the Base Date means the date stated as such in the Contract Particulars;
- 11.2 "materials" and "goods" include timber used in formwork but do not include other consumable stores, plant and machinery;
- 11.3 "workpeople" means persons whose rates of wages and other emoluments (including holiday credits) are governed by the rules or decisions or agreements of the Construction Industry Joint Council or some other wage-fixing body for trades associated with the building industry;
- 11.4 "wage-fixing body" means a body which lays down recognised terms and conditions of workers;
- 11.5 "recognised terms and conditions" means terms and conditions of workers in comparable employment in the trade or industry, or section of trade or industry, in which the employer in question is engaged which have been settled by an agreement or award to which the parties are employers' associations and independent trade unions which represent (generally, or in the district in question, as the case may be) a substantial proportion of the employers and of the workers in the trade, industry or section being workers of the description to which the agreement or award relates.

**Percentage addition to fluctuation payments or allowances**

**12** There shall be added to the amount paid to or allowed by the Contractor under:

- 12.1 paragraph 1.2,
- 12.2 paragraph 1.3,
- 12.3 paragraph 1.6,
- 12.4 paragraph 2.2

the percentage stated in the Contract Particulars.

## Schedule 5 Supplemental Provisions

(Thirteenth Recital)

Supplemental Provisions 1 to 6 apply unless otherwise stated in the Contract Particulars. Supplemental Provision 7 applies where the Employer is a Local or Public Authority or other body of the type mentioned in that provision; Supplemental Provision 8 applies where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations.

### Collaborative working

- 1 The Parties shall work with each other and with other project team members in a co-operative and collaborative manner, in good faith and in a spirit of trust and respect. To that end, each shall support collaborative behaviour and address behaviour which is not collaborative.

### Health and safety

- 2
- 2.1 Without limiting either Party's statutory and/or regulatory duties and responsibilities and/or the specific health and safety requirements of this Contract, the Parties will endeavour to establish and maintain a culture and working environment in which health and safety is of paramount concern to everybody involved with the project.
- 2.2 In addition to the specific health and safety requirements of this Contract, the Contractor undertakes to:
- 2.2.1 comply with any and all approved codes of practice produced or promulgated by the Health and Safety Executive;
- 2.2.2 ensure that all personnel engaged by the Contractor and members of the Contractor's supply chain on site receive appropriate site-specific health and safety induction training and regular refresher training;
- 2.2.3 ensure that all such personnel have access at all times to competent health and safety advice in accordance with regulation 7 of the Management of Health and Safety at Work Regulations 1999; and
- 2.2.4 ensure that there is full and proper health and safety consultation with all such personnel in accordance with the Health and Safety (Consultation with Employees) Regulations 1996.

### Cost savings and value improvements

- 3
- 3.1 The Contractor is encouraged to propose changes to designs and specifications for the Works and/or to the programme for their execution that may benefit the Employer, whether in the form of a reduction in the cost of the Works or their associated life cycle costs, through practical completion at a date earlier than the Completion Date or otherwise.
- 3.2 The Contractor shall provide details of his proposed changes, identifying them as suggested under this Supplemental Provision 3, together with his assessment of the benefit he believes the Employer may obtain, expressed in financial terms, and a quotation.
- 3.3 Where the Employer wishes to implement a change proposed by the Contractor, the Parties shall negotiate with a view to agreeing its value, the financial benefit and any adjustment to the Completion Date. Upon agreement, the change and the amount of any adjustment of the Contract Sum shall be confirmed in an Architect/Contract Administrator's instruction, together with the share of the financial benefit to be paid to the Contractor and any adjustment to the Completion Date.
- 3.4 Original proposals by the Contractor under this Supplemental Provision 3 may only be instructed in accordance with it, provided always that nothing shall prevent the Employer from utilising other contractors to implement such changes after practical completion of the

Works.

#### **Sustainable development and environmental considerations**

**4**

- 4.1 The Contractor is encouraged to suggest economically viable amendments to the Works which, if instructed as a Variation, may result in an improvement in environmental performance in the carrying out of the Works or of the completed Works.
- 4.2 The Contractor shall provide to the Employer all information that he reasonably requests regarding the environmental impact of the supply and use of materials and goods which the Contractor selects.

#### **Performance Indicators and monitoring**

**5**

- 5.1 The Employer shall monitor and assess the Contractor's performance by reference to any performance indicators stated or identified in the Contract Documents.
- 5.2 The Contractor shall provide to the Employer all information that he may reasonably require to monitor and assess the Contractor's performance against the targets for those performance indicators.
- 5.3 Where the Employer considers that a target for any of those performance indicators may not be met, he may inform the Contractor who shall submit his proposals for improving his performance against that target to the Employer.

#### **Notification and negotiation of disputes**

**6**

With a view to avoidance or early resolution of disputes or differences (subject to Article 7), each Party shall promptly notify the other of any matter that appears likely to give rise to a dispute or difference. The senior executives nominated in the Contract Particulars (or if either is not available, a colleague of similar standing) shall meet as soon as practicable for direct, good faith negotiations to resolve the matter.

#### **Transparency**

**7**

Where the Employer is a Local or Public Authority or other body to whom the provisions of the Freedom of Information Act 2000 ('FOIA') apply, the Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of this Contract is not confidential. The Employer shall be responsible for determining in his absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding clause 2.8.3 or any other term of this Contract:

- 7.1 the Contractor hereby consents to the Employer publishing any amendments to the standard form JCT contract in their entirety, including changes to the standard form agreed from time to time, but in each case with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted;
- 7.2 the Employer shall promptly inform the Contractor of any request for disclosure that he receives in relation to this Contract.

#### **The Public Contracts Regulations 2015**

**8**

Where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations<sup>[59]</sup>:

- 8.1 where regulation 113 of the PC Regulations applies to this Contract, the Contractor shall include in any sub-contract entered into by him suitable provisions to impose the requirements of regulation 113(2)(c)(i) and (ii);
- 8.2 the Contractor shall include in any sub-contract entered into by him provisions requiring the sub-contractor:

**[59]** An explanatory summary of those provisions in the PC Regulations that are reflected in this Contract is contained in the Intermediate Building Contract Guide. Provisions relating to the PC Regulations are also set out in section 8 (Termination) of this Contract. The JCT Intermediate Sub-Contracts (ICSub and ICSub/D) meet the requirements of Supplemental Provision 8.

- 8.2.1 to supply and notify to the Contractor the information required (as applicable) under regulations 71(3), 71(4) and 71(5) of the PC Regulations; and
- 8.2.2 to include in any sub-subcontract he in turn enters into provisions to the same effect as required under paragraph 8.2.1 of Supplemental Provision 8;

8.3

- 8.3.1 the Contractor shall include in any sub-contract entered into by him provisions that shall entitle him to terminate the sub-contractor's employment where there are grounds for excluding the sub-contractor under regulation 57;
- 8.3.2 in the event the Employer requires the Contractor to terminate a sub-contractor's employment pursuant to regulation 71(9) the Contractor shall take the appropriate steps to terminate that employment and where required by the Employer under regulation 71(9) shall, or in circumstances where there is no such requirement may, appoint a replacement sub-contractor.

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## Schedule 6 Design Submission Procedure

(Clause 2.10.3)

- 1 The Contractor shall prepare and submit each of the Contractor's Design Documents to the Architect/Contract Administrator by the means and in the format stated in the Employer's Requirements or the Contractor's Proposals and in sufficient time to allow any comments of the Architect/Contract Administrator to be incorporated prior to the relevant Contractor's Design Document being used for procurement and/or in the carrying out of the CDP Works. Where the means and format are not so stated, then, unless and until otherwise agreed with the Architect/Contract Administrator, the Contractor shall submit 2 copies of each of the Contractor's Design Documents to him.
- 2 Within 14 days from the date of receipt of any Contractor's Design Document, or (if later) 14 days from either the date or expiry of the period for submission of the same stated in the Contract Documents, the Architect/Contract Administrator shall return one copy of that Contractor's Design Document to the Contractor marked 'A', 'B' or 'C' provided that a document shall be marked 'B' or 'C' only where the Architect/Contract Administrator considers that it is not in accordance with this Contract.
- 3 If the Architect/Contract Administrator does not respond to a Contractor's Design Document in the time stated in paragraph 2, it shall be regarded as marked 'A'.
- 4 Where the Architect/Contract Administrator marks a Contractor's Design Document 'B' or 'C', he shall identify by means of a written comment why he considers that it is not in accordance with this Contract.
- 5 When a Contractor's Design Document is returned by the Architect/Contract Administrator:
  - 5.1 if it is marked 'A', the Contractor shall carry out the CDP Works in strict accordance with that document;
  - 5.2 if it is marked 'B', the Contractor may carry out the CDP Works in accordance with that document, provided that the Architect/Contract Administrator's comments are incorporated into it and an amended copy of it is promptly submitted to the Architect/Contract Administrator; or
  - 5.3 if it is marked 'C', the Contractor shall take due account of the Architect/Contract Administrator's comments on it and shall either forthwith resubmit it to the Architect/Contract Administrator in amended form for comment in accordance with paragraph 1 or notify the Architect/Contract Administrator under paragraph 7.
- 6 The Contractor shall not carry out any work in accordance with a Contractor's Design Document marked 'C' and the Employer shall not be liable to pay for any work within the CDP Works executed otherwise than in accordance with Contractor's Design Documents marked 'A' or 'B'.
- 7 If the Contractor disagrees with a comment of the Architect/Contract Administrator and considers that the Contractor's Design Document in question is in accordance with this Contract, he shall within 7 days of receipt of the comment notify the Architect/Contract Administrator that he considers that compliance with the comment would give rise to a Variation. Such notification shall be accompanied by a statement setting out the Contractor's reasons. Upon receipt of such a notification the Architect/Contract Administrator shall within 7 days either confirm or withdraw the comment and, where the comment is confirmed, the Contractor shall amend and resubmit the document accordingly.
- 8 Provided always that:
  - 8.1 confirmation or withdrawal of a comment in accordance with paragraph 7 shall not signify acceptance by either the Employer or the Architect/Contract Administrator that the relevant Contractor's Design Document or amended document is in accordance with this Contract or that compliance with the Architect/Contract Administrator's comment would give rise to a Variation;
  - 8.2 where in relation to a comment by the Architect/Contract Administrator the Contractor does not notify him in accordance with paragraph 7, the comment in question shall not be treated as giving rise to a Variation; and

- 8.3 neither compliance with the design submission procedure in this Schedule nor with the Architect/Contract Administrator's comments shall diminish the Contractor's obligations to ensure that the Contractor's Design Documents and CDP Works are in accordance with this Contract.

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