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RM 2016
Repair and Maintenance Contract
Commercial 2016

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2016
REPAIR AND MAINTENANCE CONTRACT

Repair and Maintenance Contract (Commercial) (RM)

Appropriate:

- where the work involves the repair and maintenance of a building; and
- where no independent contract administrator is to be appointed.

Can be used:

- by both private and local authority employers.

Not suitable:

- for periodic repair or maintenance over a fixed term or the regular maintenance of plant etc. – consider the Measured Term Contract (MTC);
- for work on a dwelling by a residential occupier – consider the Building contract for a home owner/occupier who has not appointed a consultant to oversee the work (HO/B) or the Building contract and consultancy agreement for a home owner/occupier (HO/C), or if the work is of a very minor nature the Home Repair and Maintenance Contract (HO/RM).

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For details of 2016 Edition changes, see the Guidance Notes and the Tracked Change Document.

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Invitation to Tender

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

Issued by^[1]: North Northamptonshire Council

Sheerness House, 41 Meadow Road, Kettering, Northamptonshire, NN16 8TZ (the Employer)

For repair/maintenance work at^[2]: Filter Bed Play Area, Play Sculpture and Water Play at Sywell Country Park

(Reference No. TBC)

To: TBC

TBC

You are invited to tender for the repair/maintenance work details of which are set out in the documents referred to at item 1 of the attached Contract Particulars ('the Works'). If you wish to tender, please complete the Tender form included in this document.

When completed, you should sign the Tender and, for the purposes of identification, sign or initial each of the following:

- * the enclosed Drawings^[3]
- * the enclosed Specification^[3]
- * your Schedule of Rates^[4]
- * your Schedule of Hourly Charges^[4]

This complete document (RM), together with one signed or initialled copy of each of those other documents, should then be returned to

TBC at North Northamptonshire Council, Sheerness House, 41 Meadow Road, Kettering, Northamptonshire, NN16 8TZ

so as to be received not later than TBC hours on TBC.

(The additional copies of each of the documents supplied by us are for you to retain.)

Tenders should remain open for acceptance for no less than TBC days from the closing date stated above.

Signed by or on behalf of North Northamptonshire Council

-
- [1] If issued by an agent, the name and address of the Employer for whom it is issued should also be stated.
- [2] Insert location and brief reference to the general nature of the work.
- [3] Two copies of the Drawings and/or Specification should be sent to each tenderer, together with a further copy of this document.
- [4] Item 2 of the Contract Particulars is intended to state whether tenders are to be made on the basis of a fixed Contract Price for the Works as a whole (subject to adjustment for Variations) or whether the price of the whole or part of the Works is to be calculated by reference to the Contractor's Schedule of Rates or, in the case of daywork, an all-in Schedule of Hourly Charges. (Where a fixed price is required for the Works as a whole, Schedules of Rates and/or Hourly Charges may nevertheless provide an appropriate basis for valuing variations.) The Employer/issuer, when completing item 2, should also make appropriate deletions in the Tender form prior to issue.

Signature: _____

Position: TBC

Date: TBC

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Contract Particulars

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

(References in these Particulars to clauses are to the clauses in the attached Conditions.)

1 Description of the Works

The Works are those shown and/or described in the enclosed^[5]:

- * Drawings, numbered TBC
- * Specification, marked TBC

2 Basis of pricing

(Fixed price/daywork or other rates^[6])

A fixed price for the Works as a whole

3 Time of payment(s)^[7]

The Contract Price is to be paid:

- * by a single payment on completion of the Works (the estimated duration of the Works being less than 45 days)

4 Conditions of Contract

Whether any of Supplemental Provisions 1 to 6 (set out in Schedule 1) apply is stated below^[8]:

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

Supplemental Provision 1: Collaborative working
* applies

Supplemental Provision 2: Health and safety
* applies

Supplemental Provision 3: Cost savings and value improvements
* applies

Supplemental Provision 4: Sustainable development and environmental

[5] If documents other than Drawings or a Specification are used, the references here and in the Invitation to Tender should be adjusted accordingly. It is envisaged that in those cases where there is an applicable BIM or other communications protocol this will be included within one of the documents identified at item 1.

[6] State the required basis of pricing, which should then be reflected in the Contract Price section of the Tender. If the Works or part(s) of them are to be tendered for on the basis of daywork or other rates, the basis on which each item of Work is to be performed should be stated clearly either here or in a document identified here. The Contract provides that daywork labour rates shall be given by way of all-in hourly rates (inclusive of incidental costs, overheads and profit) in a Schedule of Hourly Charges and provides for a percentage to be added to the cost of materials.

[7] Where the duration of the Works is stated or estimated to be 45 days or more, there will generally be a statutory right to instalment or periodical payments (see the Guidance Notes).

[8] 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 the Contract is subject to the PC Regulations.

considerations
* applies

Supplemental Provision 5: Performance Indicators and monitoring
* applies

Supplemental Provision 6: Notification and negotiation of disputes
* applies

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

Employer's nominee

Rebecca Jenkins

Contractor's nominee

TBC

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

The Contract is supplemented by the Framework Agreement identified below^[9]:

[]

5 Commencement and completion^[7]
(Clause 2.2)

The Works shall be commenced on TBC

and, subject to the Conditions, shall be completed by TBC

6 Access, facilities and site rules
(Clauses 2.3.2 and 3.1.1)

Access to areas where the work is to be carried out^[10] will be given on TBC
between TBC and TBC hours.

The premises *will be occupied/will not be occupied while the Works are being carried out.

The Employer will provide free of charge (unless otherwise stated) the use of^[11]:

TBC

Site rules applicable to the Works are those set out in

TBC^[12]

7 Rectification Period
(Clause 2.5)

The Rectification Period is

(The period is 6 weeks unless a different period is stated.)

[9] State date, title and parties of any Framework Agreement that applies to the Contract.

[10] State whether access is to be given for the whole of the period mentioned in item 5 above or specify the days/dates on which access is to be given, and in either case specify the hours of access.

[11] Specify facilities (including any electricity, water, telephone, toilet and washing facilities, materials and/or equipment) to be supplied by the Employer.

[12] Employer to identify (and to make available copies of) any applicable site rules.

52 weeks^[13]
from the completion of the Works

8 Employer's representative
(Clause 3.2)

The Employer's representative is
Rebecca Jenkins^[14]

9 CDM Regulations
(Clause 3.7)

The Principal Designer is
TBC

The Principal Contractor is *the Contractor/[]^[15]

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 below:

The project *is notifiable^[16]

10 Insurance
(Clauses 5.3, 5.4 and 5.5)

Contractor's Public Liability insurance (clause 5.3): injury to persons or property – the required level of cover is not less than

£5,000,000 (five million pounds)
for any one occurrence or series of occurrences arising out of one event

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

10 per cent

Insurance of existing structures – clause 5.4.1^[17]
(Unless otherwise stated, clause 5.4.1 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 'Clause 5.4.1 Replacement Schedule')

Insurance of the Works by Contractor in Joint Names – clause 5.5
(If neither entry is deleted, the clause does not apply.)

[13] If a 6 week period is not sufficient, having regard to the nature of the Works, an appropriate longer period should be inserted.

[14] Leave blank if no appointment has been made or decided upon.

[15] Under the CDM Regulations 2015, regardless of whether or not a project is notifiable, there is a requirement to appoint a principal designer and a principal contractor in all cases where there is more than one contractor, or if it is reasonably foreseeable that more than one contractor will be working on a project at any time. For these purposes, the term 'contractor' is broadly defined by the regulations and treats the Contractor's sub-contractors as separate contractors.

[16] 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.

[17] As to choice of applicable insurance provisions, see the Guidance Notes.
In respect of existing structures, it is vital that any prospective Employer who is not familiar with clause 5.4 and the alternative solutions under clause 5.4.1 – in particular, any Employer who is a tenant – 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.

* does not apply

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Tender by Contractor

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

To: North Northamptonshire Council

Sheerness House, 41 Meadow Road, Kettering, Northamptonshire, NN16 8TZ (the Employer)

From: TBC

TBC

Repair/maintenance work at: Filter Bed Play Area, Play Sculpture and Water Play at Sywell Country Park

(Reference No. TBC)

We note the information set out in the Contract Particulars and have examined the documents referred to in them. We return with this Tender one signed or initialled copy of each of the documents as requested in the Invitation to Tender.

Contract Price^[18]

On the basis of that information and those documents we offer to carry out the Works in accordance with the Conditions for:

* a fixed price of £ _____

for the Works as a whole

The price and/or any rates given are **exclusive of VAT** and the price is subject to adjustment in accordance with the Conditions.

We are:

- * Registered for VAT
- * Not registered for VAT

VAT registration number _____

This tender remains open for acceptance for the period stated in the Invitation to Tender, or for such longer period as we may agree.

Signed by or on behalf of _____

Signature: _____

Position: _____

Date: _____ 20_____

Accepted by or on behalf of the Employer^[19]

Signature: _____

Position: _____

Date: _____ 20_____

[18] The issuer should prior to issue to tenderers insert the name of the Employer as the addressee and make appropriate deletions or adaptations to accord with the Invitation to Tender and item 2 of the Contract Particulars.

[19] On acceptance, the Employer must sign and return a copy of the accepted Tender to the Contractor.

Conditions

Section 1 Definitions and Interpretation

1.1 Definitions

Unless the context otherwise requires, the following words or phrases where they appear in capitalised form in these Conditions shall have the following meanings:

All Risks Insurance^[20]: 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^[21];
- (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.

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

Clause 5.4.1 Replacement Schedule: (where applicable) the insurance schedule and/or other documents identified as such in the **Contract Particulars (item 10)**.

Conditions: the clauses set out in sections 1 to 7, together with and including Schedule 1 hereto.

Construction Industry Scheme (or CIS): the Construction Industry Scheme under the Finance Act 2004.

Construction Phase Plan: the plan referred to in regulation 2 of the CDM Regulations, including any

[20] The risks and costs that All Risks Insurance is required to cover are defined by exclusions. Policies issued by insurers are not standardised and the way in which insurance for these risks is expressed varies.

[21] In any policy for All Risks Insurance taken out under clause 5.4.2 or 5.5, 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 that clause or that definition. Wider All Risks cover than that specified may be available, though it is not standard.

updates and revisions.

Contract Price: the sum specified and/or the amount calculated in accordance with the rates and prices stated in the Contract, exclusive of VAT and adjusted in accordance with these Conditions.

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 Employer, Employer's Persons and any Statutory Undertaker.

Employer's Persons: all persons employed, engaged or authorised by the Employer, excluding the Contractor, Contractor's Persons and any Statutory Undertaker.

Excepted Risks: 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, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

Insolvent: insolvent, within the meaning of section 113 of the Housing Grants, Construction and Regeneration Act 1996.

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 recognised as an insured thereunder.

Local or Public Authority: a body that is a 'contracting authority' as defined by the PC Regulations 2015.

Parties: the Employer and the Contractor together.

Party: the Employer or the Contractor.

PC Regulations: the Public Contracts Regulations 2015.

Principal Contractor: the Contractor or other contractor named in the **Contract Particulars (item 9)** or any successor appointed by the Employer.

Principal Designer: the person named in the **Contract Particulars (item 9)** or any successor appointed by the Employer.

Rectification Period: the period of 6 weeks (or such other period as is stated in the **Contract Particulars (item 7)**) from the completion of the Works.

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

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.

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 the Contract and any regulation or bye-law of any local authority or statutory undertaker which 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.

Variation: any variation or change in the Works.

VAT: Value Added Tax.

Works: the works as described in the documents listed in the **Contract Particulars (item 1)**, subject to any Variations.

Works Insurance Policy: the Joint Names Policy or policies covering the Works and Site Materials to be effected and maintained under clause 5.4.2 or 5.5.

1.2 Interpretation

- 1.2.1 Unless otherwise expressly agreed in writing, nothing in the documents referred to in the Contract Particulars (item 1), nor anything in any Framework Agreement, shall override or modify the provisions of the accepted Tender or of these Conditions.
- 1.2.2 In the Contract, unless the context otherwise requires:
- 1.2.2.1 the headings, notes and footnotes are included for convenience only and shall not affect the interpretation of the Contract;
 - 1.2.2.2 the singular includes the plural and vice versa;
 - 1.2.2.3 a gender includes any other gender;
 - 1.2.2.4 a reference to a 'person' includes any individual, firm, partnership, company and any other body corporate; and
 - 1.2.2.5 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.
- 1.2.3 Notwithstanding any other provision of the Contract, nothing in the 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.
- 1.2.4 Any notice under the Contract may be given by any effective means. In the absence of any agreed address, a notice shall be treated as effectively given if addressed and sent by pre-paid post to the addressee's last known principal business address or, where the addressee is a body corporate, its registered or principal office.

1.3 Applicable law

The Contract shall be governed by and construed in accordance with the law of England and the English Courts shall have jurisdiction over any dispute or difference that may arise.^[22]

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

Section 2 Carrying out the Works

2.1 Contractor's obligations

- 2.1.1 The Contractor shall carry out and complete the Works in a regular, diligent and competent manner, in accordance with the Contract, the Construction Phase Plan and Statutory Requirements.
- 2.1.2 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.

2.2 Commencement and completion

The Works may commence on and shall be completed by the respective dates stated in the Contract Particulars (item 5).

2.3 Employer's duties

The Employer shall provide to the Contractor:

- 2.3.1 in writing and in due time, any further information and instructions that the Contractor reasonably requires in order to carry out the Works by the date fixed for their completion; and
- 2.3.2 the access to areas and facilities stated in the Contract Particulars (item 6).

2.4 Extension of time

If the Contractor is delayed by the Employer or for any reason beyond the Contractor's control, the Employer shall fix a fair and reasonable revised date for completion of the Works. The Contractor shall constantly use all reasonable endeavours to prevent or minimise any delay in the progress of the whole or any part of the Works.

2.5 Defects

- 2.5.1 The Contractor at no cost to the Employer shall promptly on being notified make good any defects in the Works which appear within the Rectification Period and which result from materials and/or workmanship not being in accordance with the Contract. The Employer will give prompt notice of any defects and give reasonable access for making good.
- 2.5.2 If the Contractor fails promptly to make good any defects of which notice is given under clause 2.5.1, the Employer may employ other contractors to do so and shall be entitled to deduct or recover as a debt the costs of doing so.

Section 3 Control of the Works

3.1 Contractor's undertakings

The Contractor:

- 3.1.1 shall keep the working areas tidy and comply with any site rules identified in the Contract Particulars (item 6);
- 3.1.2 shall provide to the Employer any information that the Employer may reasonably require as to the methods and materials used or to be used in carrying out the Works and/or as to their conformity with the Contract;
- 3.1.3 shall promptly comply with all reasonable written instructions given by the Employer;
- 3.1.4 shall not assign the benefit of the Contract; and
- 3.1.5 shall not sub-contract the Works or any part(s) of them except with the prior written consent of the Employer. Such consent shall not be unreasonably delayed or withheld but shall not affect the Contractor's responsibility for carrying out and completing the Works.

3.2 Employer's representative

The Employer may at any time on giving notice in writing to the Contractor appoint a person to act as his representative for the purposes of the Contract and may at any time on giving such notice remove or replace the representative. Without affecting the rights of the Employer under clause 3.4, neither the Employer nor any replacement representative may disregard any instruction duly given by a predecessor representative.

3.3 Giving instructions

If the Employer gives any instructions orally, those instructions shall promptly be confirmed to the Contractor in writing.

3.4 Variations

The Employer may at any time give instructions for Variations provided that they are of a nature and scale that is reasonable relative to the scope of the Works as originally described in the Contract.

3.5 Valuation of Variations

If instructions are given for a Variation, the Contract Price shall be adjusted accordingly. The Employer and the Contractor shall in each case use all reasonable endeavours to pre-agree the amount of that adjustment, failing which it shall be valued by the Employer on a fair and reasonable basis. Where and insofar as there are under the Contract agreed daywork or other rates that apply to work of the type in question, such valuation shall where appropriate be made by reference to the agreed rates, but due account shall be taken of the cost to the Contractor of any additional work for which instructions are given (or the saving from any omission) and also of any loss and/or expense arising directly from the effects of the instruction on the regular progress of the Works.

3.6 Daywork returns

Where the Works or any part of them (including any Variations) are to be carried out on the basis of daywork rates, the Contractor shall not later than the end of the week following that in which the work has been carried out deliver to the Employer in such form as the Employer may reasonably require a return giving full details of the labour, materials and plant for the relevant week.

3.7 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:

- 3.7.1 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;

- 3.7.2 the Contractor shall comply with regulations 8 and 15 and, where he is the Principal Contractor, with regulations 12 to 14;
- 3.7.3 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;
- 3.7.4 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

4.1 VAT

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

4.2 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, his obligation to make any payment under the Contract is subject to the provisions of the CIS.

4.3 Interim invoices^[23]

Where the Contract provides for payment by instalments, the Contractor on completion of the Works comprised in the relevant stage shall send the Employer an itemised invoice for such instalment, stating the sum he considers due, as adjusted for the agreed value or any valuation of Variations of the part(s) of the Works comprised in that stage and any amounts previously invoiced, and showing any VAT chargeable.

4.4 Final invoice

On completion of the Works the Contractor shall send the Employer an itemised invoice for the Contract Price, adjusted for the agreed value or valuation of all Variations and after deducting the aggregate amount of any instalment payments previously invoiced. The invoice shall also show any VAT chargeable.

4.5 Due and final dates for payment

The due date for payment of the sum due invoiced under clause 4.3 or 4.4, including VAT, shall be the date of receipt of the invoice by the Employer and the final date for payment shall be 14 days from the due date.

4.6 Payment – amount and notices

4.6.1 If the Employer intends to pay less than the sum stated as due from him in the invoice, he shall not later than 5 days before the final date for payment give the Contractor written notice of that intention specifying the sum he considers to be due to the Contractor at the date the notice is given and the basis on which that sum has been calculated. Where such notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated as due in the notice.

4.6.2 A notice to be given by the Employer under clause 4.6.1 may be given on his behalf by his representative or by any other person who the Employer notifies the Contractor as being authorised to do so. It is immaterial to the requirement for the giving of such notice that the amount the Employer then considers to be due may be zero.

4.6.3 Unless notice is given under clause 4.6.1, the Employer shall pay the sum specified in the invoice.

4.7 Failure to pay amount due

4.7.1 If the Employer fails to pay a sum, or any part of it, due to the Contractor under these Conditions by its final date for payment, the Employer shall, in addition to any unpaid amount that should properly have been paid, pay the Contractor simple interest on that amount for the period from the final date for payment until payment is made at the rate of 5% per annum above the official bank rate of the Bank of England at the final date for payment.

[23] See the Guidance Notes.

- 4.7.2 Any such unpaid amount and any interest under clause 4.7.1 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 Contractor's right to proper payment of the principal amount due or of the Contractor's rights to suspend performance under clause 4.8 or terminate his employment under section 6.

4.8 Contractor's right of suspension

- 4.8.1 If the Employer fails to pay a sum payable to the Contractor in accordance with clause 4.6 (together with any VAT properly chargeable in respect of such payment) by the final date for payment and the failure continues for 7 days after the Contractor has given written notice to the Employer of his intention to suspend performance of his obligations under the 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.
- 4.8.2 Where the Contractor exercises his right of suspension under clause 4.8.1, 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.
- 4.8.3 Applications in respect of any such costs and expenses shall be made to the Employer 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.

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Section 5 Indemnities and Insurance

5.1 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 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.

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

Subject to clauses 5.2.1 to 5.2.3, 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 (other than loss, injury or damage to the Works and/or Site Materials) 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. In respect of existing structures and their contents:

- 5.2.1 where clause 5.4.1 applies, the Contractor's liability and indemnity under this clause 5.2 also excludes any loss or damage to those existing structures or to any of their contents that are required to be insured under clause 5.4 that is caused by any of the risks or perils required or agreed to be insured against under that clause;
- 5.2.2 the exclusion in clause 5.2.1 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;
- 5.2.3 where a Clause 5.4.1 Replacement Schedule applies in lieu of clause 5.4.1, the Contractor's liability and indemnity under this clause 5.2 shall, in respect of loss, injury or damage to those existing structures and their contents due to the causes specified in clause 5.2, be subject only to such limitations or exclusions as are specified in that schedule.

5.3 Contractor's insurance of his liability^[24]

Without limiting or affecting his indemnities to the Employer under clauses 5.1 and 5.2 and prior to coming onto the premises the Contractor shall effect and maintain until the expiry of the Rectification Period or (if later) completion of making good in accordance with clause 2.5.1, a public liability insurance policy for death or injury to people and damage to property, under which the limit of indemnity for any one occurrence or series of occurrences arising out of one event is not less than the amount specified in the Contract Particulars (item 10).

5.4 Joint Names Insurance of the Works and existing structures by Employer^[25]

The Employer shall (prior to the Contractor coming onto the premises):

- 5.4.1 unless otherwise stated by the Contract Particulars (item 10) effect and maintain a Joint Names Policy in respect of 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 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;
- 5.4.2 subject to clause 5.5 where the Contract Particulars state that that clause applies (item 10), effect and maintain a Joint Names Policy for All Risks Insurance for the full reinstatement value of the Works (plus the percentage, if any, stated in the Contract Particulars (item 10) to cover professional fees)

[24] It should be noted that the cover granted under Public Liability policies taken out pursuant to clause 5.3 may not be fully co-extensive with the indemnity given to the Employer in clauses 5.1 and 5.2: 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.

[25] As to choice of applicable insurance provisions, see the Guidance Notes.

and shall maintain such Joint Names Policies until completion of the Works or, if earlier, the date of termination of the Contractor's employment.

5.5 Joint Names Insurance of the Works by Contractor^{[25][26]}

If the Contract Particulars (item 10) state that clause 5.5 applies, prior to coming onto the premises the Contractor shall effect and maintain with insurers approved by the Employer a Joint Names Policy for All Risks Insurance for the full reinstatement value of the Works (plus the percentage, if any, stated in the Contract Particulars (item 10) to cover professional fees) and shall maintain such Joint Names Policy until completion of the Works or, if earlier, the date of termination of the Contractor's employment.

5.6 Evidence of insurance

Where a Party is required by the Contract to effect and maintain an insurance policy or cover under any of clauses 5.3, 5.4 and 5.5, or is responsible for ensuring that it is effected and maintained, that Party shall within 7 days of a 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.

5.7 Loss or damage – insurance claims and reinstatement

5.7.1 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 existing structure or its contents, the Contractor shall forthwith upon it occurring or becoming apparent give notice to the Employer of its nature, location and extent.

5.7.2 Subject to clauses 5.7.5.1 and 5.7.6, 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 the Contract.

5.7.3 The Contractor, for himself and his sub-contractors, shall authorise the insurers to pay to the Employer all monies from the Works Insurance Policy, and from any policies covering existing structures or their contents that are effected by the Employer.

5.7.4 Where loss or damage affecting executed work or Site Materials is occasioned by any risk covered by the Works Insurance Policy, the Contractor, after any inspection required by the insurers under that policy, shall 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.

5.7.5 Where clause 5.5 applies:

5.7.5.1 the Employer shall pay all monies from such insurance to the Contractor (in the form of separate reinstatement work certificate(s)) at the same date or dates as apply to any amounts payable to the Contractor in accordance with section 4 less only the amounts referred to in clause 5.7.5.2;

5.7.5.2 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;

5.7.5.3 in respect of reinstatement work, the Contractor shall not be entitled to any payment other than amounts received under the Works Insurance Policy.

5.7.6 Where clause 5.4.2 applies or where loss or damage is caused by an Excepted Risk, reinstatement work shall be treated as a Variation.

5.8 Loss or damage to existing structures – right of termination

If there is material loss of or damage to any existing structure, the Employer shall be under no obligation to reinstate that structure, but either Party may, if it is just and equitable, terminate the Contractor's employment under the Contract by notice given to the other within 28 days of the occurrence of that loss or damage. If such notice is given, then:

[26] Where the Contractor has in force an All Risks policy which insures the Works, this policy may be used to provide the insurance required by clause 5.5 provided the policy recognises the Employer as a composite insured in respect of the Works.

- 5.8.1 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 the Contract to determine whether the termination is just and equitable, it shall be deemed to be so;
- 5.8.2 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 5.8.3 shall apply;
- 5.8.3 upon termination of the Contractor's employment under this clause 5.8, after taking into account amounts previously paid to the Contractor under the Contract, the Employer shall promptly make payment of all amounts properly due to the Contractor in respect of work completed and/or of labour, materials and/or plant supplied under the Contract up to such termination.

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Section 6 Termination

6.1 Termination – breach or insolvency

Each Party ('the terminating Party') shall be entitled by written notice to the other Party to terminate the Contractor's employment under the Contract forthwith if the other Party at any time:

6.1.1 is in material breach of his obligations under the Contract which he fails to rectify within 7 days of a written warning from the terminating Party specifying the breach and requiring that it be remedied within that period; or

6.1.2 is Insolvent.

In the event of such termination the terminating Party shall be entitled to recover from the other Party the amount of any resultant loss, damage and/or expense incurred by the terminating Party which he would not have incurred had the Contract been duly performed in full.

6.2 Termination – corruption

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.

6.3 Other rights

The provisions of section 6 are without prejudice to any other rights or remedies available to either Party.

Section 7 Settlement of Disputes

7.1 Mediation

Subject to clause 7.2, if a dispute or difference arises under the 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.

7.2 Adjudication

Either Party may at any time refer any dispute or difference arising under the Contract to adjudication in accordance with the provisions of Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998 except that the adjudicator nominating body shall be:

Royal Institute of British Architects;
The Royal Institution of Chartered Surveyors;
constructionadjudicators.com^[27]; or
Chartered Institute of Arbitrators,

as selected by the referring Party.

[27] constructionadjudicators.com is a trading name of Contractors Legal Grp Ltd.

Schedule 1 Supplemental Provisions

Supplemental Provisions 1 to 6 apply unless otherwise stated in the Contract Particulars (item 4). 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 the 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 the 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 the 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 date for completion 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 date for completion. Upon agreement, the change and the amount of any adjustment of the Contract Price shall be confirmed in an Employer's instruction, together with the share of the financial benefit to be paid to the Contractor and any adjustment to the date for completion.
- 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 clause 7.2), 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 (item 4) (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 the Contract is not confidential. The Employer shall be responsible for determining in his absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding any other term of the 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 the Contract.

The Public Contracts Regulations 2015

8

Where the Employer is a Local or Public Authority, the Contract is subject to the PC Regulations^[28] and where regulation 113 applies to the 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).

[28] An explanatory summary of this provision is contained in the Guidance Notes.

Guidance Notes

Use and Format

- 1 The Repair and Maintenance Contract (Commercial) (RM) is intended for use on individual, substantially defined, programmes of repair and/or maintenance work on specified buildings or sites.
- 2 The primary users of RM are envisaged as being local or public authorities and other employers who regularly place small and medium-size contracts for jobbing work and are sufficiently experienced both in placing contracts and in dealing with Contractors' accounts that there is no requirement for administration of the Contract by an independent contract administrator.
- 3 Where there is a requirement for repair and maintenance programmes over the whole or a substantial part of a local or public authority area or other more substantial programmes with possible requirements for work of a type and/or at a time that cannot be predicted at the outset, but where the Employer wishes to select a contractor or contractors willing to take on such orders as need arises, users should consider the JCT Measured Term Contract and/or consult www.jctltd.co.uk to assist in the selection of the appropriate form.
- 4 RM is published as a single document, comprising both the Tender (with its accompanying Invitation to Tender and form of acceptance) and the Conditions.
- 5 Where RM Conditions are to be incorporated by reference in an Employer's order, the Invitation to Tender and the Tender should be marked as 'not used' but the information set out in the Contract Particulars must be inserted in the order. Where the original programme is tendered and contracted for on the basis of the RM Tender, further or extended orders can be issued and accepted by reference to the Tender and the agreed rates and prices.

Invitation to Tender and Tender

- 6 The Invitation to Tender includes a Contract Particulars section and this, like the Invitation itself, should be completed by the Employer or his representative. These Particulars are intended to make available to the tenderer as much information on the variable contract terms as is practicable, thereby simplifying the terms of the Tender itself.
- 7 RM is flexible in terms of price in that it enables the Employer to seek quotes on the basis of a fixed price and/or of daywork or other rates, using either a Schedule of Rates or all-in labour rates in a Schedule of Hourly Charges (see item 2 of the Contract Particulars). RM also makes express provision for payment either by a single payment or by stage payments, at the same time noting the statutory right to instalment payments that may arise under the Housing Grants, Construction and Regeneration Act 1996 (see item 3 of the Contract Particulars).
- 8 The terms that are to apply are those set out in the Conditions and these include the Supplemental Provisions set out in Schedule 1. The choice as to which of Supplemental Provisions 1 to 6 apply is made in item 4 of the Contract Particulars. If no choice is made in relation to a provision, it will apply. Supplemental Provisions 7 and 8 will only apply in the specific circumstances stated in Schedule 1; Supplemental Provision 7 (Transparency) will only apply where the Employer is a Local or Public Authority or other body to whom the Freedom of Information Act 2000 applies and Supplemental Provision 8 (The Public Contracts Regulations 2015) applies only where the Employer is a Local or Public Authority and the Contract is subject to those regulations. Item 4 should also give the date, title and parties of any applicable Framework Agreement.
- 9 In completing the Invitation to Tender, it is important that items 5 and 6 of the Contract Particulars be duly completed, so that there is clear agreement on the commencement date for the work, its completion date, matters of access, site facilities to be provided by the Employer and conduct on site.
- 10 RM 2016 includes a new entry in the Contract Particulars (item 9) relating to the CDM Regulations 2015. Item 10 has been adapted to reflect changes made to the insurance provisions (section 5), which are commented on below.
- 11 RM makes no provision for liquidated damages for delay: where these are appropriate, the Minor

Works Building Contract (MW 2016) should generally be used.

- 12 Assuming the Employer's requirements are clearly set out in the Contract Particulars, completion by tenderers of the Tender form itself should be relatively straightforward.
- 13 It is important that copies of the Drawings, Specification and/or other description documents be signed or initialled by the Contractor and returned with the Tender, as requested by the Invitation. In the case of the successful Tender, it is important that the Employer on acceptance should sign the form of acceptance in the Tender and return a copy of it to the Contractor.

Conditions

- 14 Section 1 deals with Definitions and Interpretation (in this edition there are a significant number of new definitions reflecting the contractual and legislative changes to the contract provisions commented on below), section 2 with the Carrying out the Works and section 3 with the Control of the Works (including provisions for Variations). Each is in straightforward and generally self-explanatory terms. As respects sections 4 to 7 and Schedule 1, the following may be noted.

Payment

- 15 Section 4 and item 3 of the Contract Particulars reflect the Housing Grants, Construction and Regeneration Act 1996 ('the Construction Act'). Section 109 of the Construction Act, when read in conjunction with the Scheme for Construction Contracts, appears to make it clear that, unless the Contract expressly requires the Works to be completed in less than 45 days or unless the Parties' agreed estimate of their duration is less than 45 days, instalment, stage or periodic interim payments are required. If those are not agreed by the Parties, the Scheme provides for periodic payments based on a 28 day cycle, pro rata to the proportion of work carried out after adjustment for site materials and any other sums payable under the Contract that are referable to the 28 day period in question.
- 16 Hence, in relation to the option of a single lump sum payment on completion of the Works, item 3 of the Contract Particulars records an agreed estimate of shorter duration. The single payment option should only be selected where that estimate is genuine.
- 17 If the Works are likely to have a duration of 45 days or more and the Parties agree that 28 day or monthly interim payments are more appropriate than instalment/stage payments, the wording of the instalment option can readily be adapted to provide for interim payments based on the relevant percentage of the pro rata value of work done, plus any other amounts due for reimbursement, less payments made or due in respect of any previous interim invoices.
- 18 The provisions of clause 4.6 reinforce the need for a 'pay less' notice in any case where the Employer has reason not to pay the amount invoiced and clause 4.8, in relation to the Contractor's right of suspension for non-payment, reflects the statutory right for him to recover his reasonable costs and expenses arising from such suspension.
- 19 In RM 2016 there is some minor clarificatory amendment to clauses 4.7 and 4.8.

Insurance

- 20 The provisions relating to works and existing structures insurance (in line with similar changes made to the insurance provisions of contracts across the JCT range) have in RM 2016 been revised to offer more flexibility. They include new clauses 5.4 and 5.5 and consequential amendments to the clause 5.2 provisions relating to Contractor's liability for loss, injury or damage to property.

Clause 5.4 is for use where the Employer is able to cover the Works on a Joint Names, All Risks basis and, in addition to his own cover for existing structures, is able to extend at least Specified Perils cover to the Contractor in respect of the existing structures. If the Contractor is to be required to effect and maintain cover for the Works on a Joint Names All Risks basis, the Parties must make the appropriate election in the Contract Particulars (item 10).

In relation to existing structures, it is acknowledged that existing structures cover for the Contractor is not always readily available to Employers at reasonable cost, in particular where the Employer is only a tenant and structures cover is effected by the freeholder or an intermediate lessor; the option now provided in RM 2016 under clause 5.4, the Clause 5.4.1 Replacement Schedule option, is designed for cases in these latter categories.

The freeholder Employer may cover the Works in Joint Names and continue with his own cover under his existing structures policy, with the Contractor covering his liability for any damage to existing

structures under the Public Liability cover required under clause 5.3 or an appropriate extension of it. Alternatively, the Contractor's insurers may be prepared to cover both the Works and those structures under a Works policy.

In the case of tenant Employers, it is necessary to involve the insuring landlord and in all cases (particularly in the case of existing structures) it is essential that Employers, prior to the tender stage, take appropriate specialist insurance advice, consult the Employer's existing structures insurers and, where relevant, the landlord. They should also then liaise with the prospective Contractor and his advisers at the earliest opportunity, specify any further cover required from him and check that that is in place before work commences on site.

In the case of the Works insurance, care should also be taken in determining the full reinstatement value (including any applicable VAT) and to ensure that the policy gives appropriate cover for items such as the additional costs of materials, working and removal of debris etc. that are likely to arise from loss or damage to the Works.

Termination

- 21 RM contains (at clause 6.1) provisions for termination of the Contractor's employment by either Party in the case of the other's breach or insolvency and for the recovery of any loss, damage and/or expense arising. Such termination does not affect the rights of either Party (clause 6.3).

Settlement of Disputes

- 22 Section 7, at clause 7.1, includes reference to mediation as a means of dispute resolution that the Parties should consider and, at clause 7.2, includes provisions for adjudication.
- 23 With the right to adjudication, arbitration no longer appears appropriate to works of the scale envisaged by RM and there is no provision for it in the contract, but the Parties remain free to agree to arbitrate any dispute should they so wish.

CDM Regulations 2015

- 24 The CDM provisions set out specific contractual cross-undertakings by the Parties to comply with their respective duties under the regulations (clause 3.7).
- 25 General Health and Safety matters, which insofar as they are Statutory Requirements are in any event covered by the Contractor's obligations under clause 2.1, are augmented by Supplemental Provision 2, unless the latter is disapplied.

Schedule 1 (Supplemental Provisions)

- 26 Schedule 1 contains Supplemental Provisions 1 to 6 that are intended to encourage collaborative working and to achieve value and environmental improvements. New Supplemental Provision 7 contains provisions relevant to the Freedom of Information Act 2000 ('FOIA') and will only apply where the Employer is a Local or Public Authority or other body to whom the FOIA applies.

Supplemental Provision 8 will only apply where the Employer is a Local or Public Authority and the Contract is subject to the Public Contracts Regulations 2015 ('the PC Regulations') and where regulation 113 (which applies to all public contracts except for those specifically excluded in regulation 113) applies to the Contract; it comprises a specific provision dealing with the prompt payment provisions of regulation 113 to allow for these to be passed down the supply chain.

As the Contract is intended for use on smaller projects, which it is supposed will be below threshold for the purposes of the PC Regulations and not subject to a full competitive tendering process, however, no reference has been made in the Contract itself to any other requirements of the PC Regulations. Reference should always be made to the regulations themselves if there is any doubt as to their applicability generally or any specific provision and legal advice taken as appropriate.



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