

Invitation to Tender

**Ground Source Heat System for
The Pavilion, Weymouth Avenue.**

APRIL 28

Dorchester Town Council





Table of Contents

.....	1
1.0 Dorchester Town Council – Background Information	4
1.1 About Us	4
1.1.1 Climate Emergency	4
1.2 About our Renewables Programme.....	5
1.3 The Cricket Pavilion.....	5
2 Invitation to Tender Process	6
2.1 Document Purpose.....	6
2.2 Confidentiality	6
2.3 Timetable.....	6
2.4 Technical Briefing and Site Visit.....	7
2.5 Tender Assessment and Award Criteria	8
2.6 Outcome of Tender	9
2.7 Internal Approval requirements	10
2.8 Additional information.....	10
2.9 General	10
3 Basis of appointment.....	11
3.1 Form and Conditions of Contract.....	11
3.2 Pricing & Invoicing.....	11
4 Statement of Requirements	12
4.1 Overview.....	12
4.2 Performance specification.....	12
4.3 Financial context	12
4.4 Site considerations	12
4.5 Project Delivery and Site Operations	13
4.5.1 Visitor Engagement	13
4.6 Program Management, Reporting and Communication.....	13



4.7 CDM	14
4.8 Supervision	14
4.9 Design Settings, Commissioning, Performance Tests and Guarantees.....	15
4.10 Handover, Maintenance and RHI Application	16
4.11 General requirements for building works	16
4.12 Conduct.....	18
5 Costing and Activity Schedule Cost Breakdown	18
6 Tender Questions and Supporting Information	19
6.1 Company Structure and Details	19
6.2 Proposed ground source heat system.....	22
6.3 Project management and Programme	22
6.4 Commissioning, Handover, Performance, RHI	23
6.5 Quality management and Accreditations	23
6.6 Team structure and subcontractors	24
6.7 Operations and Maintenance	24
6.8 Working with DTC	25
6.9 Customer Information	25



1.0 Dorchester Town Council – Background Information

1.1 About Us

From the outset it must be noted that this tender exercise is being conducted during a lockdown process related to the Covid 19 outbreak. Officers have decided to proceed regardless. There is one opportunity for an onsite meeting during the process, which you will not be penalised for not attending, and where social distancing practices must be strictly observed if you do attend.

Dorchester Town Council (DTC), spends around £1.5 Million a year on its services. Around 85% of the funds we rely on are raised through the Council Tax, which is paid by c. 7,500 households in Dorchester and also includes sums paid to Dorset Council, Dorset Police and Dorset Fire Authority. The Dorset Council collects the Council Tax. The remaining 15% comes from direct users of our services, predominantly Municipal Buildings hire and Burial fees, and from our 1/3 share of the surplus generated by markets in the town.

The Council receives no direct grant from Central Government; nor does it receive any funding from the local business community through Non-Domestic Rates. All of our money is raised locally.

1.1.1 Climate Emergency

In May 2019, in response to growing evidence and public concern, Dorchester Town Council declared a Climate Emergency. This Response takes, as a given, the overwhelming evidence supporting the case for a change in attitudes and approach regarding how the earth's resources are used. From this perspective we have commenced a program of renewable energy initiatives where possible across the buildings and properties under our control.

A copy of our Climate Emergency Document can be found at <http://www.dorchester-tc.gov.uk/docs/downloads/200127-Climate-Emergency.pdf>



1.2 About our Renewables Programme

Our Renewables Program is aimed at delivering renewable projects to support DTC's drive towards producing 100% of its energy from renewables by 2030, preferably sooner. DTC generates about 150 tonnes of CO2 each year heating and powering the places in its care, while buildings operated by partner organisations also generate significant CO2. By investing in renewable energy, DTC can reduce both its carbon footprint and its energy bills, in time allowing it to invest more in other areas.

In addition to environmental drivers, our renewables initiative is a targeted investment programme focussing on key installations and aimed at delivering a good financial return that strengthens our investment income. Such projects also enable DTC to benefit from the Governments Renewable Heat Incentives and help DTC take a major step towards greater energy security and business resilience. The programme focuses on three tried and tested technologies (solar, biomass and heat pumps) but with a weighted focus on heat generation to help accelerate DTC's commitments to 'get off oil and gas'. The Council also wishes to share its learning with other town and parish Councils/

1.3 The Cricket Pavilion


The Pavilion has been selected for the installation of a ground source heating system after assessment against a number of key criteria based on the environmental and financial requirements of the site. A site plan is attached as Appendix B

The Pavilion has a total floor area of 320m² – floor plans are attached as Appendix A. The main Community Room (c. 100m²), plus Kitchen and Toilets, are used by local groups including Age UK, Weightwatchers, Yoga, Art classes etc. and for Cricket club activities.

The facilities are open 9.00am – 9.00pm, 50 weeks a year.

Two changing rooms with showers are exclusively used for Cricket purposes, during the summer season – April to September.

A Gym space is used by a local boxing club in the evenings all year round.



Currently the main Community Room is heated by 2 electric storage heaters, with hot water for the kitchen supplied by an instantaneous electric water heater.

A mains gas boiler supplies hot water for the changing room showers and taps.

Details of the requirements are listed in section 4.0

2 Invitation to Tender Process

2.1 Document Purpose

The aim of this document is to invite a list of possible suppliers to provide DTC with a Tender proposal for the design, provision and installation of a ground source heat system at The Cricket Pavilion, Weymouth Avenue, Dorchester. This will allow DTC to understand which supplier will be capable of meeting the requirements, and to identify a preferred supplier based on the information returned.

2.2 Confidentiality

This Invitation to Tender is issued to a number of Third Parties and the information herein is provided in confidence in order to assist potential suppliers. It must remain a confidential document, to be viewed by named personnel and by agreed personnel of each organisation. Please do not disclose this information to any other third parties without prior consent of DTC, except to third parties that are essential to the preparation of the tender submission.

2.3 Timetable

The Council wishes to proceed with the project at a decent pace, but recognises the limitations that suppliers are working with during the current Covid 19 lockdown. The Council is committed to working safely during this period and will take all necessary steps consistent with safeguarding its staff and those of prospective tenderers.



Activity Date

Issue of Invitation to Tender Friday 1st May 2020

Return Intention to Participate Form 15:00, Friday 8th May 2020

Technical briefing at Weymouth Avenue site (social distancing will apply) Friday 15th May 2020

Closing date for return of Tender proposals 10:00, Friday 29th May 2020

Interviews (via Zoom) Friday 12th June 2020

Anticipated accepted design and award of contract (subject to DTC approvals, see 2.7) Mid July 2020

Target construction and commissioning window August to September 2020*

*The ground source system should be commissioned and sufficiently complete to enable the RHI application to be made prior to the end of September 2020 to avoid any further RHI digression. The successful Tenderer will be invited to explore the possibility of installing the system so that an application for RHI payments can be made before the end of July 2020.

2.4 Technical Briefing and Site Visit

A Technical Briefing will be offered on site on 15th May for all interested parties. It is intended that this will provide an opportunity for tendering companies to visit the site, receive a verbal briefing on the project specification, ask any questions about the project requirements, and provide an opportunity for tenderers to ascertain local conditions to enable an informed tender and cost proposal to be submitted. Social distancing must be observed throughout the visit.

The Technical Briefing will be split into two sessions with selected companies attending each session.

- Session 1 - Morning: 10:00 – 12:30
- Session 2 - Afternoon: 13:30 – 16:00

A maximum of two representatives may attend the Technical Briefing from each tendering company. Tenderers should complete the form at the end of this document and return to Adrian Stuart by e-mail by 15:00, Friday 8th May 2020 confirming names of attendees and your preferred session Please note that a maximum of 3 companies can be facilitated at each session. Allocation to a session will be provided on a 'first come first served' basis and confirmed with you.



2.5 Tender Assessment and Award Criteria

So that all parties receive the same tender conditions, failure to meet the deadline for return without prior consent will result in your proposal being disqualified from this tender process. It is in the tenderer's interest to ensure that all the information requested is provided, the questions section in the tender submission is completed and that the submission reaches DTC by the closing deadline detailed in the cover letter.

Statement of facts, proposals, and details submitted will be audited at each selection stage; inconsistencies, ambiguities etc. will count against the responding company. Any attempt to alter the questions could lead to a removal from the application process.

DTC reserves the right to ask all Tenderers for additional information (such requests will be applied consistently across all Tenderers), including but not limited to information on the Tenderer's financial status or management systems, including questions related to the current lockdown and its implications for the Tenderer. The contract will be awarded on the basis of the tender that most effectively meets the requirements of the ITT.

All tenders will be assessed in line with key criteria such as experience, technical competency, finances, project approach, and feedback from previous clients. Please note, DTC does not undertake to accept the lowest tender, or part, or all of any tender, and the acknowledgement of receipt of any submitted tender shall not constitute any actual or implied agreement between DTC and the tendering company.

DTC reserves the right to accept any part, or all, of any tender or tenders at its sole discretion. This means additionally that DTC reserves the right to potentially choose more than one supplier based on the Tender proposals and other selection criteria, or not to appoint any of the companies.

A weighting methodology will be applied to the qualitative questions giving a % allocation of the total available score. An anticipated weighting of responses has been outlined below, although DTC reserves the right to modify these values at its own discretion.

Tender returns will be assessed and ranked in two parts:

- i. Overall price comparison (section 5)
- ii. Assessment and scoring of answers to the qualitative questions (section 6)

Section	Description of scored elements	Prob. % of total qualitative score
-	Overall Quality of Tender Submission	4%
5	Quality of pricing submission & other qualitative questions (not scoring overall cost)	4%
6.1	Company Structure and Details	6%
6.2	Proposed GSHP System	28%
6.3	Project Management and Program	12%
6.4	Commissioning, Handover, Performance, RHI	12%
6.5	Quality Management and Accreditations	7%
6.6	Team Structure and Subcontractors	7%
6.7	Operations and Maintenance	13%
6.8	Working with the DTC	6%
6.9	Customer Information	1%

Questions marked 'MANDATORY' in section 6.1 are pass or fail. A fail will result in omission from the process due to our minimum expectations not being met. It is advisable that you read the mandatory questions first as this will prevent any time being wasted by all parties concerned. Should you submit a response without being able to meet the MANDATORY requirements; your tender submission will not be evaluated any further. Once both cost and qualitative question rankings have been identified, these will be compared by DTC to identify a shortlist of suppliers with whom we may conduct a post tender clarification session, including an interview. DTC will also take into account other factors in the selection decision e.g. credit check, case studies, references from existing customers.

2.6 Outcome of Tender

The outcome of the Invitation to Tender process will form the framework for agreement between DTC and the chosen supplier. The selection process will conclude with a decision to either: **A.** Nominate a preferred supplier subject to a number of factors e.g. negotiation of contract, provision of relevant information, planning consent and any associated conditions, internal authorisation to proceed or **B.** Not go ahead with any of the suppliers



2.7 Internal Approval requirements

The project is currently in the proposal and development phase of work and the implementation of the project will be subject to the approval of DTC Policy Committee. Planning Consent may be required. DTC will apply for these consents and Tenderers will be required to comply with and help discharge conditions attached to the consents.

2.8 Additional information

Tenderers should contact DTC to request any information that is required as part of the tender process or to inform/improve their bids. Where possible, DTC will endeavour to provide any relevant information. Any updates will be issued to all tendering parties.

2.9 General

To successfully submit a tender response it is required that you:

- A. Submit your tender in accordance with these instructions and timescales. Omissions, qualifications or failure to meet requested timescales may render a tender invalid.
- B. Submit your tender with due consideration of the Statement of Requirements as supplied in Section 4, the Performance Specification and other supporting documents.
- C. Provide an overall cost in the form at the end of this document and a unitised break down of the costs for all works in Pound Sterling in line with the cost breakdown identified in Section 5.
- D. Provide detailed answers (and associated documents) to the questions in Section 6 of this document. Each question section (i.e. Section 6.2 Project Management and Program) should be submitted on its own sheets. Answers should reference the question section title, the associated question numbers, and the company name. Answers should be succinct and focussed. One particular answer must relate to only one identified question.
- E. Provide a copy of your organisation's insurance/liability cover.
- F. Supply one electronic copy for review and two hard copies in a sealed envelope marked up as tender return with the time and date.
- G. Submit your tender proposals as outlined in this and the accompanying documents to:



Adrian Stuart, Town Clerk,
Dorchester Town Council
19 North Square
Dorchester
DT1 1JF
Email A.Stuart@dorchester-tc.gov.uk
Tel: 01305 266861

Please be aware that tenders are to be produced at the tenderers own cost, you will not be entitled to claim from DTC any cost or expenses that you may incur in preparing your response. Tenderers are requested to declare any conflict of interest or raise any issues relating to the preparation of their tender or delivery of this brief in their response.

3 Basis of appointment

3.1 Form and Conditions of Contract

The Contract form will be based on a JCT Minor Works Building Contract with Contractor's design, 2016 Edition.

3.2 Pricing & Invoicing

This contract will have fixed costs. The pricing submitted will remain fixed for a minimum period of 60 days from the return deadline date of tender. The price of the services to be supplied shall be as stated in the contract resulting from this tender process and no increase will be accepted.



4 Statement of Requirements

4.1 Overview

As part of DTC's longer term aims of removing fossil-fuelled systems from their properties, DTC wish to install a renewable energy source of heat and hot water for the Pavilion to replace inefficient electric and mains gas heating & hot water services.

4.2 Performance specification

The system performance specification is detailed in a separate document, attached.

Whilst DTC has identified a ground source heat pump as their preferred solution, Tenderers are encouraged to propose alternatives providing they meet the overall performance, sustainable and financial criteria within this document.

4.3 Financial context

This project is being delivered as part of DTC's Renewables Program and is expected to deliver a strong financial return as well as helping DTC take a major step towards greater energy security and business resilience. The cost of the project and value for money will be very important considerations in the review of the system design; not only the initial capital cost but also the ongoing running and maintenance costs of the system.

Tenderers should provide evidence of how any financial benefits have been calculated.

4.4 Site considerations

Available space for the installation of necessary ground loop collectors is limited to the cricket field outfield and surrounding space of the Pavilion itself.

It is understood that the cricket field lays on a chalk and flint bed, some 50cm below ground level. Accordingly, it is assumed that the ground collectors will be in boreholes rather than trenches, given the poor heat transfer of chalk and the possibility of pipe punctures from flints. It is also assumed then that the additional civils works for horizontal collectors will prove to be costly and will extend the installation period.



4.5 Project Delivery and Site Operations

DTC expects the Tenderer to work closely with DTC staff to deliver a successful project; minimising the impact of construction works and ensuring a usable heating solution is installed that can be managed by the site team after completion.

The Tenderer should assume that the Pavilion will remain open throughout the installation of the system (NB it is currently closed due to the Covid 19 outbreak). The Tenderer must minimise disruption from works, ensuring the safe operation of the Pavilion and the safety of its visitors at all times. Close liaison with the Project Manager, and Grounds teams will be needed to ensure that construction can happen in parallel with the day to day running of the Pavilion and that work areas and equipment storage are agreed on a regular basis.

Given that the cricket season runs from April to September, Tenderers should provide details of how they plan to install their systems without affecting cricket activities (NB the cricket season is currently suspended but this may change).

Unless specified, construction works will be confined to Monday to Friday, 8am to 5pm in line with site staffing and avoiding weekends. Tenderers should indicate whether any out-of-hours working has been allowed for in the tender.


4.5.1 Visitor Engagement

The opportunity to engage with visitors (e.g. to talk about DTC's work and renewable energy) is an important part of the DTC's way of working. Not only does DTC want to showcase the technology and tell the story of the new renewable technology, but it also wants to ensure that engagement with visitors takes place along the way. There may be occasions when visitors ask questions about the work; Tenderers on site will be expected to speak to visitors about what they are doing in a polite and engaging way.

4.6 Program Management, Reporting and Communication

As a minimum the following will be expected during the project in line with the JTC Contract:

1. A weekly programme commencing one week before beginning work on site. This programme must be submitted to DTC by 15:30 on the Thursday of the previous week.



It should indicate planned work and personnel expected to be on site in the following week, an updated work plan indicating work completed, % progress against plan and any other significant issues that have occurred in the preceding week, and a summary of longer term planned works.

2. Cutover and Heating Outages. The heating and hot water systems are essential parts of daily site operation. System outages from cutover of the existing heating system to the new ground source solution should be minimised.

3. Tenderers should manage associated trenching activities across the site to minimise impact to site operations.

4.7 CDM

Principle Designer and Principle Contractor Construction, Design and Management (CDM) regulations will not apply as the project is not notifiable under CDM Regulations.

However, the Tenderer will be expected to operate in the spirit of the regulations. As a minimum, the Tenderer will be expected to provide a suitably detailed construction phase health and safety plan together with appropriate Risk Assessments and supply Method Statements for all project works on site prior to work being started. DTC reserves the right to request access to these documents at any time during the project.

4.8 Supervision

The Tenderer is expected to accept responsibility for co-ordination, supervision and administration of the works, including all sub-contractors. The Tenderer will be required to appoint a competent person in charge on site who will deal with the day to day management of the site and all works taking place. This should include, but not be limited to, morning briefings for all parties, clear application of site rules, and awareness of all works ongoing and personnel working on site at any time. The Tenderer will supply DTC with contact details for this representative both in and out of hours.

4.9 Design Settings, Commissioning, Performance Tests and Guarantees

As part of producing an Accepted Design, the successful Tenderer will be expected to produce a list of plant and design settings that are intended to meet the Performance Specification (attached). An example table has been provided in the Performance Specification.

Commissioning and Tests on Completion

The successful Tenderer will be expected to provide and undertake thorough commissioning procedures and:

- The Tenderer will follow and complete the manufacturer-supplied commissioning checklist for the heat pump and all directly-connected peripherals.
- Will supply and follow a sequence for pressure testing, draining, refilling and adding inhibitor to the system.
- Verify the correct operation of all primary hydraulic equipment (pumps, valves) by operating secondary system controls to initiate heat calls.
- Secondary systems will then be verified by checking e.g. radiator temperatures, hot water availability.
- The electrical installation in connection with this work will be tested during and on completion of works. All tests will be carried out in accordance with BS 7671:2008 and Guidance Note 3 (Inspection and Testing).

Electrical testing inherently involves some degree of hazard, these hazards will be identified and continually monitored throughout the duration of the installation, paying particular attention to The Electricity at Work Regulations 1989. All electrical test equipment used will conform to BS EN 61010 and BS EN 61557 and where appropriate the requirements of GS38 will be observed for test meter leads.

- A copy of the Electrical Installation Certificate along with a schedule of inspections and schedule of test results will be issued. As a minimum, isolated tests will include; continuity of protective conductors, continuity of ring final circuits, insulation resistance and polarity. Live testing will include; polarity of supply, earth fault loop impedance, prospective fault current, RCD testing and functional testing.
- The Tenderer will also be expected to identify in the design settings table the final commissioning settings and performance of the relevant plant and equipment.



Tests after Completion

Within the first 6 months a series of Tests after Completion will be required to prove:

- a. The installation is operating in line with key requirements of the performance specification
- b. The heat pump and system are delivering to design operating efficiencies.

Test on Completion will be a repeat of the commissioning tests as identified in section 8.9 of the Performance Specification document.

Guarantees

DTC is looking for appropriate guarantees on installed equipment. This should include the heat pump and all other equipment installed on site as outlined in the Performance Specification document

4.10 Handover, Maintenance and RHI Application


The installation will become an essential part of daily site operations once the project is completed. As such, a comprehensive handover to the site team of all information, guidance and training to enable ongoing operation of the system is expected. This should include appropriate drawings, user manuals and training (in addition to that supplied as part of any HSE file).

Irrespective of handover of this information, Tenderers are also required to provide details of a suitable Operations and Maintenance agreement for review by DTC to provide ongoing system support.

The financial business case for the installation includes a significant element of Renewable Heat Incentive income. It is expected that the Tenderer shall provide appropriate metering and deliver the required information to enable successful accreditation under the Governments RHI scheme as outlined in the attached Performance Specification.

4.11 General requirements for building works

Please see the Performance Specification for DTC's General Requirements for Building Works. Some additional points are noted as follows:



Health and Safety: The Tenderer will be responsible for the health and safety and security of the construction site until the point of completion and handover.

Tenderer Compound and Laydown Area: A secure area for Tenderer facilities will be identified. There is limited space at the point of work for additional storage or material lay down. Any specific requirements for additional space will be discussed once a preferred Tenderer is identified. The Tenderer is responsible for bringing such equipment and facilities as required to support their works.

Access to/on site: Use of work vehicles on site will be restricted and should be minimised and agreed with DTC's Project Manager. Contracting staff will be expected to leave personal vehicles in the main visitor car park. Deliveries should be co-ordinated to arrive on site before 10:00am unless previously agreed. Speed must be restricted when driving on site.

Water and power: Tenderers will be permitted to use DTC's existing on-site mains electricity and water supply for the purposes of delivering the scope of work associated with the project; please note, however, DTC will not be responsible for the consequences of any failure or restriction in supply. The Tenderer is responsible for getting any such services to point of work from the existing site arrangements.

Protection: Tenderers should adequately protect all parts of the works, services and their employees, throughout the contract. Wherever work is of a vulnerable nature or exposed to abnormal risks special protection should be provided to ensure that damage does not occur. Tenderers are also required to check proposed methods of work for effects on adjacent structures, buildings, features and grounds inside and outside the site boundary, and provide any supports or protection necessary to preserve the stability or integrity of the structures, buildings and grounds.

Fire prevention: the Tenderer must make themselves aware of DTC's fire instructions and procedures.

Services: for new and existing services, please ensure compliance with the Byelaws or Regulations of the relevant Statutory Authority (including notification of works, provision of information, consents and certification).

4.12 Conduct

The successful Tenderer, including their staff and sub-contractors, must conduct themselves in an appropriate and professional manner whilst on any DTC site. A good neighbour approach must be taken to ensure that there is minimum disruption to the locality, others working on and neighbours of the site; for example, the use of radios, audio equipment or the like, will not be permitted and work places must be maintained in a clean and tidy state. DTC will investigate all complaints received and take appropriate action, and reserves the right to instruct the Tenderer to expel from site any person whose conduct is prejudicial to those priorities

5 Costing and Activity Schedule Cost Breakdown

Tenderers should complete and return the form at the end of this document giving an overall cost of works. In addition the following cost breakdown, additional cost and activity schedule should be provided. Tenderers are requested to submit the following cost breakdown to enable fair comparison of all tenders.

- 1) Design acceptance
- 2) Breakdown of prelims
- 3) Modification of the buildings to accommodate the heat pump, vessels and associated equipment.
- 4) Ground works for ground collectors including making of building entries, any supply and laying of bedding sand, back filling, compaction of trenches, reinstatement of surfaces, finishes (including making good of building entry points). To include for all necessary health and safety measures such as protection barriers and temporary access arrangements during the work.
- 5) Heat pump and system controls, including any modification to local heating controls and requirements to ensure effective integration with the new system.
- 6) Any additional works/equipment to minimise impact to hot water supply/heating during heat pump cutover.
- 7) Removal of existing boilers and pipework where appropriate
- 8) RHI application and provision of completion documents

9) Handover: annual maintenance agreement, priced spares list, call out fees and training.

10) Costs associated with any guarantees and details of those guarantees.

Activity Schedule

Tenderers are to submit an activity schedule reflecting the prices in the cost breakdown. This will be a document headed 'activity schedule' and will comprise a list of activities with an amount entered against each activity. This amount is the sum due to the Tenderer on completion of each activity. Activity descriptions must be clear and complete so that the work included in each can be identified and the completion of each activity is easily recognised for payment. Submit your activity schedule with due consideration of the Performance Specification and in the format below. As a minimum, the following activities must be included in the schedule.

Activity number	Activity Description	% of contract price	££
1	Signing of contracts and placing of equipment orders		
2	Delivery of major equipment to site		
3	Startup & Commissioning		
4	System Handover		

6 Tender Questions and Supporting Information

6.1 Company Structure and Details

Mandatory question: Regulation 23(1) of the Public Contracts Regulations 2006 sets out grounds on which a bidder will be deemed ineligible to tender for, or be awarded, a public contract.


Has the Tendering Organisation or its directors or other people with powers of representation, decision or control been convicted of any of the following offences?

- participation in a criminal organisation, as defined in Article 2 (1) of Council Joint Action 98/733/JHA (1);
- conspiracy;
- bribery;
- corruption, as defined in Article 3 of the Council Act of 26.5.1997 and Article 3(1) of Council Joint Action 98/742/JHA respectively;
- fraud within the meaning of Article 1 of the convention relating to the protection of the financial interests of the European Communities;
- money laundering as defined in Article 1 of the Council Directive 91/308/EEC of 10.6.1991 on prevention of the use of the financial system for the purpose of money laundering;
- any other offence within the meaning of Article 45(1) of the Public Sector Procurement Directive (2004/18/EC).

If you answered “yes” please provide details that will enable the Trust to determine whether or not they are required to exclude you under the mandatory grounds for exclusion laid out in Regulation 23 of the Public Contracts Regulations 2006.

Mandatory question: Regulation 23(4) of the Public Contracts Regulations 2006 sets out grounds on which a services provider may be deemed ineligible to tender for or be awarded a public contract. Do any of the circumstances as set out below apply?

- The bidder being an individual is in a state of bankruptcy or has a receiving order or administration order or bankruptcy restriction order made against him or has made any arrangement for the benefit of creditors.
- The bidder being a partnership constituted under Scots law has granted a trust deed or become otherwise apparently insolvent, or is subject of a petition presented for sequestration of its estate.
- The bidder being a company is in the process of winding up, administration, or receivership.
- The bidding organisation has been convicted of a criminal offence relating to the conduct of its business or profession.
- The bidding organisation has committed an act of grave misconduct in the course of its business or profession.
- The bidding organisation has not fulfilled obligations relating to payment of social security contributions.
- The bidding organisation has not fulfilled obligations relating to payment of taxes.

- 
- The bidding organisation is guilty of serious misrepresentations in supplying information required by the Buyer under the Public Contracts Regulations.
 - The bidding organisation is not in possession of a licence or not a member of the appropriate organisation where the law requires it.

If you answered “yes” please provide details that will enable the Trust to determine whether the discretionary grounds for exclusion laid out in Regulation 23(4) of the Public Contracts Regulations 2006 apply to you or not.

Mandatory question: Provide evidence of Public Liability Insurance at a minimum of £1,000,000 and Employers Liability Insurance.

Mandatory question: Are there any actual or potential conflicts of interest which might arise for you (including, where your organisation is a joint venture or consortium, one or more of the members of that joint venture or consortium) if your organisation were to be awarded the contract? If the answer is ‘yes’ please provide details, including how it is proposed to deal with such conflicts.

- 1) What is your company structure, including any parent or subsidiary companies?
- 2) What has your annual turnover and operating profit been for the last 3 years? (parent and subsidiary)
- 3) Please provide 3 years of accounts
- 4) Please indicate whether you are VAT registered
- 5) Has your organisation had a contract terminated for failure to perform within the last three years?

If you answered ‘yes’ please provide details including the name of the customer, reasons for termination and any action taken to avoid this happening again.

- 6) Have you had liquidated and ascertained damages or other similar fixed penalties, imposed for a failure to complete a contract on time or to requirements in the last three years?

If you answered ‘yes’ please provide details including the name of the customer, reasons for Liquidated and Ascertained Damages (LADs)/penalties imposed and any action taken to avoid this happening again.

- 7) Has your company been served with a Prohibition or Improvement notice for any breaches of Health & Safety legislation in the last three years?

■

If your answer was “yes” provide details of the convictions or notice(s) served and give details of any remedial action or changes to procedures you have made as a result of the prosecution or notice(s) served.

8) Does your company anticipate any long term negative effects on your ability to operate as a result of the Covid19 outbreak?

6.2 Proposed ground source heat system

1) How would you meet and deliver the technical requirements of this contract?

To include (but not limited to):

- a. Details of pumps, arrangement, heat main and building system connections
- b. Summary of your proposed control system.

2) Highlight and describe any proposed deviations from the Performance Specification and explain why you propose these changes.

3) Indicate the warranties and guarantees offered, any variance from those requested in the performance Specification (section 10.3) and any additional provision proposed.

4) Provide a draft single line diagram of the proposed hydraulic system.

5) Provide a draft floorplan with proposed layout of the plantroom.

6) Provide an example of a system control schematic/philosophy (this may be from previous project).

6.3 Project management and Programme


1) How would you deliver or meet the operational requirements of this brief? (e.g. design of the system to meet health and safety, regulatory compliance, planning requirements, working with various stakeholders etc)

2) Identify your ability to meet our preferred timescales or any constraints to achieving this. Please identify lead time on key equipment/services supply.

3) Supply a Program for delivery of the works (covering detailed design through to completion).

4) Identify how you would manage the project once site works are started. How would you monitor and report performance throughout the project? Please provide a draft/example of a regular project report to the client.

5) Identify how you would manage ground works to minimise disruption to the site.


- 
- 6) Identify a plan for minimising the impact of cutover to the ground source system, with particular attention to maintaining hot water supplies to the kitchen in opening hours and minimising impact to the other heating systems.
 - 7) Identify your anticipated maximum requirements for equipment/structures at the Tenderer compound area, anticipated numbers of staff and required vehicles that will be on site at any one time.
 - 8) List items/services if any, that you are assuming to be available free of charge from DTC in support of this project and your proposed works.
 - 9) What is your approach to customer service in consideration of the following? - Problem escalation, dispute resolution, complaints procedure. - Account or Project Management Structure i.e. Account Manager or similar.

6.4 Commissioning, Handover, Performance, RHI

- 1) Please identify and summarise the key aspects, tests and checklists you will consider as part of commissioning of the full ground source system.
- 2) Please summarise the key elements of any handover packs and information that will be passed to site following completion of the works to enable effective ongoing operation and maintenance.
- 3) Please confirm your acceptance to undertake the RHI accreditation process (through DTC user account with Ofgem) and provide examples of your company's involvement in similar projects that have been successful in applying for the RHI and how long this took from commissioning to receive accreditation.

6.5 Quality management and Accreditations

- 1) Briefly describe your organisation's health and safety policies relevant to the provision of the goods and/or services of the type to be provided in relation to the Requirement.
- 2) Please provide a copy of your Health and Safety Policy statement (not manual), signed and dated.
- 3) Is your company registered with an industrial or occupational safety group, for example, Safety Schemes in Procurement (www.ssip.org.uk) or equivalent? If your answer was 'yes' please state the organisation concerned, provide your membership number, your membership level and other details of what your membership covers.

- 
- 4) Has your company been served with a Prohibition or Improvement notice for any breaches of Health & Safety legislation in the last three years? If your answer was “yes” provide details of the convictions or notice(s) served and give details of any remedial action or changes to procedures you have made as a result of the prosecution or notice(s) served.
 - 5) What checking procedures do you use to verify quality and reliability of products and services from sub-contractors and suppliers?
 - 6) Do you conform to any recognised quality or management standards/accreditations? (e.g. quality assurance, environmental)
 - 7) Please provide details of any Environmental and Sustainability policies you currently have in place.

6.6 Team structure and subcontractors

- 1) Please provide a list of the key members of your team that will be involved in this project, plus an outline of their skills/qualifications
- 2) Please show how the team would be structured and resource allocated to the programme of work
- 3) How would subcontractors on this project be managed?
- 4) Please detail the subcontractors you intend to use for this work and outline which aspects of the contract they will be used for.
- 5) Are you linked to or do you have an agreement with any specific heat pump manufacturer? [if so, please state which one(s)]

6.7 Operations and Maintenance

- 1) Please confirm your intention and capability to supply an Operations and Maintenance (O&M) service to support the full ground source system after handover.
- 2) Please identify expected maintenance regimes for life of key plant and equipment identifying requirements for major and minor services.
- 3) Please supply an example of a standard O&M agreement that you would supply for installations such as this.
- 4) Please supply an example of As Built diagrams, O&M manuals and any Operating guidance that you would provide as standard.
- 5) What training is available and what format will this take?



6.8 Working with DTC

- 1) What is your experience of working with a public service provider? Please give examples and indicate how this affects your approach.
- 2) Do you currently provide (or have you recently provided) any goods or services to DTC? - If so, what is the annual spend of DTC with you? - If not, do you have any customers similar in nature to the DTC?
- 3) Please recommend two clients for which you have provided similar services that we could contact or visit?

6.9 Customer Information

- 1) Please provide at least two case studies demonstrating your involvement and management of similar projects, which also reflect your approach to customer service
- 2) Please provide details of 2 of your larger customers that we could contact as part of our due diligence? (please outline how long you held their business and the products/services you have provided)

Additional material is included in the Performance Specification included with this document.



Confirmation of ITT receipt and intention to participate

Please complete and email to: A.Stuart@dorchester-tc.gov.uk by 15:00, Friday 8th May 2020.

Name of Company:

Name of Contact:

Confirm we intend to participate:

We would like to attend the morning / afternoon (delete as appropriate) technical briefing session on Friday 15th May at Weymouth Avenue

Our representatives at this session will be

- 1.
- 2.

We decline to participate in this tender because:



COMPANY INFORMATION

Tender for the design, supply and installation of a ground source heat system at The Cricket Pavilion, Weymouth Avenue, Dorchester DT1 2EN

Please complete and return the information below when submitting your tender:

Name of Your Organisation :

Signature:

Date:

Name :

Position in company:

Direct Tel No:

Email:

Address for correspondence:

Registered company address:

Company registration number:

Date of Registration:



FORM OF TENDER

**Adrian Stuart, Town Clerk
Dorchester Town Council
19 North Square
Dorchester
DT1 1JF**

Project: Installation of a Ground Source Heat System at The Pavilion, Weymouth Avenue, Dorchester

I/we the undersigned hereby submit a fixed price tender and undertake to carry out the works in accordance with the plans and specifications and to supply all necessary materials and plant for the sum of:

..... excluding VAT

(Amount in words)

I/we agree to commence the works within weeks of receipt of order and to complete the works within weeks of commencement.

I/we understand that DTC does not bind itself to accept the lowest or any other tender.

Signed..... Date.....

On behalf of

**PERFORMANCE
SPECIFICATION**
for the installation of a
**GROUND SOURCE HEAT
SYSTEM**
at
The Pavilion
Weymouth Avenue
Dorchester
DT1 2EN



1	INTRODUCTION	3
2	SYSTEM OVERVIEW	4
3	SCOPE OF THE WORKS.....	4
4	THE EXISTING SYSTEM	4
5	HEAT DEMAND	5
6	REMOVAL OF EXISTING EQUIPMENT	6
6.1	Hot water cylinder and associated pipe work	6
6.3	Heating Equipment.....	6
6.4	Waste Management Duty of Care	6
7	SERVICES	7
7.1	Electrical	7
7.2	Water Supply	7
7.3	Drainage.....	7
7.4	Spoil	7
7.5	Internet Connection	7
8	SPECIFICATION.....	8
8.1	Regulations and Standards	8
8.2	System Capacity.....	9
8.3	Heat Pump.....	9
8.4	Internal Pipe Work and Plant Room Components	10
8.5	Ground collectors	11
8.6	General Conditions	12
8.7	Controls	13
8.8	System Preparation	13
8.9	Commissioning and Testing.....	14
9	DOCUMENTATION AND PERMISSIONS	15
9.1	Pre-construction Phase Documentation	15
9.2	Permissions.....	15
9.3	CDM (2015) Risk Assessment and Method Statements	15
9.4	Operation and Maintenance Manuals	15
9.5	Labelling.....	16
10	ADDITIONAL REQUIREMENTS.....	16
10.1	Staff Training	16
10.2	Design Support	16
10.3	Guarantees	16
10.4	Renewable Heat Incentive (RHI).....	17
10.5	Equipment Specification and Settings Schedule	17

1 INTRODUCTION

This document forms part of the Invitation to Tender (ITT) documents for the design and installation of a ground source renewable heating system at The Pavilion. Along with accompanying documents and drawings it is intended to provide sufficient information to enable a potential contractor to submit a tender for the work.

The area covered by the proposed heating system is the Cricket Pavilion, located at Weymouth Avenue, Dorchester DT1 2EN.

The ground source plant equipment will be installed in the Groundsman's room, connecting to the heat emitters and hot water supplies in the Community room and Changing rooms.

Every potential contractor will have their own preferred designs, equipment suppliers and installation methods. In recognition of this the document is not prescriptive in detail but a specification for the performance and function of the completed installation. However the requirements laid out in this document are the minimum specification required and any modification to this standard such that a facility or service is removed or degraded will require the approval in writing of Dorchester Town Council (DTC).

In this document "the Contractor" means both any prospective Contractor offering a price for the works and the successful Contractor awarded the contract for the works.

A layout of the site showing the Pavilion location is attached as Appendix A.

A scanned image of the Pavilion floor plan is attached as Appendix B

2 SYSTEM OVERVIEW

A new ground source heat pump system will be installed within the Pavilion to provide heat and hot water. Replacement heat emitters will be provided to deliver the required levels of heat to the designated areas within the Pavilion. Hot water will be stored and made available to users of the changing rooms, configured to the correct capacity to ensure adequate supply is available at peak usage times.

The whole system should be designed to be as energy efficient as possible both in terms of thermal efficiency and heat distribution efficiency.

3 SCOPE OF THE WORKS

The Tenderer will supply, install and commission all components and controls to make a successful fully operational heat and hot water system.

NOTE: all sizes and distances given on documents and drawings are approximate and should be confirmed through the Tenderer's own survey and calculations.

The offer submitted should include the following:

- The design, supply, installation and commissioning of a complete ground source heating and hot water system as specified in this document.
- The removal of existing and redundant equipment including heaters, cylinders and pipe work as necessary
- The design, supply and installation of the hydraulic interface between the new ground source system and the existing heating/supply systems.
- The design, supply and installation of a control system for the heat pump and heat distribution system.

4 THE EXISTING SYSTEM

Night storage heaters are used to heat the Community Room - these are easily tampered with and contribute to the high heating costs experienced.

Hot water for the kitchen areas is provided by instantaneous electrical boilers.

A high capacity mains gas boiler with an adjacent hot water tank is located in the Groundsman's store and provides hot water to the showers & handbasins.

There is no heating in the changing rooms.

The roof area has a complex heat recovery system which has been effectively disabled and currently serves no purpose. Some recycled glasswool insulation has been added in accessible areas, but the main area above the entrance lobby and the Community Room has not been insulated due to it having a suspended acoustic-tiled ceiling which is not weight supportive. This exacerbates the current high levels of heat loss and through ventilation/air changes.

We understand that the existing hot and cold water distribution systems are out of specification and do not comply with current anti-Legionnaires disease regulations.

Part of the building has been re-purposed and now serves as a Boxing Gym. This currently has no heating apart from 2 wall mounted electric heaters.

Annual electricity consumption is estimated at 36,500 kWh, with around 28,000 kWh used during daytime hours and the balance at night tariff levels. Gas consumption is around 6,000 kWh.

5 HEAT DEMAND

The following information is provided to assist design of the new system.

The annual heat and hot water requirements for the Cricket Pavilion, based on a heat loss survey are listed below:

Room	Heat loss (W)	Energy demand (kWh)
Community room	6151	17414
Entrance	808	2252
Disable WC	361	989
Male WC	556	1573
Female WC	794	2265
Kitchen	807	2275
Pipe losses (10%)	948	2677
Hot water		6000
Total	10425	35445

(The survey assumed remedial works to install 300mm of loft insulation would be in place.)

The proposed system must provide adequate heat to meet the survey figures above and to ensure that sufficient hot water is available for showers and basin usage during the cricket season i.e. April to September.

The Community Room, entrance lobby, kitchen and toilets, which are in use throughout the year, will be heated to a design temperature of 20°C. There is no requirement for heat in the Gym (Boxing Club) or the changing rooms.

Heat should be provided using fan coil radiators that enable the heat pump to run at optimum temperature, delivering rapid heating of the rooms and reducing the emitters size. The emitters should also be tamper-proof where possible to prevent members of the public from changing settings.

Hot water for the changing room showers must have sufficient capacity to avoid cold-running whilst in use, it should be designed to provide 1,300L of hot water at 40C for 20min. Hot water should be stored at a minimum of 55C and be equipped with an insulated recirculation line.

The existing hot water cylinder for the kitchen will be removed and replaced by an instantaneous electric water heater.

Existing instantaneous water heaters for the basins will remain as they are.

6 REMOVAL OF EXISTING EQUIPMENT

6.1 Hot water cylinder and associated pipe work

Any redundant hot water cylinder and pipework will be removed and disposed of by the Contractor. Any redundant buried pipes should be drained and flushed through.

6.3 Heating Equipment

All items of heating equipment and associated pipe work and fittings made redundant by the new system should be removed and disposed of by the Contractor.

All redundant pipe work and electrical connections will be isolated, safely capped off and terminated by the Contractor.

6.4 Waste Management Duty of Care

A suitably registered carrier of waste must be used for the transfer of any waste from the property. Copies of waste transfer notes for all removed items, including those removed by the contractor, must be submitted to DTC within 30 days of the removal.

7 SERVICES

7.1 Electrical

A three phase 400V electrical supply of 32A per phase capacity will be provided by DTC in the Groundsman's room. The supplies will terminate at a distribution board (DB) with a number of spare ways as requested by the Contractor. All electrical distribution work relating to the heat pump installation downstream of the DB is to be within the scope of the works, this includes general 13 Amp sockets.

All electrical works should comply with 17th edition of the IEE Wiring Regulations (BS 7671: 2008 amendment 3).

Where temporary disruption will be caused to any existing electrical supply, prior notification must be given to the DTC and agreement obtained.

7.2 Water Supply

The contractor is to use the existing water supply. There is a feed and expansion tank in the loft with a booster pump that supplies water to the existing water heater, showers and taps. All downstream works necessary for the functioning of the system are to be within the scope of works.

Where temporary disruption will be caused to any existing water supply, prior notification must be given to the DTC and agreement obtained.

7.3 Drainage

A suitable drain point for waste or pressure relief discharge water will be made available from the existing heating system in the plant room. Connection to the drain, via any necessary traps or valves, is to be within the scope of the works.

7.4 Spoil

Because of the lack of mains drainage at the site, it will be the contractor's responsibility to remove any drilling spoil and waste water from the site.

7.5 Internet Connection

An internet connection via an RJ45 connection to the DTC local network will be made available at an agreed location by DTC.

8 SPECIFICATION

8.1 Regulations and Standards

All items of equipment and components will be fit for purpose, of correct capacity and installed in such a manner as to comply with the manufacturer's installation and operating instructions.

All parts of the installation will comply with prevailing European and UK regulations, standards, codes of practice and industry best practice. Particular regard should be given to the following British Standards, Regulations, Approved Documents (ADs) and RHI Guidance Documentation:

Building Regulations / Approved Documents

- Part A - Structure (2004)
- Part B - Fire safety (2000/2004)
- Part G - Hygiene (1992)
- Part H - Drainage and waste (2002)
- Part J - Heat producing appliances (1992)
- Part P - Electrical safety (2006)

British Standards

- BS 4814 Expansion vessels
- BS 5422: 2009 Thermal insulation materials on pipes, ductwork and equipment
- BS 5970 Thermal insulation of pipes and equipment
- BS 7671: 2008 (Amendment 3) - Requirements for electrical installations, I EE Wiring Regulations 17th Edition
- BS 8000 Workmanship on building sites

Other

- The Non-domestic Renewable Heat Incentive Guidance Volume 1: Eligibility and How to Apply
- Health & Safety Executive - HSG47 Avoiding Danger from Underground Services
- The Construction (Design and Management) Regulations 2015
- WRAS Water Regulation Guide and Advice for Sportsgrounds

8.2 System Capacity

In order to meet the heat demands given in Section 5, plus an additional allowance, the Contractor must design and install a system capable of delivering at least 10.5 kW for heating peak load conditions.

Table 2: System capacity – Heating:

Local Plant Room	Flow rate	System design temperatures	Heat Load
Heating	0.51 l/s	Flow 45°C - Return 40°C	10.5 kW

Table 3: System capacity – Hot water:

Local Plant Room	Flow rate	System design temperatures	Stored temperature
DHW	1300L for 20min or 1.08 l/s	Flow 40°C	At least 55C

8.3 Heat Pump

The heat pump must:

- Have a manufacturer's specification plate clearly stating the rated output.
- Have a minimum flow temperature of 55°C for domestic hot water
- Have a maximum flow temperature of 50°C for heating
- Be a modulating brine/groundwater heat pump with a DC-inverter controlled scroll compressor. This technology will allow modulation of the heating output from approximately 10% to 100% to provide just in time heating.

-
- System pumps should be speed controlled for optimum system efficiency.
 - MCS Accredited
 - A Co-efficient of Performance (CoP) of at least 4.0, in accordance with standard EN14511 under conditions 0/-3 °C and 40/45 °C
 - ErP – A+++ rating
 - 5 year guarantee

The Contractor should specify what method will be used for the control and monitoring of the heat pump. Access to, and use of, any software provided or offered by the heat pump manufacturer to operate or monitor the facility must be provided free of charge to DTC for the lifetime of the equipment. In addition, the Contractor should indicate whether control or monitoring can be made available over the internet and if so, what requirements are necessary to achieve this.

8.4 Internal Pipe Work and Plant Room Components

Works within the plant rooms must comply with the following:

Hydraulic pipe work is to be generally in medium gauge steel or equivalent and in the plant room insulated to BS5970-2001. Insulation should be of good quality and effectively cover fittings, valves and flanges; it should be designed to be removable and to last for the lifetime of the project (20 years).

Copper pipe work may be used but only where:

- Copper already exists on the secondary side.
- An appropriate type and quantity of inhibitor is used.

No hot work is to be undertaken. Should the Contractor deem hot work to be unavoidable an application must be made to DTC demonstrating that there is no other feasible manner to carry out the work. DTC may issue a written hot works permit with conditions. Under no circumstances are hot works to be carried out without a written permit from DTC.

Where an electrical or heat energy saving can be achieved by their use, circulating pumps with PID control capable of being based on pressure, flow rate and temperature (constant or delta T) should be used.

The maximum allowable velocity is 1m/s and maximum pipe resistance is 300 Pa/m.

All heat meters will be of fluid oscillator, swing jet or ultra-sonic type and be certified to MID Class 2 or better and provided with compliance/calibration certificates.

8.5 Ground collectors

We believe the available ground is unsuitable for conventional horizontal trench-laid collector pipework because of the chalk and flint bed below the shallow topsoil.

Accordingly, we assume the installation will consist of a number of vertical boreholes.

- From 0-15m in depth, the borehole should be cased with PVC-U 125 mm x 3.7mm glue socket, 7.5 bar pressure rated.
- From 15-104m in depth, the borehole should be lined with PVC-U 110mm Well Screen, 7.5 bar pressure rated
- “HeatSeal” geothermal grouting or similar should be used to provide a minimum of 2.175 W/mK thermal conductivity.
- The grouting material should be approved to BS EN ISO 9001 and appropriate material safety data sheets and test specifications provided.

Borehole Design:

- 200mm diameter from 0 - 15 meters
- 150mm diameter from 15 - 104 meters

Installation should include:

- Borehole lining and casing (150mm 0-15m / 110mm 15-104)
- 40mm probe pipe, thermal grouting; 40-60mm pipe to central manifold
- 40-60mm header pipe from manifold to plant,
- Pipe system biocide tests
- Non-toxic heat transfer fluid injected and pressure tested

Each borehole should be capped and connected by flexible pipe such as cross linked polyethylene (PEXa), connecting back to a common manifold chamber, via a trench.

The manifold chamber should have valve cut offs to allow for individual pressure testing of the circuits.

The Contractor’s offer must include for supply of the pipe, trenching, blinding, laying of the pipe, building entries, back-filling and reinstatement all as per manufacturer’s instructions and recommendations.

The pipe must be installed as per the manufacturer's instructions using the manufacturer's proprietary fittings and tools.

All pipe building connections and entries must be sealed and anchored in compliance with the manufacturer's recommended method and use the manufacturer's proprietary fittings.

Where possible pipe should be laid in continuous lengths. Any unavoidable underground joints should be electro-fusion welded and be appropriately sealed and insulated.

Joints using compression fittings may be used provided:

- They are housed in access chambers.
- Fittings must be of genuine type from the pipe manufacturer.
- Fittings must be installed strictly to manufacturer's instructions, particularly with regard to allowance for expansion and contraction.

The collector pipe should be buried to a depth and in a manner according to the manufacturer's instruction for mechanical protection. Protection should be provided for 10 tonne vehicles.

8.6 General Conditions

It will be the Contractor's responsibility to search for, locate and avoid any services. The Contractor should allow for an appropriate pre-construction ground survey and a CAT scan before digging.

All structures, surfaces and finishes removed or disturbed during construction and laying of pipes must be reinstated by the same method and using the same materials as the original except where specifically instructed otherwise, in writing, by DTC.

Safe digging practices in accordance with HSE publication HSG47 "Avoiding Danger from Underground Services" must be used to verify and establish the actual position of the mains, pipes, services and other apparatus on site before any mechanical plant is used.

The final route for the heat distribution circuit both outside and inside buildings will be agreed on site by DTC and Contractor representatives. A marked up drawing (and notes) specifying the route will be produced by DTC. Construction will not begin until an agreed and signed copy of the drawing has been provided to DTC by the Contractor.

An accurate drawing should be produced by the Contractor, and provided to DTC, of the “as built” pipe route. The drawing should be sufficiently detailed to reliably locate the exact route of the pipe and the depth where buried.

8.7 Controls

Generally the controls must:

- Be designed to minimise system losses and maximise system efficiency as far as possible.
- Be fully interlocked to ensure that distribution pumps run only when there is a demand for heat.
- Be designed to maximise the difference between flow and return temperatures at all points within the system.
- Be designed to ensure stratification within the buffer under normal operation.
- Be designed to minimise flow rates and electrical pump energy consumption.
- Be designed to allow remote access of the heating system via an app.

No more than 4 weeks after signing the contract the Contractor will be required to provide an Equipment Specification and Settings Schedule. This includes:

- A schematic of the hydraulic system showing all items of equipment critical to the function and control of the system. Each item should be marked with a reference number.
- A table showing the reference, specification and settings for each item.
- A brief written description of the operation and method of control of the system

Should any bespoke or proprietary software be used for the control and/or monitoring of the system access to, and use of, the software must be provided free of charge to DTC for the lifetime of the equipment. In addition, the Contractor should indicate whether control or monitoring can be made available over the internet and if so, what requirements are necessary to achieve this.

8.8 System Preparation

All systems will be flushed, filled and maintained at pressure for 48h before final commissioning.

The system(s) will be pressurised and brought up to the operating temperature twice. Thereafter the system(s) must hold pressure without any make up from the pressurisation unit for four weeks before final acceptance will be agreed.

A record of dates showing flushing, filling and pressure readings is to be provided to DTC before any anticorrosion treatment is carried out.

8.9 Commissioning and Testing

A fully documented commissioning and testing programme in compliance with industry best practice will be carried out by the Contractor. Where any item of installed plant or equipment carries a manufacturer's recommended installation method and/or a commissioning/test/proving process, this will be included within the commissioning programme. As a minimum the programme will include the following items:

- Heat pump.
- Buffer tank.
- Hot water cylinder(s).
- Pressurization and expansion systems.
- Pumps and valves (including correct operation according to the control strategy).
- Fan coil radiators
- Correct operation of all sensors.
- Hydraulic resistance of circuits.

A record of all values and settings should be included in the handover documentation. Where items of equipment have a high number of settings the record may be in the form of a USB memory drive or similar; this must be readable with free software and enable the equipment to be re-set to the commissioned settings.

9 DOCUMENTATION AND PERMISSIONS

9.1 Pre-construction Phase Documentation

No more than 4 weeks after signing the contract the Contractor must provide DTC with schematic drawings and accompanying notes showing the proposed system and as a minimum to include:

- The Equipment Specification and Settings Schedule
- Heat meter locations and specifications
- Installation Schematic

9.2 Permissions

DTC will arrange for any necessary planning approval and building consent. The Contractor should provide supporting information requested by DTC.

The Contractor is responsible for obtaining all other permissions and permits required under any other regulations. These may include, but not exclusively; Building Regulations and Electrical wiring regulations.

The Contractor will be required to complete the RHI application for the system and liaise with OFGEM to achieve accreditation.

9.3 CDM (2015) Risk Assessment and Method Statements

The project size is such that it is not notifiable under CDM regulations. However, the Contractor should operate in the spirit of the regulations wherever possible.

9.4 Operation and Maintenance Manuals

The Contractor will supply three copies of:

- As built drawings in paper and electronic format.
- Operation and Installation manuals for all installed equipment.
- Mounted and suitably protected system schematic drawings in the plantroom.
- Risk assessments and method statements for the on-going operation of all equipment.
- Commissioning documentation. As listed in Section 8.9.

9.5 Labelling

All heat pumps, heat meters, pumps, cylinders, valves, indicators etc will be appropriately labelled with permanent engraved labels from Traffolyte or similar. Labelling is to match that on drawings and schematics.

10 ADDITIONAL REQUIREMENTS

10.1 Staff Training

The Contractor will provide staff training on the day to day operation and maintenance of the system. This must cover:

- Two half day on site sessions with up to six attendees at each day within 4 weeks of the commissioning date.
- A follow up half day on site session with up to six attendees approximately 6 months after the commissioning date.

10.2 Design Support

The Contractor will supply all supporting documents required for the RHI application with special regard to system specification, drawings and meter calibration certificates.

The Contractor will ensure that they assist and cooperate with any other contractors on site to ensure the smooth installation, commissioning and operation of the heat pump system. This requirement includes attending project and design meetings.

10.3 Guarantees

The heat pump is to be guaranteed (parts and labour) for 5 years from commissioning.

All controls to be guaranteed (parts and labour) for 2 years from commissioning.

All electrical equipment and improvements/extensions to the electrical system will be guaranteed (parts and labour) for 2 years from commissioning.

All ancillary plant, pipe work and fittings to be guaranteed (parts and labour) for 2 years from date of commissioning.

All underground pipe work installed by the Contractor is to be warranted against leakage and insulation failure for a period of 10 years from commissioning. The Contractor should supply their proposed warranty conditions as part of the tender.

The Contractor should supply details of any proposed extended warranty for the whole system which should include:

- Terms and conditions of the warranty.
- Any items of plant, equipment or software that are not covered.
- Any potential costs that are not covered.
- Cost of the warranty.
- An example of an agreement for a similar system installed and maintained by the Contractor

10.4 Renewable Heat Incentive (RHI)

All installations and equipment must be suitable for claiming the RHI without any further work or adaptation. The Contractor will supply all necessary certificates, specifications and documentation to facilitate DTC making a successful application for RHI accreditation and subsequent claims for tariff payments.

10.5 Equipment Specification and Settings Schedule

No more than 4 weeks after signing the contract the following documents must be provide to DTC for written approval:

1. A schematic of the hydronic system showing all items of equipment critical to the function and control of the system. Each item should be marked with a reference number.
2. A table showing the reference, specification and settings for each item. An example is shown below.
3. A brief written description of the operation and method of control of the system

Ref	Item	Make	Model	Flow Rate (l/s)	Head (kPa)	Setting		Control Function/Notes
						Enable on	Enable off	
B1	Heat pump	-	-	-	-	-	-	-

TS1	Temperature sensor	-	-	-	-	-	-	-
TS2	Temperature sensor	-					-	-
AC1	Buffer	-	-	-	-	-	-	-
P1	Pump	-	-	-	-	-	-	-
etc								

The aim of these three documents is to ensure that a rigorous design process has been completed for the effective performance of the system. It should also be used to provide the controls and commissioning engineer with a clear understanding of the intended method of operation.

A similar document is to be produced showing the final values set and recorded during the commissioning process correct at time of handover.

Appendix A – Floor plan 200428 WARP

MA
EN
RANCE

see detail for
wall cladding

300 eaves projection

roller shutter

100mm CONCRETE SUBGRADE
TO REDUCE SOUND TRANSMISSION
FOR COLLAR SHUTTER

Party wall between Shop & Pavilion
to be 200mm Tarmac lightweight (TL) to
achieve U Value of 0.59 W/mK
Wall to extend full height to u/s of
roof insulation, to achieve
fire stop 2800

GROUNDSMAN'S
STORE

DISABLED
PERSONS

MALE TOILETS

FEMALE TOILETS

PL SOAP
EQ

DO9 "BOMB PROOF" 1-4
BASIC ACTION OVERHEAD CLOSURE

CRICKET
STORE

Community
Room

MULTI USE AREA

CURBOARD
BAR

UNHEATED
CHANGING
①

UNHEATED
CHANGING
②

KITCHEN
'Altra' non slip surface

OPENING PARAPETS
OF SUPERDECK WINDERS
100"

interval refresh mts

COVERED VERANDAH

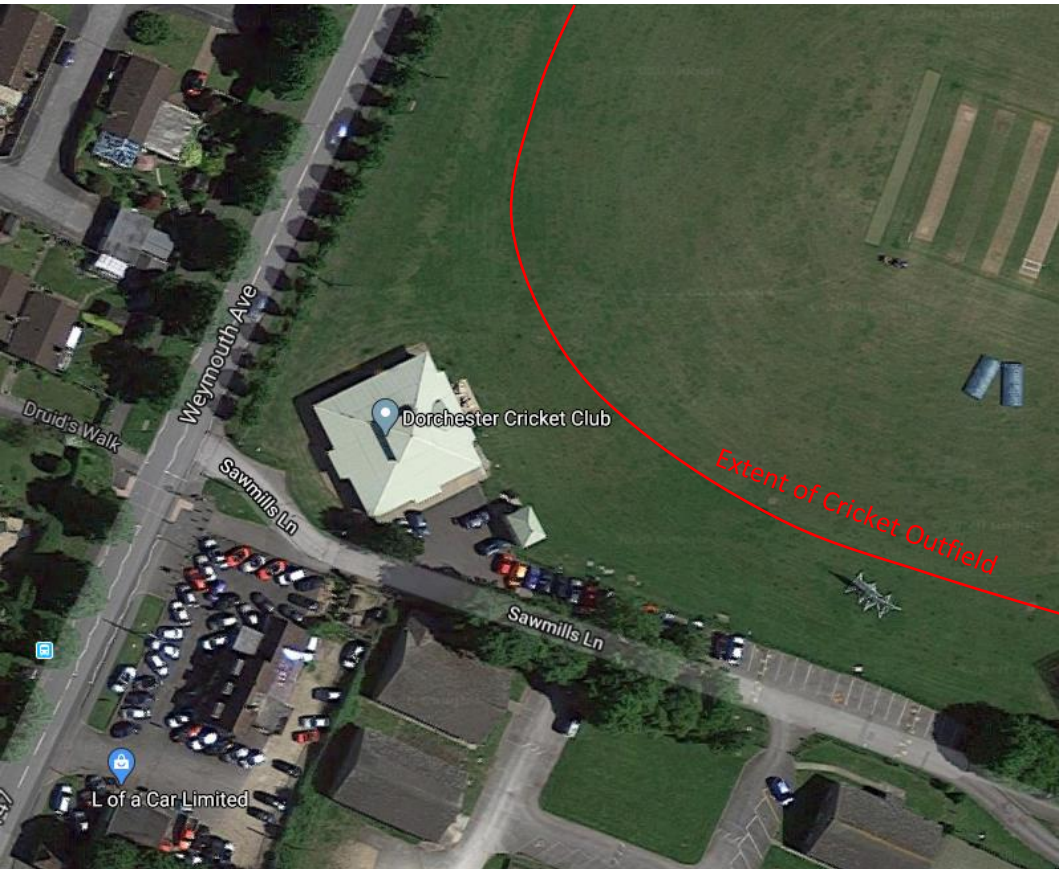
EMERGENCY GAS SHUT
OFF VALVE WITH MANUAL BOX
TO RESTART GAS SUPPLY

BOXING
Gym
(NO HEATING)

18500

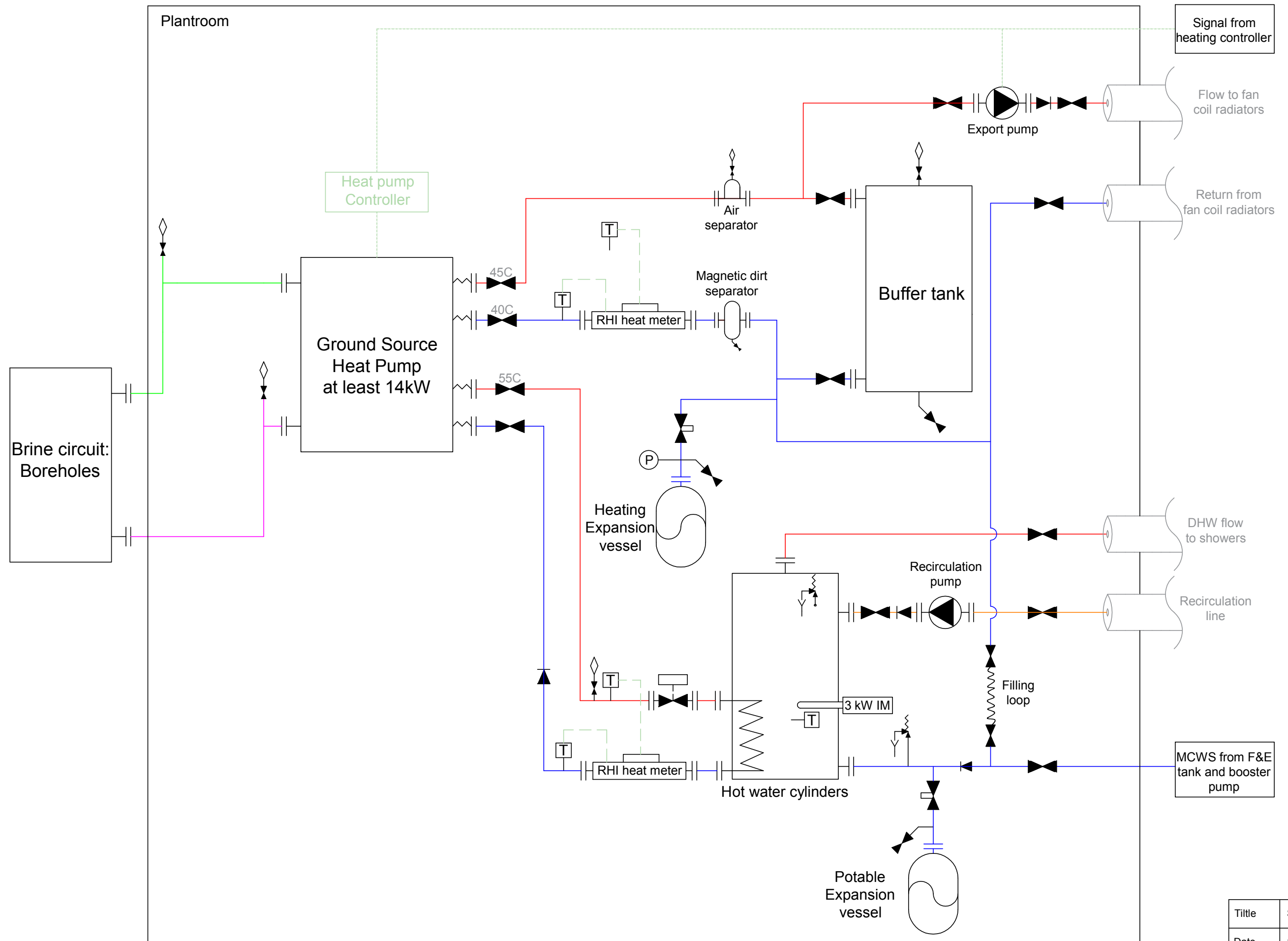
Appendix B – Site Plan

The Cricket Pavilion
Weymouth Avenue
Dorchester DT1 2EN



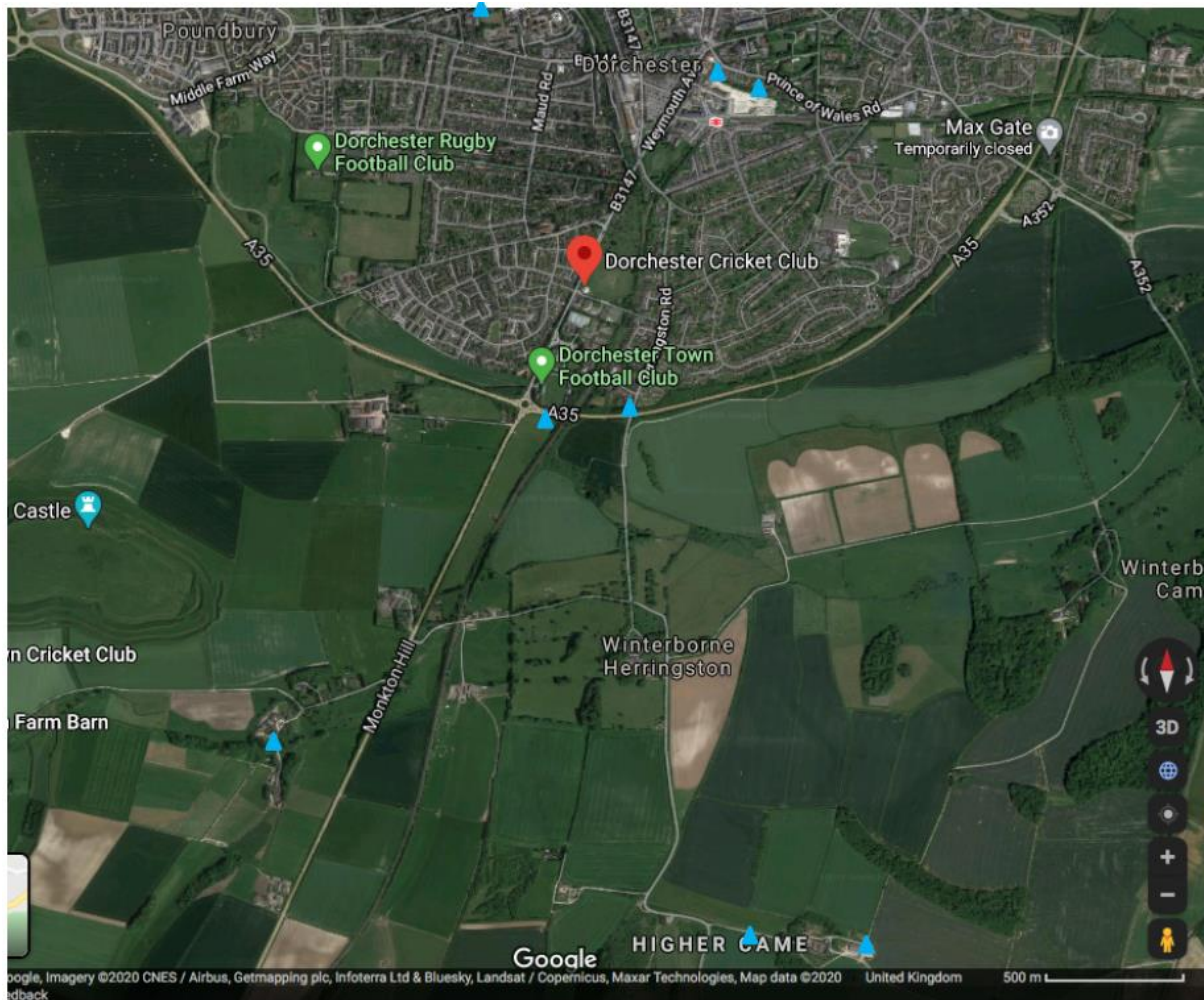
Cricket outfield not to scale

Appendix C – Example schematic



Title	Schematic		
Date	20/04/2020		
Project	DTC - The Cricket Pavillon		
Version	1	Signed off by:	MP

Appendix D – Geo-location



Existing boreholes 10m+



Prospect Location

Proposed site lies on White Chalk Subgroup (Porstdown Chalk Formation). Superficial deposits to a depth of 1-2m meters transitioning into the Porstdown chalk, increasing hardness and flint density to 75m becoming more marly transitioning into Culver Chalk Fm. A highly productive aquifer yielding 50-100 L/s of good water quality and upward mobility aiding the higher geothermal gradient in this area.

The temperature gradient is higher than the national average with an estimated geothermal irradiance of between 55-66 mWm⁻² with an estimated temperature of 13-14°C at 100m TVD.



This document has changed from the published version. A comparison document must be provided.

MWD 2016
Minor Works Building Contract
with contractor's design 2016

DRAFT

2016

MINOR WORKS BUILDING CONTRACT

Minor Works Building Contract with contractor's design (MWD)

Appropriate:

- where the work involved is simple in character;
- where the work is designed and the requirements for the contractor's design of discrete part(s) are detailed by or on behalf of the Employer, and where the Contractor is required to design those part(s) of the work (Contractor's Designed Portion);
- where the Employer is to provide drawings and/or a specification and/or work schedules to define adequately the quantity and quality of the work; and
- where an Architect/Contract Administrator is to administer the conditions.

Can be used:

- by both private and local authority employers.

Not suitable:

- as a design and build contract;
- where bills of quantities are required;
- where provisions are required to govern work carried out by named specialists;
- where detailed control procedures are needed.

This contract document is created using JCT's online service. Changes or choices made by the contract creator mean that this document differs from the original JCT text. A comparison document, showing all the changes from the original JCT text, is available and must be provided with the contract by the contract creator to all parties to the contract under the terms and conditions of the use of this service. Please note that the finalised version of a contract document that has been output from this service includes the comparison document automatically. Reports of failure to observe the terms and conditions of the use of this service may result in this service being suspended.

This document has been produced electronically by Rapidocs software and is derived from the published printed version (June 2016). Its use is subject to the software licence agreement. Thomson Reuters and the Thomson Reuters Logo are trademarks of Thomson Reuters. Sweet & Maxwell ® is a registered trademark of Thomson Reuters (Professional) UK Limited.

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

www.jctltd.co.uk

Contents

	Agreement	1
	Recitals	2
	Articles	4
1	Contractor's obligations	
2	Contract Sum	
3	Architect/Contract Administrator	
4	Principal Designer	
5	Principal Contractor	
6	Adjudication	
7	Arbitration	
8	Legal proceedings	
	Contract Particulars	6
	Attestation	10
	Conditions	12
Section 1	Definitions and Interpretation	12
1.1	Definitions	
1.2	Agreement etc. to be read as a whole	
1.3	Headings, references to persons, legislation etc.	
1.4	Reckoning periods of days	
1.5	Contracts (Rights of Third Parties) Act 1999	
1.6	Notices and other communications	
1.7	Consents and approvals	
1.8	Applicable law	
Section 2	Carrying out the Works	16
2.1	Contractor's obligations	
2.2	Materials, goods and workmanship	
2.3	Commencement and completion	
2.4	Architect/Contract Administrator's duties	
2.5	Correction of inconsistencies	
2.6	Divergences from Statutory Requirements	
2.7	Fees or charges legally demandable	
2.8	Extension of time	
2.9	Damages for non-completion	
2.10	Practical completion	
2.11	Defects	
2.12	Certificate of making good	
Section 3	Control of the Works	19
3.1	Assignment	
3.2	Person-in-charge	
3.3	Sub-contracting	
3.4	Architect/Contract Administrator's instructions	
3.5	Non-compliance with instructions	
3.6	Variations	
3.7	Provisional Sums	
3.8	Exclusion from the Works	
3.9	CDM Regulations	
Section 4	Payment	21
4.1	VAT	
4.2	Construction Industry Scheme (CIS)	

4.3	Interim payments – dates and certificates	
4.4	Contractor's applications and payment notices	
4.5	Payments – amount and notices	
4.6	Failure to pay amount due	
4.7	Contractor's right of suspension	
4.8	Final certificate and final payment	
4.9	Fixed price and fluctuations provisions	
Section 5	Injury, Damage and Insurance	24
5.1	Contractor's liability – personal injury or death	
5.2	Contractor's liability – loss, injury or damage to property	
5.3	Contractor's insurance of his liability	
5.4	Joint Names Insurance of the Works by Contractor	
5.5	Joint Names Insurance of the Works and existing structures by Employer	
5.6	Insurance of the Works and existing structures by other means	
5.7	Evidence of insurance	
5.8	Loss or damage – insurance claims and reinstatement	
5.9	Loss or damage to existing structures – right of termination	
Section 6	Termination	27
6.1	Meaning of insolvency	
6.2	Notices under section 6	
6.3	Other rights, reinstatement	
6.4	Default by Contractor	
6.5	Insolvency of Contractor	
6.6	Corruption and regulation 73(1)(b) of the PC Regulations	
6.7	Consequences of termination under clauses 6.4 to 6.6	
6.8	Default by Employer	
6.9	Insolvency of Employer	
6.10	Termination by either Party and regulations 73(1)(a) and 73(1)(c) of the PC Regulations	
6.11	Consequences of termination under clauses 6.8 to 6.10	
Section 7	Settlement of Disputes	31
7.1	Mediation	
7.2	Adjudication	
7.3	Arbitration	
Schedules		32
Schedule 1	Arbitration	32
Schedule 2	Fluctuations – Contribution, levy and tax changes	34
Schedule 3	Supplemental Provisions	35
Guidance Notes		38

Agreement

This Agreement

is made the _____ 20_____

Between

The Employer

Dorchester Town Council

of 19 North Square Dorchester DT1 1JF

And

The Contractor

Tenderer

Place of incorporation: UK

(Company No. TBA)^[1]

whose registered office is at TBA

[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.

Recitals

Whereas

First

the Employer wishes to have the following work carried out^[2]:

Design, Supply and Installation of Ground Source Heating System

at

The Cricket Pavilion, Weymouth Avenue, Dorchester DT1 2EN ('the Works')
under the direction of the Architect/Contract Administrator referred to in Article 3;

Second

the Works include the design and construction of^[3]

a Ground Source Heating System
(('the Contractor's Designed Portion'));

Third

the Employer has had the following documents prepared which show and describe the work to be done:

the drawings listed in Appendix A- Floor plan 200428 WARP

Appendix B - Site plan

Appendix C - Example schematic

Appendix D - Geo-location ('the Contract Drawings')^{[4][5]}

a Specification ('the Contract Specification')^[4]

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')

which for identification have been signed or initialled by or on behalf of each Party; those documents together with this Agreement, the Conditions and, if applicable, a Schedule of Rates as referred to in the Fourth Recital (collectively 'the Contract Documents') are annexed to this Agreement^[6];

Fourth

the Contractor has supplied the Employer^[4];

[2] State nature and location of intended works.

[3] State nature of work in the Contractor's Designed Portion either here or by reference to an identified Annex to this Contract. The Annex or any continuation sheets to a description here should be signed or initialled by or on behalf of each Party.

[4] Delete as appropriate.

[5] State the identifying numbers of the Contract Drawings or identify the schedule of drawings or other document listing them.

[6] Where a Contract Document has been priced by the Contractor it is that version of the document that should be annexed.

Fifth

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;

Sixth

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;

Seventh

the Contract is not supplemented by a Framework Agreement;

Eighth

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

DRAFT

Articles

Now it is hereby agreed as follows

Article 1 Contractor's obligations

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

Article 2 Contract Sum

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

1 (£1) ('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^[7] is

Adrian Stuart

of

Dorchester Town Council, 19 North Square, Dorchester DT1 1JF

or, if he ceases to be the Architect/Contract Administrator, such other person as the Employer nominates (such nomination to be made within 14 days of the cessation). No replacement appointee as Architect and/or Contract Administrator shall be entitled to disregard or overrule any certificate, opinion, decision, approval 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.

Article 4 Principal Designer

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 5 Principal Contractor

The Principal Contractor for the purposes of the CDM Regulations is the Contractor or such replacement as the Employer at any time appoints to fulfil that role.

Article 6 Adjudication

If any dispute or difference arises under this Contract either Party may refer it to adjudication in accordance with clause 7.2.^[8]

[7] Unless the person appointed by or under Article 3 is entitled to use the title 'Architect' under the Architects Act 1997, the term 'Architect' shall so long as that person holds that post be deemed deleted throughout this Contract. Any appointee as Contract Administrator should be suitably experienced for the role. Irrespective of experience or qualifications, the Employer should not at any time appoint himself to the role without the Contractor's prior agreement.

[8] As to adjudication in cases where the Employer is a residential occupier within the meaning of section 106 of the Housing Grants,

Article 7

Arbitration

Where Article 7 applies^[9], then, subject to Article 6 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 Schedule 1 and the JCT 2016 edition of the [Construction Industry Model Arbitration Rules \(CIMAR\)](#)^[10]. The exceptions to this Article 7 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 8

Legal proceedings^[9]

Subject to Article 6 and (where it applies) to Article 7, the English courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.

DRAFT

Construction and Regeneration Act 1996, see the Guidance Notes.

[9] If it is intended, subject to the right of adjudication and exceptions stated in Article 7, that disputes or differences should be determined by arbitration and not by legal proceedings, the Contract Particulars **must** state that the arbitration provisions of Article 7 and Schedule 1 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 8 (see also clause 1.8).

[10] See the Guidance Notes.

Contract Particulars

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

Fifth Recital and Schedule 2 (paragraphs 1.1, 1.2, 1.5, 1.6, 2.1 and 2.2)

Base Date

May 1st 2020

Fifth Recital and clause 4.2

Construction Industry Scheme (CIS)

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

Sixth Recital

CDM Regulations^[11]

the project
* is not notifiable

Eighth Recital and Schedule 3

Supplemental Provisions^[12]

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

Supplemental Provision 1: Collaborative working
* does not apply

Supplemental Provision 2: Health and safety
* does not apply

Supplemental Provision 3: Cost savings and value improvements
* does not apply

Supplemental Provision 4: Sustainable development and environmental considerations
* does not apply

Supplemental Provision 5: Performance Indicators and monitoring
* does not apply

Supplemental Provision 6: Notification and negotiation of disputes
* does not apply

[11] 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.

[12] 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.

Article 7

Arbitration

(If neither entry is deleted, Article 7 and Schedule 1 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must be stated that Article 7 and Schedule 1 apply.)^[13]

Article 7 and Schedule 1 (*Arbitration*)
* apply

2.3

Works commencement date

July 15th 2020

Date for Completion

September 30th 2020
or such later date for completion as is fixed under clause 2.8

2.9

Liquidated damages

at the rate of
£200 per day^[14]

2.11

Rectification Period

(The period is 3 months unless a different period is stated.)

3 months^[15]
from the date of practical completion

4.3

Interim payments – Interim Valuation Dates^[16]

(Unless otherwise stated, the first Interim Valuation Date is one month after the Works commencement date specified in these Particulars (against the reference to clause 2.3) and thereafter at monthly intervals.)

The first Interim Valuation Date is

and thereafter at intervals of

Payments due prior to practical completion – percentage of the total value of work etc.
(The percentage is 95 per cent unless a different rate is stated.)

per cent^[15]

[13] 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 Guidance Notes. See also footnote [9].

[14] Insert 'day', 'week' or other period.

[15] An insertion is needed here only if the default position is not to apply. If no retention is required, insert '100' in the percentage entries for clause 4.3.

[16] The first Interim Valuation Date should not be more than one month after the Works commencement date and the intervals between Interim Valuation Dates should not be more than one month.

Payments becoming due on or after practical completion – percentage of the total amount to be paid to the Contractor
(*The percentage is 97½ per cent unless a different rate is stated.*)

per cent^[15]

4.3 and 4.8

Fluctuations provision
(*Unless another provision or entry is selected, Schedule 2 applies.*)

* no fluctuations provision applies

4.8.1

Supply of documentation for computation of amount to be finally certified
(*The period is 3 months unless a different period is stated.*)

3 months^[15]
from the date of practical completion

5.3

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

£1000000
for any one occurrence or series of occurrences arising out of one event

5.4, 5.5 and 5.6

Insurance of the Works etc. – alternative provisions^[17]

* Clause 5.4 (*Works insurance by Contractor in Joint Names*) applies

5.4 and 5.5

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

5 per cent

7.2

Adjudication^[18]

Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)^[19]

(*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.*)

* Chartered Institute of Arbitrators

-
- [17] As to choice of applicable insurance provisions, see the Guidance Notes.
Where there are existing structures, it is vital that any prospective Employer – in particular any Employer who is a tenant or a domestic homeowner – who is not familiar with clause 5.5 and the possible solutions under clause 5.6, or an appropriate member of their professional team, should consult the Employer's insurance advisers prior to the tender stage. Any Employer who is a tenant should also consult his insuring landlord prior to that stage.
- [18] 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.
- [19] Delete all but one of the nominating bodies asterisked.

Schedule 1 (paragraph 2.1)

Arbitration^[20] – appointor of Arbitrator (and of any replacement)^[21]

(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:

* Chartered Institute of Arbitrators

DRAFT

[20] This only applies where the Contract Particulars state (against the reference to Article 7) that Article 7 and Schedule 1 (*Arbitration*) apply.

[21] 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 the main factor relevant to that choice, see the Guidance Notes.

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

Conditions

Section 1 Definitions and Interpretation

1.1 Definitions

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

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

All Risks Insurance^[22]: 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^[23];
- (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.

Article: an article in the Agreement.

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

[22] The definition of All Risks Insurance defines the risks for which insurance is required. Policies issued by insurers are not standardised and the way in which insurance for those risks is expressed varies.

[23] In any policy for All Risks Insurance taken out under clause 5.4 or 5.5.2, 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 those insurance clauses or of that definition. Wider All Risks cover than that specified may be available, though it is not standard.

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

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

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

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

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

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

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 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, the Architect/Contract Administrator and any Statutory Undertaker.

Employer's Requirements: see the **Third Recital**.

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.

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 Valuation Date: each date as specified by the **Contract Particulars** (against the reference to **clause 4.3**).

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.

Parties: the Employer and the Contractor together.

Party: either the Employer or the Contractor.

PC Regulations: the Public Contracts Regulations 2015.

Provisional Sum: 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.^[24]

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

Rectification Period: the period stated as such period in the **Contract Particulars** (against the reference to **clause 2.11**).

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

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

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

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 this 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.

VAT: Value Added Tax.

Works Insurance Policy: the Joint Names Policy or policies covering the Works and Site Materials to be effected and maintained under whichever of clauses 5.4, 5.5 and 5.6 applies.

1.2 Agreement etc. to be read as a whole

The Agreement and these Conditions are to be read as a whole. Nothing contained in the Contract Drawings, the Contract Specification, the Work Schedules or the Employer's Requirements, nor anything in any Framework Agreement, shall override or modify the Agreement or these Conditions.

1.3 Headings, references to persons, legislation etc.

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

- 1.3.1 the headings, notes and footnotes are included for convenience only and shall not affect the interpretation of this Contract;
- 1.3.2 the singular includes the plural and vice versa;
- 1.3.3 a gender includes any other gender;
- 1.3.4 a reference to a 'person' includes any individual, firm, partnership, company and any other body corporate; and
- 1.3.5 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.

1.4 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.

1.5 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.

1.6 Notices and other communications

- 1.6.1 Each notice, instruction or other communication referred to in the Agreement or these Conditions shall be in writing.
- 1.6.2 Unless otherwise stated in these Conditions, any notice or other communication under this Contract may be given to or served on the recipient by any effective means at the address specified in the Agreement or such other address as he shall notify to the other Party. If no such address is then current, the notice or other communication shall be treated as effectively given or served if addressed and sent by pre-paid post to the recipient's last known principal business address or (where a body corporate) its registered or principal office.

1.7 Consents and approvals

- 1.7.1 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 1.7.2, such consent or approval shall not be unreasonably delayed or withheld.

- 1.7.2 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 1.7.1 shall not apply, namely the Employer's consent under clause 2.11 and either Party's consent under clause 3.1.

1.8 Applicable law

This Contract shall be governed by and construed in accordance with the law of England.^[25]

DRAFT

[25] 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

2.1 Contractor's 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:

- 2.1.1 using reasonable skill, care and diligence, shall complete the design for the Contractor's Designed Portion, including, so far as not described or stated in the Employer's Requirements, the selection of any specifications for the kinds and standards of the materials, goods and workmanship to be used in the CDP Works;
- 2.1.2 shall comply with regulations 8 to 10 of the CDM Regulations and 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 3.4.2;
- 2.1.3 shall as and when necessary without charge provide the Architect/Contract Administrator with copies of such drawings or details, specifications of materials, goods and workmanship, and (if requested) related calculations and information, as are reasonably necessary to explain the Contractor's Designed Portion;
- 2.1.4 shall not be responsible for the contents of the Employer's Requirements or for verifying the adequacy of any design contained within them. If an inadequacy is found in any design in the Employer's Requirements, then, subject to clause 2.6, the Employer's Requirements shall be altered or modified by instructions under clause 3.6.1.

Drawings and other documents to be supplied by the Contractor shall be supplied by such means and in such format, if any, as are specified in the Employer's Requirements^[26]. In the absence of specific requirements they shall be supplied in the form of not less than two copies and, unless otherwise stated in the Employer's Requirements, the Contractor shall allow not less than 7 days from the date of their receipt for the Architect/Contract Administrator's comments on each drawing or other document before commencing the work to which they relate.

2.2 Materials, goods and workmanship

- 2.2.1 Insofar as the quality of materials 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 Commencement and completion

The Works may be commenced on and shall be completed by the respective dates stated in the Contract Particulars.

2.4 Architect/Contract Administrator's duties

The Architect/Contract Administrator shall issue any further information and instructions necessary for the proper carrying out of the Works and all certificates required by these Conditions.

[26] It is envisaged that any applicable BIM or other communications protocol will be included in the Employer's Requirements.

2.5 Correction of inconsistencies

- 2.5.1 Any inconsistency in or between the Contract Drawings, the Contract Specification, the Work Schedules and the Employer's Requirements shall be corrected and any such correction which results in an addition, omission or other change shall be treated as a variation under clause 3.6.1.
- 2.5.2 Any inconsistency in or between documents prepared by the Contractor for the CDP Works shall be corrected by the Contractor at his own expense after the Architect/Contract Administrator has approved the manner in which the Contractor proposes to deal with the inconsistency.

2.6 Divergences from Statutory Requirements

- 2.6.1 If the Contractor becomes aware of any divergence between the Statutory Requirements and the Contract Documents or between the Statutory Requirements and any instruction from the Architect/Contract Administrator, he shall immediately notify the latter, specifying the divergence.
- 2.6.2 Provided the Contractor is not in breach of clause 2.6.1, 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 the Contract Documents or the Architect/Contract Administrator's instructions.

2.7 Fees or charges legally demandable

The Contractor shall pay any fees or charges (including any rates or taxes) legally demandable under any of the Statutory Requirements. Such fees and charges shall not be reimbursable to the Contractor by the Employer unless otherwise agreed.

2.8 Extension of time

If it becomes apparent that the Works will not be completed by the Date for Completion as stated in the Contract Particulars or as later fixed under this clause 2.8, the Contractor shall thereupon notify the Architect/Contract Administrator. Where that delay occurs for reasons beyond the control of the Contractor, including compliance with Architect/Contract Administrator's instructions that are not occasioned by a default of the Contractor, the Architect/Contract Administrator shall give such extension of time for completion as may be reasonable and notify the Parties accordingly. Reasons within the control of the Contractor include any default of the Contractor, of any Contractor's Person or of any of their respective suppliers of goods or materials for the Works.

2.9 Damages for non-completion

- 2.9.1 If the Works are not completed by the Date for Completion as stated in the Contract Particulars or as later fixed under clause 2.8, the Employer may require the Contractor to pay or allow to the Employer liquidated damages at the rate stated in the Contract Particulars between such Date for Completion and the date of practical completion.
- 2.9.2 Subject to clause 2.9.3, the Employer may deduct the liquidated damages from any sum due to the Contractor under this Contract (provided a notice of that deduction has been given under clause 4.5.4) or recover those damages from the Contractor as a debt.
- 2.9.3 If the Employer intends to deduct any such damages from the sum stated as due in the final certificate or thereafter recover them as a debt, he shall additionally notify the Contractor of that intention not later than the date of issue of the final certificate.

2.10 Practical completion

The Architect/Contract Administrator shall certify the date when in his opinion the Works have reached practical completion and the Contractor has complied sufficiently with clauses 2.1.3 and 3.9 in respect of the supply of documents and information.

2.11 Defects

If any defects, shrinkages or other faults in the Works appear within the Rectification Period due to materials, goods or workmanship not in accordance with this Contract or any failure of the Contractor to comply with his obligations in respect of the CDP Works, the Architect/Contract Administrator shall not later than 14 days after the expiry of the Rectification Period notify the Contractor who shall make

good such defects, shrinkages or other faults entirely at his own cost unless the Architect/Contract Administrator with the Employer's consent instructs otherwise. If he instructs otherwise, an appropriate deduction may be made from the Contract Sum.

2.12 Certificate of making good

When in his opinion the Contractor's obligations under clause 2.11 have been discharged, the Architect/Contract Administrator shall forthwith issue a certificate specifying the date they were discharged.

DRAFT

Section 3 Control of the Works

3.1 Assignment

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

3.2 Person-in-charge

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

3.3 Sub-contracting

3.3.1 The Contractor shall not without the Architect/Contract Administrator's consent sub-contract the whole or any part of the Works or of any design work for the Contractor's Designed Portion. 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.

3.3.2 Where considered appropriate, the Contractor shall engage the sub-contractor using the JCT Minor Works Sub-Contract with sub-contractor's design or the JCT Short Form of Sub-Contract.^[27] It shall be a condition of any sub-contract that:

3.3.2.1 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;

3.3.2.2 each party to the sub-contract shall in relation to the Works and the site comply with applicable CDM Regulations;

3.3.2.3 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, such payment of interest to be on and subject to terms equivalent to those of clause 4.6 of these Conditions.

3.4 Architect/Contract Administrator's instructions

3.4.1 The Architect/Contract Administrator may issue instructions and the Contractor shall forthwith comply with them. If instructions are given orally, they shall not have effect until the Architect/Contract Administrator confirms them in writing.

3.4.2 The Architect/Contract Administrator shall not issue an instruction affecting the design of the CDP Works without the Contractor's consent.

3.5 Non-compliance with instructions

If the Contractor unreasonably delays or withholds his consent to an instruction referred to in clause 3.4.2 or fails to comply within 7 days after receipt of a notice from the Architect/Contract Administrator requiring compliance with any other instruction, 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.

3.6 Variations

3.6.1 The Architect/Contract Administrator may without invalidating this Contract issue instructions requiring an addition to, omission from, or other change in the Works or the order or manner in which they are to be carried out (a 'variation'), including instructions

[27] The Short Form of Sub-Contract is not appropriate where the sub-contract is to include sub-contractor's design.

effecting changes in the Employer's Requirements that necessitate an alteration or modification of the design of the CDP Works.

- 3.6.2 The Architect/Contract Administrator and the Contractor shall endeavour to agree a price prior to the Contractor carrying out the instruction.
- 3.6.3 Failing agreement under clause 3.6.2, any instructions for a variation and any matters that are to be treated as a variation shall be valued by the Architect/Contract Administrator on a fair and reasonable basis using any relevant prices in the priced Contract Specification/Work Schedules/Schedule of Rates, and the valuation shall include any direct loss and/or expense incurred by the Contractor due to the regular progress of the Works being affected by compliance with the instruction.

3.7 Provisional Sums

The Architect/Contract Administrator shall issue instructions in regard to the expenditure of any Provisional Sums included in the Contract Documents; failing agreement on price, such instructions shall be valued on the basis set out in clause 3.6.3.

3.8 Exclusion 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.

3.9 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:

- 3.9.1 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;
- 3.9.2 the Contractor in addition to any obligations under clause 2.1.2 shall comply with regulation 15 and, where he is the Principal Contractor, with regulations 12 to 14;^[28]
- 3.9.3 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;
- 3.9.4 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.

[28] 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.

Section 4 Payment

4.1 VAT

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

4.2 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^[29], his obligation to make any payment under this Contract is subject to the provisions of the CIS.

4.3 Interim payments – dates and certificates

During the period up to the due date for the final payment fixed under clause 4.8.1, the due dates for interim payments to the Contractor shall in each case be the date 7 days after the relevant Interim Valuation Date. Not later than 5 days after each due date the Architect/Contract Administrator shall issue an interim certificate for the applicable percentage, as stated in the Contract Particulars, of what he considers to be the total value at the due date of:

4.3.1 work properly executed, adjusted where relevant for any amounts ascertained or agreed under clause 3.6, 3.7 or 4.7; and

4.3.2 materials and goods reasonably and properly brought on to the site for the purpose of the Works that are adequately protected against weather and other casualties

in both cases calculated as at the Interim Valuation Date and adjusted for any fluctuations provision that is stated by the Contract Particulars to apply, less the total of sums stated as due to the Contractor in previous interim certificates, any sums paid in respect of any payment notice given by the Contractor after the issue of the latest interim certificate and, if applicable, any deduction under clause 2.11 or 3.5. The certificate shall state the sum due from the Employer and the basis on which that sum has been calculated, including the amount of each adjustment. Subject to clause 4.5.3, the final date for payment of each interim payment shall be 14 days from its due date.

4.4 Contractor's applications and payment notices

4.4.1 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 Architect/Contract Administrator, stating the sum that the Contractor considers to be due to him at the relevant due date in accordance with clause 4.3 or 4.8 and the basis on which that sum has been calculated.

4.4.2 If a certificate is not issued in accordance with clause 4.3 or 4.8, then:

4.4.2.1 where the Contractor has made an application for that payment in accordance with clause 4.4.1, that application is for the purposes of these Conditions a payment notice; or

4.4.2.2 where the Contractor has not made such an application, he may at any time after the 5 day period referred to in clause 4.3 or 4.8.2 give a payment notice to the Architect/Contract Administrator, stating the sum that the Contractor considers to have become due to him under clauses 4.3 or 4.8 at the relevant due date and the basis on which that sum has been calculated.

4.5 Payments – amount and notices

4.5.1 Subject to any notice given by the paying Party under clause 4.5.4, the paying Party shall pay the sum stated as due in the relevant certificate on or before the final date for payment under clause 4.3 or 4.8.

[29] See the Contract Particulars (Fifth Recital and clause 4.2).

- 4.5.2 If that certificate is not issued in accordance with clause 4.3 or 4.8 but a Contractor's payment notice has been or is then given, the Employer shall, subject to any notice subsequently given by him under clause 4.5.4, pay the Contractor the sum stated as due in the Contractor's payment notice.
- 4.5.3 Where the Contractor gives a payment notice under clause 4.4.2.2, 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 expiry of the 5 day period referred to in clause 4.4.2.2 that the Contractor's payment notice is given.
- 4.5.4 Where:
- 4.5.4.1 the Employer intends to pay less than the sum stated as due from him in a certificate or, where applicable, the Contractor's payment notice; or
- 4.5.4.2 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 (a 'pay less notice'), stating the sum (if any) that he considers to be due to the other Party at the date the pay less notice is given and the basis on which that sum has been calculated. 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.
- 4.5.5 A pay less notice to be given by the Employer under clause 4.5.4 may be given on his behalf by the Architect/Contract Administrator or by any other person who the Employer notifies the Contractor as being authorised to do so.
- 4.5.6 In relation to the requirements for the issue of certificates and the giving of notices under section 4, it is immaterial that the amount then considered to be due may be zero.

4.6 Failure to pay amount due

- 4.6.1 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.
- 4.6.2 Any such unpaid amount and any interest under clause 4.6.1 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 recipient's right to proper payment of the principal amount due or of the Contractor's rights to suspend performance under clause 4.7 or terminate his employment under section 6.

4.7 Contractor's right of suspension

- 4.7.1 If the Employer fails to pay a sum payable to the Contractor in accordance with clause 4.5 (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 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.
- 4.7.2 Where the Contractor exercises his right of suspension under clause 4.7.1, 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.
- 4.7.3 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. When ascertained or agreed, the amount shall be included in the next interim certificate.

4.8 Final certificate and final payment

- 4.8.1 Following practical completion the Contractor shall within the period stated in the Contract Particulars supply to the Architect/Contract Administrator all documentation reasonably

required for computation of the final payment. The due date for the final payment shall be 28 days after either the date of receipt of the documentation or, if later, the date specified in the certificate under clause 2.12.

4.8.2 Not later than 5 days after that due date the Architect/Contract Administrator shall issue a final certificate which shall state:

4.8.2.1 the Contract Sum, as adjusted for the amounts referred to in clause 4.3.1, any fluctuations provision that applies and any deductions made under clause 2.11 or 3.5;

4.8.2.2 the sum of amounts stated as due in interim certificates plus any amount paid in respect of any Contractor's payment notice in accordance with clause 4.5 that is not reflected in a subsequent certificate,

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 certificate as a balance due to the Contractor from the Employer or vice versa. The certificate shall state the basis on which that amount has been calculated, including the amount of each adjustment.

4.8.3 Subject to clause 4.5.3, the final date for payment of the final payment shall be 14 days from its due date.

4.9 Fixed price and fluctuations provisions

Subject to clauses 3.6, 3.7 and 4.7 and any fluctuations provision that is stated by the Contract Particulars (for clauses 4.3 and 4.8) to apply, no account shall be taken in any payment to the Contractor under this Contract of any change in the cost to the Contractor of the labour, materials, plant and other resources employed in carrying out the Works.

Section 5 Injury, Damage 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 5.5 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 5.5.1 that is caused by any of the risks or perils required or agreed to be insured against under clause 5.5;
- 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 clause 5.6 applies, 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 to any limitations and exclusions specified in the insurance arrangements under clause 5.6 identified in the Contract Particulars.

5.3 Contractor's insurance of his liability

Without limiting or affecting his indemnities to the Employer under clauses 5.1 and 5.2, the Contractor shall effect and maintain (and shall cause any sub-contractor similarly to effect and maintain) insurance in respect of claims arising out of the liabilities referred to in those clauses which:

- 5.3.1 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
- 5.3.2 for all other claims to which clause 5.3 applies^[30], 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 5.3.

5.4 Joint Names Insurance of the Works by Contractor^{[31][32]}

If the Contract Particulars state that clause 5.4 applies, the Contractor shall effect and maintain with insurers approved by the Employer a Joint Names Policy for All Risks Insurance for the full

[30] 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.

[31] 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 5.4 provided the Policy recognises the Employer as a composite insured in respect of the Works.

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

reinstatement value of the Works (plus the percentage, if any, stated in the Contract Particulars to cover professional fees) and shall maintain such Joint Names Policy 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.

5.5 Joint Names Insurance of the Works and existing structures by Employer^[32]

If the Contract Particulars state that clause 5.5 applies, the Employer shall effect and maintain:

- 5.5.1 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;
- 5.5.2 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 to cover professional fees)

and shall maintain such Joint Names Policies 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.

5.6 Insurance of the Works and existing structures by other means^[32]

If the Contract Particulars state that clause 5.6 applies, the insurance arrangements identified by those particulars shall apply and each Party shall effect and maintain the policy or policies for which he is stated to be responsible or shall ensure that such policy or policies are effected and maintained, in each case in and on the specified terms.

5.7 Evidence of insurance

Where a Party is required by this Contract to effect and maintain an insurance policy or cover under any of clauses 5.3, 5.4, 5.5 and 5.6, 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.

5.8 Loss or damage – insurance claims and reinstatement

- 5.8.1 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 notify the Architect/Contract Administrator and the Employer.
- 5.8.2 Subject to clauses 5.8.5.1 and 5.8.6, 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.
- 5.8.3 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.
- 5.8.4 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.
- 5.8.5 Where clause 5.4 applies or where clause 5.6 applies and the Contractor is responsible for effecting the Works Insurance Policy:
 - 5.8.5.1 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 4.3 but without deduction of Retention and less only the amounts referred to in clause 5.8.5.2;
 - 5.8.5.2 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;

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

5.8.6 Where clause 5.5 applies, where clause 5.6 applies and the Employer is responsible for effecting the Works Insurance Policy or where loss or damage is caused by an Excepted Risk, reinstatement work shall be treated as a variation under clause 3.6.

5.9 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 this Contract by notice given to the other within 28 days of the occurrence of that loss or damage. If such notice is given, then:

- 5.9.1 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;
- 5.9.2 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 6.11 (except clause 6.11.2.3) shall apply.

DRAFT

Section 6 Termination

6.1 Meaning of insolvency

For the purposes of these Conditions a person becomes insolvent on:

- 6.1.1 the making of an administration, bankruptcy or winding-up order against him, appointment of an administrative receiver, receiver or manager of his property, his passing of a resolution for voluntary winding-up without declaration of solvency or any other event referred to in section 113, sub-sections (2) to (5), of the Housing Grants, Construction and Regeneration Act 1996;
- 6.1.2 otherwise entering administration within the meaning of Schedule B1 to the Insolvency Act 1986;
- 6.1.3 entering 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
- 6.1.4 (in the case of a partnership) each partner being the subject of an individual arrangement or any other event or proceedings referred to in this clause 6.1.

6.2 Notices under section 6

- 6.2.1 Notice of termination of the Contractor's employment shall not be given unreasonably or vexatiously.
- 6.2.2 Such termination shall take effect on receipt of the relevant notice.
- 6.2.3 Each notice referred to in this section 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.

6.3 Other rights, reinstatement

- 6.3.1 The provisions of clauses 6.4 to 6.7 are without prejudice to any other rights and remedies of the Employer. The provisions of clauses 6.8 and 6.9 and (in the case of termination under either of those clauses) the provisions of clause 6.11, are without prejudice to any other rights and remedies of the Contractor.
- 6.3.2 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.

6.4 Default by Contractor

- 6.4.1 If, before practical completion of the Works, the Contractor:
 - 6.4.1.1 without reasonable cause wholly or substantially suspends the carrying out of the Works or the design of the Contractor's Designed Portion; or
 - 6.4.1.2 fails to proceed regularly and diligently with the Works or the design of the Contractor's Designed Portion; or
 - 6.4.1.3 fails to comply with clause 3.9,the Architect/Contract Administrator may give to the Contractor a notice specifying the default or defaults (a 'specified' default or defaults).
- 6.4.2 If the Contractor continues a specified default for 7 days from receipt of the notice under clause 6.4.1, the Employer may on, or within 10 days from, the expiry of that 7 day period by a further notice to the Contractor terminate the Contractor's employment under this Contract.

6.5 Insolvency of Contractor

- 6.5.1 If the Contractor is insolvent, the Employer may at any time by notice to the Contractor terminate the Contractor's employment under this Contract.
- 6.5.2 As from the date the Contractor becomes insolvent, whether or not the Employer has given such notice of termination:
- 6.5.2.1 clauses 6.7.2 to 6.7.4 shall apply as if such notice had been given;
 - 6.5.2.2 the Contractor's obligations under Article 1 and these Conditions to carry out and complete the Works shall be suspended; and
 - 6.5.2.3 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.

6.6 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.

6.7 Consequences of termination under clauses 6.4 to 6.6

If the Contractor's employment is terminated under clause 6.4, 6.5 or 6.6:

- 6.7.1 the Employer may employ and pay other persons to carry out and complete the Works, 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;
- 6.7.2 no further sum shall become due to the Contractor under this Contract other than any amount that may become due to him under clause 6.7.4 and the Employer need not pay any sum that has already become due either:
- 6.7.2.1 insofar as the Employer has given or gives a notice under clause 4.5.4; or
 - 6.7.2.2 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 6.1.1 to 6.1.3;
- 6.7.3 following the completion of the Works and the making good of defects in them (or of instructions otherwise, as referred to in clause 2.11), 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:
- 6.7.3.1 the amount of expenses properly incurred by the Employer, including those incurred pursuant to clause 6.7.1 and, where applicable, clause 6.5.2.3, 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;
 - 6.7.3.2 the amount of payments made to the Contractor; and
 - 6.7.3.3 the total amount which would have been payable for the Works in accordance with this Contract;
- 6.7.4 if the sum of the amounts stated under clauses 6.7.3.1 and 6.7.3.2 exceeds the amount stated under clause 6.7.3.3, 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.

6.8 Default by Employer

- 6.8.1 If the Employer:

6.8.1.1 does not pay by the final date for payment the amount due to the Contractor in accordance with clause 4.5 and/or any VAT properly chargeable on that amount; or

6.8.1.2 interferes with or obstructs the issue of any certificate due under this Contract; or

6.8.1.3 fails to comply with clause 3.9,

the Contractor may give to the Employer a notice specifying the default or defaults (a 'specified' default or defaults).

6.8.2 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 one month or more by reason of:

6.8.2.1 Architect/Contract Administrator's instructions under clause 3.6; and/or

6.8.2.2 any impediment, prevention or default, whether by act or omission, by the Employer, the Architect/Contract Administrator or any Employer's Person

(but in either case excluding such instructions as are referred to in clause 6.10.1.2), 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).

6.8.3 If a specified default or a specified suspension event continues for 7 days from the receipt of notice under clause 6.8.1 or 6.8.2, the Contractor may on, or within 10 days from, the expiry of that 7 day period by a further notice to the Employer terminate the Contractor's employment under this Contract.

6.9 Insolvency of Employer

6.9.1 If the Employer is insolvent, the Contractor may by notice to the Employer terminate the Contractor's employment under this Contract;

6.9.2 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.

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

6.10.1 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 one month or more by reason of one or more of the following events:

6.10.1.1 force majeure;

6.10.1.2 Architect/Contract Administrator's instructions under clause 3.6 issued as a result of the negligence or default of any Statutory Undertaker;

6.10.1.3 loss or damage to the Works occasioned by any risk covered by the Works Insurance Policy or by an Excepted Risk;

6.10.1.4 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

6.10.1.5 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 6.10.2, 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.

6.10.2 The Contractor shall not be entitled to give notice under clause 6.10.1 in respect of the matter referred to in clause 6.10.1.3 where the loss or damage to the Works was caused by the negligence or default of the Contractor or any Contractor's Person.

- 6.10.3 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.

6.11 Consequences of termination under clauses 6.8 to 6.10

If the Contractor's employment is terminated under any of clauses 6.8 to 6.10 or under clause 5.9:

- 6.11.1 no further sums shall become due to the Contractor otherwise than in accordance with this clause 6.11;
- 6.11.2 the Contractor shall as soon as reasonably practicable prepare an account. The account shall set out the amounts referred to in clauses 6.11.2.1 and 6.11.2.2 and, if applicable, clause 6.11.2.3, namely:
- 6.11.2.1 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;
- 6.11.2.2 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;
- 6.11.2.3 any direct loss and/or damage caused to the Contractor by the termination;
- 6.11.3 the account shall include the amount, if any, referred to in clause 6.11.2.3 only where the Contractor's employment is terminated either:
- 6.11.3.1 under clause 6.8 or 6.9; or
- 6.11.3.2 under clause 6.10.1.3, if the loss or damage to the Works was caused by the negligence or default of the Employer or any Employer's Person;
- 6.11.4 after taking into account amounts previously paid to the Contractor under this Contract, the Employer shall pay to the Contractor the amount properly due in respect of the account within 28 days of its submission by the Contractor to the Employer, without deduction of any retention. Payment by the Employer for any such materials and goods as are referred to in clause 6.11.2.2 shall be subject to those materials and goods thereupon becoming the property of the Employer.

Section 7 Settlement of Disputes

7.1 Mediation

Subject to Article 6, 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.

7.2 Adjudication

If a dispute or difference arises under this Contract which either Party wishes to refer to adjudication, the Scheme shall apply except that 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.

7.3 Arbitration

For the purposes of Article 7, if it applies, the procedures for arbitration are set out in Schedule 1.^[33]

[33] 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.

Schedules

Schedule 1 Arbitration

(Clause 7.3)

Conduct of arbitration

- 1 Any arbitration pursuant to Article 7 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 to the Arbitrator, state that they wish the arbitration to be conducted in accordance with the Rules as so amended. References in this Schedule 1 to a Rule or Rules are references to such Rule(s) as set out in the JCT 2016 edition of [CIMAR](#).

Notice of reference to arbitration

- 2
- 2.1 Where pursuant to Article 7 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.
- 2.2 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.
- 2.3 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 7 to be decided in the arbitral proceedings and Rule 3.3 shall apply.

Powers of Arbitrator

- 3 Subject to the provisions of Article 7 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.

Effect of award

- 4 Subject to paragraph 5 the award of the Arbitrator shall be final and binding on the Parties.

Appeal – questions of law

- 5 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):
- 5.1 apply to the courts to determine any question of law arising in the course of the reference, and
- 5.2 appeal to the courts on any question of law arising out of an award made in an arbitration under this arbitration agreement.

Arbitration Act 1996

- 6** 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.

DRAFT

Schedule 2 Fluctuations – Contribution, levy and tax changes

(Clauses 4.3 and 4.8)

Not applicable

DRAFT

Schedule 3 Supplemental Provisions

(Eighth 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 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 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 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 under clause 3.6.1, 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 6), 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 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^[34]:

- 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

[34] For an explanatory summary of those provisions in the PC Regulations that are reflected in this Contract, see the Guidance Notes. Provisions relating to the PC Regulations are also set out in section 6 (Termination) of this Contract. The JCT Minor Works Sub-Contract with sub-contractor's design (MWSub/D) and the JCT Short Form of Sub-Contract (ShortSub) meet the requirements of Supplemental Provision 8.

sub-contractor:

- 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.

DRAFT

Guidance Notes

Use of Minor Works Building Contract with contractor's design

- 1 The Contract should only be used where the employer has engaged an architect or other professionally qualified person to advise on and administer its terms.
- 2 The criteria for determining the suitability of the Contract are set out on the inside of the front cover.
- 3 For Works which do not fulfil these criteria, reference should be made to www.jctltd.co.uk for guidance as to the appropriate contract.
- 4 The Contract makes provision for a Contractor's Designed Portion which may comprise of one or more discrete parts. However, the Contract is not drafted as a design and build contract and should not be used where that form of contractual arrangement is required.
- 5 The Contract is predicated upon a lump sum offer being obtained, based on drawings and/or a specification and/or work schedules, but without detailed measurements. Those documents should therefore be in a form sufficient to enable the Contractor accurately to identify the work to be done without the need for the Employer to provide bills of quantities. In those cases where there is a relevant BIM protocol, it is assumed that it will be included in the Employer's Requirements.
- 6 The Contract is not suitable for use where the Works are of a complex nature.
- 7 The payment provisions in the Contract comply with the requirements of the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 ('the Construction Act'). In addition to the statutory requirements regarding payment procedures, the Construction Act provides a statutory right for either Party to refer disputes or differences to adjudication.
- 8 However, not all building contracts are subject to the Construction Act; for example, a contract with a residential occupier within the meaning of section 106 of the Act is excluded and therefore it does not need to contain adjudication provisions, but, unless amendments are made, a residential occupier in entering into a Minor Works Building Contract will be accepting adjudication as a means of resolving disputes.
- 9 For some projects where it is intended to use the Contract, the Employer may wish to control the selection of sub-contractors for specialist work. This may be done by naming a person or company in the tender documents or in instructions on the expenditure of a Provisional Sum. There are, however, no provisions in the Contract to deal with the consequences of such naming and control of specialist work may be better achieved by the Employer entering into a direct contract with his chosen specialist.

Outline of the Contract

Architect/Contract Administrator

- 10 This is the professional whom the Employer has appointed to advise on and administer the Contract. If the appointee is not an architect, he is taken to be referred to in the Contract as the 'Contract Administrator', but, irrespective of the Architect/Contract Administrator's profession, their duties under the Contract are the same.

Role of the Architect/Contract Administrator

- 11 The Architect/Contract Administrator is paid by the Employer, advises the Employer on all matters in connection with the building work and administers the Contract on behalf of the Employer with a view to securing completion of the work in an efficient and economical manner. However, in relation to decisions in that administrative role that require professional skill and judgment, he should act fairly and independently as between the Employer and the Contractor, in particular when:
 - issuing payment certificates;

- valuing any variations or any work instructed in respect of Provisional Sums (see "Terms used") included in the Contract Documents;
- giving any extension to the time stated in the Contract Particulars for the completion of the building work;
- certifying the date of practical completion (see "Terms used") and the date when in his opinion all defects which appear during the Rectification Period (see "Terms used") have been made good.

Instructions

- 12** Under the Contract only the Architect/Contract Administrator can issue instructions to the Contractor; although the Employer is paying for the building work, he is not entitled to give any instructions direct to the Contractor in connection with it. If the Employer wishes to make any change to the work or the manner in which it is being carried out, he must ask the Architect/Contract Administrator to give the necessary instructions to the Contractor. The Architect/Contract Administrator has wide powers to issue instructions but instructions affecting the design of the Contractor's Designed Portion can only be issued with the consent of the Contractor. The Contractor must act reasonably and cannot delay or withhold his consent unless it is reasonable to do so.

Contractor's Designed Portion

- 13** The First Recital requires a brief description of the Works as a whole; the Second Recital provides for the identification of the part or parts of the Works that are to comprise the Contractor's Designed Portion. The Third Recital refers to the Employer's Requirements, the document supplied by the Employer to the Contractor that sets out the Employer's requirements for the design of work by the Contractor. The Contractor is required to complete the design of the Contractor's Designed Portion and to comply with any Architect/Contract Administrator's directions with regard to its integration into the Works but the Contractor is not responsible for the contents of the Employer's Requirements or for verifying the adequacy of any design included in them.

Price

- 14** This is the lump sum stated in the Contract, plus any VAT properly chargeable on the building work. The precise sum may be increased or decreased depending on any changes to the work or the order or period in which it is carried out, the value of work instructed by the Architect/Contract Administrator in respect of any Provisional Sums included in the Contract Documents and, where applicable, any increase or decrease in contributions, levies and taxes for which the Contractor is liable.

Time-scale for the work

- 15** If it becomes apparent that the work cannot be finished within the original time stated in the Contract Particulars the Contractor is required to notify the Architect/Contract Administrator straightaway. If the delay arises for reasons beyond the control of the Contractor, the Architect/Contract Administrator is then required to give such extension of time as is reasonable.

If the work is not finished by the Date for Completion (see "Terms used") after taking into account any extensions of time, the Employer can recover liquidated damages (see "Terms used") from the Contractor.

Payment

- 16** In the 2016 edition there are revisions to and simplification of the section 4 payment provisions including the establishment of Interim Valuation Dates that are also to apply at JCT sub-contract and sub-subcontract levels.

The revisions include modifications to the interim payment due date provisions of clause 4.3. Under the revised provisions of clause 4.3, during the period up to the due date for the final payment, the due dates for interim payments are in each case the date 7 days after the relevant Interim Valuation Date. There are new entries in the Contract Particulars (for clause 4.3) which require the first Interim Valuation Date and the intervals that will apply for subsequent Interim Valuation Dates to be specified. The first Interim Valuation Date should not be more than one month after the Works commencement date and the intervals between Interim Valuation Dates should not be more than one month. If these entries are not completed, the relevant default provisions set out in the Contract Particulars for clause 4.3 apply.

Interim payments are to be made against interim certificates issued by the Architect/Contract Administrator up to the date for issue of the final certificate when the final balance becomes due. The Construction Act requires interim and final certificates to be issued not later than 5 days after their due

date and clauses 4.3 and 4.8 comply with these requirements. The final date for payment of each certificate, together with any VAT chargeable to the Employer, is 14 days from the due date for payment.

Unless a percentage for payment other than 95 per cent is inserted in the Contract Particulars for clause 4.3, interim certificates for the period up to practical completion will reflect the Employer's entitlement to retain 5 per cent. For the period between practical completion and the final certificate, the Contract envisages that the percentage retained will be halved.

The interim payment due date provisions referred to above are followed at clause 4.4 by a general provision governing Contractor's payment applications (and, in default of a payment certificate, their role as a payment notice) which apply with respect to the final payment as well as to interim payments.

There is some consolidation of the provisions dealing with the notice requirements of the Construction Act. The provisions regarding payment and pay less notices, amounts to be paid and default interest are set out in clauses 4.5 and 4.6 and as the text of each indicates, these clauses apply with respect to the final payment as well as to interim payments.

Clause 4.8 still covers the final certificate and final payment, but some of its former content has been included in clause 4.5 (Payments – amount and notices) as part of the consolidation exercise referred to above.

If the Employer fails to pay an amount due to the Contractor by the final date for its payment, interest at a rate of 5% per annum over the official bank rate of the Bank of England is payable by the Employer for the period until payment is made.

If the Employer gives a pay less notice and pays the lesser amount specified in the pay less notice, the Contractor's right under the Construction Act to suspend for non-payment does not arise. However, the JCT provision for interest is intended to preserve the Contractor's right to interest on the additional amount that he should have been paid, insofar as there was no sustainable basis for a withholding by the Employer and regardless of any pay less notice that the latter has given.

Suspension

- 17 If the Employer does not give a pay less notice and does not pay the amount due to the Contractor by the final date for its payment, or, having given a pay less notice, then fails to pay the amount specified in it, the Contractor, after giving a 7 day notice, has the right to suspend performance of some or all of his obligations under the Contract until payment of the appropriate amount is made. The Contractor also has a statutory right to recover reasonable costs and expenses that he incurs as a result of that suspension.

Termination

- 18 Either Party may end the Contractor's employment if the other Party is in breach of certain obligations (in the case of the Contractor those mentioned in clauses 6.4 and 6.6; in the case of the Employer those in clause 6.8) or becomes insolvent. There is also a right under clause 6.10 for either Party to terminate in the case of prolonged suspension resulting from certain neutral causes.

Dealing with disputes

- 19 Either Party may at any time refer any dispute to adjudication for a 'fast track' decision; the adjudicator's decision is binding unless and until the dispute is decided by an arbitrator or the court. Residential occupiers wishing to use the Contract should also refer to paragraph 8 above. The Contract Particulars enable the Parties to nominate an individual adjudicator in advance, should they wish. However, an individual should not be named in the Contract without his prior agreement. It has also to be recognised that those of sufficient standing to merit nomination are generally busy people and that when a dispute arises they may not be available.

The Parties may also agree to mediate a dispute.

For final dispute resolution in cases where either or both Parties are dissatisfied with the results of adjudication or mediation (or neither Party wished to have the dispute adjudicated), the choice is between court litigation and arbitration. Since 2005 litigation has been the default option under JCT contracts. If arbitration is the agreed choice, it should be selected through the appropriate entry in the Contract Particulars.

The JCT 2016 edition of the [Construction Industry Model Arbitration Rules](#) (CIMAR), which includes the JCT Supplementary and Advisory Procedures, will govern any arbitration that is commenced. It is

recommended that anyone considering instituting arbitration proceedings should obtain a copy of the rules and, as with litigation, should take competent professional advice before taking steps to institute proceedings.

In making the choice between arbitration and litigation, in addition to the adjudication option, one should consider a range of other factors. Arbitration provides the ability to choose an arbitrator from any relevant profession, greater freedom of choice procedurally and confidentiality, whereas in litigation there is the wider power of the court. In the case of contracts where claims either way are likely to be small, it may be considered desirable to keep open the potentially cheaper route of using the County Court small claims track; any agreement to arbitrate, unless suitably qualified, would normally operate as a bar to using that route if the other Party did not agree.

Rights and remedies generally

- 20 Statutory and common law rights are not restricted by the terms of the Contract. The limitation period for a contract that is simply signed by the Parties is 6 years from the date of the breach or, where it is executed as a deed, 12 years. The limitation period should not be confused with the Rectification Period, which is provided to facilitate the remedying of the Contractor's defective work by allowing him to return to site to make good.

Supplemental Provisions

- 21 Schedule 3 includes six optional Supplemental Provisions which build upon the traditional JCT approach and reflect principles adopted by the Office of Government Commerce in the Achieving Excellence in Construction initiatives. They are for use where appropriate; the extent of such use may depend upon factors such as the scope of the project, the participants and the type of relationship that the Parties wish to have. The choice as to which provisions apply is made in the Contract Particulars. If no choice is made in relation to a provision, it will apply, since the provisions are generally intended to be disapplied only where there is a Framework Agreement or other contract documentation that covers the same ground.

Schedule 3 also contains new Supplemental Provisions 7 and 8. Supplemental Provision 7 contains provisions relevant to the Freedom of Information Act 2000 ('FOIA') and will only apply in the event that the Employer is a Local or Public Authority or other body to whom the FOIA applies. Supplemental Provision 8, and section 6 (Termination), contain provisions relevant to the Public Contracts Regulations 2015 ('the PC Regulations') which will only be applicable where the Employer is a Local or Public Authority and the Contract is subject to the PC Regulations. For some background information on the PC Regulations and a summary of those provisions in the PC Regulations that are reflected in Supplemental Provision 8 and section 6 (Termination), please go to www.jctltd.co.uk.

Terms used

- 22 As part of his duties to the Employer, the Architect/Contract Administrator should be prepared to explain the general meanings of the various terms used in the Contract. For example:

Base Date

- 23 The Base Date is stated in the Contract Particulars. The date often selected is 7 days or thereabouts before the date for submission of tenders so as to avoid any need for tenderers to deal with last minute changes. In the Minor Works Building Contract, however, Base Date plays a comparatively minor role, acting as the date of record for the Employer's status under the CIS scheme and for determining what fluctuations are payable.

CDM Regulations

- 24 Regulations made under Act of Parliament to improve health and safety standards on construction sites. For guidance on the CDM Regulations 2015, please go to www.jctltd.co.uk.

Principal Designer and Principal Contractor

- 25 The respective persons named in the Agreement or subsequently appointed as such, as required by the CDM Regulations. With a view to minimising health and safety risks, the Regulations require the Employer to appoint a Principal Designer to control the pre-construction phase where there is more than one contractor, or it is reasonably foreseeable that more than one contractor will be working on the project at any time. One of the contractors must also be appointed as Principal Contractor in those circumstances. (For these purposes the term 'contractor' includes sub-contractors.)

Health and safety file

- 26 A manual which the Principal Designer prepares with assistance from the Principal Contractor, containing health and safety information necessary for anyone undertaking work on the site post-completion of the Works, which he passes on to the Principal Contractor if his appointment terminates before the end of the project and is to be delivered to the Employer on completion.

Date for Completion

- 27 The date by which the Contractor is required to finish the work, as stated in the Contract Particulars or subsequently extended by the Architect/Contract Administrator.

Date of practical completion

- 28 The date when, in the Architect/Contract Administrator's opinion, the Contractor has to all practical intents and purposes completed the Works.

Rectification Period

- 29 Unless otherwise agreed, the Rectification Period is 3 months from the date of practical completion. The Contractor is required to put right any defects in the work which appear during the Rectification Period before he is entitled to be paid the final balance of the Contract price. The Architect/Contract Administrator is required to notify the Contractor of any such defects not later than 14 days after the expiry of the Rectification Period.

Insurance in Joint Names

- 30 The works and existing structures insurance provisions have in this 2016 edition been made more flexible through a widening of clause 5.6 and consequential amendments to the clause 5.2 provisions relating to Contractor's liability for loss, injury or damage to property.

Clause 5.4 remains intended for use where there are no existing structures and the contractor is to arrange a Joint Names, All Risks policy, under which each Party is covered as a 'composite insured'. This may take the form of a specific project policy or through equivalent coverage under the Contractor's annual CAR policy.

Clause 5.5 is for use where there are existing structures and 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.

However, existing structures cover for the Contractor is not always readily available to Employers at reasonable cost, in particular where the Employer is a domestic homeowner or where he is only a tenant and structures cover is effected by the freeholder or an intermediate lessor and clause 5.6 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 household or existing structures policy, with the Contractor covering his liability for any damage to existing structures under the Public Liability cover required under clause 5.3.2 or an appropriate extension of it. Alternatively, the Contractor's insurers may be prepared to cover both the Works and those structures under the Works policy.

In the case of tenant Employers, it is necessary to involve the insuring landlord and in all cases, in particular those involving existing structures, it is essential that Employers and Architect/Contract Administrators, prior to the tender stage, take appropriate specialist insurance advice, consult the Employer's household or 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.

Liquidated damages

- 31 The rate per day/week/month stated in the Contract Particulars by the Employer, to compensate him for the Contractor's failure to finish the work on time. The prudent Employer will be alert to the legal principles and rules governing the enforceability of liquidated damages provisions and will approach calculation of the rate with these in mind. It is suggested the Employer records an explanation of the

rate and why it represents (i) a genuine pre-estimate of the loss that he is likely to suffer or (ii) a reasonable and proportionate protection of his legitimate commercial interest(s) in timely completion, which he can use to respond to any challenge. It is for the Employer to decide whether to deduct any liquidated damages that he might be entitled to from any amount certified as due to the Contractor; such deduction is not taken into account by the Architect/Contract Administrator in the calculation of any certificate and the appropriate notice must be given by the Employer under clauses 2.9 and 4.5.4.

Provisional Sum

- 32** A sum included for work which the Employer may or may not decide to have carried out, or which cannot be accurately specified in the original contract documents. For instance, where the Employer is undecided whether all, some or none of the outside of the premises will need to be re-decorated, the pricing documents may say "Allow £X for complete external redecoration of the premises." If the Employer then decides any redecoration is necessary, the specification required is instructed by the Architect/Contract Administrator and the price to be paid is either agreed between the Architect/Contract Administrator and the Contractor or valued by the Architect/Contract Administrator.

Variation

- 33** A change to the work that the Architect/Contract Administrator instructs on behalf of the Employer. The variation may be an addition to or an omission from the work as originally specified or to the order or manner in which it is to be carried out.

MWD User Checklist

A checklist of the key information that will help you to complete the Agreement may be downloaded from the JCT [website](#).

Care has been taken in preparing these Guidance Notes but they should not be treated as a definitive legal interpretation or commentary. Users are reminded that the effect in law of the provisions of the Minor Works Building Contract with contractor's design 2016 Edition is, in the event of a dispute as to that effect, a matter for decision in adjudication, arbitration or litigation.



All parties must rely exclusively upon their own skill and judgment or upon those of their advisers when using this document and neither Thomson Reuters (Professional) UK Limited nor its associated companies assume any liability to any user or any third party in connection with such use.

DRAFT

SWEET & MAXWELL



THOMSON REUTERS