



# **HUMBERSIDE** POLICE & CRIME COMMISSIONER



INVITATION TO TENDER

CALL OFF CONTRACT

REFURBISHMENT WORKS TO BRIDLINGTON FIRE STATION

CONTRACT REF: 1930-2019



**HUMBERSIDE**  
Fire & Rescue Service

the 1990s, the number of people in the UK with a mental health problem has increased by 50% (Mental Health Act 1983, 1990).

There is a growing awareness of the need to improve the lives of people with mental health problems. The Department of Health (1999) has set out a vision of a new mental health system, which will be based on the following principles: (1) people with mental health problems should be treated as individuals, with their own needs and wishes; (2) people should be given the opportunity to participate in decisions about their care; (3) people should be given the opportunity to live as normal as possible; (4) people should be given the opportunity to live in their own homes; (5) people should be given the opportunity to live in their own communities; (6) people should be given the opportunity to live in their own families; (7) people should be given the opportunity to live in their own neighborhoods; (8) people should be given the opportunity to live in their own country.

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## **CONTRACT DOCUMENTS**

HFRS STATION REFURBISHMENTS



- 1.0 JCT CONTRACT**
- 2.0 PRELIMS**
- 3.0 YORBUILD CALL OFF AGREEMENT**
- 4.0 T&CS**
- 5.0 SECURITY ASPECTS LETTER**



This contract has been amended from the original template.

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

**2016**

**INTERMEDIATE BUILDING CONTRACT**

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# Contents

## Agreement

### Recitals

### Articles

- Article 1: Contractor's obligations
- Article 2: Contract Sum
- Article 3: Architect/Contract Administrator
- Article 4: Quantity Surveyor
- Article 5: Principal Designer
- Article 6: Principal Contractor
- Article 7: Adjudication
- Article 8: Arbitration
- Article 9: Legal proceedings

### Contract Particulars

### Attestation

### Conditions

## Section 1 Definitions and Interpretation

### 1.1 Definitions

#### Interpretation

- 1.2 Reference to clauses etc.
- 1.3 Agreement etc. to be read as a whole
- 1.4 Headings, references to persons, legislation etc.
- 1.5 Reckoning periods of days
- 1.6 Contracts (Rights of Third Parties) Act 1999
- 1.7 Notices and other communications
- 1.8 Issue of Architect/Contract Administrator's certificates
- 1.9 Effect of Final Certificate
- 1.10 Effect of certificates other than Final Certificate
- 1.11 Consents and approvals
- 1.12 Applicable law

## Section 2 Carrying out the Works

### Contractor's Obligations

- 2.1 General obligations
- 2.2 Materials, goods and workmanship
- 2.3 Fees and charges

### Possession

- 2.4 Date of Possession – progress
- 2.5 Deferment of possession
- 2.6 Early use by Employer
- 2.7 Work not forming part of the Contract

### Supply of Documents, Setting Out etc.



- 2·8 Contract Documents
- 2·9 Levels and setting out of the Works
- 2·10 Construction information
- 2·11 Further drawings, details and instructions

**Errors, Inconsistencies and Divergences**

- 2·12 Bills of Quantities
- 2·13 Instructions on errors, omissions and inconsistencies
- 2·14 Instructions – additions to Contract Sum, exceptions
- 2·15 Divergences from Statutory Requirements
- 2·16 Emergency compliance with Statutory Requirements

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

- 2·17 Materials and goods – on site
- 2·18 Materials and goods – off site

**Adjustment of Completion Date**

- 2·19 Notice of delay – extensions
- 2·20 Relevant Events

**Practical Completion, Lateness and Liquidated Damages**

- 2·21 Practical completion and certificates
- 2·22 Certificate of non-completion
- 2·23 Liquidated damages for non-completion
- 2·24 Repayment of liquidated damages

**Partial Possession by Employer**

- 2·25 Contractor's consent
- 2·26 Practical completion date
- 2·27 Defects etc. – Relevant Part
- 2·28 Insurance – Relevant Part
- 2·29 Liquidated damages – Relevant Part

**Defects**

- 2·30 Rectification
- 2·31 Certificate of making good

**CDP Design Work**

- 2·32 As-built Drawings
- 2·33 Copyright and use
- 2·34 Design liabilities and limitation

**Section 3 Control of the Works****Access and Representatives**

- 3·1 Access for Architect/Contract Administrator
- 3·2 Person-in-charge
- 3·3 Clerk of works
- 3·4 Replacement of Architect/Contract Administrator or Quantity Surveyor

**Sub-Contracting**

- 3·5 Consent to sub-contracting
- 3·6 Conditions of sub-contracting
- 3·7 Named Sub-Contractors

**Architect/Contract Administrator's Instructions**

- 3·8 Compliance with instructions
- 3·9 Non-compliance with instructions
- 3·10 Provisions empowering instructions
- 3·11 Instructions requiring Variations
- 3·12 Postponement of work
- 3·13 Instructions on Provisional Sums

- 3-14 Inspection – tests
- 3-15 Work not in accordance with the Contract
- 3-16 Instructions as to removal of work etc.
- 3-17 Exclusion of persons from the Works

### **3-18 CDM Regulations**

## **Section 4 Payment**

### **Contract Sum and Adjustment**

- 4-1 Work included in Contract Sum
- 4-2 Adjustment only under the Conditions
- 4-3 Adjustment of Contract Sum
- 4-4 Fluctuations – Named Sub-Contractors

### **Taxes**

- 4-5 VAT
- 4-6 Construction Industry Scheme (CIS)

### **Payments, Certificates and Notices – general provisions**

- 4-7 Advance payment
- 4-8 Interim payments – due dates and certificates
- 4-9 Interim payments – calculation of sums due
- 4-10 Listed Items
- 4-11 Contractor's Payment Applications and Payment Notices
- 4-12 Interim and final payments – final date and amount
- 4-13 Pay Less Notices and other general provisions
- 4-14 Contractor's right of suspension

### **Loss and Expense**

- 4-15 Matters materially affecting regular progress
- 4-16 Notification and ascertainment
- 4-17 Relevant Matters
- 4-18 Amounts ascertained – addition to Contract Sum
- 4-19 Reservation of Contractor's rights and remedies

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

- 4-20 Final adjustment
- 4-21 Final Certificate and final payment

## **Section 5 Variations**

### **General**

- 5-1 Definition of Variations
- 5-2 Valuation of Variations and provisional sum work

### **The Valuation Rules**

- 5-3 Measurable Work
- 5-4 Daywork
- 5-5 Change of conditions for other work
- 5-6 Additional provisions
- 5-7 Contractor's Designed Portion – Valuation

## **Section 6 Injury, Damage and Insurance**

### **Personal Injury and Property Damage**

- 6-1 Contractor's liability – personal injury or death
- 6-2 Contractor's liability – loss, injury or damage to property
- 6-3 Loss or damage to Existing Structures or their contents

### **Insurance against Personal Injury and Property Damage**



- 6-4 Contractor's insurance of his liability
- 6-5 Contractor's insurance of liability of Employer
- 6-6 Excepted Risks

**Insurance of the Works and Existing Structures**

- 6-7 Insurance Options and period
- 6-8 Related definitions
- 6-9 Sub-contractors – Specified Perils cover under Works Insurance Policies
- 6-10 Terrorism Cover – policy extensions and premiums
- 6-11 Terrorism Cover – non-availability – Employer's options
- 6-12 Evidence of insurance
- 6-13 Loss or damage – insurance claims and reinstatement
- 6-14 Loss or damage to Existing Structures – right of termination

**Joint Fire Code – compliance**

- 6-15 Application of clauses
- 6-16 Compliance with Joint Fire Code
- 6-17 Breach of Joint Fire Code – Remedial Measures
- 6-18 Joint Fire Code – amendments/revisions

**CDP Professional Indemnity Insurance**

- 6-19 Obligation to insure
- 6-20 Increased cost and non-availability

**Section 7 Assignment, Performance Bonds and Guarantees and Collateral Warranties****7-1 Assignment****7-2 Performance Bonds and Guarantees****Collateral Warranties**

- 7-3 Rights Particulars
- 7-4 Notices
- 7-5 Execution of Collateral Warranties
- 7-6 Contractor's Warranties – Purchasers and Tenants
- 7-7 Contractor's Warranty – Funder
- 7-8 Sub-Contractors' Warranties

**Section 8 Termination****General**

- 8-1 Meaning of insolvency
- 8-2 Notices under section 8
- 8-3 Other rights, reinstatement

**Termination by Employer**

- 8-4 Default by Contractor
- 8-5 Insolvency of Contractor
- 8-6 Corruption and regulation 73(1)(b) of the PC Regulations
- 8-7 Consequences of termination under clauses 8-4 to 8-6
- 8-8 Employer's decision not to complete the Works

**Termination by Contractor**

- 8-9 Default by Employer
- 8-10 Insolvency of Employer

**8-11 Termination by either Party and regulations 73(1)(a) and 73(1)(c) of the PC Regulations****8-12 Consequences of Termination under clauses 8-9 to 8-11, etc.**

**Section 9 Settlement of Disputes**

**9-1 Mediation**

**9-2 Adjudication**

**Arbitration**

9-3 Conduct of arbitration

9-4 Notice of reference to arbitration

9-5 Powers of Arbitrator

9-6 Effect of award

9-7 Appeal – questions of law

9-8 Arbitration Act 1996

**Schedules**

**Schedule 1 Insurance Options**

Insurance Option A

Insurance Option B

Insurance Option C

**Schedule 2 Named Sub-Contractors**

**Schedule 3 Forms of Bonds**

Part 1: Advance Payment Bond

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

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

**Schedule 5 Supplemental Provisions**

**Schedule 6 Design Submission Procedure**

# Agreement

This Agreement is made the \_\_\_\_\_ 20\_\_\_\_

**Between**      **The Employer** The Police and Crime Commissioner for Humberside

of The Lawns,

Harland Way,

Cottingham

HU16 5SN

**And**              **The Contractor** GEO HOULTON & SONS LIMITED

(Company No. 01632717)<sup>[1]</sup>

whose registered office is at Hyperion Street

Hull

East Yorkshire

HU9 1BD

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

## Recitals

### Whereas

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

Partial internal refurbishment of accommodation, communal and operational areas at Bridlington Fire Station.

at

Bessingby Gate  
Bridlington  
YO16 4TS ('the Works')

and has had drawings and bills of quantities or a specification or work schedules prepared which show and describe the work to be done;

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

Elements of the Mechanical & Electrical Works at each station ('the Contractor's Designed Portion');

**Third** the drawings are listed in Drawing Register annexed to this Contract ('the Contract Drawings')

and have for identification been signed or initialed by or on behalf of each Party<sup>[4]</sup>;

**Fourth** the Employer has supplied to the Contractor:

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

~~the Specification<sup>[6]</sup>~~

~~the Work Schedules<sup>[7]</sup>~~

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

~~particulars of the Intermediate Named Sub-Contract Tender and Agreement ICSUB/NAM (comprising a certified copy of the tender for work included in the Bills of Quantities, Specification or Work Schedules for pricing by the Contractor and for which the Contractor is required under clause 3-7 to employ a named person, together with the Intermediate Named Sub-Contract Invitation to Tender and Tender (ICSUB/NAM/IT and ICSUB/NAM/T) as completed and the Tender Documents referred to in them)<sup>[8]</sup>;~~

**Fifth** the Contractor has:

<sup>[2]</sup> State nature and location of intended works.

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

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

<sup>[5]</sup> Delete as appropriate.

<sup>[6]</sup> Delete if no items specifying a Named Sub-Contractor are included in the documents. See also footnote [3] above and the Intermediate Building Contract Guide.

(A) priced the ~~Bills of Materials/Specification~~ Work Schedules<sup>[1]</sup> (as priced, 'the Priced Document'), the total of such pricing being the Contract Sum stated in Article 2 ('Pricing Option A'); or

~~(B) stated the sum he will require for carrying out the Works shown on the Contract Drawings and described in the Specification, that sum being the Contract Sum stated in Article 2, and has supplied to the Employer a Contract Sum Analysis in accordance with the stated requirements of the Employer or a Schedule of Rates on which that sum is based ('the Priced Document') ('Pricing Option B');~~

but a priced schedule of activities (the 'Activity Schedule') has not been provided;

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

- Sixth** in response to the Employer's Requirements the Contractor has supplied to the Employer:
- documents showing and describing the Contractor's proposals for the design and construction of the Contractor's Designed Portion ('the Contractor's Proposals'); and
  - an analysis of the portion of the Contract Sum relating to the Contractor's Designed Portion ('the CDP Analysis');
- Seventh** the Employer has examined the Contractor's Proposals and, subject to the Conditions, is satisfied that they appear to meet the Employer's Requirements.<sup>[2]</sup> The Employer's Requirements, the Contractor's Proposals and the CDP Analysis have each for identification been signed or initialled by or on behalf of each Party and particulars of each are given in the Contract Particulars;
- Eighth** for the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004, the status of the Employer is, as at the Base Date, that stated in the Contract Particulars;
- Ninth** a schedule (the Information Release Schedule) which states the information the Architect/Contract Administrator will release and the time of that release is not provided;
- Tenth** for the purposes of the Construction (Design and Management) Regulations 2015 (the 'CDM Regulations') the status of the project that comprises or includes the Works is stated in the Contract Particulars;
- Eleventh** the Works are not divided into Sections;
- Twelfth** where so stated in the Contract Particulars, this Contract is supplemented by the Framework Agreement identified in those particulars;
- Thirteenth** whether any of Supplemental Provisions 1 to 6 apply is stated in the Contract Particulars;

<sup>[1]</sup> Delete as appropriate.

<sup>[2]</sup> Where the Employer has accepted a divergence from his requirements in the proposals submitted by the Contractor, the divergence should be removed by amending the Employer's Requirements before the Contract is executed.



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

Three hundred and sixty four thousand, eight hundred and sixty six pounds and ninety three pence, (£364,866.93) ('the Contract Sum')

or such other sum as becomes payable under this Contract.

#### Article 3: Architect/Contract Administrator

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

Rider Levett Bucknall (UK) Ltd

of

6th Floor, Fountain Precinct, Sheffield, S1 2JA

or, if he ceases to be the Architect/Contract Administrator, such other person as the Employer nominates in accordance with clause 3-4 of the Conditions.

#### Article 4: Quantity Surveyor

For the purposes of this Contract the Quantity Surveyor<sup>(1)</sup> is

Rider Levett Bucknall (UK) Ltd

of

6th Floor, Fountain Precinct, Sheffield, S1 2JA

or, if he ceases to be the Quantity Surveyor, such other person as the Employer nominates in accordance with clause 3-4 of the Conditions.

#### Article 5: 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 6: Principal Contractor

<sup>(1)</sup> If the Architect/Contract Administrator is to exercise the Quantity Surveyor's functions under the Conditions, his name should be inserted in Article 4.

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 7: Adjudication**

If any dispute or difference arises under this Contract, either Party may refer it to adjudication in accordance with clause 9.2.<sup>113</sup>

#### **Article 8: Arbitration**

Where Article 8 applies<sup>114</sup>, then, subject to Article 7 and the exceptions set out below, any dispute or difference between the Parties of any kind whatsoever arising out of or in connection with this Contract shall be referred to arbitration in accordance with clauses 9.3 to 9.8 and the JCT 2016 edition of the Construction Industry Model Arbitration Rules (CIMAR). The exceptions to this Article 8 are:

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

#### **Article 9: Legal proceedings<sup>114</sup>**

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

<sup>113</sup> As to adjudication in cases where the Employer is a residential occupier within the meaning of section 106 of the Housing Grants, Construction and Regeneration Act 1996, see the Intermediate Building Contract Guide.

<sup>114</sup> If it is intended, subject to the right of adjudication and exceptions stated in Article 8, that disputes or differences should be determined by arbitration and not by legal proceedings, the Contract Particulars must state that Article 8 and clauses 9.3 to 9.8 apply and the words "do not apply" must be deleted. If the Parties wish any dispute or difference to be determined by the courts of another jurisdiction the appropriate amendment should be made to Article 9 (see also clause 1.12).

## Contract Particulars

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

<i>Clause etc.</i>	<i>Subject</i>	
Fourth Recital	Employer's Requirements (State reference numbers and dates or other identifiers of the relevant documents.) <sup>[14]</sup>	<u>M&amp;E Specification</u>
Sixth Recital	Contractor's Proposals (State reference numbers and dates or other identifiers of the relevant documents.) <sup>[14]</sup>	<u>To be issued</u>
Sixth Recital	CDP Analysis (State reference numbers and dates or other identifiers of the relevant documents.) <sup>[14]</sup>	<u>M&amp;E Specification</u>
Eighth Recital and clause 4.6	Construction Industry Scheme (CIS)	Employer at the Base Date * is not a 'contractor' for the purposes of the CIS
Tenth Recital	CDM Regulations <sup>[15]</sup>	the project * is notifiable
Twelfth Recital	Framework Agreement (if applicable) (State date, title and parties.)	<u>YorBuild 2 Framework Agreement</u>
Thirteenth Recital and Schedule 5	Supplemental Provisions <sup>[17]</sup> (Where neither entry against one of Supplemental Provisions 1 to 6 below is deleted, that Supplemental Provision applies.)	
	Collaborative working	* Supplemental Provision 1 does not apply
	Health and safety	* Supplemental Provision 2 does not apply
	Cost savings and value improvements	Supplemental Provision 3

<sup>[14]</sup> If the relevant document or set of documents takes the form of an Annex to this Contract, it is sufficient to refer to that Annex.

<sup>[15]</sup> 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.

<sup>[17]</sup> 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.

		* does not apply
	Sustainable development and environmental considerations	* Supplemental Provision 4 does not apply
	Performance Indicators and monitoring	* Supplemental Provision 5 does not apply
	Notification and negotiation of disputes	* Supplemental Provision 6 does not apply
Article 8	Arbitration <i>(If neither entry is deleted, Article 8 and clauses 9.3 to 9.8 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it <u>must</u> be stated that Article 8 and clauses 9.3 to 9.8 apply.)</i> <sup>[14]</sup>	* Article 8 and clauses 9.3 to 9.8 (Arbitration) apply
1.1	Base Date	<u>3 August 2020</u>
1.1	BIM Protocol (where applicable) <i>(State title, edition, date or other identifiers of the relevant documents.)</i>	Not applicable
1.1	Date for Completion of the Works <i>(where completion by Sections does not apply)</i>	<u>29 January 2021</u>
1.7	Addresses for service of notices by the Parties <i>(If none is stated, the address in each case, subject to clause 1.7.3, shall be that shown at the commencement of the Agreement.)</i> <sup>[20]</sup>	Employer <u>HFRS Joint Estates, Police HQ, Wyke Way, North Ferriby HU14 3BQ</u> Contractor <u>Hyperion St, Hull HU9 1BD</u>
2.4	Date of Possession of the site <i>(where possession by Sections does not apply)</i>	<u>12 October 2020</u>
2.5	Deferment of possession of the site <i>(where possession by Sections does not apply)</i>	* Clause 2.5 does not apply
2.23.2	Liquidated damages <i>(where completion by Sections does not apply)</i>	at the rate of <u>£1000 per week or part thereof</u>
2.30	Rectification Period <i>(where completion by Sections does not apply) (If no other period is stated, the period is 6 months.)</i>	<u>12 months</u> months from the date of practical completion of the Works

<sup>[14]</sup> On factors to be taken into account by the Parties in considering whether disputes are to be determined by arbitration or by legal proceedings, see the Intermediate Building Contract Guide. See also footnote [14].

<sup>[20]</sup> As to service of notices etc. outside the United Kingdom, see the Intermediate Building Contract Guide.

2-34-3	Contractor's Designed Portion: Limit of Contractor's liability for loss of use etc. (if any)	<u>£1,000,000</u>
4-3 and 4-9	Fluctuations Provision (Unless another provision or entry is selected, Schedule 4 applies.)	<ul style="list-style-type: none"> <li>* <del>Schedule 4 (Contribution, levy and tax fluctuations) applies/</del></li> <li>* <del>no Fluctuations Provision applies/</del></li> <li>* <del>the following Fluctuations Provision applies</del></li> </ul>
4-8-1	Interim payments – Interim Valuation Dates (If no date is stated, the first Interim Valuation Date is one month after the Date of Possession.)	<p>The first Interim Valuation Date is <u>30 October 2020</u> and thereafter the same date in each month or the nearest Business Day in that month<sup>[22]</sup></p>
4-9-1	Interim payments – percentages of value	
	Where the Works, or those works in a Section, have not achieved practical completion, the percentage of total value in respect of the works that have not achieved practical completion is (The percentage is 95 per cent unless a different rate is stated.)	<u>95 per cent</u> <sup>[22]</sup>
	Where the Works, or those works in a Section or Relevant Part, have achieved practical completion, the percentage in respect of the completed works is (The percentage is 97½ per cent unless a different rate is stated.)	<u>97.5 per cent</u> <sup>[22]</sup>
4-10-4	Listed Items – uniquely identified (Delete the entry if no bond is required.)	* No bond is required for Listed Items uniquely identified.
4-10-5	Listed Items – not uniquely identified (Delete the entry if clause 4-10-5 does not apply.)	* No bond is required for Listed Items not uniquely identified.
6-4-1	Contractor's Public Liability insurance: injury to persons or property – the required level of cover is not less than	<u>£5,000,000</u> for any one occurrence or series of occurrences arising out of one event
6-5-1	Insurance – liability of Employer (Not required unless it is stated that it may be required and the minimum amount of indemnity is	<ul style="list-style-type: none"> <li>* Insurance is not required</li> </ul>

<sup>[22]</sup> The first Interim Valuation Date should not be more than one month after the Date of Possession.

<sup>[23]</sup> An Insertion is needed here only if the default position is not to apply. If no retention is required, insert '100' in the entries for clause 4-9-1.

stated)

## 6.7 and Schedule 1 Works Insurance – Insurance Option applicable

## Schedule 1:

- \* ~~Insurance Option A applies/~~
- \* ~~Insurance Option B applies/~~
- \* Insurance Option C applies

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

15 per cent

Where Insurance Option C applies, paragraph C.1<sup>[25]</sup>  
(Unless otherwise stated, paragraph C.1 applies. If it is not to apply, state the reference number and date or other identifier of the replacement document(s).)

- \* applies

6.10 and Schedule 1 Terrorism Cover – details of the required cover  
(Unless otherwise stated, Pool Re Cover is required.)<sup>[26]</sup>

are set out in the following document(s)

## 6.15 Joint Fire Code

- \* The Joint Fire Code does not apply<sup>[27]</sup>

## 6.19 Contractor's Designed Portion (CDP) Professional Indemnity insurance

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

- \* Amount of indemnity required relates to claims or series of claims arising out of one event

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

and is  
£1,000,000

Cover for pollution and contamination claims

- \* is not required

<sup>[25]</sup> Insurance Option C is for use in the case of alterations of or extensions to Existing Structures. Under that option, the Employer is required to take out a Joint Names Policy for All Risks Insurance for the Works and also, if paragraph C.1 applies, a Joint Names Policy to insure the Existing Structures and their contents owned by him or for which he is responsible against loss or damage by the Specified Perils. Some Employers (e.g. tenants and some homeowners) may not be able readily to obtain the Joint Names cover required under paragraph C.1. Where that is the case, alternative arrangements and amendments will be necessary. See the Intermediate Building Contract Guide.

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

<sup>[26]</sup> Obtaining Terrorism Cover for the Works, which unless otherwise agreed is necessary in order to comply with the requirements of Insurance Option A, B or C, will involve an additional premium and in certain situations has been difficult to effect. If any difficulty might arise, there should be immediate pre-contract discussion between the Parties and their insurance advisers. See the Intermediate Building Contract Guide.

<sup>[27]</sup> Where Insurance Option A applies these entries are made on information supplied by the Contractor.

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

	Expiry of required period of CDP Professional Indemnity insurance is <i>(If no period is selected, the expiry date shall be 6 years from the date of practical completion of the Works.)</i>	* 12 years
7.2.1	Performance bond or guarantee from bank or other approved surety <sup>[20]</sup> <i>(If this entry is not completed or the required form is not specified, a performance bond or guarantee is not required.)</i>	* is not required
7.2.2	Guarantee from the Contractor's parent company	* is not required
7.3	Collateral Warranties – details of the requirements for the grant by the Contractor and sub-contractors of P&T Rights, Funder Rights and/or (In the case of sub-contractors) Employer Rights in respect of the Works by collateral warranties ('Rights Particulars') are set out in the following document <sup>[20]</sup> <i>(State reference number and date or other identifier of the relevant document.)</i>	N/A
8.9.2	Period of suspension <i>(If none is stated, the period is 2 months.)</i>	<u>2 months</u>
8.11.1.1 to 8.11.1.5	Period of suspension <i>(If none is stated, the period is 2 months.)</i>	<u>2 months</u>
9.2.1	Adjudication <sup>[20]</sup>	The Adjudicator is
	Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or	* <del>Royal Institute of British Architects</del> * The Royal Institution of Chartered Surveyors

<sup>[20]</sup> If a performance bond is required, the identity of the issuer as well as the operative terms of the bond should be agreed prior to execution of the contract.

<sup>[20]</sup> The relevant Rights Particulars should identify the beneficiaries (by name, class or description) and the sub-contractors who are also required to grant rights by way of Collateral Warranties, state in those cases where the default provision is not to apply which alternative provision is to apply in its place and give any other details required to complete the terms of the warranties that are to be given. A Model Form for the Rights Particulars is included in the Intermediate Building Contract Guide and is also available on the JCT website [www.jcttd.co.uk](http://www.jcttd.co.uk).

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

Directions may be needed as to mode of execution of sub-contracts and/or collateral warranties by relevant sub-contractors. See also the Intermediate Building Contract Guide.

<sup>[20]</sup> 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.

unable to act (whenever that is established)<sup>[21]</sup>  
*(Where an Adjudicator is not named and a  
nominating body has not been selected, the  
nominating body shall be one of the bodies listed  
opposite selected by the Party requiring the  
reference to adjudication.)*

- \* ~~constructionadjudicators.com<sup>[22]</sup>~~
- \* ~~Association of Independent Construction  
Adjudicators<sup>[23]</sup>~~
- \* ~~Chartered Institute of Arbitrators~~

9-4-1

Arbitrator<sup>[24]</sup> — appointer of Arbitrator (and of any  
replacement)<sup>[25]</sup>  
*(If no appointor is selected, the appointor shall be  
the President or a Vice-President of the Royal  
Institute of British Architects.)*

- President or a Vice-President:
- \* ~~Royal Institute of British Architects~~
  - \* The Royal Institution of Chartered Surveyors
  - \* ~~Chartered Institute of Arbitrators~~

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

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

[23] Association of Independent Construction Adjudicators is controlled by and acts as an agent of the National Specialist Contractors' Council for the purpose of the nomination of adjudicators.

[24] This only applies where the Contract Particulars state (against the reference to Article 8) that Article 8 and clauses 9-3 to 9-8 (Arbitration) apply.

[25] Delete all but one of the bodies asterisked.

## **Attestation**

### **Note on Execution**

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

#### **Execution under hand**

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

#### **Execution as a Deed**

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

#### **Other forms of Attestation**

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

## Notes on Execution as a Deed

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

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

*Execution as a Deed***Executed as a Deed by the Employer**namely ' The Police and Crime Commissioner for Humberside

(C) by attested signature of a single Director of the company i.e.

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

In the presence of

Witness' signature L. Foster (Print name) LAURA FOSTERWitness' address 42, the willows, Leeds, LS10 4FT

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

**Execution as a Deed****Executed as a Deed by the Contractor**namely <sup>1</sup> GEO HOULTON & SONS LIMITED(A) acting by a Director and the Company Secretary/two Directors of the company <sup>2,3</sup>

PAUL GIBSON  
(Print name of signatory)

Signature

Director

and

Mike Johnson  
(Print name of signatory)

Signature

Company Secretary/Director

---

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

# Conditions

## Section 1 Definitions and Interpretation

### Definitions

- 1-1** Unless the context otherwise requires or the Agreement or these Conditions specifically provide otherwise, the following words and phrases, where they appear in capitalised form in the Agreement or these Conditions, shall have the meanings stated or referred to below:

<i>Word or phrase</i>	<i>Meaning</i>
<b>Activity Schedule:</b>	see the <b>Fifth Recital</b> .
<b>Adjudicator:</b>	an individual appointed under <b>clause 9-2</b> as the Adjudicator.
<b>Agreement:</b>	the Agreement to which these Conditions are annexed, including its Recitals, Articles and Contract Particulars.
<b>All Risks Insurance:</b>	see <b>clause 6-8</b> .
<b>Approximate Quantity:</b>	a quantity in any Contract Bills there identified as an approximate quantity.
<b>Arbitrator:</b>	an individual appointed under <b>clause 9-4</b> as the Arbitrator.
<b>Architect/Contract Administrator:</b>	the person named in <b>Article 3</b> or any successor nominated or otherwise agreed under <b>clause 3-4</b> .
<b>Article:</b>	an article in the <b>Agreement</b> .
<b>Base Date:</b>	the date stated as such in the <b>Contract Particulars</b> (against the reference to <b>clause 1-1</b> ) <sup>[36]</sup> .
<b>BIM Protocol:</b>	(where applicable) the document identified as such in the <b>Contract Particulars</b> (against the reference to <b>clause 1-1</b> ).
<b>Business Day:</b>	any day which is not a Saturday, a Sunday or a Public Holiday.
<b>C-1 Replacement Schedule:</b>	(where applicable) the insurance schedule and/or other documents identified as such in the <b>Contract Particulars</b> (against the reference to <b>clause 6-7</b> and <b>Schedule 1</b> ).
<b>CDM Regulations:</b>	the Construction (Design and Management) Regulations 2015.
<b>CDP Analysis:</b>	see the <b>Sixth Recital</b> and the <b>Contract Particulars</b> .
<b>CDP Works:</b>	that part of the Works comprised in the Contractor's <b>Designed</b>

<sup>[36]</sup> The Base Date is relevant (inter alia) to **clause 2-15-2-1** (changes in Statutory Requirements) and the JCT fluctuations provision (**Schedule 4**) and it helps to determine the edition/issue and/or version of documents relevant to this Contract, e.g. the Measurement Rules and definitions of the prime cost of daywork (**clause 5-4**).

Portion.

<b>Completion Date:</b>	the Date for Completion of the Works or of a Section as stated in the <b>Contract Particulars</b> or such other date as is fixed under <b>clause 2.19</b> .
<b>Conditions:</b>	the clauses set out in sections 1 to 9 of these Conditions, together with and including the Schedules hereto.
<b>Construction Industry Scheme (or 'CIS'):</b>	see the <b>Elighth Recital</b> .
<b>Construction Phase Plan:</b>	the plan referred to in regulation 2 of the CDM Regulations, including any updates and revisions.
<b>Consultants:</b>	see <b>clause 7.3.2</b> .
<b>Contract Bills:</b>	(where Pricing Option A applies and Bills of Quantities form the Priced Document) those bills as priced by the Contractor (see the <b>Fourth and Fifth Recitals</b> ).
<b>Contract Documents:</b>	the Agreement, these Conditions, the Contract Drawings, the Employer's Requirements, the Contractor's Proposals and the CDP Analysis, together with: (where applicable) the BIM Protocol; (where Pricing Option A applies) the Priced Document or (where Pricing Option B applies) the Specification; and any Invitation to Tender and Tender to and by a Named Sub-Contractor in forms ICSUB/NAM/IT and ICSUB/NAM/T as referred to in the <b>Fourth Recital</b> .
<b>Contract Drawings:</b>	the drawings referred to in the <b>Third Recital</b> .
<b>Contract Particulars:</b>	the particulars in the Agreement and there described as such, including the entries made by the Parties.
<b>Contract Sum:</b>	the sum stated in <b>Article 2</b> .
<b>Contract Sum Analysis:</b>	see the <b>Fifth Recital</b> .
<b>Contractor:</b>	the person named as Contractor in the Agreement.
<b>Contractor's Design Documents:</b>	the drawings, details and specifications of materials, goods and workmanship and other related documents and information prepared by or for the Contractor in relation to the Contractor's Designed Portion (including such as are contained in the Contractor's Proposals or referred to in clause 2.10.2), together, where applicable, with any other design documents or information to be provided by him under the BIM Protocol.
<b>Contractor's Designed Portion:</b>	see the <b>Second Recital</b> .
<b>Contractor's Persons:</b>	the Contractor's employees and agents, all other persons employed or engaged on or in connection with the Works or any part of them and any other person properly on the site in connection therewith, excluding the Architect/Contract Administrator, the Quantity Surveyor, the Employer, Employer's Persons and any Statutory Undertaker.
<b>Contractor's Proposals:</b>	see the <b>Sixth Recital</b> and the <b>Contract Particulars</b> .

<b>Date for Completion:</b>	the date stated as such date in the <b>Contract Particulars</b> (against the reference to <b>clause 1-1</b> ) in relation to the Works or a Section.
<b>Date of Possession:</b>	the date stated as such date in the <b>Contract Particulars</b> (against the reference to <b>clause 2-4</b> ) in relation to the Works or a Section.
<b>Design Submission Procedure:</b>	such procedure as is specified by the BIM Protocol or, where that is not applicable, the procedure set out in <b>Schedule 6</b> , subject to any modifications of that procedure specified in the <b>Contract Documents</b> .
<b>Employer:</b>	the person named as Employer in the <b>Agreement</b> .
<b>Employer Rights:</b>	any rights in favour of the Employer to be granted by sub-contractors in accordance with the Rights Particulars, by way of JCT collateral warranty SCWa/E.
<b>Employer's Persons:</b>	all persons employed, engaged or authorised by the Employer, excluding the Contractor, Contractor's Persons, the Architect/Contract Administrator, the Quantity Surveyor and any Statutory Undertaker.
<b>Employer's Requirements:</b>	see the <b>Fourth Recital</b> and the <b>Contract Particulars</b> .
<b>Excepted Risks:</b>	see <b>clause 6-8</b> .
<b>Existing Structures:</b>	any and all existing structures within which the Works or part of them are to be executed or to which they are to form an extension, together with any Section for which a Section Completion Certificate has been issued and, as from the Relevant Date, any Relevant Part taken into possession under <b>clause 2-25</b> .
<b>Final Certificate:</b>	see <b>clauses 1-9</b> and <b>4-21</b> .
<b>Finance Agreement:</b>	the agreement between the Funder and the Employer for the provision of finance for the Works.
<b>Fluctuations Provision:</b>	the provision (if any) specified by the <b>Contract Particulars</b> (against the reference to <b>clauses 4-3</b> and <b>4-9</b> ).
<b>Funder:</b>	the person named or otherwise sufficiently identified as such (whether by class or description) in or by the Rights Particulars.
<b>Funder Rights:</b>	the rights in favour of the Funder to be granted by the Contractor by JCT collateral warranty CWa/F or those to be granted by sub-contractors in accordance with the Rights Particulars.
<b>Information Release Schedule:</b>	the schedule referred to in the <b>Ninth Recital</b> .
<b>Insolvent:</b>	see <b>clause 8-1</b> .
<b>Insurance Options A, B and C:</b>	the provisions relating to insurance of the Works and (where applicable) Existing Structures set out in <b>Schedule 1</b> .
<b>Interest Rate:</b>	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.
<b>Interim Certificate:</b>	any of the certificates to which <b>clause 4-8-2</b> refers.
<b>Interim Valuation Date:</b>	each date as specified by the <b>Contract Particulars</b> (against the reference to <b>clause 4-8-1</b> ).

Joint Fire Code:	the Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Renovation, published by Construction Industry Publications Ltd and the Fire Protection Association, current at the Base Date.
Joint Names Policy:	see clause 6-8.
Listed Items:	materials, goods and/or items prefabricated for inclusion in the Works which are listed as such items by the Employer in a list supplied to the Contractor and annexed (where Pricing Option A applies) to the Priced Document or (where Pricing Option B applies) to the Specification.
Local or Public Authority:	a body that is a 'contracting authority' as defined by the PC Regulations.
Measurement Rules:	the RICS New Rules of Measurement – Detailed Measurement for Building Works (NRM2), in the form published at the Base Date, unless otherwise stated in the Contract Documents.
Named Sub-Contract Conditions:	Intermediate Named Sub-Contract Conditions ICSUB/NAM/C (as incorporated by reference in an Intermediate Named Sub-Contract Agreement ICSUB/NAM/A).
Named Sub-Contractor:	see the Fourth Recital and clause 3-7.
P&T Rights:	the rights in favour of a Purchaser or Tenant to be granted by the Contractor by JCT collateral warranty CWA/P&T or those to be granted by sub-contractors in accordance with the Rights Particulars.
Parties:	the Employer and the Contractor together.
Party:	either the Employer or the Contractor.
Pay Less Notice:	see clauses 4-12-5 and 4-13-1.
Payment Application:	see clause 4-11-1.
Payment Certificate:	an Interim Certificate or the Final Certificate.
Payment Notice:	see clause 4-11-2.
PC Regulations:	the Public Contracts Regulations 2015.
Practical Completion Certificate:	see clause 2-21.
Priced Document:	see the Fifth Recital.
Pricing Options A and B:	see the Fifth Recital.
Principal Contractor:	the Contractor or other contractor named in Article 6 or any successor appointed by the Employer.
Principal Designer:	the Architect/Contract Administrator or other person named in Article 5 or any successor appointed by the Employer.
Provisional Sum:	where the Contract Documents include Contract Bills, includes a sum provided in such bills for work, whether or not identified as being for defined or undefined work within the meaning of paragraph 2-9-1 of the Measurement Rules; and where the Contract Documents do not include Contract Bills,

	includes a sum provided for work that the Employer may or may not decide to have carried out, or which cannot be accurately specified in the Contract Documents.
<b>Public Holiday:</b>	Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday. <sup>[37]</sup>
<b>Purchaser:</b>	any person named or otherwise sufficiently identified as such (whether by class or description) in or by the Rights Particulars to whom the Employer transfers or agrees to transfer his interest in all or part of the Works.
<b>Quantity Surveyor:</b>	the person named in Article 4 or any successor nominated or otherwise agreed under clause 3-4.
<b>Recitals:</b>	the recitals in the Agreement.
<b>Rectification Period:</b>	the period stated as such period in the Contract Particulars (against the reference to clause 2-30) in relation to the Works or (where applicable) a Section.
<b>Relevant Date:</b>	see clause 2-25.
<b>Relevant Event:</b>	see clause 2-20.
<b>Relevant Matter:</b>	see clause 4-17.
<b>Relevant Part:</b>	see clause 2-25.
<b>Rights Particulars:</b>	see clause 7-3 and the Contract Particulars for that clause.
<b>Schedule of Rates:</b>	see the Fifth Recital.
<b>Scheme:</b>	Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998.
<b>Sections:</b>	(where applicable) the Sections into which the Works have been divided, as referred to in the Eleventh Recital and the Contract Particulars.
<b>Section Completion Certificate:</b>	see clause 2-21-2.
<b>Section Sum:</b>	see clause 2-29 and the Contract Particulars.
<b>Site Materials:</b>	all unfixd materials and goods delivered to and placed on or adjacent to the Works which are intended for incorporation therein.
<b>Specification:</b>	where applicable under Pricing Option A, the specification as priced and, where Pricing Option B applies, the unpriced specification. (See the Fourth and Fifth Recitals.)
<b>Specified Perils:</b>	see clause 6-8.
<b>Statutory Requirements:</b>	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

<sup>[37]</sup> Amend as necessary if different Public Holidays are applicable.

with whose systems the Works are, or are to be, connected.

<b>Statutory Undertaker:</b>	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.
<b>Tenant:</b>	any person named or otherwise sufficiently identified as such (whether by class or description) in or by the Rights Particulars to whom the Employer grants or agrees to grant a leasehold interest in all or part of the Works.
<b>Terrorism Cover:</b>	see clause 6-8.
<b>Valuation:</b>	a valuation by the Quantity Surveyor in accordance with the Valuation Rules, pursuant to clause 5-2.
<b>Valuation Rules:</b>	see clauses 5-3 to 5-7.
<b>Variation:</b>	see clause 5-1.
<b>VAT:</b>	Value Added Tax.
<b>Works:</b>	the works briefly described in the First and Second Recitals, as more particularly shown, described or referred to in the Contract Documents, including any changes made to those works in accordance with this Contract.
<b>Works Insurance Policy:</b>	the Joint Names Policy or policies covering the Works and Site Materials to be effected and maintained under whichever of Insurance Options A, B or C applies under this Contract.
<b>Work Schedules:</b>	where applicable under Pricing Option A, the work schedules as priced (see the Fourth and Fifth Recitals).

## Interpretation

### Reference to clauses etc.

- 1-2 Unless otherwise stated, a reference in the Agreement or in these Conditions to a clause or Schedule is to that clause in or Schedule to these Conditions and, unless the context otherwise requires, a reference in a Schedule to a paragraph is to that paragraph of that Schedule.

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

- 1-3 The Agreement and these Conditions are to be read as a whole. Nothing contained in any other Contract Document or any Framework Agreement, irrespective of their terms, shall override or modify the Agreement or these Conditions.

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

- 1-4 In the Agreement and these Conditions, unless the context otherwise requires:
- 1 the headings, notes and footnotes are included for convenience only and shall not affect the interpretation of this Contract;
  - 2 the singular includes the plural and vice versa;
  - 3 a gender includes any other gender;
  - 4 a reference to a 'person' includes any individual, firm, partnership, company and any other body corporate;
  - 5 a reference to a statute, statutory instrument or other subordinate legislation ('legislation') is to

such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification, and including corresponding legislation in any other relevant part of the United Kingdom; and

- 6 references to documents shall, where there is a BIM Protocol or other protocol relating to the supply of documents or information, be deemed to include information in a form or medium conforming to that protocol.

#### **Reckoning periods of days**

- 1·5 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.

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

- 1·6 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.

#### **Notices and other communications**

- 1·7
  - 1 Any notice or other communication between the Parties, or by or to the Architect/Contract Administrator or Quantity Surveyor, that is expressly referred to in the Agreement or these Conditions (including, without limitation, each application, approval, consent, confirmation, counter-notice, decision, instruction or other notification) shall be in writing.
  - 2 Subject to clause 1·7·4, each such notice or other communication and any documents to be supplied may or (where so required) shall be sent or transmitted by the means (electronic or otherwise) and in such format as the Parties have agreed or may from time to time agree in writing for the purposes of this Contract.<sup>[30]</sup>
  - 3 Subject to clauses 1·7·2 and 1·7·4, any notice, communication or document may be given or served by any effective means and shall be duly given or served if delivered by hand or sent by pre-paid post to:
    - 1 the recipient's address stated in the Contract Particulars, or to such other address as the recipient may from time to time notify to the sender; or
    - 2 if no such address is then current, the recipient's last known principal business address or (where a body corporate) its registered or principal office.
  - 4 Any notice expressly required by this Contract to be given in accordance with this clause 1·7·4 shall be delivered by hand or sent by Recorded Signed for or Special Delivery post. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.
  - 5 If in an emergency any communication is made orally with respect to health and safety, risk of damage to property or insurance matters, written confirmation of it shall be sent as soon thereafter as is reasonably practicable.

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

- 1·8 Each certificate to be issued by the Architect/Contract Administrator under these Conditions shall be issued to the Employer and the Contractor at the same time.

#### **Effect of Final Certificate**

- 1·9
  - 1 Subject to clause 1·9·2 (and save in respect of fraud), the Final Certificate shall have effect in any proceedings under or arising out of or in connection with this Contract (whether by adjudication, arbitration or legal proceedings) as conclusive evidence that:

<sup>[30]</sup> In cases where there is no BIM Protocol, the Parties should agree a communications protocol on or before entering into the Contract, or as soon thereafter as is practicable. See the Intermediate Building Contract Guide.

- 1 where and to the extent that any particular quality of any materials or goods or any particular standard of an item of workmanship was expressly described in the Contract Documents, in any instruction issued by the Architect/Contract Administrator under these Conditions or in any drawings or details issued by him under clause 2·9 or 2·10, to be for his approval, the particular quality or standard was to his reasonable satisfaction, but the Final Certificate shall not be conclusive evidence that they or any other materials, goods or workmanship comply with any other requirement or term of this Contract;
  - 2 necessary effect has been given to all the terms of this Contract that require an adjustment to be made to the Contract Sum save where there has been an erroneous inclusion or exclusion of any item or an arithmetical error in any computation, in which event the Final Certificate shall have effect as conclusive evidence as to all other computations;
  - 3 all and only such extensions of time, if any, as are due under clause 2·19 have been given; and
  - 4 the reimbursement of direct loss and/or expense, if any, due to the Contractor as agreed, ascertained or valued in accordance with these Conditions is in final settlement of all and any claims which the Contractor has or may have arising out of the occurrence of any Relevant Matters, whether such claim be for breach of contract, duty of care, statutory duty or otherwise.
- 2 The effects of the Final Certificate specified in clause 1·9·1 shall in relation to the subject matter of any adjudication, arbitration or other proceedings be suspended pending the conclusion of such proceedings, and shall thereafter be subject to the terms of any decision, award or judgment in and any settlement of those proceedings:
- 1 where those proceedings are commenced before or within 28 days after the date of issue of the Final Certificate; or
  - 2 in the case of an adjudication commenced within the period referred to in clause 1·9·2·1 in which the Adjudicator gives his decision after the date of issue of the Final Certificate, where arbitration or legal proceedings to determine the dispute or difference in question are commenced within 28 days of the date of that decision
- but not otherwise.
- 3 For the purposes of clause 1·9·2 any proceedings shall be treated as concluded if during any period of 12 months commencing on or after the issue of the Final Certificate neither Party takes a further step in them.

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

- 1·10 Save as stated in clause 1·9 no certificate of the Architect/Contract Administrator shall of itself be conclusive evidence that any works, any materials or goods to which the certificate relates are in accordance with this Contract.

#### **Consents and approvals**

- 1·11 ·1 Where consent or approval of either Party or the Architect/Contract Administrator is expressly required under these Conditions and is requested, then, except as provided in clause 1·11·2, such consent or approval shall not be unreasonably delayed or withheld.
- 2 In the following cases the giving of consent or approval shall be at the sole discretion of the Party from whom it is sought and clause 1·11·1 shall not apply, namely the Employer's consent under clause 2·9 or 2·30 and either Party's consent under clause 7·1.

#### **Applicable law**

- 1·12 This Contract shall be governed by and construed in accordance with the law of England.<sup>[39]</sup>

<sup>[39]</sup> Where the Parties do not wish the law applicable to this Contract to be the law of England appropriate amendments should be made.

## Section 2 Carrying out the Works

### Contractor's Obligations

#### General obligations

- 2-1** The Contractor shall carry out and complete the Works in a proper and workmanlike manner and in compliance with the Contract Documents, the Construction Phase Plan and Statutory Requirements, and shall give all notices required by the Statutory Requirements. In relation to the Contractor's Designed Portion, the Contractor shall:
- 1 complete the design for the Contractor's Designed Portion, including the selection of any specifications for the kinds and standards of the materials, goods and workmanship to be used in the CDP Works, so far as not described or stated in the Employer's Requirements or the Contractor's Proposals;
  - 2 comply with the Architect/Contract Administrator's directions for the integration of the design of the Contractor's Designed Portion with the design of the Works as a whole, subject to the provisions of clause 3-8-2; and
  - 3 In complying with this clause 2-1, comply with regulations 8 to 10 of the CDM Regulations.

#### Materials, goods and workmanship

- 2-2**
- 1 Insofar as the quality of materials or goods or standards of workmanship are stated to be a matter for the Architect/Contract Administrator's approval, such quality and standards shall be to his reasonable satisfaction. To the extent that the quality of materials and goods or standards of workmanship are neither described in the Contract Documents nor stated to be a matter for such approval or satisfaction, they shall in the case of the Contractor's Designed Portion be of a standard appropriate to it and shall in any other case be of a standard appropriate to the Works.
  - 2 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.

#### Fees and charges

- 2-3** The Contractor shall pay all fees and charges in respect of the Works legally recoverable from him. The amount of any such fees or charges (including any rates or taxes other than VAT) shall be added to the Contract Sum unless they are required by the Priced Document or Specification to have been included in the Contract Sum or relate solely to the Contractor's Designed Portion.

### Possession

#### Date of Possession – progress

- 2-4** On the Date of Possession possession of the site or, in the case of a Section, possession of the relevant part of the site shall be given to the Contractor who shall thereupon begin the construction of the Works or Section and regularly and diligently proceed with and complete the same on or before the relevant Completion Date. For Works Insurance purposes the Contractor shall retain possession:
- 1 of the site and the Works up to and including the date of issue of the Practical Completion Certificate; or
  - 2 of each Section and the relevant part of the site up to and including the date of issue of the Section Completion Certificate for that Section and, in respect of any balance of the site, up to and including the date of issue of the Practical Completion Certificate

and, subject to clause 2-25 and section 8, the Employer shall not be entitled to take possession of any part or parts of the Works or Section until such date.

**Deferment of possession**

- 2-5** If the Contract Particulars state that clause 2-5 applies in respect of the Works or a Section, the Employer may defer the giving of possession of the site or relevant part of it for a period not exceeding 6 weeks or lesser period stated in the Contract Particulars, calculated from the relevant Date of Possession.

**Early use by Employer**

- 2-6**
- 1 Notwithstanding clause 2-4, the Employer may, with the Contractor's consent, use or occupy the site or the Works or part of them, whether for storage or otherwise, before the date of issue of the Practical Completion Certificate or relevant Section Completion Certificate. Before the Contractor gives his consent to such use or occupation, the Party responsible for the Works Insurance Policy and/or, where there are Existing Structures, for any insurance cover relating to them shall notify the insurers and obtain confirmation that such use or occupation will not prejudice the insurance.
  - 2 Where Insurance Option A applies and/or the Contractor is to cover his own or any other risks in relation to any Existing Structures and any insurers' confirmation is conditional on an additional premium being paid, the Contractor shall notify the Employer of its amount. If the Employer continues to require such use or occupation, any additional premium shall be added to the Contract Sum and the Contractor shall if requested produce the receipt for it to the Employer.

**Work not forming part of the Contract**

- 2-7** In regard to any work not forming part of this Contract which the Employer requires to be carried out by the Employer himself or by any Employer's Person:
- 1 where the Contract Documents provide the information necessary to enable the Contractor to carry out and complete the Works or each relevant Section in accordance with this Contract, the Contractor shall permit the execution of such work;
  - 2 where the Contract Documents do not provide the information referred to in clause 2-7-1, the Employer may with the Contractor's consent arrange for the execution of that work.

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

- 2-8**
- 1 The Contract Documents and (where Pricing Option B applies) the Priced Document shall remain in the custody of the Employer and shall be available at all reasonable times for inspection by the Contractor.
  - 2 Immediately after the execution of this Contract the Architect/Contract Administrator, without charge to the Contractor, shall (unless previously provided or unless the BIM Protocol or other communications protocol requires otherwise) provide him with:
    - 1 one copy, certified on behalf of the Employer, of the Contract Documents; and
    - 2 two further copies of the Contract Drawings and the Contract Bills/Specification/Work Schedules.
  - 3 None of the documents referred to in this clause 2-8 that are provided to the Contractor shall be used by him for any purpose other than this Contract, and (subject only to clause 2-8-4) the Employer, the Architect/Contract Administrator and the Quantity Surveyor shall not divulge or use except for the purposes of this Contract any of the rates or prices in the Priced Document.
  - 4 Where the Employer is a Local or Public Authority or other body of the type mentioned in Supplemental Provision 7, his obligations of confidentiality shall be subject to that Supplemental Provision.

**Levels and setting out of the Works**

- 2-9** The Architect/Contract Administrator shall determine any levels required for the execution of the Works and, subject to clause 2-10-2-2, shall provide the Contractor by way of accurately dimensioned drawings with such information as shall enable the Contractor to set out the Works. The

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

#### Construction Information

- 2-10
- 1 Unless prevented by an act or default of the Contractor or any Contractor's Person, the Architect/Contract Administrator shall ensure that the information referred to in the Information Release Schedule is released at the time stated in that schedule. The Employer and Contractor may agree to vary any such time, such agreement not to be unreasonably withheld.
  - 2 In relation to the CDP Works, the Contractor, in addition to complying with clause 2-1, shall as and when necessary from time to time and without charge provide the Architect/Contract Administrator with such Contractor's Design Documents as are reasonably necessary to explain or amplify the Contractor's Proposals, including:
    - 1 such related calculations and information as may be requested; and
    - 2 all levels and setting out dimensions which the Contractor prepares or uses for the purposes of carrying out and completing the Contractor's Designed Portion.
  - 3 The Contractor's Design Documents to be provided pursuant to clause 2-10-2 shall be submitted to the Architect/Contract Administrator in accordance with the Design Submission Procedure and the Contractor shall not commence any work to which such a document relates before that procedure has been complied with.

#### Further drawings, details and instructions

- 2-11
- 1 Where not included in the Information Release Schedule, the Architect/Contract Administrator shall from time to time, without charge to the Contractor, provide him with such further drawings or details as are reasonably necessary to explain and amplify the Contract Drawings and shall issue such instructions (including those for or in regard to the expenditure of Provisional Sums) as are necessary to enable the Contractor to carry out and complete the Works in accordance with this Contract.
  - 2 The further drawings, details and instructions shall be provided or given at the time the Contractor reasonably requires them, having regard to the progress of the Works, or, if in the Architect/Contract Administrator's opinion practical completion of the Works or relevant Section is likely to be achieved before the relevant Completion Date, having regard to that Completion Date.
  - 3 Where the Contractor has reason to believe that the Architect/Contract Administrator is not aware of the time by which the Contractor needs to receive such further drawings, details or instructions, he shall, so far as reasonably practicable, give such advance notice to the Architect/Contract Administrator as should enable the Architect/Contract Administrator to comply with that requirement.

### Errors, Inconsistencies and Divergences

#### Bills of Quantities

- 2-12
- 1 Where there are Contract Bills, then, unless in respect of any specified item or items it is otherwise specifically stated in them, those bills are to have been prepared in accordance with the Measurement Rules.
  - 2 If in the Contract Bills there is any unstated departure from the method of preparation referred to in clause 2-12-1 or any error in description or in quantity or any omission of items (including any error in or omission of information in any item which is the subject of a Provisional Sum for defined work), the departure, error or omission shall be corrected. Where the description of a Provisional Sum for defined work does not provide the information required by the Measurement Rules, the description shall be corrected so that it does provide that information.

#### Instructions on errors, omissions and inconsistencies

- 2-13
- 1 The Architect/Contract Administrator shall issue instructions in regard to any such departure, error or omission as is referred to in clause 2-12 and in relation to any error in description or

quantity, any omission or any inconsistency in or between any of the following, namely:

- 1 the Contract Documents;
  - 2 any instruction issued by the Architect/Contract Administrator under these Conditions;
  - 3 any drawings or documents issued by the Architect/Contract Administrator under any of clauses 2-9 to 2-11; and
  - 4 the Contractor's Design Documents.
- 2 No such departure, error, omission or inconsistency shall vitiate this Contract.
- 3 If the Contractor becomes aware of any such departure, error, omission or inconsistency as is referred to in clause 2-12 or 2-13-1:
- 1 he shall immediately give notice to the Architect/Contract Administrator with appropriate details; and
  - 2 in the case of an inconsistency within the Employer's Requirements that is not dealt with in the Contractor's Proposals in a manner consistent with Statutory Requirements or in the case of an inconsistency within or between the Contractor's Proposals and/or other Contractor's Design Documents, he shall as soon as practicable after its discovery make proposals for the necessary amendments.
- 4 Where an inconsistency within the Employer's Requirements is dealt with in the Contractor's Proposals in a manner consistent with Statutory Requirements, the Contractor's Proposals shall prevail.

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

- 2-14** Where instructions under clause 2-13-1 vary the quality or quantity of work included in the Contract Sum, as referred to in clause 4-1, or in any other manner constitute a Variation, they shall be valued in accordance with section 5, save and provided always that no extension of time shall be given and there shall be no addition to the Contract Sum in respect of:
- 1 instructions for the correction of any error, omission or inconsistency within or between the Contractor's Proposals and/or other Contractor's Design Documents or requiring a Variation of work not comprised in the Contractor's Designed Portion that is necessitated by any such error, omission or inconsistency or its correction; or
  - 2 any delay or suspension caused by the Contractor's failure to comply with clause 2-1-3 or to provide in due time any Contractor's Design Documents or related calculations or information either:
    - 1 as required by clause 2-10-3; or
    - 2 in response to a request from the Architect/Contract Administrator that specifies the documents or information and date by which it is reasonably necessary for him to receive them, having regard to the progress of the Works.

#### Divergences from Statutory Requirements

- 2-15** -1 If the Contractor or Architect/Contract Administrator becomes aware of a divergence between the Statutory Requirements and a document referred to in clause 2-13, he shall immediately give the other notice specifying the divergence and, where it is between the Statutory Requirements and the Employer's Requirements, the Contractor's Proposals or other Contractor's Design Documents, the Contractor shall notify the Architect/Contract Administrator of his proposed amendment for removing it.
- 2 Within 7 days of becoming aware of such divergence (or, where applicable, within 14 days of receipt of the Contractor's proposed amendment), the Architect/Contract Administrator shall issue instructions in that regard, in relation to which:
- 1 if the divergence is between the Statutory Requirements and the Employer's Requirements, the Contractor's Proposals or other Contractor's Design Documents, the Contractor shall comply at no cost to the Employer unless after the Base Date there is a change in the Statutory Requirements which necessitates an alteration or modification to the Contractor's Designed Portion, in which event the instruction shall to that extent be treated as a Variation of the Employer's Requirements; and

- 2 in any other case, if and insofar as those instructions require the Works to be varied, they shall be treated as a Variation.
- 3 Provided the Contractor is not in breach of clause 2·15·1, the Contractor shall not be liable under this Contract if the Works (other than the CDP Works) do not comply with the Statutory Requirements to the extent that the non-compliance results from the Contractor having carried out work in accordance with any of the documents referred to in clauses 2·13·1·1 to 2·13·1·3, other than the Employer's Requirements, the Contractor's Proposals or other Contractor's Design Documents.

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

- 2·16 ·1 If in an emergency compliance with the Statutory Requirements necessitates the Contractor supplying materials and/or executing work before receiving instructions under clause 2·15·2, the Contractor shall supply such limited materials and execute such limited work as are reasonably necessary to secure immediate compliance.
- 2 The Contractor shall forthwith notify the Architect/Contract Administrator of the emergency and the steps that he is taking under clause 2·16·1.
- 3 Where the emergency arises from a divergence between the Statutory Requirements and any of the documents referred to in clauses 2·13·1·1 to 2·13·1·3 other than the Employer's Requirements, the Contractor's Proposals or other Contractor's Design Documents, then, provided that the Contractor has complied with clause 2·16·2, the execution and supply of work and materials under clause 2·16·1 shall be treated as a Variation.

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

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

- 2·17 Site Materials shall not be removed from storage on or adjacent to the Works except for use on the Works without the Architect/Contract Administrator's consent. Where their value has in accordance with clause 4·9·1·2 been included in any Interim Certificate under which the amount properly due to the Contractor has been paid by the Employer, they shall upon such payment become the Employer's property, but, subject to Insurance Option B or C (if applicable), the Contractor shall remain responsible for loss or damage to them.

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

- 2·18 Where the value of any Listed Items has in accordance with clause 4·10 been included in any Interim Certificate under which the amount properly due to the Contractor has been paid by the Employer, those items shall become the Employer's property and thereafter the Contractor shall not, except for use upon the Works, remove or cause or permit them to be moved or removed from the premises where they are. The Contractor shall be responsible for any loss of or damage to them and for the cost of their storage, handling and insurance until they are delivered to and placed on or adjacent to the Works. As from such delivery the provisions of clause 2·17 (except the words "Where their value" to "Employer's property, but,") shall apply to such items.

#### **Adjustment of Completion Date**

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

- 2·19 ·1 If and whenever it becomes reasonably apparent that the progress of the Works or any Section is being or is likely to be delayed the Contractor shall forthwith give the Architect/Contract Administrator notice of the cause of the delay. If in the Architect/Contract Administrator's opinion completion of the Works or Section has been, is being or is likely to be delayed beyond the relevant Completion Date by any of the Relevant Events, then, save where these Conditions expressly provide otherwise, the Architect/Contract Administrator, as soon as he is able to estimate the length of the delay beyond that date, shall by notice to the Contractor give a fair and reasonable extension of time for completion of the Works or Section.
- 2 If any Relevant Event referred to in clauses 2·20·1 to 2·20·6 occurs after the relevant Completion Date but before practical completion is achieved, the Architect/Contract Administrator, as soon as he is able to estimate the length of the delay, if any, to the Works or any Section resulting from that event, shall by notice give a fair and reasonable extension of time for completion of the Works or Section.

- 3 At any time up to 12 weeks after the date of practical completion of the Works or Section, the Architect/Contract Administrator may give an extension of time in accordance with the provisions of this clause 2·19, whether on reviewing a previous decision or otherwise and whether or not the Contractor has given notice as referred to in clause 2·19·1. Such an extension of time shall not reduce any extension previously given.
- 4 Provided always that the Contractor shall:
  - 1 constantly use his best endeavours to prevent delay and do all that may reasonably be required to the satisfaction of the Architect/Contract Administrator to proceed with the Works or Section; and
  - 2 provide such Information required by the Architect/Contract Administrator as is reasonably necessary for the purposes of this clause 2·19.
- 5 In this clause 2·19 and, so far as relevant, in the other clauses of these Conditions, any reference to delay or extension of time includes any further delay or further extension of time.

#### Relevant Events

2·20 The following are the Relevant Events referred to in clause 2·19:

- 1 Variations and any other matters or instructions which under these Conditions are to be treated as, or as requiring, a Variation;
- 2 Architect/Contract Administrator's instructions:
  - 1 under any of clauses 2·13, 3·12 or 3·13 (excluding, where there are Contract Bills, an instruction for expenditure of a Provisional Sum for defined work);
  - 2 (to the extent provided therein) under clause 3·7 and Schedule 2; or
  - 3 for the opening up for inspection or testing of any work, materials or goods under clause 3·14 or 3·15·1 (including making good), unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract;
- 3 deferment of the giving of possession of the site or any Section under clause 2·5;
- 4 the execution of work for which an Approximate Quantity is not a reasonably accurate forecast of the quantity of work required;
- 5 suspension by the Contractor under clause 4·14 of the performance of any or all of his obligations under this Contract;
- 6 any impediment, prevention or default, whether by act or omission, by the Employer, the Architect/Contract Administrator, the Quantity Surveyor or any Employer's Person, except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or any Contractor's Person;
- 7 the carrying out by a Statutory Undertaker of work in pursuance of its statutory obligations in relation to the Works, or the failure to carry out such work;
- 8 exceptionally adverse weather conditions;
- 9 loss or damage occasioned by any Specified Peril;
- 10 civil commotion or the use or threat of terrorism and/or the activities of the relevant authorities in dealing with such event or threat;
- 11 strike, lock-out or local combination of workmen affecting any trade employed upon the Works or engaged in the preparation, manufacture or transportation of any of the goods or materials required for them or any persons engaged in design work for the Contractor's Designed Portion;
- 12 the exercise after the Base Date by the United Kingdom Government or any Local or Public Authority of any statutory power that is not occasioned by a default of the Contractor or any Contractor's Person but which directly affects the execution of the Works;
- 13 force majeure.

#### Practical Completion, Lateness and Liquidated Damages

**Practical completion and certificates**

**2-21** When in the Architect/Contract Administrator's opinion practical completion of the Works or a Section is achieved and the Contractor has complied sufficiently with clauses 2-32 and 3-18 in respect of the supply of documents and information, then:

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

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

**Certificate of non-completion**

**2-22** If the Contractor fails to complete the Works or a Section by the relevant Completion Date, the Architect/Contract Administrator shall issue a certificate to that effect. If an extension of time is made after the issue of such a certificate, the extension shall cancel that certificate and the Architect/Contract Administrator shall where necessary issue a further certificate.

**Liquidated damages for non-completion**

- 2-23** ·1 Provided:
- 1 the Architect/Contract Administrator has issued a certificate under clause 2-22; and
  - 2 the Employer has notified the Contractor before the date of the Final Certificate that he may require payment of, or may withhold or deduct, liquidated damages,
- the Employer may, not later than 5 days before the final date for payment of the amount payable under clause 4-21, give notice to the Contractor in the terms set out in clause 2-23-2.
- 2 A notice from the Employer under clause 2-23-1 shall state that for the period between the Completion Date and the date of practical completion of the Works or that Section:
- 1 he requires the Contractor to pay liquidated damages at the rate stated in the Contract Particulars, or lesser rate stated in the notice, in which event the Employer may recover the same as a debt; and/or
  - 2 that he will withhold or deduct liquidated damages at the rate stated in the Contract Particulars, or at such lesser stated rate, from sums due to the Contractor.<sup>1401</sup>
- 3 If the Employer in relation to the Works or a Section has notified the Contractor in accordance with clause 2-23-1-2 that he may require payment of, or may withhold or deduct, liquidated damages, then, unless the Employer states otherwise in writing, clause 2-23-1-2 shall remain satisfied in relation to the Works or Section, notwithstanding the cancellation of any certificate and issue of any further certificate under clause 2-22.

**Repayment of liquidated damages**

**2-24** If after the operation of clause 2-23 an extension of time is given and the relevant certificate under clause 2-22 is cancelled the Employer shall pay or repay to the Contractor any amounts deducted or recovered under clause 2-23 in respect of the period of the extension.

**Partial Possession by Employer****Contractor's consent**

**2-25** If at any time or times before the date of issue by the Architect/Contract Administrator of the Practical Completion Certificate or relevant Section Completion Certificate the Employer wishes to take

<sup>1401</sup> In addition to the notice under clause 2-23-2, the Employer, if he intends to withhold or deduct all or any of the liquidated damages payable, must give the appropriate Pay Less Notice under clause 4-12-5.

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

#### **Practical completion date**

- 2-26** Practical completion of the Relevant Part shall be deemed to have occurred, and the Rectification Period in respect of the Relevant Part shall be deemed to have commenced, on the Relevant Date.

#### **Defects etc. – Relevant Part**

- 2-27** When in the Architect/Contract Administrator's opinion any defects, shrinkages or other faults in the Relevant Part which he has required to be made good under clause 2-30 have been made good, he shall issue a certificate to that effect.

#### **Insurance – Relevant Part**

- 2-28** As from the Relevant Date the Works insurance obligation under Insurance Option A, B or C-2, whichever applies, shall cease in respect of the Relevant Part (but not otherwise) and the Existing Structures (if any) shall from that date be deemed to include the Relevant Part.

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

- 2-29** As from the Relevant Date, the rate of liquidated damages stated in the Contract Particulars in respect of the Works or Section containing the Relevant Part shall reduce by the same proportion as the value of the Relevant Part bears to the Contract Sum or to the relevant Section Sum, as shown in the Contract Particulars.

### **Defects**

#### **Rectification**

- 2-30** Any defects, shrinkages or other faults in the Works or a Section which appear and are notified by the Architect/Contract Administrator to the Contractor not later than 14 days after the expiry of the Rectification Period, and which are due to materials, goods or workmanship not in accordance with this Contract, shall at no cost to the Employer be made good by the Contractor unless the Architect/Contract Administrator with the Employer's consent shall otherwise instruct. If he does so otherwise instruct, an appropriate deduction shall be made from the Contract Sum in respect of the defects, shrinkages or other faults not made good.

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

- 2-31** The Architect/Contract Administrator shall, when in his opinion the Contractor's obligations under clause 2-30 have been discharged, issue a certificate to that effect.

### **CDP Design Work**

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

- 2-32** The Contractor, in addition to his obligations under the CDM Regulations in relation to information for the health and safety file, shall, before practical completion of the Works or relevant Section and without further charge to the Employer, supply for retention and use by the Employer such Contractor's Design Documents and related information as is specified in the Contract Documents or as the Employer may reasonably require that show or describe the Contractor's Designed Portion as built or relate to the maintenance and operation of it or its installations.

#### **Copyright and use**

- 2-33** ·1 Subject to all sums due and payable under this Contract to the Contractor having been paid, the Employer shall have an irrevocable, royalty-free, non-exclusive licence to copy and use the

Contractor's Design Documents and to reproduce the designs and content of them for any purpose relating to the Works including, without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Works. That licence shall enable the Employer to copy and use the Contractor's Design Documents for an extension of the Works but shall not include any right or licence to reproduce the designs contained in them for any such extension.

- 2 The licence shall be assignable to any owner from time to time of the Works or any part of them and may be sub-licensed to any owner or tenant of the Works or part of them and to any person engaged for the purposes permitted by clause 2·33·1.
- 3 The Contractor shall not be liable for any use by the Employer of any of the Contractor's Design Documents for any purpose other than that for which they were prepared.

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

- 2·34 ·1 Insofar as the design of the Contractor's Designed Portion is comprised in the Contractor's Proposals and in what he is to complete in accordance with the Employer's Requirements and these Conditions (including any further design that he is required to carry out as a result of a Variation), the Contractor shall in respect of any inadequacy in such design have the same liability to the Employer, whether under statute or otherwise, as would an architect or other appropriate professional designer who holds himself out as competent to take on work for such design and who, acting independently under a separate contract with the Employer, has supplied such design for or in connection with works to be carried out and completed by a building contractor who is not the supplier of the design.
- 2 Where and to the extent that this Contract involves the Contractor in taking on work for or in connection with the provision of a dwelling or dwellings, the clause 2·34·1 reference to the Contractor's liability includes liability under the Defective Premises Act 1972.
- 3 Where or to the extent that this Contract does not involve the Contractor in taking on work for or in connection with the provision of a dwelling or dwellings to which that Act applies, the Contractor's liability for loss of use, loss of profit or other consequential loss arising in respect of the liability of the Contractor referred to in clause 2·34·1 shall be limited to the amount, if any, stated in the Contract Particulars; but such a limitation shall not apply to or be affected by any liability for liquidated damages under clause 2·23.
- 4 Subject to clause 2·15, the Contractor shall not be responsible for the contents of the Employer's Requirements or for verifying the adequacy of any design contained within them.
- 5 If an inadequacy is found in any design in the Employer's Requirements and the Contractor under clause 2·34·4 is not responsible for verifying its adequacy, then, if or to the extent that that inadequacy is not dealt with in the Contractor's Proposals, the Employer's Requirements shall be altered or modified accordingly and, subject to clause 2·15, any such correction, alteration or modification shall be treated as a Variation.

## Section 3 Control of the Works

### Access and Representatives

#### Access for Architect/Contract Administrator

- 3-1 The Architect/Contract Administrator and any person authorised by him shall at all reasonable times have access to the Works and elsewhere to any work which is being prepared for or is to be utilised in the Works but subject to any reasonable restrictions necessary to protect any proprietary rights.

#### Person-in-charge

- 3-2 The Contractor shall ensure that at all reasonable times he has on the site a competent person-in-charge and any instructions given to that person by the Architect/Contract Administrator shall be deemed to have been issued to the Contractor.

#### Clerk of works

- 3-3 The Employer shall be entitled to appoint a clerk of works whose duty shall solely be to act as inspector on behalf of the Employer under the Architect/Contract Administrator's directions.

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

- 3-4
- 1 If the Architect/Contract Administrator or Quantity Surveyor at any time ceases to hold that post, the Employer shall within 14 days of the cessation nominate a replacement. Except where the Employer is a Local or Public Authority and the nominated replacement is an official of it, if the Contractor objects for reasons considered sufficient by a person appointed under the dispute resolution procedures of this Contract, the Employer shall nominate an acceptable replacement.
  - 2 No replacement Architect/Contract Administrator appointed for this Contract shall be entitled to disregard or overrule any certificate, opinion, decision, consent or instruction given by any predecessor in that post, save to the extent that that predecessor if still in the post would then have had power under this Contract to do so.

### Sub-Contracting

#### Consent to sub-contracting

- 3-5 The Contractor shall not without the Architect/Contract Administrator's consent sub-contract the whole or any part of the Works other than in accordance with clause 3-7 or sub-contract the design for the CDP Works. In no case shall any such consent or any sub-contracting in any way affect the Contractor's obligations under any other provision of this Contract.

#### Conditions of sub-contracting

- 3-6 Where considered appropriate, the Contractor shall engage the sub-contractor using the relevant version of the JCT Intermediate Building Sub-Contract. It shall be a condition of any sub-contract that<sup>(4)</sup>:
- 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;
  - 2 the sub-contract shall provide:
    - 1 that, except for use on the Works, no Site Materials delivered to the Works by or for the

<sup>(4)</sup> The JCT Intermediate Sub-Contracts (ICSub and ICSub/D) meet the requirements of clause 3-6 and also those of paragraph 3 of the JCT fluctuations provision (Schedule 4).

sub-contractor shall be removed without the Contractor's written consent (such consent not to be unreasonably delayed or withheld) and (in addition to any provision for earlier vesting in the Contractor of title to any Listed Items for the purposes of clause 4.10.2.1 of these Conditions) that:

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

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

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

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

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

#### **Compliance with Instructions**

- 3.8 The Contractor shall forthwith comply with all instructions issued to him which these Conditions empower the Architect/Contract Administrator to issue, save that:
  - 1 where an instruction requires a Variation of the type referred to in clause 5.1.2, the Contractor

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

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

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

- 3-9 Subject to clause 3-8, if within 7 days after receipt of a notice from the Architect/Contract Administrator requiring compliance with an instruction the Contractor does not comply, the Employer may employ and pay other persons to execute work of any kind that may be necessary to give effect to that instruction. The Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and an appropriate deduction may be made from the Contract Sum.

#### **Provisions empowering instructions**

- 3-10 On receipt of an instruction the Contractor may request the Architect/Contract Administrator to notify him which provision of these Conditions empowers its issue and the Architect/Contract Administrator shall forthwith comply with the request. If the Contractor thereafter complies with that instruction with neither Party then having invoked any dispute resolution procedure under this Contract to establish the Architect/Contract Administrator's powers in that regard, the instruction shall be deemed to have been duly given under the specified provision.

#### **Instructions requiring Variations**

- 3-11
  - 1 The Architect/Contract Administrator may issue instructions requiring a Variation.
  - 2 Any instruction of the type referred to in clause 5.1.2 shall be subject to the Contractor's right of reasonable objection set out in clause 3-8.1.
  - 3 In respect of the Contractor's Designed Portion, any instruction requiring a Variation shall be an alteration to or modification of the Employer's Requirements.
  - 4 The Architect/Contract Administrator may sanction in writing any Variation made by the Contractor otherwise than pursuant to an instruction.
  - 5 No Variation required or sanctioned by the Architect/Contract Administrator shall vitiate this Contract.

#### **Postponement of work**

- 3-12 The Architect/Contract Administrator may issue instructions in regard to the postponement of any work to be executed under this Contract.

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

- 3-13 The Architect/Contract Administrator shall issue instructions in regard to the expenditure of Provisional Sums included in the Contract Bills/Specification/Work Schedules or in the Employer's Requirements.

#### **Inspection – tests**

- 3-14 The Architect/Contract Administrator may issue instructions requiring the Contractor to open up for inspection any work covered up or to arrange for or carry out any test of any materials or goods (whether or not already incorporated in the Works) or of any executed work. The cost of that opening up or testing (including the cost of making good) shall be added to the Contract Sum unless provided for in the Contract Bills/Specification/Work Schedules or unless the inspection or test shows that the materials, goods or work are not in accordance with this Contract.

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

- 3-15** -1 If during the carrying-out of the Works any work, materials or goods are found not to be in accordance with this Contract, the Contractor shall forthwith notify the Architect/Contract Administrator of the action which the Contractor proposes immediately to take, at no cost to the Employer, to establish that there is no similar failure in work already executed or materials or goods already supplied (whether or not incorporated in the Works). If the Architect/Contract Administrator:
- 1 has not received such notification within 7 days of the finding; or
  - 2 is not satisfied with the action proposed by the Contractor; or
  - 3 because of safety considerations or statutory obligations, is unable to wait for the Contractor's written proposals,
- he may issue instructions requiring the Contractor at no cost to the Employer to open up for inspection any work covered up or to arrange for or carry out any test of any materials or goods (whether or not already incorporated in the Works) or any executed work to establish that there is no similar failure, including making good thereafter. The Contractor shall forthwith comply with any such instruction.
- 2 If within 10 days of receipt of an instruction under clause 3-15-1, and without affecting his obligation to comply with it, the Contractor gives notice to the Architect/Contract Administrator, objecting to compliance and stating his reasons, and if within 7 days of receipt of that objection the Architect/Contract Administrator does not notify withdrawal of the instruction or its modification to remove the Contractor's objection, then any dispute or difference as to whether the nature or the extent of the opening up for inspection or testing instructed by the Architect/Contract Administrator was reasonable in all the circumstances shall be referred to a person appointed under the dispute resolution procedures of this Contract.
- 3 If and to the extent that the person appointed finds the instruction was not reasonable he shall decide the amount, if any, to be paid by the Employer to the Contractor in respect of compliance (including making good) and the consequent extension of time, if any, for completion of the Works or any relevant Section.

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

- 3-16** -1 The Architect/Contract Administrator may issue instructions in regard to the removal from the site of any work, materials or goods which are not in accordance with this Contract.
- 2 If any work is not carried out in a proper and workmanlike manner the Architect/Contract Administrator may issue such instructions to the Contractor as are in consequence reasonably necessary and the Contractor shall comply with them at no cost to the Employer.

#### Exclusion of persons from the Works

- 3-17** The Architect/Contract Administrator may (but shall not unreasonably or vexatiously) issue instructions requiring the exclusion from the site of any person employed thereon.

### CDM Regulations

- 3-18** 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:
- 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;
  - 2 the Contractor in addition to any obligations under clause 2-1-3 shall comply with regulation 15 and, where he is the Principal Contractor, with regulations 12 to 14;<sup>[42]</sup>
  - 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

<sup>[42]</sup> Where the Employer is a domestic client, as defined in regulation 2, the Principal Contractor may also be responsible for carrying out certain of the client's duties under regulations 4, 6 and 8. (As to the CDM Regulations generally, see the Intermediate Building Contract Guide.)

15(3), shall be at no cost to the Employer and shall not entitle the Contractor to an extension of time;

- 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.

## Section 4 Payment

### Contract Sum and Adjustment

#### Work Included In Contract Sum

- 4.1
- 1 Where there are Contract Bills, the quality and quantity of the work included in the Contract Sum shall be that set out in those bills and in the Employer's Requirements, the Contractor's Proposals, the CDP Analysis and other Contractor's Design Documents.
  - 2 Where there are no Contract Bills and save insofar as quantities are given in the Specification or Work Schedules, the quality and quantity of the work included in the Contract Sum shall be that set out in the Contract Documents taken together, provided that if there is any inconsistency between work as stated or shown on the Contract Drawings and any description of that work in the Specification or Work Schedules, the Contract Drawings shall prevail.
  - 3 Where there are no Contract Bills, but quantities are given for any items in the Specification or Work Schedules, the quality and quantity of the work included in the Contract Sum for those items shall be that set out in the Specification or Work Schedules.

#### Adjustment only under the Conditions

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

#### Adjustment of Contract Sum

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

#### Fluctuations – Named Sub-Contractors

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

### Taxes

#### VAT

- 4.5
- 1 The Contract Sum is exclusive of VAT and in relation to each payment to the Contractor under this Contract, the Employer shall in addition pay the amount of any VAT properly chargeable in respect of it.

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

#### Construction Industry Scheme (CIS)

- 4-6 If the Employer is or at any time up to the payment of the Final Certificate becomes a 'contractor' for the purposes of the CIS<sup>[43]</sup>, his obligation to make any payment under this Contract is subject to the provisions of the CIS.

### Payments, Certificates and Notices – general provisions

#### Advance payment

- 4-7 Not applicable.

#### Interim payments – due dates and certificates

- 4-8 ·1 During the period up to the due date for the final payment fixed under clause 4-21-3, the monthly due dates for interim payments by the Employer shall in each case be the date 7 days after the relevant Interim Valuation Date.
- 2 The Architect/Contract Administrator shall not later than 5 days after each due date issue an Interim Certificate, stating the sum that he considers to be or have been due to the Contractor at the due date, calculated in accordance with clause 4-9, and the basis on which that sum has been calculated.
- 3 Interim valuations shall be made by the Quantity Surveyor whenever the Architect/Contract Administrator considers them necessary for ascertaining the sum due in an Interim payment.

#### Interim payments – calculation of sums due

- 4-9 The amount of each interim payment to be certified under clause 4-8-2 shall, subject to any agreement between the Parties as to stage payments, be the total of the amounts referred to in clauses 4-9-1 and 4-9-2, less the deductions referred to in clause 4-9-3, each calculated as at the Interim Valuation Date, less the cumulative total of the amounts of any advance payment that have then become due for reimbursement to the Employer in accordance with the terms stated in the Contract Particulars for clause 4-7 and less the total of sums stated as due in previous Interim Certificates and any sums paid in respect of any Payment Notice given after the issue of the latest Interim Certificate. The amounts referred to are:
  - 1 the applicable percentage, as stated in the Contract Particulars of the total value of:
    - 1 the work properly executed by the Contractor, including any work so executed for which a value has been agreed pursuant to clause 5-2-1 or which has been valued under the Valuation Rules, but excluding any reinstatement work under clause 5-13-4, as referred to in clause 4-9-2;
    - 2 Site Materials, provided they are adequately protected against weather and other casualties and are not on the Works prematurely; and
    - 3 Listed Items (if any) for which the conditions set out in clause 4-10 are satisfied;

those values shall be adjusted, where appropriate, in accordance with any applicable Fluctuations Provision and, where there is an Activity Schedule, the value to be included in respect of the work in each activity to which it relates shall be a proportion of the price stated for the work in that activity equal to the proportion of the work in that activity that has then been properly executed;
  - 2 the full amount (100%) (to the extent then ascertained) payable to the Contractor or to be

<sup>[43]</sup> See the Contract Particulars (Eighth Recital and clause 4-6).

added to the Contract Sum in respect of:

Fees and charges (clause 2·3);

Inspection and testing (clauses 3·14 and 3·15·3);

Contractor's right of suspension – costs and expenses (clause 4·14);

Fluctuations – Named Sub-Contractors (clause 4·4);

Fluctuations under any applicable Fluctuations Provision, other than by means of an adjustment under clause 4·9·1;

Loss and Expense (clause 4·15);

Insurance premiums (clauses 2·6, 6·5, 6·10, 6·11, 6·12·2 and 6·18);

Reinstatement etc. of loss or damage – where Insurance Option B or C applies or to the extent that the work is under clause 6·13·5·3 to be treated as a Variation, reinstatement work under clause 6·13·4;

- 3 the ascertained amount of any deductions to be made under clause 2·9 (*Levels*), 2·30 (*Rectification*), 3·9 (*Non-compliance with instructions*), 4·4 (*Fluctuations – Named Sub-Contractors*), (in the event of a reduction in the premium) 6·10 (*Terrorism Cover premiums*), 6·12·2 (*Evidence of insurance*) or 6·17·2 (*Breach of Joint Fire Code – Remedial Measures*) or any amount under any applicable Fluctuations Provision other than by means of an adjustment under clause 4·9·1.

#### Listed Items

- 4·10 The conditions for inclusion of the value of a Listed Item in the amount of an Interim payment to be certified under clause 4·8·2 before its delivery to or adjacent to the Works as referred to in clause 4·9·1·3 are:

- 1 the Listed Item is in accordance with this Contract;
- 2 the Contractor has provided the Architect/Contract Administrator with reasonable proof that:
  - 1 property in the Listed Item is vested in the Contractor; and
  - 2 the Listed Item is and will remain insured against loss or damage for its full value under a policy of insurance protecting the interests of the Employer and the Contractor in respect of the Specified Perils until delivered to, or adjacent to, the Works;
- 3 at the premises where the Listed Item is situated pending delivery, there is in relation to that item clear identification of:
  - 1 the Employer as the person to whose order it is held; and
  - 2 the Works as its destination,

each item being either set apart or clearly and visibly marked, individually or as a set, by letters, figures or a pre-determined code; and
- 4 for uniquely identified Listed Items, the Contractor, if it is stated in the Contract Particulars as required, has provided a bond in favour of the Employer from a surety approved by the Employer in the terms set out in Part 2 of Schedule 3 ('the required bond') in the amount specified in the Contract Particulars for this clause 4·10·4; or
- 5 for Listed Items that are not uniquely identified, the Contractor has provided the required bond in the amount specified in the Contract Particulars for this clause 4·10·5.

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

- 4·11 ·1 In relation to any interim payment the Contractor may not later than its Interim Valuation Date or, in the case of the final payment, may at any time prior to issue of the Final Certificate make an application to the Quantity Surveyor (a 'Payment Application'), stating the sum that the Contractor considers to be due to him at the relevant due date, as fixed in accordance with clause 4·8 or 4·21·3, and the basis on which that sum has been calculated.
- 2 If a Payment Certificate is not issued in accordance with clause 4·8·2 or 4·21·1, then:

- 1 where the Contractor has made a Payment Application in accordance with clause 4.11.1, that application is for the purposes of these Conditions a Payment Notice; or
- 2 where the Contractor has not made a Payment Application, he may at any time after the last date for issue of the Payment Certificate give a Payment Notice to the Quantity Surveyor, stating the sum that the Contractor considers to have become due to him under clause 4.9 or 4.21.2 at the relevant due date and the basis on which that sum has been calculated.

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

- 4.12**
- 1 Subject to clause 4.12.4, the final date for payment of each interim payment and the final payment shall be 14 days from its due date.
  - 2 Subject to any Pay Less Notice given by the paying Party under clause 4.12.5, the paying Party shall pay the sum stated as due in the Payment Certificate on or before the final date for payment.
  - 3 If a Payment Certificate is not issued in accordance with clause 4.8.2 or 4.21.1, but a Payment Notice has been or is then given, the Employer shall, subject to any Pay Less Notice under clause 4.12.5, pay the Contractor the sum stated as due in the Payment Notice.
  - 4 Where a Payment Notice is given under clause 4.11.2.2, the final date for payment of the sum specified in it shall for all purposes be regarded as postponed by the same number of days as the number of days after the last date for issue of the Payment Certificate that the Payment Notice is given.
  - 5 Where:
    - 1 the Employer intends to pay less than the sum stated as due from him in a Payment Certificate or Payment Notice; or
    - 2 if the Final Certificate shows a balance due to the Employer, the Contractor intends to pay less than the sum stated as due,
 the Party by whom the payment is stated to be payable shall not later than 5 days before the final date for payment give the other Party notice of that intention in accordance with clause 4.13.1 (a 'Pay Less Notice'). Where a Pay Less Notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated in it as due.
  - 6 If either Party fails to pay a sum, or any part of it, due to the other Party under these Conditions by its final date for payment, he shall, in addition to any unpaid amount that should properly have been paid, pay the other Party simple interest on that amount at the Interest Rate for the period from the final date for payment until payment is made.
  - 7 Any such unpaid amount and any interest under clause 4.12.6 shall be recoverable as a debt. Acceptance of a payment of interest shall not in any circumstances be construed as a waiver either of the recipient's right to proper payment of the principal amount due or of the Contractor's rights to suspend performance under clause 4.14 or terminate his employment under section 8.

#### Pay Less Notices and other general provisions

- 4.13**
- 1 A Pay Less Notice given by either Party shall specify the sum he considers to be due to the other Party at the date the notice is given and the basis on which that sum has been calculated. Such notice:
    - 1 (where it is to be given by the Employer) may be given on his behalf by the Architect/Contract Administrator or Quantity Surveyor or by any other person who the Employer notifies the Contractor as being authorised to do so but, in the case of a payment for which a Payment Certificate is not issued in due time, may not be given until the Contractor has in respect of the payment given a Payment Notice;
    - 2 (where it is to be given by the Contractor) shall be sent to the Employer, with a copy to the Architect/Contract Administrator.
  - 2 In relation to the requirements for the issue of Payment Certificates and the giving of Pay Less Notices, it is immaterial that the amount then considered to be due may be zero.

- 3 Where the Employer is not a Local or Public Authority, the Employer's interest in the percentage of the total value not included in the amounts of the interim payments to be certified under clause 4·8·2 shall be fiduciary as trustee for the Contractor (but without obligation to invest) and the Contractor's beneficial interest in that sum shall be subject only to the right of the Employer to have recourse to it from time to time for payment of any amount which he is entitled under the provisions of this Contract to withhold or deduct from sums due or to become due to the Contractor.

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

- 4·14 ·1 If the Employer fails to pay a sum payable to the Contractor in accordance with clause 4·12 (together with any VAT properly chargeable in respect of that payment) by the final date for payment and the failure continues for 7 days after the Contractor has given notice to the Employer, with a copy to the Architect/Contract Administrator, of his intention to suspend the performance of his obligations under this Contract and the grounds for such suspension, the Contractor, without affecting his other rights and remedies, may suspend performance of any or all of those obligations until payment is made in full.
- 2 Where the Contractor exercises his right of suspension under clause 4·14·1, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of exercising the right.
- 3 Applications in respect of any such costs and expenses shall be made to the Architect/Contract Administrator and the Contractor shall with his application or on request submit such details of them as are reasonably necessary for ascertaining the amount in question.

### **Loss and Expense**

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

- 4·15 ·1 If in the execution of this Contract the Contractor incurs or is likely to incur any direct loss and/or expense as a result of any deferment of giving possession of the site or part of it under clause 2·5 or because regular progress of the Works or any part of them has been or is likely to be materially affected by any Relevant Matter, he shall, subject to clause 4·15·2 and compliance with the provisions of clause 4·16 be entitled to reimbursement of that loss and/or expense.
- 2 No such entitlement arises where these Conditions provide that there shall be no addition to the Contract Sum or otherwise exclude the operation of this clause 4·15 or to the extent that the Contractor is reimbursed for such loss and/or expense under another provision of these Conditions.

#### **Notification and ascertainment**

- 4·16 ·1 The Contractor shall notify the Architect/Contract Administrator as soon as the likely effect of a Relevant Matter on regular progress or the likely nature and extent of any loss and/or expense arising from a deferment of possession becomes (or should have become) reasonably apparent to him.
- 2 That notification shall be accompanied or, as soon as reasonably practicable, followed by the Contractor's initial assessment of the loss and/or expense incurred and any further amounts likely to be incurred, together with such information as is reasonably necessary to enable the Architect/Contract Administrator or Quantity Surveyor to ascertain the loss and/or expense incurred.
- 3 The Contractor shall thereafter, in such form and manner as the Architect/Contract Administrator may reasonably require, update that assessment and information at monthly intervals until all information reasonably necessary to allow ascertainment of the total amount of such loss and expense has been supplied.
- 4 Within 28 days of receipt of the initial assessment and information and 14 days of each subsequent update of them the Architect/Contract Administrator or Quantity Surveyor shall notify the Contractor of the ascertained amount of the loss and/or expense incurred, each ascertainment being made by reference to the information supplied by the Contractor and in sufficient detail to enable the Contractor to identify differences between it and the Contractor's

**Relevant Matters****4-17** The following are the Relevant Matters:

- 1 Variations (including any other matters or instructions which under these Conditions are to be treated as a Variation);
- 2 Architect/Contract Administrator's instructions:
  - 1 under clause 3-12 or 3-13 (excluding, where there are Contract Bills, an instruction for expenditure of a Provisional Sum for defined work);
  - 2 (to the extent provided therein) under clause 3-7 and Schedule 2;
  - 3 for the opening up for inspection or testing of any work, materials or goods under clause 3-14 (including making good), unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract; or
  - 4 in relation to errors, omissions and inconsistencies in or between the Contract Documents and/or other documents referred to in clause 2-13;
- 3 the execution of work for which an Approximate Quantity is not a reasonably accurate forecast of the quantity of work required;
- 4 any impediment, prevention or default, whether by act or omission, by the Employer, the Architect/Contract Administrator, the Quantity Surveyor or any Employer's Person, except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or any Contractor's Person.

**Amounts ascertained – addition to Contract Sum****4-18** Amounts ascertained under clause 4-16 shall be added to the Contract Sum.**Reservation of Contractor's rights and remedies****4-19** The provisions of clauses 4-15 to 4-18 shall not limit or affect any other rights and remedies of the Contractor.**Final Adjustment and Final Payment****Final adjustment**

- 4-20** ·1 Not later than 6 months after the issue of the Practical Completion Certificate or last Section Completion Certificate, the Contractor shall provide the Architect/Contract Administrator or (if so instructed) the Quantity Surveyor, with all documents necessary for the adjustment of the Contract Sum.
- 2 Not later than 3 months after receipt of the documents referred to in clause 4-20-1:
  - 1 the Architect/Contract Administrator, or, if he so instructs, the Quantity Surveyor, shall ascertain the amount of any loss and/or expense notified by the Contractor under clause 4-16 and not previously ascertained;
  - 2 the Quantity Surveyor shall prepare a statement showing all adjustments to be made to the Contract Sum under clause 4-3,

and the Architect/Contract Administrator shall within that 3 month period send to the Contractor copies of that statement and any such ascertainment.
- 3 If after expiry of the 6 month period referred to in clause 4-20-1 the Contractor has not supplied the necessary documents, the Architect/Contract Administrator may at any time give the Contractor one month's notice requiring their supply. Failing the supply of such documents,

any ascertainment of loss and expense not then completed and the statement of adjustments may be completed on the basis of information in the Architect/Contract Administrator's or Quantity Surveyor's possession. Following preparation or completion of those documents, copies of them shall promptly be sent to the Contractor.

#### **Final Certificate and final payment<sup>144</sup>**

- 4.21** ·1 The Architect/Contract Administrator shall issue the Final Certificate not later than 28 days after whichever of the following occurs last:
- 1 the end of the Rectification Period in respect of the Works or (where there are Sections) the last such period to expire;
  - 2 the date of issue of the certificate of making good under clause 2.31 or (where there are Sections) the last such certificate to be issued; or
  - 3 the date on which the Architect/Contract Administrator sends to the Contractor copies of the statement and any ascertainment under clause 4.20.2 or 4.20.3.
- 2 The Final Certificate shall state:
- 1 the Contract Sum as adjusted in accordance with clause 4.3; and
  - 2 the sum of amounts already stated as due in Interim Certificates plus the amount of any advance payment made under clause 4.7 and (where relevant) any sums paid in respect of any such Payment Notice as is referred to in clause 4.9
- and (without affecting the rights of the Contractor in respect of any interim payment not paid in full by the Employer by its final date for payment) the final payment shall be the difference (if any) between the two sums, which shall be shown in the Final Certificate as a balance due to the Contractor from the Employer or vice versa. The Final Certificate shall state the basis on which that amount has been calculated.
- 3 The due date for the final payment shall be the date of issue of the Final Certificate or, if that certificate is not issued within the 28 day period referred to in clause 4.21.1, the last day of that period.

<sup>144</sup> The effect of the Final Certificate is set out in clause 1.9.

## Section 5 Variations

### General

#### Definition of Variations

##### 5-1 The term 'Variation' means:

- 1 the alteration or modification of the design, quality or quantity of the Works including:
  - 1 the addition, omission or substitution of any work;
  - 2 the alteration of the kind or standard of any of the materials or goods to be used in the Works;
  - 3 the removal from the site of any work executed or Site Materials other than work, materials or goods which are not in accordance with this Contract;
- 2 the imposition by the Employer of any obligations or restrictions in regard to the following matters or any addition to or alteration or omission of any such obligations or restrictions that are so imposed or are imposed by the Contract Documents in regard to:
  - 1 access to the site or use of any specific parts of the site;
  - 2 limitations of working space;
  - 3 limitations of working hours; or
  - 4 the execution or completion of the work in any specific order.<sup>[48]</sup>

#### Valuation of Variations and provisional sum work

##### 5-2 The value of:

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

shall be such amount as is agreed by the Employer and the Contractor or, where not agreed, the amount valued by the Quantity Surveyor (a 'Valuation'). Each Valuation shall be made in accordance with clauses 5-3 to 5-7 ('the Valuation Rules'), such Valuation insofar as it relates to the Contractor's Designed Portion being in accordance with clause 5-7.

### The Valuation Rules

#### Measurable Work

- 5-3 ·1 To the extent that a Valuation relates to the execution of additional or substituted work which can properly be valued by measurement or to the execution of work for which an Approximate Quantity is included in Contract Bills and subject to clause 5-7 in the case of CDP Works, such work shall be measured and shall be valued in accordance with the following rules:
  - 1 where the additional or substituted work is of similar character to, is executed under similar conditions as, and does not significantly change the quantity of, work set out in

<sup>[48]</sup> See clauses 3-8-1 and 3-8-2 for the Contractor's right of reasonable objection to Variations within clause 5-1-2.

the Contract Documents, the rates and prices for the work set out in the Priced Document shall determine the valuation;

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

Provided that clauses 5·3·1·4 and 5·3·1·5 shall apply only to the extent that the work has not been altered or modified other than in quantity.

- 2 To the extent that a Valuation relates to the omission of work set out in the Contract Documents and subject to clause 5·7 in the case of CDP Works, the rates and prices for such work therein set out shall determine the valuation of the work omitted.
- 3 In any valuation of work under clauses 5·3·1 and 5·3·2:
  - 1 measurement shall be in accordance with the same principles as those governing the preparation of Contract Bills, as referred to in clause 2·12;
  - 2 allowance shall be made for any percentage or lump sum adjustments in the Priced Document; and
  - 3 allowance, where appropriate, shall be made for any addition to or reduction of preliminary items of the type referred to in the Measurement Rules, provided that no such allowance shall be made in respect of compliance with an Architect/Contract Administrator's instruction for the expenditure of a Provisional Sum for defined work.

#### Daywork

- 5·4 Where the execution of additional or substituted work cannot be valued in accordance with clause 5·3 or 5·7, as applicable, the Valuation shall comprise:
  - 1 the prime cost of such work (calculated in accordance with the 'Definition of Prime Cost of Daywork carried out under a Building Contract' issued by The Royal Institution of Chartered Surveyors (RICS) and Construction Industry Publications Ltd as current at the Base Date) together with Percentage Additions to each section of the prime cost at the rates stated in the Priced Document or, if they apply in respect of labour, at the All-Inclusive Rates stated therein; or
  - 2 where the work is within the province of any specialist trade and the RICS and the appropriate body representing the employers in that trade have agreed and issued a definition of prime cost of daywork<sup>[46]</sup>, the prime cost of such work calculated in accordance with that definition current at the Base Date, together with Percentage Additions on the prime cost at the rates stated in the Priced Document or, if they apply in respect of labour, at the All-Inclusive Rates stated therein.

Provided that in any case vouchers specifying the time daily spent upon the work, the workmen's names, the plant and the materials employed shall be delivered for verification to the Architect/Contract Administrator or his authorised representative not later than 7 Business Days after the work has been executed.

<sup>[46]</sup> There are currently three definitions to which clause 5·4·2 refers, namely those agreed between the RICS and the Electrical Contractors Association, the RICS and the Electrical Contractors Association of Scotland and the RICS and the Building and Engineering Services Association.

**Change of conditions for other work****5-5 If as a result of:**

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

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

**Additional provisions**

- 5-6**
- 1 To the extent that a Valuation does not relate to the execution of additional or substituted work or the omission of work or to the extent that the valuation of any work or liabilities directly associated with a Variation cannot reasonably be effected in the Valuation by the application of clauses 5-3 to 5-5 and 5-7, a fair valuation shall be made.
  - 2 No allowance shall be made under the Valuation Rules for any effect upon the regular progress of the Works or of any part of them or for any other direct loss and/or expense for which the Contractor would be reimbursed by payment under any other provision in these Conditions.

**Contractor's Designed Portion – Valuation****5-7** Valuations relating to the Contractor's Designed Portion shall be made under this clause 5-7.

- 1 Allowance shall be made in such Valuations for the addition or omission of the relevant design work.
- 2 The valuation of additional or substituted work shall be consistent with the values of work of a similar character set out in the CDP Analysis, making due allowance for any change in the conditions under which work is carried out and/or any significant change in the quantity of the work so set out. Where there is no work of a similar character set out in the CDP Analysis a fair valuation shall be made.
- 3 The valuation of the omission of work set out in the CDP Analysis shall be in accordance with the values therein for such work.
- 4 Clauses 5-3-3-2, 5-3-3-3, 5-4 and 5-5 shall apply so far as is relevant.

## Section 6 Injury, Damage and Insurance

### Personal Injury and Property Damage

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

- 6-1** The Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings whatsoever in respect of personal injury to or the death of any person arising out of or in the course of or caused by the carrying out of the Works, except to the extent that the same is due to any act or neglect of the Employer, any Employer's Person or any Statutory Undertaker.

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

- 6-2** Subject to clause 6-3, the Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the Works and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor or any Contractor's Person.

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

- 6-3**
- 1 Where paragraph C-1 of Insurance Option C applies, the Contractor's liability and indemnity under clause 6-2 excludes any loss or damage to Existing Structures or to any of their contents required to be insured under that option that is caused by any of the risks or perils required or agreed to be insured against under that option.
  - 2 The exclusion in clause 6-3-1 shall apply notwithstanding that the loss or damage is or may be due in whole or in part to the negligence, breach of statutory duty, omission or default of the Contractor or any Contractor's Person.
  - 3 Where Insurance Option C applies but a C-1 Replacement Schedule applies in lieu of paragraph C-1, the Contractor's liability and indemnity under clause 6-2 shall, in respect of loss, injury or damage to the Existing Structures and their contents due to the causes specified in that clause, be subject only to such limitations or exclusions as are specified in that schedule.
  - 4 The reference in clause 6-2 to 'property real or personal' does not include the Works, work executed or Site Materials up to and including the date of issue of the Practical Completion Certificate or, if earlier, the date of termination of the Contractor's employment, except that:
    - 1 after the date of issue of a Section Completion Certificate, the Section to which it relates shall no longer be regarded as 'the Works' or 'work executed' for these purposes; and
    - 2 if partial possession is taken under clause 2-25, the Relevant Part shall no longer be so regarded after the Relevant Date.

### Insurance against Personal Injury and Property Damage

#### Contractor's insurance of his liability

- 6-4**
- 1 Without limiting or affecting his indemnities to the Employer under clauses 6-1 and 6-2, the Contractor shall effect and maintain insurance in respect of claims arising out of the liabilities referred to in those clauses which:
    - 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

- 2 for all other claims to which clause 6-4-1 applies<sup>[47]</sup>, shall indemnify the Employer in like manner to the Contractor (but only to the extent that the Contractor may be liable to indemnify the Employer under the terms of this Contract) and shall for any one occurrence or series of occurrences arising out of one event be in a sum not less than that stated in the Contract Particulars for clause 6-4-1.<sup>[48]</sup>
- 2 As to evidence that such insurances have been effected and are being maintained and the consequences of failure to comply, clause 6-12 shall apply.

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

- 6-5 ·1 If the Contract Particulars state that insurance under clause 6-5-1 may be required, the Contractor shall if instructed by the Architect/Contract Administrator effect and maintain a policy of insurance in the names of the Employer and the Contractor for the amount of indemnity there stated in respect of any expense, liability, loss, claim or proceedings which the Employer may incur or sustain by reason of injury or damage to any property caused by collapse, subsidence, heave, vibration, weakening or removal of support or lowering of ground water arising out of or in the course of or by reason of the carrying out of the Works, excluding injury or damage:
- 1 for which the Contractor is liable under clause 6-2; or
  - 2 which is attributable to errors or omissions in the designing of the Works; or
  - 3 which can reasonably be foreseen to be inevitable having regard to the nature of the work to be executed and the manner of its execution; or
  - 4 (if Insurance Option C applies) which it is the responsibility of the Employer to insure under paragraph C-1 of Schedule 1; or
  - 5 to the Works and Site Materials except where the Practical Completion Certificate has been issued or in so far as any Section is the subject of a Section Completion Certificate; or
  - 6 which arises from any consequence of war, invasion, act of foreign enemy, hostilities (whether war is declared or not), civil war, rebellion or revolution, insurrection or military or usurped power; or
  - 7 which is directly or indirectly caused by or contributed to by or arises from the Excepted Risks; or
  - 8 which is directly or indirectly caused by or arises out of pollution or contamination of buildings or other structures or of water or land or the atmosphere happening during the period of insurance, save that this exception shall not apply in respect of pollution or contamination caused by a sudden identifiable, unintended and unexpected incident which takes place in its entirety at a specific moment in time and place during the period of insurance (all pollution or contamination which arises out of one incident being considered for the purpose of this insurance to have occurred at the time such incident takes place); or
  - 9 which results in any costs or expenses being incurred by the Employer or in any other sums being payable by the Employer in respect of damages for breach of contract, except to the extent that such costs or expenses or damages would have attached in the absence of any contract.
  - 2 Any insurance under clause 6-5-1 shall be placed with insurers approved by the Employer, and the Contractor shall upon its issue deposit the policy with the Architect/Contract Administrator or, if so directed, the Employer.
  - 3 Amounts expended by the Contractor to effect and maintain that insurance shall on production of receipts be added to the Contract Sum, and clause 6-12 shall apply.

<sup>[47]</sup> It should be noted that the cover granted under Public Liability policies taken out pursuant to clause 6-4-1 may not be co-extensive with the indemnity given to the Employer in clauses 6-1 and 6-2: for example, each claim may be subject to an excess and cover may not be available in respect of loss or damage due to gradual pollution.

<sup>[48]</sup> The Contractor may, if he wishes, insure for a sum greater than that stated in the Contract Particulars.

**Excepted Risks**

- 6-6** Notwithstanding clauses 6-1, 6-2 and 6-4-1, the Contractor shall neither be liable to indemnify the Employer nor obliged to insure against any personal injury to or the death of any person or any damage, loss or injury to the Works, Site Materials, work executed, the site or any other property, caused by the effect of an Excepted Risk.

**Insurance of the Works and Existing Structures****Insurance Options and period**

- 6-7** -1 Insurance Options A, B and C are set out in Schedule 1. The Insurance Option that applies to this Contract is that stated in the Contract Particulars.<sup>[40]</sup>
- 2 In each case the Party responsible for effecting a Joint Names Policy under the Insurance Option that applies (the 'Works Insurance Policy') shall maintain that policy up to and including the date of issue of the Practical Completion Certificate, or last Section Completion Certificate, or (if earlier) the date of termination of the Contractor's employment, except that the obligation to maintain a Works Insurance Policy:
- 1 shall not apply in relation to a Section after the date of issue of its Section Completion Certificate; and
- 2 if partial possession is taken under clause 2-25, shall not as from the Relevant Date apply in relation to the Relevant Part.

**Related definitions**

- 6-8** In these Conditions the following phrases shall have the following meanings:

All Risks Insurance<sup>[60]</sup>: insurance which provides cover against any physical loss or

<sup>[40]</sup> Insurance Options A and B are for use in the case of new buildings. Insurance Option A is applicable where the Contractor is required to take out a Joint Names Policy for All Risks Insurance of the Works or to include them on that basis within his Annual Construction policy; Insurance Option B is applicable where the Employer has elected to take out that Joint Names Policy. Insurance Option C is for use in the case of alterations of or extensions to Existing Structures. Under that option, the Employer is required to take out a Joint Names Policy for All Risks Insurance for the Works and also, if paragraph C-1 applies, a Joint Names Policy to insure the Existing Structures and their contents owned by him or for which he is responsible against loss or damage by the Specified Perils. Some Employers (e.g. tenants and some homeowners) may not be able readily to obtain the Joint Names cover required under paragraph C-1. Where that is the case, alternative arrangements through use of a C-1 Replacement Schedule or as otherwise described in the Intermediate Building Contract Guide will be necessary. Where there are Existing Structures, it is vital that any prospective Employer who is not familiar with Insurance Option C – in particular any Employer who is a tenant or domestic homeowner – or an appropriate member of the Employer's professional team, should consult specialist insurance advisers prior to the tender stage. Any Employer who is a tenant should also consult his insuring landlord prior to that stage.

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

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

<sup>[60]</sup> The risks and costs that All Risks Insurance is required to cover are defined by exclusions. Policies issued by insurers are not standardised; the way in which insurance for these risks is expressed varies and in some cases it may not be possible for insurance to be taken out against certain of the risks required to be covered. In the case of Terrorism Cover, where the extension of cover will involve an additional premium and may in certain situations be difficult to effect, the requirement is now expressly limited to Pool Re Cover or such other cover as is agreed and set out in the Contract Particulars. That extension and any other relevant details of Works Insurance also require discussion and agreement between the Parties and their insurance advisers at an early stage, prior to entering into the Contract. See the Intermediate Building Contract Guide.

damage to work executed and Site Materials and against the reasonable cost of the removal and disposal of debris and of any shoring and propping of the Works which results from such physical loss or damage but excluding the cost necessary to repair, replace or rectify:

(a) property which is defective due to:

- (i) wear and tear,
- (ii) obsolescence, or
- (iii) deterioration, rust or mildew;

(b) any work executed or any Site Materials lost or damaged as a result of its own defect in design, plan, specification, material or workmanship or any other work executed which is lost or damaged in consequence thereof where such work relied for its support or stability on such work which was defective<sup>[81]</sup>;

(c) loss or damage caused by or arising from:

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

Excepted Risks:

the risks comprise:

(a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof (other than such risk insofar, but only insofar, as it is included in the Terrorism Cover from time to time required to be taken out and maintained under this Contract);

(b) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; and

(c) any act of terrorism that is not within the Terrorism Cover from time to time required to be taken out and maintained under this Contract.

Joint Names Policy:

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

Pool Re Cover:

such insurance against loss or damage to work executed and Site

<sup>[81]</sup> In an All Risks Insurance policy for the Works, cover should not be reduced by any exclusion that goes beyond the terms of paragraph (b) in this definition. For example, an exclusion in terms that 'This Policy excludes all loss of or damage to the property insured due to defective design, plan, specification, materials or workmanship' would not be in accordance with the terms of the relevant Insurance Options or that definition. In relation to design defects, wider All Risks cover than that specified may be available, though it is not standard.

Materials caused by or resulting from terrorism as is from time to time generally available from insurers who are members of the Pool Reinsurance Company Limited scheme or of any similar successor scheme.<sup>[52]</sup>

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

**Terrorism Cover:** Pool Re Cover or other insurance against loss or damage to work executed and Site Materials (and/or, for the purposes of clause 6.11.1, to an Existing Structure and/or its contents) caused by or resulting from terrorism.<sup>[53]</sup>

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

- 6.9** ·1 The Contractor, where Insurance Option A applies, and the Employer, where Insurance Option B or C applies, shall ensure that the Works Insurance Policy either:
- 1 provides for recognition of each sub-contractor as an insured under the policy; or
  - 2 includes a waiver by the insurers of any right of subrogation which they may have against any such sub-contractor
- in respect of loss or damage by the Specified Perils to the Works or relevant Section, work executed and Site Materials and that this recognition or waiver continues up to and including the date of issue of any certificate or other document which states that in relation to the Works, the sub-contractor's works are practically complete or, if earlier, the date of termination of the sub-contractor's employment. Where there are Sections, the recognition or waiver for a sub-contractor in relation to a Section shall cease upon the issue of such certificate or other document for his work in that Section.
- 2 Clause 6.9.1 applies also in respect of any Works Insurance Policy taken out in default under clause 6.12.2.
- 3 Where paragraph C.1 of Insurance Option C applies or Insurance Option C applies but a C.1 Replacement Schedule applies in lieu of paragraph C.1, the Employer shall also ensure that the policy of insurance referred to in that paragraph or the provisions of that schedule shall provide for recognition of any Named Sub-Contractor as an insured under that policy or schedule or include a waiver in respect of that Named Sub-Contractor in the terms referred to in clause 6.9.1.2, in either case up to and including the date of issue of such certificate or other document as is referred to in clause 6.9.1 or earlier date of termination of the Named Sub-Contractor's employment.<sup>[53]</sup>

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

- 6.10** ·1 To the extent that the Works Insurance Policy excludes (or would otherwise exclude) loss or damage caused by terrorism, the Contractor, where Insurance Option A applies, or the Employer, where Insurance Option B or C applies, shall unless otherwise agreed effect and maintain, either as an extension to the Works Insurance Policy or as a separate Joint Names Policy, in the same amount and for the same period as the Works Insurance Policy, such Terrorism Cover as is specified in or by the Contract Particulars, subject to clauses 6.10.4 and 6.11.
- 2 Where Insurance Option A applies and the Contractor is required to take out and maintain Pool Re Cover, the cost of that cover and its renewal shall be deemed to be included in the

<sup>[52]</sup> As respects Terrorism Cover and the requirements of Insurance Options A, B and C, see footnote [50] and the Intermediate Building Contract Guide.

<sup>[53]</sup> As to Insurance Option C, paragraph C.1 and the alternative arrangements that may be made through use of a C.1 Replacement Schedule generally see footnote [49]. Where using a C.1 Replacement Schedule, the Employer should consider how the requirements in clause 6.9.3 are to be dealt with and should obtain specialist insurance advice as appropriate.

Contract Sum save that, if at any renewal of the cover there is a variation in the rate on which the premium is based, the Contract Sum shall be adjusted by the net amount of the difference between the premium paid by the Contractor and the premium that would have been paid but for the change in rate.

- 3 Where Insurance Option A applies and Terrorism Cover other than Pool Re Cover is specified as required, the cost of such other cover and of its renewal shall be added to the Contract Sum.
- 4 Where Insurance Option A applies and the Employer is a Local or Public Authority, If at any renewal of the Terrorism Cover (of any type) there is an increase in the rate on which the premium is based, he may instruct the Contractor not to renew the Terrorism Cover. If he so instructs, clause 6·13·5·3 shall apply with effect from the renewal date.

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

- 6·11 ·1 If the insurers named in any Joint Names Policy notify either Party that, with effect from a specified date (the 'cessation date'), Terrorism Cover will cease and will no longer be available or will only continue to be available with a reduction in the scope or level of such cover, the recipient shall immediately notify the other Party.
- 2 The Employer, after receipt of such notification but before the cessation date, shall give notice to the Contractor either:
  - 1 that, notwithstanding the cessation or reduction in scope or level of Terrorism Cover, the Employer requires that the Works continue to be carried out; or
  - 2 that on the date stated in the Employer's notice (which shall be a date after the date of the insurers' notification but no later than the cessation date) the Contractor's employment under this Contract shall terminate.
- 3 Where Insurance Option A applies and the Employer gives notice under clause 6·11·2·1 requiring continuation of the Works, he may instruct the Contractor to effect and maintain any alternative or additional form of Terrorism Cover then reasonably obtainable by the Contractor; the net additional cost to the Contractor of any such cover and its renewal shall be added to the Contract Sum.
- 4 If the Employer gives notice of termination under clause 6·11·2·2, then upon and from such termination the provisions of clause 8·12 (excluding clause 8·12·3·5) shall apply.
- 5 If the Employer does not give notice of termination under clause 6·11·2·2, but work executed and/or Site Materials thereafter suffer physical loss or damage caused by terrorism, clauses 6·13 and 6·14 shall as appropriate apply.

#### **Evidence of insurance**

- 6·12 ·1 Where a Party is required by this Contract to effect and maintain an insurance policy or cover under any of clauses 6·4, 6·5, 6·7 and 6·10, or is responsible for ensuring that it is effected and maintained, that Party shall at the request of the other Party supply such documentary evidence as the other Party may reasonably require that the policy or cover has been effected and remains in force.
- 2 If a Party required to provide such documentary evidence fails to provide it within 7 days of a request being made, the other Party may assume that there has been a failure to insure, and may insure against any risk, liability or expense to which he may be exposed as a consequence, but shall not be obliged to do so. If the other Party insures, the defaulting Party shall be liable in the case of insurance under clause 6·4, 6·7 or 6·10 for the costs or, in the case of insurance required under clause 6·5, any additional cost that the other Party incurs in taking out and maintaining that insurance. Any costs payable to the Contractor shall be added to the Contract Sum; any costs payable to the Employer may be deducted from any sums due or to become due to the Contractor or shall be recoverable from the Contractor as a debt.

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

- 6·13 ·1 If during the carrying out of the Works any loss or damage affecting any executed work or Site Materials is occasioned by any of the risks covered by the Works Insurance Policy or an Excepted Risk or there is any loss of or damage of any kind to any of the Existing Structures or

- their contents, the Contractor shall forthwith upon it occurring or becoming apparent give notice both to the Architect/Contract Administrator and to the Employer of its nature, location and extent.
- 2 Subject to clauses 6-13-5-1 and 6-13-6, the occurrence of such loss or damage to executed work or Site Materials shall be disregarded in calculating any amounts payable to the Contractor under this Contract.
  - 3 The Contractor, for himself and for all his sub-contractors recognised as an Insured under the Works Insurance Policy, shall authorise the Insurers to pay to the Employer all monies from such Insurance, and from any policies covering Existing Structures or their contents that are effected by the Employer.
  - 4 Where loss or damage affecting executed work or Site Materials is occasioned by any risk covered by the Works Insurance Policy, and subject to clause 6-14 where relevant, the Contractor shall after any inspection required by the insurers under the Works Insurance Policy and with due diligence restore the damaged work, replace or repair any lost or damaged Site Materials, remove and dispose of any debris (collectively 'reinstatement work') and proceed with the carrying out and completion of the Works.
  - 5 Where Insurance Option A applies:
    - 1 the Employer shall pay all monies from such insurance to the Contractor by instalments under separate reinstatement work certificates issued by the Architect/Contract Administrator at the same dates as those for Interim Certificates under clause 4-8 but without deduction of retention and less only the amounts referred to in clause 6-13-5-2;
    - 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;
    - 3 In respect of reinstatement work, the Contractor shall not be entitled to any payment other than amounts received under the Works Insurance Policy except where there has been a cessation of or reduction in Terrorism Cover under clause 6-10-4 or 6-11 and loss or damage is then caused by or results from terrorism, in which case the reinstatement work shall, to the extent that its cost is no longer recoverable under the policy, be treated as a Variation and under clause 4-9-2 or 6-13-5-1 included in Interim Certificates. In neither case shall there be any reduction in any amount payable by reason of any act or neglect of the Contractor or of any sub-contractor which may have contributed to the physical loss or damage.
  - 6 Where Insurance Option B or paragraph C-2 of Insurance Option C applies or where loss or damage is caused by an Excepted Risk, reinstatement work shall be treated as a Variation.

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

- 6-14** If there is material loss of or damage to any of the Existing Structures, the Employer shall be under no obligation to reinstate those structures, but either Party may, if it is just and equitable, terminate the Contractor's employment under this Contract by notice given to the other in accordance with clause 1-7-4 within 28 days of the occurrence of that loss or damage. If such notice is given, then:
- 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;
  - 2 upon the giving of that notice or, where a dispute resolution procedure is invoked within that period, upon any final upholding of the notice, the provisions of clause 8-12 (except clause 8-12-3-5) shall apply.

#### Joint Fire Code – compliance

##### Application of clauses

- 6-16** Clauses 6-16 to 6-18 apply where the Contract Particulars state that the Joint Fire Code applies.

**Compliance with Joint Fire Code**

- 6-16** The Parties shall comply with the Joint Fire Code and any amendments or revisions to it; the Employer shall ensure such compliance by all Employer's Persons and the Contractor shall ensure such compliance by all Contractor's Persons.

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

- 6-17** -1 If a breach of the Joint Fire Code occurs and the insurers under the Works Insurance Policy specify by notice to the Employer or the Contractor the remedial measures they require (the 'Remedial Measures'), the Party receiving the notice shall send copies of it to the other and to the Architect/Contract Administrator, and then:
- 1 subject to clause 6-17-1-2, where the Remedial Measures relate to the obligation of the Contractor to carry out and complete the Works, the Contractor shall ensure that the Remedial Measures are carried out by such date as the Insurers specify; and
  - 2 to the extent that the Remedial Measures require a Variation to the Works as described in the Contract Documents or in an Architect/Contract Administrator's instruction, the Architect/Contract Administrator shall issue such instructions as are necessary to enable compliance. If, in an emergency, compliance with the Remedial Measures in whole or in part requires the Contractor to supply materials or execute work before receiving instructions under this clause 6-17-1-2, the Contractor shall supply the materials and execute the work reasonably necessary to secure immediate compliance. The Contractor shall forthwith notify the Architect/Contract Administrator of the emergency and of the steps he is taking. Save to the extent they relate to the Contractor's Designed Portion, the work and materials reasonably necessary shall be treated as if executed and supplied under a Variation instruction.
  - 2 If the Contractor, within 7 days of receipt of a notice specifying Remedial Measures not requiring an Architect/Contract Administrator's instruction under clause 6-17-1-2, does not begin to carry out or thereafter fails without reasonable cause regularly and diligently to proceed with the Remedial Measures, then the Employer may employ and pay other persons to carry out those Remedial Measures. The Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and an appropriate deduction shall be made from the Contract Sum.

**Joint Fire Code – amendments/revisions**

- 6-18** Where the Joint Fire Code is, under a Joint Names Policy, applicable to the Works and amendments or revisions are made to it after the Base Date, any cost of compliance by the Contractor with amendments or revisions made after that date shall be borne as stated in the Contract Particulars. If the cost is to be borne by the Employer, it shall be added to the Contract Sum.

**CDP Professional Indemnity Insurance****Obligation to insure**

- 6-19** The Contractor shall:
- 1 forthwith after this Contract has been entered into, take out (unless he has already done so) a Professional Indemnity insurance policy with limits of indemnity of the types and in amounts not less than those stated in the Contract Particulars<sup>174</sup>;
  - 2 thereafter, provided it is available at commercially reasonable rates, maintain such insurance until the expiry of the period stated in the Contract Particulars from the date of practical completion of the Works; and
  - 3 as and when reasonably requested to do so by the Employer or the Architect/Contract Administrator, produce for inspection documentary evidence that such insurance has been effected and/or is being maintained.

<sup>174</sup> See the Intermediate Building Contract Guide.

**Increased cost and non-availability**

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

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

### Assignment

- 7-1 Neither the Employer nor the Contractor shall without the consent of the other assign this Contract or any rights thereunder.

### Performance Bonds and Guarantees

- 7-2 The Contractor shall on the execution of this Contract provide to the Employer whichever of the following the Contract Particulars state as being required:
- 1 a performance bond or guarantee of the Contractor's due performance of the Contract from a bank or other surety approved by the Employer in an amount equal to the percentage of the Contract Sum and for the period stated in the Contract Particulars;
  - 2 a guarantee by the Contractor's parent company identified in the Contract Particulars;
- any such bond or guarantee, unless otherwise agreed by the Employer, being substantially in the form of the document identified by the Contract Particulars.

### Collateral Warranties

#### Rights Particulars

- 7-3 The requirements for the grant of P&T Rights and Funder Rights by the Contractor and sub-contractors and any requirement for the grant of Employer Rights by any sub-contractors ('Rights Particulars') are set out in the document(s) identified in the Contract Particulars against the reference to clause 7-3.<sup>[55]</sup> As respects those requirements:
- 1 such rights are conferred only on persons sufficiently identified (by name, class or description) in the Rights Particulars;
  - 2 unless otherwise stated in the Rights Particulars, the term 'the Consultants' shall in all collateral warranties to be given mean the Architect/Contract Administrator and the Quantity Surveyor (including any replacements), together with any other consultants providing design services to the Employer in connection with the Works.

#### Notices

- 7-4 Each notice to the Contractor referred to in clauses 7-6 to 7-8 shall be given in accordance with clause 1-7-4.

[55] The relevant Rights Particulars should identify the beneficiaries (by name, class or description) and the sub-contractors who are also required to grant rights by way of Collateral Warranties, state in those cases where the default provision is not to apply which alternative provision is to apply in its place and give any other details required to complete the terms of the warranties that are to be given. A Model Form for the Rights Particulars is included in the Intermediate Building Contract Guide and is also available on the JCT website [www.jcttd.co.uk](http://www.jcttd.co.uk). Employers should be selective in identifying the sub-contractors (or categories of sub-contractor) from whom collateral warranties may be required and should not include any Named Sub-Contractor since such matters are intended to be dealt with by the Intermediate Named Sub-Contractor/Employer Agreement ICSUB/NAM/E and not to be governed by the Intermediate Named Sub-Contract itself (ICSUB/NAM). Directions may be needed as to mode of execution of sub-contracts and/or collateral warranties by relevant sub-contractors. See also the Intermediate Building Contract Guide. Employers should be selective in identifying the sub-contractors (or categories of sub-contractor) from whom collateral warranties may be required and should not include any Named Sub-Contractor since such matters are intended to be dealt with by the Intermediate Named Sub-Contractor/Employer Agreement ICSUB/NAM/E and not to be governed by the Intermediate Named Sub-Contract itself (ICSUB/NAM). Directions may be needed as to mode of execution of sub-contracts and/or collateral warranties by relevant sub-contractors. See also the Intermediate Building Contract Guide. Directions may be needed as to mode of execution of sub-contracts and/or collateral warranties by relevant sub-contractors. See also the Intermediate Building Contract Guide.

**Execution of Collateral Warranties**

- 7-5** Where this Contract is executed as a deed, any collateral warranty to be entered into by the Contractor pursuant to clause 7-6 or 7-7 shall be executed as a deed. Where this Contract is executed under hand, any such warranty may be executed under hand.<sup>[98]</sup>

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

- 7-6** Where the Rights Particulars state that the Contractor shall confer P&T Rights on a Purchaser or Tenant by way of collateral warranty, the Employer may by notice to the Contractor, identifying the Purchaser or Tenant and his interest in the Works, require that the Contractor within 14 days from receipt of that notice enter into a Collateral Warranty with such Purchaser or Tenant in the form CWa/P&T, completed in accordance with the relevant Rights Particulars.

**Contractor's Warranty – Funder**

- 7-7** Where the Rights Particulars state that the Contractor shall confer Funder Rights on a Funder by way of collateral warranty, the Employer may by notice to the Contractor require that the Contractor within 14 days from receipt of the Employer's notice enter into a Collateral Warranty with the Funder in the form CWa/F, completed in accordance with the relevant Rights Particulars.

**Sub-Contractors' Warranties**

- 7-8** Where the Rights Particulars state that a sub-contractor shall execute and deliver a Collateral Warranty in favour of a Purchaser, Tenant or Funder and/or the Employer:
- 1 the Contractor shall comply with the Contract Documents as to the obtaining of such warranties including:
    - 1 on receipt of notice from the Employer (or Architect/Contract Administrator on his behalf) identifying in each case the sub-contractor, type of warranty and beneficiary, promptly giving notice under clause 2-18-2 of the JCT Intermediate Sub-Contract Conditions or other equivalent sub-contract condition to each sub-contractor identified in the Employer's notice; and
    - 2 In the case of each Collateral Warranty specified in the Employer's notice and within 21 days of receipt of that notice, taking such steps as are required to obtain each warranty, promptly forwarding the executed document to the Employer or as he may direct and, where Collateral Warranty SCWa/F is required, having himself also executed and delivered the document;
  - 2 any amendment to the form of any collateral warranty proposed by a sub-contractor shall require approval by both the Contractor and the Employer.

<sup>[98]</sup> See the footnote to clause 7-3 above.

## Section 8 Termination

### General

#### Meaning of insolvency

8-1 For the purposes of these Conditions:

- 1 a company becomes Insolvent:
  - 1 when it enters administration within the meaning of Schedule B1 to the Insolvency Act 1986;
  - 2 on the appointment of an administrative receiver or a receiver or manager of its property under Chapter I of Part III of that Act, or the appointment of a receiver under Chapter II of that Part;
  - 3 on the passing of a resolution for voluntary winding-up without a declaration of solvency under section 89 of that Act; or
  - 4 on the making of a winding-up order under Part IV or V of that Act.
- 2 a partnership becomes Insolvent:
  - 1 on the making of a winding-up order against it under any provision of the Insolvency Act 1986 as applied by an order under section 420 of that Act; or
  - 2 when sequestration is awarded on the estate of the partnership under section 12 of the Bankruptcy (Scotland) Act 1985 or the partnership grants a trust deed for its creditors.
- 3 an individual becomes Insolvent:
  - 1 on the making of a bankruptcy order against him under Part IX of the Insolvency Act 1986; or
  - 2 on the sequestration of his estate under the Bankruptcy (Scotland) Act 1985 or when he grants a trust deed for his creditors.
- 4 a person also becomes Insolvent if:
  - 1 he enters into an arrangement, compromise or composition in satisfaction of his debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction); or
  - 2 (in the case of a partnership) each partner is the subject of an individual arrangement or any other event or proceedings referred to in this clause 8-1.

Each of clauses 8-1-1 to 8-1-4 also includes any analogous arrangement, event or proceedings in any other jurisdiction.

#### Notices under section 8

- 8-2 -1 Notice of termination of the Contractor's employment shall not be given unreasonably or vexatiously.
- 2 Such termination shall take effect on receipt of the relevant notice.
- 3 Each notice referred to in this section shall be given in accordance with clause 1-7-4.

#### Other rights, reinstatement

- 8-3 -1 The provisions of clauses 8-4 to 8-7 are without prejudice to any other rights and remedies of the Employer. The provisions of clauses 8-9 and 8-10 and (in the case of termination under either of those clauses) the provisions of clause 8-12, are without prejudice to any other rights and remedies of the Contractor.
- 2 Irrespective of the grounds of termination, the Contractor's employment may at any time be

reinstated if and on such terms as the Parties agree.

## Termination by Employer

### Default by Contractor

- 8-4**
- 1 If, before practical completion of the Works, the Contractor:
    - 1 without reasonable cause wholly or substantially suspends the carrying out of the Works; or
    - 2 fails to proceed regularly and diligently with the Works; or
    - 3 refuses or neglects to comply with a notice or instruction from the Architect/Contract Administrator requiring him to remove any work, materials or goods not in accordance with this Contract and by such refusal or neglect the Works are materially affected; or
    - 4 fails to comply with clause 3-5, 3-7 or 7-1; or
    - 5 fails to comply with clause 3-18,
 the Architect/Contract Administrator may give to the Contractor a notice specifying the default or defaults (a 'specified' default or defaults).
  - 2 If the Contractor continues a specified default for 14 days from receipt of the notice under clause 8-4-1, the Employer may on, or within 21 days from, the expiry of that 14 day period by a further notice to the Contractor terminate the Contractor's employment under this Contract.
  - 3 If the Employer does not give the further notice referred to in clause 8-4-2 (whether as a result of the ending of any specified default or otherwise) but the Contractor repeats a specified default (whether previously repeated or not), then, upon or within a reasonable time after such repetition, the Employer may by notice to the Contractor terminate that employment.

### Insolvency of Contractor

- 8-5**
- 1 If the Contractor is Insolvent, the Employer may at any time by notice to the Contractor terminate the Contractor's employment under this Contract.
  - 2 The Contractor shall immediately notify the Employer if he makes any proposal, gives notice of any meeting or becomes the subject of any proceedings or appointment relating to any of the matters referred to in clause 8-1.
  - 3 As from the date the Contractor becomes Insolvent, whether or not the Employer has given such notice of termination:
    - 1 clauses 8-7-3 to 8-7-5 and (if relevant) clause 8-8 shall apply as if such notice had been given;
    - 2 the Contractor's obligations under Article 1 and these Conditions to carry out and complete the Works shall be suspended; and
    - 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.

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

- 8-6**
- 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.

### Consequences of termination under clauses 8-4 to 8-6

- 8-7**
- If the Contractor's employment is terminated under clause 8-4, 8-5 or 8-6:

- 1 the Employer may employ and pay other persons to carry out and complete the Works and to make good any defects of the kind referred to in clause 2.30, and he and they may enter upon and take possession of the site and the Works and (subject to obtaining any necessary third party consents) may use all temporary buildings, plant, tools, equipment and Site Materials for those purposes;
- 2 the Contractor shall:
  - 1 when required in writing by the Architect/Contract Administrator to do so (but not before), remove or procure the removal from the Works of any temporary buildings, plant, tools, equipment, goods and materials belonging to the Contractor or Contractor's Persons;
  - 2 without charge provide the Employer with copies of all Contractor's Design Documents then prepared, whether or not previously provided;
  - 3 if so required by the Employer (or by the Architect/Contract Administrator on his behalf) within 14 days of the date of termination, assign (so far as assignable and so far as he may lawfully be required to do so) to the Employer, without charge, the benefit of any agreement for the supply of materials or goods and/or for the execution of any work for the purposes of this Contract<sup>[87]</sup>;
- 3 no further sum shall become due to the Contractor under this Contract other than any amount that may become due to him under clause 8.7.5 or 8.8.2 and the Employer need not pay any sum that has already become due either:
  - 1 insofar as the Employer has given or gives a Pay Less Notice under clause 4.12.5; or
  - 2 if the Contractor, after the last date upon which such notice could have been given by the Employer in respect of that sum, has become insolvent within the meaning of clauses 8.1.1 to 8.1.3;
- 4 following the completion of the Works and the making good of defects in them (or of instructions otherwise, as referred to in clause 2.30), an account of the following shall within 3 months thereafter be set out in a certificate issued by the Architect/Contract Administrator or a statement prepared by the Employer:
  - 1 the amount of expenses properly incurred by the Employer, including those incurred pursuant to clause 8.7.1 and, where applicable, clause 8.5.3.3, and of any direct loss and/or damage caused to the Employer and for which the Contractor is liable, whether arising as a result of the termination or otherwise;
  - 2 the amount of payments made to the Contractor; and
  - 3 the total amount which would have been payable for the Works in accordance with this Contract;
- 5 if the sum of the amounts stated under clauses 8.7.4.1 and 8.7.4.2 exceeds the amount stated under clause 8.7.4.3, the difference shall be a debt payable by the Contractor to the Employer or, if that sum is less, by the Employer to the Contractor.

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

- 8.8 ·1 If within the period of 6 months from the date of termination of the Contractor's employment the Employer decides not to have the Works carried out and completed, he shall forthwith notify the Contractor. Within a reasonable time from the date of such notification, or if no notification is given but within that 6 month period the Employer does not commence to make arrangements for such carrying out and completion, then within 2 months of the expiry of that 6 month period, the Employer shall send to the Contractor a statement setting out:
  - 1 the total value of work properly executed at the date of termination or date on which the Contractor became Insolvent, ascertained in accordance with these Conditions as if that employment had not been terminated, together with any amounts due to the Contractor under these Conditions not included in such total value; and

<sup>[87]</sup> Clause 8.7.2.3 may not be effectual in cases of Contractor's Insolvency.

- 2 the aggregate amount of any expenses properly incurred by the Employer and of any direct loss and/or damage caused to the Employer and for which the Contractor is liable, whether arising as a result of the termination or otherwise.
- 2 After taking into account amounts previously paid to the Contractor under this Contract, if the amount stated under clause 8-8-1-2 exceeds the amount stated under clause 8-8-1-1, the difference shall be a debt payable by the Contractor to the Employer or, if the clause 8-8-1-2 amount is less, by the Employer to the Contractor.

## Termination by Contractor

### Default by Employer

- 8-9**
- 1 If the Employer:
    - 1 does not pay by the final date for payment the amount due to the Contractor in accordance with clause 4-12 and/or any VAT properly chargeable on that amount; or
    - 2 Interferes with or obstructs the issue of any certificate due under this Contract; or
    - 3 fails to comply with clause 7-1; or
    - 4 fails to comply with clause 3-18,
 the Contractor may give to the Employer a notice specifying the default or defaults (a 'specified' default or defaults).
  - 2 If before practical completion of the Works the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for a continuous period of the length stated in the Contract Particulars by reason of:
    - 1 Architect/Contract Administrator's instructions under clause 2-13, 3-11 or 3-12; and/or
    - 2 any impediment, prevention or default, whether by act or omission, by the Employer, the Architect/Contract Administrator, the Quantity Surveyor or any Employer's Person
 (but in either case excluding such instructions as are referred to in clause 8-11-1-2), then, unless in either case that is caused by the negligence or default of the Contractor or any Contractor's Person, the Contractor may give to the Employer a notice specifying the event or events (a 'specified' suspension event or events).
  - 3 If a specified default or a specified suspension event continues for 14 days from the receipt of notice under clause 8-9-1 or 8-9-2, the Contractor may on, or within 21 days from, the expiry of that 14 day period by a further notice to the Employer terminate the Contractor's employment under this Contract.
  - 4 If the Contractor for any reason does not give the further notice referred to in clause 8-9-3, but (whether previously repeated or not):
    - 1 the Employer repeats a specified default; or
    - 2 a specified suspension event is repeated for any period, such that the regular progress of the Works is or is likely to be materially affected thereby,
 then, upon or within a reasonable time after such repetition, the Contractor may by notice to the Employer terminate the Contractor's employment under this Contract.

### Insolvency of Employer

- 8-10**
- 1 If the Employer is Insolvent, the Contractor may by notice to the Employer terminate the Contractor's employment under this Contract;
  - 2 the Employer shall immediately notify the Contractor if he makes any proposal, gives notice of any meeting or becomes the subject of any proceedings or appointment relating to any of the matters referred to in clause 8-1;
  - 3 as from the date the Employer becomes Insolvent, the Contractor's obligations under Article 1 and these Conditions to carry out and complete the Works shall be suspended.

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

## PC Regulations

- 8-11** ·1 If, before practical completion of the Works, the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for the relevant continuous period of the length stated in the Contract Particulars by reason of one or more of the following events:
- 1 force majeure;
  - 2 Architect/Contract Administrator's instructions under clause 2-13, 3-11 or 3-12 issued as a result of the negligence or default of any Statutory Undertaker;
  - 3 loss or damage to the Works occasioned by any risk covered by the Works Insurance Policy or by an Excepted Risk;
  - 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
  - 5 the exercise by the United Kingdom Government or any Local or Public Authority of any statutory power that is not occasioned by a default of the Contractor or any Contractor's Person but which directly affects the execution of the Works,
- then either Party, subject to clause 8-11-2, may upon the expiry of that relevant period of suspension give notice to the other that, unless the suspension ceases within 7 days after the date of receipt of that notice, he may terminate the Contractor's employment under this Contract. Failing such cessation within that 7 day period, he may then by further notice terminate that employment.
- 2 The Contractor shall not be entitled to give notice under clause 8-11-1 in respect of the matter referred to in clause 8-11-1-3 where the loss or damage to the Works was caused by the negligence or default of the Contractor or any Contractor's Person.
  - 3 Where this Contract is one to which regulation 73(1) of the PC Regulations applies the Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment under this Contract where the grounds set out in regulation 73(1)(a) or 73(1)(c) of the PC Regulations apply.

## Consequences of Termination under clauses 8-9 to 8-11, etc.

- 8-12** If the Contractor's employment is terminated under any of clauses 8-9 to 8-11 or under clause 6-11-2-2 or 6-14:
- 1 no further sums shall become due to the Contractor otherwise than in accordance with this clause 8-12;
  - 2 the Contractor shall:
    - 1 with all reasonable dispatch remove or procure the removal from the site of any temporary buildings, plant, tools and equipment belonging to the Contractor and Contractor's Persons and, subject to the provisions of clause 8-12-5, all goods and materials (including Site Materials); and
    - 2 without charge provide to the Employer copies of the documents referred to in clause 2-32 then prepared;
  - 3 where the Contractor's employment is terminated under clause 8-9 or 8-10, the Contractor shall as soon as reasonably practicable prepare and submit an account or, where terminated under clause 8-11, 6-11-2-2 or 6-14, the Contractor shall at the Employer's option either prepare and submit that account or, not later than 2 months after the date of termination, provide the Employer with all documents necessary for the Employer to do so, which the Employer shall do with reasonable dispatch (and in any event within 3 months of receipt of such documents). The account shall set out the amounts referred to in clauses 8-12-3-1 to 8-12-3-4 and, if applicable, clause 8-12-3-5, namely:
    - 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

- 2 any sums ascertained in respect of direct loss and/or expense under clause 4·16 (whether ascertained before or after the date of termination);
- 3 the reasonable cost of removal under clause 8·12·2;
- 4 the cost of materials or goods (including Site Materials) properly ordered for the Works for which the Contractor then has paid or is legally bound to pay;
- 5 any direct loss and/or damage caused to the Contractor by the termination;
- 4 the account shall include the amount, if any, referred to in clause 8·12·3·5 only where the Contractor's employment is terminated either:
  - 1 under clause 8·9 or 8·10; or
  - 2 under clause 8·11·1·3, if the loss or damage to the Works was caused by the negligence or default of the Employer or any Employer's Person;
- 5 after taking into account amounts previously paid to the Contractor under this Contract, the Employer shall pay to the Contractor (or vice versa) the amount properly due in respect of the account within 28 days of its submission to the other Party, without deduction of any retention. Payment by the Employer for any such materials and goods as are referred to in clause 8·12·3·4 shall be subject to those materials and goods thereupon becoming the Employer's property.

## Section 9 Settlement of Disputes

### Mediation

- 9-1 Subject to Article 7, if a dispute or difference arises under this Contract which cannot be resolved by direct negotiations, each Party shall give serious consideration to any request by the other to refer the matter to mediation.<sup>[60]</sup>

### Adjudication

- 9-2 If a dispute or difference arises under this Contract which either Party wishes to refer to adjudication, the Scheme shall apply, subject to the following:
- 1 for the purposes of the Scheme the Adjudicator shall be the person (if any) and the nominating body shall be that stated in the Contract Particulars;
  - 2 where the dispute or difference is or includes a dispute or difference relating to clause 3-15 and as to whether an instruction issued thereunder is reasonable in all the circumstances:
    - 1 the Adjudicator to decide such dispute or difference shall (where practicable) be an individual with appropriate expertise and experience in the specialist area or discipline relevant to the instruction or issue in dispute;
    - 2 If the Adjudicator does not have the appropriate expertise and experience, the Adjudicator shall appoint an independent expert with such expertise and experience to advise and report in writing on whether or not the instruction under clause 3-15 is reasonable in all the circumstances.

### Arbitration

#### Conduct of arbitration

- 9-3 Any arbitration pursuant to Article 8 shall be conducted in accordance with the JCT 2016 edition of the Construction Industry Model Arbitration Rules (CIMAR), provided that if any amendments to that edition of the Rules have been issued by the JCT the Parties may, by a joint notice in writing to the Arbitrator, state that they wish the arbitration to be conducted in accordance with the Rules as so amended. References in clause 9-4 to a Rule or Rules are references to such Rule(s) as set out in the JCT 2016 edition of CIMAR.<sup>[60]</sup>

#### Notice of reference to arbitration

- 9-4
- 1 Where pursuant to Article 8 either Party requires a dispute or difference to be referred to arbitration, that Party shall serve on the other Party a notice of arbitration to such effect in accordance with Rule 2-1 Identifying the dispute and requiring the other Party to agree to the appointment of an arbitrator. The Arbitrator shall be an individual agreed by the Parties or, failing such agreement within 14 days (or any agreed extension of that period) after the notice of arbitration is served, appointed on the application of either Party in accordance with Rule 2-3 by the person named in the Contract Particulars.
  - 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.
  - 3 After the Arbitrator has been appointed either Party may give a further notice of arbitration to the other Party and to the Arbitrator referring any other dispute which falls under Article 8 to be decided in the arbitral proceedings and Rule 3-3 shall apply.

<sup>[60]</sup> See the Intermediate Building Contract Guide.

<sup>[60]</sup> 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.

**Powers of Arbitrator**

- 9-5** Subject to the provisions of Article 8 and clause 1-9, the Arbitrator shall, without prejudice to the generality of his powers, have power to rectify this Contract so that it accurately reflects the true agreement made by the Parties, to direct such measurements and/or valuations as may in his opinion be desirable in order to determine the rights of the Parties and to ascertain and award any sum which ought to have been the subject of or included in any certificate and to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice had been given.

**Effect of award**

- 9-6** Subject to clause 9-7 the award of the Arbitrator shall be final and binding on the Parties.

**Appeal – questions of law**

- 9-7** 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):
- 1 apply to the courts to determine any question of law arising in the course of the reference; and
  - 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**

- 9-8** The provisions of the Arbitration Act 1996 shall apply to any arbitration under this Contract wherever the same, or any part of it, shall be conducted.

# Schedules

## Schedule 1 Insurance Options

(Clause 6-7)

### Insurance Option A

(New Buildings – All Risks Insurance of the Works by the Contractor)<sup>1001</sup>

Not applicable.

<sup>1001</sup> Insurance Options A and B are for use in the case of new buildings. Insurance Option A is applicable where the Contractor is required to take out a Joint Names Policy for All Risks Insurance of the Works or to include them on that basis within his Annual Construction policy; Insurance Option B is applicable where the Employer has elected to take out that Joint Names Policy. Insurance Option C is for use in the case of alterations of or extensions to Existing Structures. Under that option, the Employer is required to take out a Joint Names Policy for All Risks Insurance for the Works and also, if paragraph C.1 applies, a Joint Names Policy to insure the Existing Structures and their contents owned by him or for which he is responsible against loss or damage by the Specified Perils. Some Employers (e.g. tenants and some homeowners) may not be able readily to obtain the Joint Names cover required under paragraph C.1. Where that is the case, alternative arrangements through use of a C.1 Replacement Schedule or as otherwise described in the Intermediate Building Contract Guide will be necessary. Where there are Existing Structures, it is vital that any prospective Employer who is not familiar with Insurance Option C – in particular any Employer who is a tenant or domestic homeowner – or an appropriate member of the Employer's professional team, should consult specialist insurance advisers prior to the tender stage. Any Employer who is a tenant should also consult his insuring landlord prior to that stage.

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

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

## Insurance Option B

(New Buildings – All Risks Insurance of the Works by the Employer)<sup>[60]</sup>

Not applicable.

<sup>[60]</sup> Insurance Options A and B are for use in the case of new buildings. Insurance Option A is applicable where the Contractor is required to take out a Joint Names Policy for All Risks Insurance of the Works or to include them on that basis within his Annual Construction policy; Insurance Option B is applicable where the Employer has elected to take out that Joint Names Policy. Insurance Option C is for use in the case of alterations of or extensions to Existing Structures. Under that option, the Employer is required to take out a Joint Names Policy for All Risks Insurance for the Works and also, if paragraph C-1 applies, a Joint Names Policy to insure the Existing Structures and their contents owned by him or for which he is responsible against loss or damage by the Specified Perils. Some Employers (e.g. tenants and some homeowners) may not be able readily to obtain the Joint Names cover required under paragraph C-1. Where that is the case, alternative arrangements through use of a C-1 Replacement Schedule or as otherwise described in the Intermediate Building Contract Guide will be necessary. Where there are Existing Structures, it is vital that any prospective Employer who is not familiar with Insurance Option C – in particular any Employer who is a tenant or domestic homeowner – or an appropriate member of the Employer's professional team, should consult specialist insurance advisers prior to the tender stage. Any Employer who is a tenant should also consult his insuring landlord prior to that stage.

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

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

## Insurance Option C

(Joint Names Insurance by the Employer of Existing Structures and Works in or Extensions to them)<sup>[1]</sup>

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

- C-1** The Employer shall unless otherwise stated by the Contract Particulars for clause 6-7 and this Schedule effect and for the period specified in clause 6-7-2 maintain a Joint Names Policy in respect of the Existing Structures together with the contents of them owned by him or for which he is responsible, for the full cost of reinstatement, repair or replacement of loss or damage due to any of the Specified Perils.

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

- C-2** The Employer shall effect and for the period specified in clause 6-7-2 maintain a Joint Names Policy for All Risks Insurance with cover no less than that specified in clause 6-8 for the full reinstatement value of the Works or (where applicable) Sections (plus the percentage, if any, stated in the Contract Particulars to cover professional fees).

### Loss or damage

- C-3** If during the carrying out of the Works there is any loss of or damage of any kind to any executed work, Site Materials and/or to any Existing Structures or their contents the provisions of clauses 6-13 and 6-14 shall as relevant apply.

<sup>[1]</sup> Insurance Option C is for use where there are Existing Structures. It can be used in its existing printed form by those Employers who are able to effect the Joint Names, Specified Perils cover for the Contractor in respect of the Existing Structures and those contents that are owned by the Employer or for which he is responsible. However, the Joint Names Policy required by paragraph C-1 or the extension of a subsisting structure and contents policy to being a Joint Names Policy may not be readily available – and that provision is often not now appropriate for – refurbishment projects or alterations by tenant Employers where Existing Structures insurance is the landlord's responsibility. Joint Names cover may also not be readily available to some domestic owner-occupiers looking to undertake refurbishments or extensions to their property. The Contract Particulars for clause 6-7 and Schedule 1 therefore expressly allow the Parties in those circumstances to disapply paragraph C-1 and, by means of a C-1 Replacement Schedule, to include in place of that paragraph provisions that are tailored to their particular requirements. In JCT's view the preparation of such replacement provisions must be assigned to insurance professionals. An explanatory summary of the alternative arrangements generally adopted to overcome those difficulties is, however, contained in the Intermediate Building Contract Guide. However, the Joint Names Policy required by paragraph C-1 or the extension of a subsisting structure and contents policy to being a Joint Names Policy may not be readily available – and that provision is often not now appropriate for – refurbishment projects or alterations by tenant Employers where Existing Structures insurance is the landlord's responsibility. Joint Names cover may also not be readily available to some domestic owner-occupiers looking to undertake refurbishments or extensions to their property. The Contract Particulars for clause 6-7 and Schedule 1 therefore expressly allow the Parties in those circumstances to disapply paragraph C-1 and, by means of a C-1 Replacement Schedule, to include in place of that paragraph provisions that are tailored to their particular requirements. In JCT's view the preparation of such replacement provisions must be assigned to insurance professionals. An explanatory summary of the alternative arrangements generally adopted to overcome those difficulties is, however, contained in the Intermediate Building Contract Guide. Joint Names cover may also not be readily available to some domestic owner-occupiers looking to undertake refurbishments or extensions to their property. The Contract Particulars for clause 6-7 and Schedule 1 therefore expressly allow the Parties in those circumstances to disapply paragraph C-1 and, by means of a C-1 Replacement Schedule, to include in place of that paragraph provisions that are tailored to their particular requirements. The Contract Particulars for clause 6-7 and Schedule 1 therefore expressly allow the Parties in those circumstances to disapply paragraph C-1 and, by means of a C-1 Replacement Schedule, to include in place of that paragraph provisions that are tailored to their particular requirements. In JCT's view the preparation of such replacement provisions must be assigned to insurance professionals. An explanatory summary of the alternative arrangements generally adopted to overcome those difficulties is, however, contained in the Intermediate Building Contract Guide. An explanatory summary of the alternative arrangements generally adopted to overcome those difficulties is, however, contained in the Intermediate Building Contract Guide.

## Schedule 2 Named Sub-Contractors

(Clause 3.7)

- 1 The Contractor shall notify the Architect/Contract Administrator of the date on which he enters into the sub-contract with the Named Sub-Contractor.
- 2 If the Contractor is unable to enter into a sub-contract in accordance with clause 3.7 and the particulars given in the Contract Documents, he shall immediately notify the Architect/Contract Administrator, specifying which of the particulars prevent the execution of the sub-contract. If the Architect/Contract Administrator is reasonably satisfied that the specified particulars have prevented execution, he shall issue an instruction which may:
  - 1 change the particulars so as to remove the impediment to execution; or
  - 2 omit the work; or
  - 3 omit the work from the Contract Documents and substitute a provisional sum.
- 3 An instruction under paragraph 2.1 or 2.2 shall be regarded as an instruction under clause 3.11 requiring a Variation and shall be valued under clause 5.2 and the provisions of clauses 2.19 (*Adjustment of Completion Date*) and 4.15 and 4.16 (*Loss and Expense*) shall as relevant apply. Where the instruction is under paragraph 2.2 the Employer may, subject to the terms of clause 2.7, have the omitted work executed in accordance with that clause. An instruction under paragraph 2.3 shall be dealt with in accordance with paragraph 5.
- 4 At any time prior to the Contractor entering into a sub-contract in accordance with clause 3.7 the Architect/Contract Administrator may issue an instruction that the work is to be carried out by a person other than the person named in the Contract Bills/Specification/Work Schedules. Such instruction shall omit the work from the Contract Documents and substitute a provisional sum which shall be dealt with in accordance with paragraph 5.
- 5
  - 1 In an instruction as to the expenditure of a provisional sum under clause 3.13 the Architect/Contract Administrator may require work to be executed by a person named in the instruction, who shall then be employed by the Contractor as a Named Sub-Contractor.
  - 2 Any such instruction shall incorporate a description of the work and all particulars of the tender of the named person for that work in an Intermediate Named Sub-Contract Invitation to Tender and Tender (ICSub/NAM/IT and ICSub/NAM/T) as completed, together with the Tender Documents referred to therein.
  - 3 Unless the Contractor makes reasonable objection to entering into a sub-contract with the named person within 14 days of the date of issue of the instruction, he shall enter into a sub-contract with him for the execution of the work, using the Intermediate Named Sub-Contract Agreement (ICSub/NAM/A) and incorporating the Named Sub-Contract Conditions.
- 6 The Contractor shall not terminate a Named Sub-Contractor's employment otherwise than under clause 7.4, 7.5 or 7.6 of the Named Sub-Contract Conditions, nor without the prior consent of the Architect/Contract Administrator accept termination or repudiation of the sub-contract by the Named Sub-Contractor. In either case the Contractor shall notify the Architect/Contract Administrator as soon as is reasonably practicable of any events likely to lead to termination of the Named Sub-Contractor's employment, however arising.
- 7 Whether or not the notification referred to in paragraph 6 has been given, if the Named Sub-Contractor's employment terminates before completion of the sub-contract work, the Contractor shall notify the Architect/Contract Administrator, giving particulars of the circumstances. The Architect/Contract Administrator shall issue instructions as may be necessary in which he shall:
  - 1 name another person to execute the work, or the outstanding balance of it, in accordance with paragraph 5.2 and subject to paragraph 5.3; or
  - 2 instruct the Contractor to make his own arrangements for the execution of the work or the outstanding balance of the work, in which case the Contractor may sub-contract the work in accordance with clause 3.5; or
  - 3 omit the work or the outstanding balance of work.
- 8 Where an instruction is issued under paragraph 7 in respect of a Named Sub-Contractor who was

named in the Contract Bills/Specification/Work Schedules and whose employment has been terminated either under clause 7·4, 7·5 or 7·6 of the Named Sub-Contract Conditions or with the Architect/Contract Administrator's consent:

- 1 an instruction under paragraph 7·1 shall be regarded as a Relevant Event for the purposes of clause 2·19 (*Adjustment of Completion Date*), but not as a Relevant Matter for the purposes of clauses 4·15 and 4·16 (*Loss and Expense*), and the Contract Sum shall be adjusted by the amount of the increase or the reduction in the price of the second Named Sub-Contractor for the work not carried out by the first Named Sub-Contractor when compared with the first Named Sub-Contractor's price for that work. In that adjustment there shall be excluded from the price of the second Named Sub-Contractor any amount included for the repair of defects in the work of the first Named Sub-Contractor;
- 2 an instruction under paragraph 7·2 or 7·3 shall be regarded as one requiring a Variation to be valued under clause 5·2 and both as a Relevant Event for the purposes of clause 2·19 and a Relevant Matter for the purposes of clauses 4·15 and 4·16.

Where the instruction is under paragraph 7·3 the Employer may, subject to the terms of clause 2·7, have the omitted work executed in accordance with that clause.

- 9 Where an instruction is issued under paragraph 7 in respect of a Named Sub-Contractor who was named in an instruction as to the expenditure of a Provisional Sum under paragraph 5 and whose employment has been terminated under clause 7·4, 7·5 or 7·6 of the Named Sub-Contract Conditions or with the Architect/Contract Administrator's consent, such instruction shall be regarded as a further instruction issued in relation to the Provisional Sum.

- 10 ·1 Where the employment of a Named Sub-Contractor is terminated otherwise than under clause 7·4, 7·5 or 7·6 of the Named Sub-Contract Conditions and without the Architect/Contract Administrator's consent, the provisions of paragraph 8·1, 8·2 or 9 (as appropriate) shall apply in respect of the instructions under paragraph 7, but only to the extent that they result in a reduction in the Contract Sum and the instruction shall not be regarded as a Relevant Event or Relevant Matter for the purposes of clauses 2·19, 4·15 and 4·16.

- 2 Where the Named Sub-Contractor's employment is terminated under clause 7·4, 7·5 or 7·6 of the Named Sub-Contract Conditions or with the Architect/Contract Administrator's consent:

- 1 the Contractor shall take such reasonable action as is necessary to recover from the Named Sub-Contractor, whether under clause 7·7 of the Named Sub-Contract Conditions or otherwise, any additional amounts payable to the Contractor by the Employer as a result of the application of paragraph 8·1, 8·2 or 9 together with an amount equal to any liquidated damages that would have been payable or allowable by the Contractor to the Employer under clause 2·23 but for the application of any of those paragraphs;
- 2 the Contractor shall account to the Employer for any amounts so recovered;
- 3 in taking such action the Contractor shall not be required to invoke the dispute resolution procedures under the sub-contract unless the Employer shall have agreed to indemnify the Contractor against any legal costs reasonably incurred in relation thereto;
- 4 if the Contractor fails to comply with this paragraph 10·2 he shall repay to the Employer any additional amounts paid as a result of the application of paragraph 8·1, 8·2 or 9 and shall pay or allow an amount equal to the liquidated damages referred to in paragraph 10·2·1.

- 11 ·1 Whether or not a Named Sub-Contractor is responsible to the Employer for exercising reasonable care and skill in:

- 1 the design of the sub-contract works insofar as they have been or are to be designed by the Named Sub-Contractor;
- 2 the selection of the kinds of materials and goods for the sub-contract works insofar as such materials and goods have been or will be selected by him; or
- 3 the satisfaction of any performance specification or requirement relating to the sub-contract works,

the Contractor shall not be responsible to the Employer under this Contract for anything to which such terms relate, nor, through the Contractor, shall the Named Sub-Contractor be so responsible; provided that this shall not be construed as affecting the obligations of the Contractor or any sub-contractor in regard to the supply of goods, materials and workmanship.

- 2 The provisions of paragraph 11·1 shall apply notwithstanding that the Sub-Contract Sum stated in Article 2 of the Intermediate Named Sub-Contract Agreement referred to in clause 3·7 or paragraph 5·3 included for the supply of any design, selection or satisfaction as referred to in paragraph 11·1, and that such Sub-Contract Sum is included within the Contract Sum or the Contract Sum as finally adjusted.
- 12 Clause 3·7 and this Schedule shall not apply to the execution of any part of the Works by a Statutory Undertaker executing work solely in that capacity.
- 13 Save as expressly stated in this Schedule, the Contractor shall remain wholly responsible for carrying out and completing the Works in all respects in accordance with clause 2·1 notwithstanding the naming of a Named Sub-Contractor for the execution of any such work.

## Schedule 3 Forms of Bonds

(Clauses 4.7 and 4.10)

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

### Part 1: Advance Payment Bond<sup>82</sup>

Not applicable.

<sup>82</sup> Not applicable where the Employer is a Local Authority or other public sector body.

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

Not applicable.

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

(Clauses 4.3 and 4.9)

Not applicable

## Schedule 5 Supplemental Provisions

(Thirteenth Recital)

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

### Collaborative working

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

### Health and safety

- 2
  - 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 In addition to the specific health and safety requirements of this Contract, the Contractor undertakes to:
    - 1 comply with any and all approved codes of practice produced or promulgated by the Health and Safety Executive;
    - 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;
    - 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
    - 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
  - 1 The Contractor is encouraged to propose changes to designs and specifications for the Works and/or to the programme for their execution that may benefit the Employer, whether in the form of a reduction in the cost of the Works or their associated life cycle costs, through practical completion at a date earlier than the Completion Date or otherwise.
  - 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 Where the Employer wishes to implement a change proposed by the Contractor, the Parties shall negotiate with a view to agreeing its value, the financial benefit and any adjustment to the Completion Date. Upon agreement, the change and the amount of any adjustment of the Contract Sum shall be confirmed in an Architect/Contract Administrator's instruction, together with the share of the financial benefit to be paid to the Contractor and any adjustment to the Completion Date.
  - 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
- 1 The Contractor is encouraged to suggest economically viable amendments to the Works which, if instructed as a Variation, may result in an improvement in environmental performance in the carrying out of the Works or of the completed Works.
  - 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
- 1 The Employer shall monitor and assess the Contractor's performance by reference to any performance indicators stated or identified in the Contract Documents.
  - 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.
  - 3 Where the Employer considers that a target for any of those performance indicators may not be met, he may inform the Contractor who shall submit his proposals for improving his performance against that target to the Employer.

#### Notification and negotiation of disputes

- 6
- With a view to avoidance or early resolution of disputes or differences (subject to Article 7), each Party shall promptly notify the other of any matter that appears likely to give rise to a dispute or difference. The senior executives nominated in the Contract Particulars (or if either is not available, a colleague of similar standing) shall meet as soon as practicable for direct, good faith negotiations to resolve the matter.

#### Transparency

- 7
- Where the Employer is a Local or Public Authority or other body to whom the provisions of the Freedom of Information Act 2000 ('FOIA') apply, the Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of this Contract is not confidential. The Employer shall be responsible for determining in his absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding clause 2.8.3 or any other term of this Contract:
- 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;
  - 2 the Employer shall promptly inform the Contractor of any request for disclosure that he receives in relation to this Contract.

#### The Public Contracts Regulations 2015

- 8
- Where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations<sup>[N3]</sup>:
- 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);
  - 2 the Contractor shall include in any sub-contract entered into by him provisions requiring the sub-contractor:
    - 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

<sup>[N3]</sup> An explanatory summary of those provisions in the PC Regulations that are reflected in this Contract is contained in the Intermediate Building Contract Guide. Provisions relating to the PC Regulations are also set out in section 8 (Termination) of this Contract. The JCT Intermediate Sub-Contracts (ICSub and ICSub/D) meet the requirements of Supplemental Provision 8.

- 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;
- 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;
  - 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.

## Schedule 6 Design Submission Procedure

(Clause 2.10.3)

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

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

**Intermediate Building Contract with contractor's design (ICD)****Appropriate:**

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

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

**Can be used:**

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

**Not suitable:**

- as a design and build contract.

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**CONTRACT DOCUMENTS**

**DECEMBER 2019**

## **PRELIMINARIES**

### **JCT INTERMEDIATE BUILDING CONTRACT WITH CONTRACTOR DESIGN (2016)**

**HUMBERSIDE FIRE & RESCUE SERVICE  
BRIDLINGTON STATION REFURBISHMENT**



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## TABLE OF CONTENTS

<b>A10 PROJECT PARTICULARS</b>	<b>4</b>
<b>A11 TENDER AND CONTRACT DOCUMENTS</b>	<b>6</b>
<b>A12 THE SITE/ EXISTING BUILDINGS</b>	<b>7</b>
<b>A13 DESCRIPTION OF THE WORK</b>	<b>9</b>
<b>A20 JCT INTERMEDIATE BUILDING CONTRACT WITH CONTRACTOR'S DESIGN (ICD)</b>	<b>10</b>
THE RECITALS	10
ARTICLES	11
CONTRACT PARTICULARS	11
THE CONDITIONS	15
<b>A30 TENDERING/ SUBLETTING/ SUPPLY</b>	<b>16</b>
MAIN CONTRACT TENDERING	16
PRICING/ SUBMISSION OF DOCUMENTS	16
SUBLETTING/ SUPPLY	20
<b>A31 PROVISION, CONTENT AND USE OF DOCUMENTS</b>	<b>21</b>
DEFINITIONS AND INTERPRETATIONS	21
DOCUMENTS PROVIDED ON BEHALF OF EMPLOYER	24
DOCUMENTS PROVIDED BY CONTRACTOR/ SUBCONTRACTORS/ SUPPLIERS	24
<b>A32 MANAGEMENT OF THE WORKS</b>	<b>26</b>
GENERALLY	26
PROGRAMME/ PROGRESS	26
CONTROL OF COST	29
<b>A33 QUALITY STANDARDS/ CONTROL</b>	<b>31</b>
STANDARDS OF PRODUCTS AND EXECUTIONS	31
SAMPLES/ APPROVALS	33
ACCURACY/ SETTING OUT GENERALLY	33
SERVICES GENERALLY	34
SUPERVISION/ INSPECTION/ DEFECTIVE WORK	36
WORK AT OR AFTER COMPLETION	38
<b>A34 SECURITY/ SAFETY/ PROTECTION</b>	<b>39</b>
SECURITY, HEALTH AND SAFETY	39
PROTECT AGAINST THE FOLLOWING	41

PROTECT THE FOLLOWING	43
<b>A35 SPECIFIC LIMITATIONS ON METHOD/ SEQUENCE/ TIMING</b>	<b>46</b>
<b>A36 FACILITIES/ TEMPORARY WORK/ SERVICES</b>	<b>47</b>
GENERALLY	47
ACCOMMODATION	47
TEMPORARY WORKS	47
SERVICES AND FACILITIES	47
<b>A37 OPERATION/ MAINTENANCE OF THE FINISHED WORKS</b>	<b>49</b>
GENERALLY	49
<b>A41 CONTRACTOR'S GENERAL COST ITEMS: SITE ACCOMMODATION</b>	<b>55</b>
<b>A50 WORK/ PRODUCTS BY/ ON BEHALF OF THE EMPLOYER</b>	<b>56</b>

## A10 PROJECT PARTICULARS

### 110 THE PROJECT

- Name: HFRS Bridlington Station Refurbishment
- Nature: Internal refurbishments at Bridlington Fire Station.
- Location: Bessingby Gate, Bridlington
- Length of contract: 16 Weeks

### 120 EMPLOYER (CLIENT)

- Name: Humberside Fire & Rescue Service.
- Address: Joint Estates Services  
Melton Police Building  
North Ferriby  
HU14 3BQ.
- Contact: Allison Rhodes
- Telephone: 01482 220001
- E-mail: [allison.rhodes@humbersidefire.gov.uk](mailto:allison.rhodes@humbersidefire.gov.uk)

### 130 PRINCIPAL CONTRACTOR (CDM)

- Name: Geo Houlton & Sons Ltd, Hyperion Street, Hull

### 140 CONTRACT ADMINISTRATOR

- Name: Rider Levett Bucknall (UK) Ltd.
- Address: 6th Floor, Fountain Precinct  
Balm Green, Sheffield, S1 2JA .
- Contact: Chris Buckley MRICS.
- Telephone: 0114 273 3300.
- E-mail: [chris.buckley@uk.rlb.com](mailto:chris.buckley@uk.rlb.com)

### **150 PRINCIPAL DESIGNER**

- Name: Rider Levett Bucknall (UK) Ltd.
- Address: Complete.
- Contact: Abigail Dowling.
- Telephone: 01142733300.
- E-mail: [abigail.dowling@uk.rlb.com](mailto:abigail.dowling@uk.rlb.com).

### **170 STRUCTURAL ENGINEER**

- Name: Mason Clark Associates.
- Address: 44 Newland Park, Hull, HU5 2DW.
- Telephone: 01482345797 (Contact Andy Thompson)

### **175 MECHANICAL ENGINEER**

- Name: Rider Levett Bucknall (UK) Limited - Contact Phil King.
- Address: As CA.
- Telephone: 0114 273 3300.

### **178 ELECTRICAL ENGINEER**

- Name: Rider Levett Bucknall (UK) Limited - Contact Phil King.
- Address: As CA.
- Telephone: 0114 273 3300.

## **A11 TENDER AND CONTRACT DOCUMENTS**

### **110 TENDER DRAWINGS**

- The tender drawings are: as listed in the Drawing Register in the tender pack.

### **120 CONTRACT DRAWINGS**

- The Contract Drawings: The same as the tender drawings.

### **160 PRECONSTRUCTION INFORMATION**

- Format: The Preconstruction information is described in these preliminaries in Section A34. It refers to information given elsewhere in the preliminaries and other tender documents.

### **180 OTHER DOCUMENTS**

- Inspection: Drawings and other documents relating to the Contract but not included in the tender documents may be seen by appointment during normal office hours at the office of Humberside Police & Fire Joint Estates Services (please contact the Contract Administrator in the first instance).

## A12 THE SITE/ EXISTING BUILDINGS

- Bridlington Fire Station

### 120 EXISTING BUILDINGS ON/ ADJACENT TO THE SITE

- Description: Assorted fire station facilities including training towers, external stores and others. Close to residential areas and supermarket.

### 140 EXISTING UTILITIES AND SERVICES

- Drawings: (Information shown is indicative only): As marked on drawings (not exhaustive).

### 180 HEALTH AND SAFETY FILE

- Availability for inspection: The Health and Safety File for the site/ building may be seen by appointment during normal office hours at: Humberside Fire & Rescue Joint Estates Services.
- Arrangements for inspection: Contact Chris Buckley.

### 200 ACCESS TO THE SITE

- Description: Refer to site plans in Tender Pack with final details to be agreed at pre-start.
- **Limitations: Each fire station must always remain operational (24/7) during the works.**

### 210 PARKING

- Restrictions on parking of the Contractor's and employees' vehicles: Limited parking will be available at each fire station; however, each facility must always remain operational 24/7 throughout the works.

### 220 USE OF THE SITE

- General: Do not use the site for any purpose other than carrying out the Works.

### 230 SURROUNDING LAND/ BUILDING USES

- General: Adjacent or nearby uses or activities are as follows:  
A mixture of residential and commercial buildings.

### 240 HEALTH AND SAFETY HAZARDS

- General: The nature and condition of the site/ building cannot be fully and certainly ascertained before it is opened. However, the following hazards are or may be present:
- Asbestos - see R&D surveys / management plans in tender pack.

- **Information:** The accuracy and sufficiency of this Information is not guaranteed by the Employer or the Employer's representative. Ascertain if any additional information is required to ensure the safety of all persons and the Works.
- **Site staff:** Draw to the attention of all personnel working on the site the nature of any possible contamination and the need to take appropriate precautionary measures.

## **250 SITE VISIT**

- **Assessment:** Ascertain the nature of the site, access thereto and all local conditions and restrictions likely to affect the execution of the Works.
- **Arrangements for visit:** Contact Chris Buckley at RLB.

## **A13 DESCRIPTION OF THE WORK**

### **110 PREPARATORY WORK BY OTHERS**

- Works: Carried out under a separate contract and completed before the start of work on site for this Contract.
- Description: None.

### **120 THE WORKS**

- Description: Partial internal refurbishment of accommodation, communal and operational areas, with boiler refurbishment at Bridlington Fire Station.

### **130 WORK BY OTHERS CONCURRENT WITH THE CONTRACT**

- None

### **140 COMPLETION WORK BY OTHERS**

- None

## **A20 JCT INTERMEDIATE BUILDING CONTRACT WITH CONTRACTOR'S DESIGN (ICD)**

### **INTERMEDIATE BUILDING CONTRACT WITH CONTRACTOR'S DESIGN (ICD)**

- The Contract: JCT Intermediate Building Contract with Contractor's Design 2016 Edition.
- Requirement: Allow for the obligations, liabilities and services described.

### **THE RECITALS**

#### **FIRST - THE WORKS**

- Comprise: Partial internal refurbishment of accommodation, communal and operational areas, at Bridlington Fire Station.

Location:

- Bridlington Fire Station

#### **CONTRACTOR'S DESIGNED PORTION**

- The Works include the design and construction of:
  - Elements of the Mechanical & Electrical Works at each station (refer to M&E Spec for full details)

#### **SECOND - CONTRACT DRAWINGS**

- The Contract Drawings: As listed in clause A11/120.

#### **THIRD - OTHER DOCUMENTS SUPPLIED BY THE EMPLOYER**

- Comprise: The Work Schedules.
- Named person: The whole of the text referring to a named person as a subcontractor will be deleted.

#### **FOURTH A - PRICING BY THE CONTRACTOR**

- Option A will apply: Option B will be deleted.
- Priced document: Within Option A the following words will be deleted:  
Bills of Quantities and Specification.
- Priced Activity Schedule: The words 'and has provided the Employer with a priced schedule of activities annexed to this contract (the Activity Schedule)' will not be deleted.

## **SIXTH - INFORMATION RELEASE SCHEDULE**

- The Sixth Recital will be deleted.

## **EIGHTH - DIVISION OF THE WORKS INTO SECTIONS**

- The Eighth Recital will not be deleted

## **ARTICLES**

### **3 - ARCHITECT/ CONTRACT ADMINISTRATOR**

- Architect/ Contract Administrator: See clause A10/140.

### **5 - PRINCIPAL DESIGNER**

- Principal Designer: See clause A10/150.

### **6 - PRINCIPAL CONTRACTOR**

- Principal Contractor: See clause A10/130.

### **9 - LEGAL PROCEEDINGS**

- Amendments: None.

## **CONTRACT PARTICULARS**

### **FIFTH RECITAL AND CLAUSE 4.6 - CONSTRUCTION INDUSTRY SCHEME (CIS)**

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

### **SEVENTH RECITAL - CDM REGULATIONS**

- The project is notifiable.

### **TENTH RECITAL AND SCHEDULE 5 - SUPPLEMENTAL PROVISIONS**

- Collaborative working: Supplemental Provision 1 does not apply.
- Health and safety: Supplemental Provision 2 does not apply.
- Cost savings and value improvements: Supplemental Provision 3 does not apply.
- Sustainable development and environmental considerations: Supplemental Provision 4 does not apply.
- Performance indicators and monitoring: Supplemental Provision 5 does not apply.
- Notification and negotiation of disputes: Supplemental Provision 6 does not apply.
- Where Supplemental Provision 6 applies, the respective nominees of the parties are:
  - Employer's nominee: N/A.

- Contractor's nominee: N/A.  
(Or such replacement as each party may notify to the other from time to time.)

## **ARTICLE 8 - ARBITRATION**

- Article 8 and clauses 9.3 to 9.8 (arbitration) apply.

## **CLAUSE 1.1 - BASE DATE**

- Base Date: 22 September 2019.

## **CLAUSE 1.1 - DATES FOR COMPLETION**

- Dates for completion 29 January 2020

## **CLAUSE 1.7 - ADDRESSES FOR SERVICE OF NOTICES**

- Employer:
  - Address:  
Attention of Alison Rhodes  
Humberside Police & Fire Joint Estates Services  
Melton Police Building, North Ferriby, HU14 EBQ.
- Contractor:
  - Address:  
Geo Houlton & Sons, Hyperion Street, Hull

## **CLAUSE 2.4 - DATE OF POSSESSION OF THE SITE**

- Dates of possession: 12 October 2020

## **CLAUSE 2.5 - DEFERMENT OF POSSESSION OF THE SITE**

- Clause 2.5 does not apply.
- Where clause 2.5 applies, maximum period of deferment (if less than six weeks) is N/A.

#### **CLAUSE 2.23.2 - LIQUIDATED DAMAGES**

- Damages:
  - Section 1: Bridlington: At the rate of £1000 per calendar week or pro-rata thereto.

#### **CLAUSE 2.29 - SUMS**

- Contract sum: £364,866.93

#### **CLAUSE 2.30 - RECTIFICATION PERIOD**

- Period: 12 months.

#### **CLAUSE 4.3 AND 4.9 - FLUCTUATIONS PROVISION**

- Fluctuations Provision: no Fluctuations Provision applies.
- Where Schedule 4 applies, percentage addition (paragraph 12): N/A.

#### **CLAUSE 4.7 - ADVANCE PAYMENT AND ADVANCE PAYMENT BOND**

- Advance payment: Clause 4.7 does not apply.

#### **CLAUSE 4.8.1 - INTERIM PAYMENTS - INTERIM VALUATION DATES**

- The first Interim Valuation Date is: last business day in the month of commencement, followed by intervals of one month (e.g. the same date in each month or the nearest Business Day in that month)

#### **CLAUSE 4.9.1 - INTERIM PAYMENTS - PERCENTAGE OF VALUE**

- Not achieved practical completion: Where the Works, or those works in a section, have not achieved practical completion, the percentage of total value in respect of the works that have not achieved practical completion is 95%.
- Completed works: Where the Works, or those works in a section, have achieved practical completion, the percentage in respect of the completed works is 97.5%.

#### **CLAUSE 4.10.4 - LISTED ITEMS - UNIQUELY IDENTIFIED**

- The Contract Particulars item for clause 4.10.4 will be deleted.

#### **4.10.5 - LISTED ITEMS - NOT UNIQUELY IDENTIFIED**

- Listed items: The Contract Particulars entry for Clause 4.10.5 will be deleted.

**CLAUSE 6.4.1 - CONTRACTOR'S PUBLIC LIABILITY INSURANCE: INJURY TO PERSONS OR PROPERTY**

- Insurance cover for any one occurrence or series of occurrences arising out of one event: £5 million.

**CLAUSE 6.5.1 - INSURANCE - LIABILITY OF EMPLOYER**

- Insurance is not required.

**CLAUSE 6.7 AND SCHEDULE 1 - WORKS INSURANCE - INSURANCE OPTIONS**

- Schedule 1: Insurance option C applies.
- Percentage to cover professional fees: 15% per cent.
- If option A applies, annual renewal date (as supplied by the Contractor):  
TO BE COMPLETED BY CONTRACTOR.
- Where Insurance Option C applies, Paragraph C1: applies.

**CLAUSE 6.15 - JOINT FIRE CODE**

- The Joint Fire Code: Does not apply.

**CLAUSE 6.19 - CONTRACTOR'S DESIGN PORTION - PROFESSIONAL INDEMNITY INSURANCE**

- Level of cover: Amount of indemnity required:
  - a) relates to claims or series of claims arising out of one event :
    - and is £1,000,000.
- Cover for pollution and contamination claims: Is not required.
- Expiry of required period of CDP Professional Indemnity Insurance: 6 years.

**CLAUSE 8.9.2 - PERIOD OF SUSPENSION (TERMINATION BY CONTRACTOR)**

- Period of suspension: 2 months.

**CLAUSES 8.11.1.1 TO 8.11.1.5 - PERIOD OF SUSPENSION (TERMINATION BY EITHER PARTY)**

- Period of suspension: 2 months.

**CLAUSE 9.2.1 - ADJUDICATION**

- The Adjudicator is: The Royal Institution of Chartered Surveyors.

- Nominating body - where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established): The Royal Institution of Chartered Surveyors.

#### **CLAUSE 9.4.1 - ARBITRATION**

- Appointor of Arbitrator (and of any replacement): President or a Vice President of the Royal Institution of Chartered Surveyors.

### **THE CONDITIONS**

#### **SECTION 1: DEFINITIONS AND INTERPRETATION**

##### **1.12 - APPLICABLE LAW**

- Amendments: N/A.

#### **SECTION 2: CARRYING OUT THE WORKS**

#### **SECTION 3: CONTROL OF THE WORKS**

#### **SECTION 4: PAYMENT**

#### **SECTION 5: VARIATIONS**

#### **SECTION 6: INJURY, DAMAGE AND INSURANCE**

#### **SECTION 7: ASSIGNMENT AND COLLATERAL WARRANTIES**

#### **SECTION 8: TERMINATION**

#### **SECTION 9: SETTLEMENT OF DISPUTES**

#### **EXECUTION**

- The Contract: Will be executed as a deed.

## **A30 TENDERING/ SUBLETTING/ SUPPLY**

### **MAIN CONTRACT TENDERING**

#### **110 SCOPE**

- General: These conditions are supplementary to those stated in the Invitation to Tender and on the form of tender.

#### **145 TENDERING PROCEDURE**

- General: In accordance with NBS Guide to Tendering for Construction Projects.
- Errors: Alternative 2 is to apply.

#### **160 EXCLUSIONS**

- Inability to tender: Immediately inform if any parts of the work as defined in the tender documents cannot be tendered.
- Relevant parts of the work: Define those parts, stating reasons for the inability to tender.

#### **170 ACCEPTANCE OF TENDER**

- Acceptance: No guarantee is offered that any tender will be recommended for acceptance or be accepted, or that reasons for non-acceptance will be given.
- Costs: No liability is accepted for any cost incurred in the preparation of any tender.

#### **190 PERIOD OF VALIDITY**

- Period: After submission or lodgement, keep tender open for consideration (unless previously withdrawn) for not less than 3 months.
- Date for possession/ commencement: See section A20.

### **PRICING/ SUBMISSION OF DOCUMENTS**

#### **210 PRELIMINARIES IN THE SPECIFICATION**

- Measurement rules: Preliminaries/ General Conditions must not be relied on as having been prepared in accordance with SMM7.

#### **220 PRICING OF PRELIMINARIES**

- Abbreviations: The following have been used:
  - F = Fixed charge item.
  - TR = Time related charge item.

## **250 PRICED DOCUMENTS**

- **Alterations:** Do not alter or qualify the priced documents without written consent. Tenders containing unauthorised alterations or qualifications may be rejected.
- **Measurements:** Where not stated, ascertain from the drawings.
- **Deemed included:** Costs relating to items, which are not priced, will be deemed to have been included elsewhere in the tender.
- **Submit:** With tender.

## **300 QUANTITIES IN THE PRICED DOCUMENT**

- **Quantities:** Where included in the priced document, these have been prepared in accordance with SMM7/ NRM2 only where and to the extent stated.
- **Other items, descriptions and measurements not prepared in accordance with SMM7/ NRM2:** Must be priced taking account of the information given elsewhere in the tender documents, including for all associated and ancillary work shown or clearly apparent as being necessary for the complete and proper execution of the work.

## **310 TENDERS**

- **General:** Tenders must include for all work shown or described in the tender documents as a whole or clearly apparent as being necessary for the complete and proper execution of the Works.

## **480 PROGRAMME**

- **Programme of work:** Prepare a summary showing the sequence and timing of the principal parts of the Works and periods for planning and design. Itemize any work which is excluded.
- **Submit:** With tender.

## **510 ALTERNATIVE METHOD TENDERS**

- **General:** In addition to and at the same time as tendering for the Works as defined in the tender documents, alternative methods of construction/ installation may be submitted for consideration. Alternatives, which would involve significant changes to other work, may not be considered.
- **Alternative tenders:** Such alternatives will be deemed to be alternative tenders and each must include a complete and precise statement of the effects on cost and programme.
- **Safety method statement:** Carry out a health and safety risk assessment for each alternative and where appropriate provide a safety method statement suitable for incorporation in the Health and Safety Plan.
- **Full technical data:** Submit for each alternative together with details of any consequential amendments to the design and/ or construction of other parts of the Works.
- **Submit:** With tender.

## **515 ALTERNATIVE TIME TENDERS**

- **General:** In addition to and at the same time as tendering based upon the date or period specified in section A20, an alternative tender based upon a different date for completion or period may be submitted.
- **Date for completion:** If any such tender is accepted the date for completion inserted in the Contract will be the date stated in the alternative tender or determined from the period stated in the alternative tender.

## **530 SUBSTITUTE PRODUCTS**

- **Details:** If products of different manufacture to those specified are proposed, submit details with the tender giving reasons for each proposed substitution. Substitutions, which have not been notified at tender stage, may not be considered.
- **Compliance:** Substitutions accepted will be subject to the verification requirements of clause A31/200.

## **540 QUALITY CONTROL RESOURCES**

- **Statement:** Describe the organisation and resources to control the quality of the Works, including the work of subcontractors.
- **QA staff:** Identify in the statement the number and type of staff responsible for quality control, with details of their qualifications and duties.
- **Submit:** With the Tender.

## **550 HEALTH AND SAFETY INFORMATION**

- **Content:** Describe the organisation and resources to safeguard the health and safety of operatives, including those of subcontractors, and of any person whom the Works may affect.
- **Include:**
  - A copy of the contractor's health and safety policy document, including risk assessment procedures.
  - Accident and sickness records for the past five years.
  - Records of previous Health and Safety Executive enforcement action.
  - Records of training and training policy.
  - The number and type of staff responsible for health and safety on this project with details of their qualifications and duties.
- **Submit:** Within one week of request.

## **570 OUTLINE CONSTRUCTION PHASE HEALTH AND SAFETY PLAN**

- **Content:** Submit the following information within one week of request:
  - Method statements on how risks from hazards identified in the pre-construction information and other hazards identified by the contractor will be addressed.

- Details of the management structure and responsibilities.
- Arrangements for issuing health and safety directions.
- Procedures for informing other contractors and employees of health and safety hazards.
- Selection procedures for ensuring competency of other contractors, the self-employed and designers.
- Procedures for communications between the project team, other contractors and site operatives.
- Arrangements for cooperation and coordination between contractors.
- Procedures for carrying out risk assessment and for managing and controlling the risk.
- Emergency procedures including those for fire prevention and escape.
- Arrangements for ensuring that all accidents, illness and dangerous occurrences are recorded.
- Arrangements for welfare facilities.
- Procedures for ensuring that all persons on site have received relevant health and safety information and training.
- Arrangements for consulting with and taking the views of people on site.
- Arrangements for preparing site rules and drawing them to the attention of those affected and ensuring their compliance.
- Monitoring procedures to ensure compliance with site rules, selection and management procedures, health and safety standards and statutory requirements.
- Review procedures to obtain feedback.

## **590 SITE WASTE MANAGEMENT PLAN**

- Person responsible for developing the Plan: The Contractor.
- Content: Include details of:
  - Principal Contractor for the purposes of the plan
  - Location of the site.
  - Description of the project.
  - Estimated project cost.
  - Types and quantities of waste that will be generated.
  - Resource management options for these wastes including proposals for minimization/ reuse/ recycling.
  - The use of appropriate and licensed waste management contractors.
  - Record keeping procedures.
  - Waste auditing protocols.
- Submit with tender.

## **599 FREEDOM OF INFORMATION**

- **Records:** Retain, make available for inspection and supply on request information reasonably required to allow response to requests made under the provisions of the Freedom of Information Act.
- **Determination:** Submit requests received. Do not supply information to anyone other than the project participants without express written permission.
- **Confidentiality:** Maintain at all times.

## **SUBLETTING/ SUPPLY**

### **630 DOMESTIC SUBCONTRACTS**

- **General:** Comply with the Construction Industry Board 'Code of Practice for the selection of subcontractors'.
- **List:** Provide details of all subcontractors and the work for which they will be responsible.  
**Submit:** With tender.

### **640 'LISTED' DOMESTIC SUBCONTRACTS**

- **General:** The work listed below and described in the Contract Documents must be carried out by persons identified in a list as provided for in clause A30/645:

## **A31 PROVISION, CONTENT AND USE OF DOCUMENTS**

### **DEFINITIONS AND INTERPRETATIONS**

#### **110 DEFINITIONS**

- **Meaning:** Terms, derived terms and synonyms used in the preliminaries/ general conditions and specification are as stated therein or in the appropriate British Standard or British Standard glossary.

#### **120 COMMUNICATION**

- **Definition:** Includes advise, inform, submit, give notice, instruct, agree, confirm, seek or obtain information, consent or instructions, or make arrangements.
- **Format:** In writing to the person named in clause A10/140 unless specified otherwise.
- **Response:** Do not proceed until response has been received.

#### **130 PRODUCTS**

- **Definition:** Materials, both manufactured and naturally occurring, and goods, including components, equipment and accessories, intended for the permanent incorporation in the Works.
- **Includes:** Goods, plant, materials, site materials and things for incorporation into the Works.

#### **135 SITE EQUIPMENT**

- **Definition:** All appliances or things of whatsoever nature required in or about the construction for completion of the Works but not materials or other things intended to form or forming part of the Permanent Works.
- **Includes:** Construction appliances, vehicles, consumables, tools, temporary works, scaffolding, cabins and other site facilities.

#### **140 DRAWINGS**

- **Definitions:** To BSRIA BG 6 A design framework for building services. Design activities and drawing definitions.
- **CAD data:** In accordance with BS 1192.

#### **145 CONTRACTOR'S CHOICE**

- **Meaning:** Selection delegated to the Contractor, but liability to remain with the specifier.

#### **155 SUBMIT PROPOSALS**

- **Meaning:** Submit information in response to specified requirements.

## **160 TERMS USED IN SPECIFICATION**

- **Remove:** Disconnect, dismantle as necessary and take out the designated products or work and associated accessories, fixings, supports, linings and bedding materials. Dispose of unwanted materials. Excludes taking out and disposing of associated pipework, wiring, ductwork or other services.
- **Fix:** Receive, unload, handle, store, protect, place and fasten in position and disposal of waste and surplus packaging including all labour, materials and site equipment for that purpose.
- **Supply and fix:** As above but including supply of products to be fixed. All products to be supplied and fixed unless stated otherwise.
- **Keep for reuse:** Do not damage designated products or work. Clean off bedding and jointing materials. Stack neatly, adequately protect and store until required by the Employer/ Purchaser or for use in the Works as instructed.
- **Make good:** Execute local remedial work to designated work. Make secure, sound and neat. Excludes redecoration and/ or replacement.
- **Replace:** Supply and fix new products matching those removed. Execute work to match original new state of that removed.
- **Repair:** Execute remedial work to designated products. Make secure, sound and neat. Excludes redecoration and/ or replacement.
- **Refix:** Fix removed products.
- **Ease:** Adjust moving parts of designated products or work to achieve free movement and good fit in open and closed positions.
- **Match existing:** Provide products and work of the same appearance and features as the original, excluding ageing and weathering. Make joints between existing and new work as inconspicuous as possible.
- **System:** Equipment, accessories, controls, supports and ancillary items, including installation, necessary for that section of the work to function.

## **170 MANUFACTURER AND PRODUCT REFERENCE**

- **Definition:** When used in this combination:
  - **Manufacturer:** the person or legal entity under whose name or trademark the particular product, component or system is marketed
  - **Product reference:** the proprietary brand name and/ or identifier by which the particular product, component or system is described.
- **Currency:** References are to the particular product as specified in the manufacturer's technical literature current on the date of the invitation to tender.

## **200 SUBSTITUTION OF PRODUCTS**

- **Products:** If an alternative product to that specified is proposed, obtain approval before ordering the product.
- **Reasons:** Submit reasons for the proposed substitution.

- **Documentation:** Submit relevant information, including:
  - manufacturer and product reference;
  - cost;
  - availability;
    - relevant standards;
    - performance;
    - function;
    - compatibility of accessories;
  - proposed revisions to drawings and specification;
    - compatibility with adjacent work;
  - appearance;
    - copy of warranty/ guarantee.
- **Alterations to adjacent work:** If needed, advise scope, nature and cost.
- **Manufacturers' guarantees:** If substitution is accepted, submit before ordering products.

## **210 CROSS REFERENCES**

- **Accuracy:** Check remainder of the annotation or item description against the terminology used in the section or clause referred to.
- **Related terminology:** Where a numerical cross-reference is not given the relevant sections and clauses of the specification will apply.
- **Relevant clauses:** Clauses in the referred to specification section dealing with general matters, ancillary products and execution also apply.
- **Discrepancy or ambiguity:** Before proceeding, obtain clarification or instructions.

## **220 REFERENCED DOCUMENTS**

- **Conflicts:** Specification prevails over referenced documents.

## **230 EQUIVALENT PRODUCTS**

- **Inadvertent omission:** Wherever products are specified by proprietary name the phrase 'or equivalent' is to be deemed included.

## **240 SUBSTITUTION OF STANDARDS**

- **Specification to British Standard or European Standard:** Substitution may be proposed complying with a grade or category within a national standard of another Member State of the European Community or an international standard recognised in the UK.
- **Before ordering:** Submit notification of all such substitutions.
- **Documentary evidence:** Submit for verification when requested as detailed in clause A31/200. Any submitted foreign language documents must be accompanied by certified translations into English.

## **250 CURRENCY OF DOCUMENTS AND INFORMATION**

- Currency: References to published documents are to the editions, including amendments and revisions, current on the date of the Invitation to Tender.

## **260 SIZES**

- General dimensions: Products are specified by their co-ordinating sizes.
- Timber: Cross section dimensions shown on drawings are:
  - Target sizes as defined in BS EN 336 for structural softwood and hardwood sections.
  - Finished sizes for non-structural softwood or hardwood sawn and further processed sections.

## **DOCUMENTS PROVIDED ON BEHALF OF EMPLOYER**

### **410 ADDITIONAL COPIES OF DRAWINGS/ DOCUMENTS**

- Additional copies: Issued free of charge.

### **440 DIMENSIONS**

- Scaled dimensions: Do not rely on.

### **450 MEASURED QUANTITIES**

- Ordering products and constructing the Works: The accuracy and sufficiency of the measured quantities is not guaranteed.
- Precedence: The specification and drawings shall override the measured quantities.

### **460 THE SPECIFICATION**

- Coordination: All sections must be read in conjunction with Main Contract Preliminaries/ General conditions.

## **DOCUMENTS PROVIDED BY CONTRACTOR/ SUBCONTRACTORS/ SUPPLIERS**

### **550 NAMED SUBCONTRACTORS: DESIGN AND PRODUCTION INFORMATION**

- General: Certain Subcontractors are/ will be required to provide design/ production information during the contract as described in the Conditions of Contract, clause 3.7.
- Master programme: Make reasonable allowance, based on information in section A30, for completing design/ production information, checking, submission (including information relevant to the CDM Regulations), comment, inspection, amendment, resubmission and reinspection.
- Information from Subcontractors:
  - Obtain in time to meet the programme and in accordance with NAM/T where applicable.

- Check dimensions are correct, account is taken of all related work, and construction is practicable. Note any comments on one copy of the design/ production information, then submit with the required number of additional unmarked copies. Such checking will not relieve the CA or the Subcontractors of their respective responsibilities for design, co-ordination and documentation.
- Inspection and comments: One copy will be marked and returned to Contractor. This will not relieve the Subcontractors of their responsibility for design and documentation. Ensure that any necessary amendments are made without delay and resubmit unless it is confirmed that it is not required.
- Final version of information: Distribute copies to all affected Subcontractors and others and keep one copy on site.
- Submit one copy.

### **630 TECHNICAL LITERATURE**

- Information: Keep on site for reference by all supervisory personnel:
  - Manufacturers' current literature relating to all products to be used in the Works.
  - Relevant British, EN or ISO Standards.

### **640 MAINTENANCE INSTRUCTIONS AND GUARANTEES**

- Components and equipment: Obtain or retain copies, register with manufacturer and hand over on or before completion of the Works.
- Information location: In Building Manual.
- Emergency call out services: Provide telephone numbers for use after completion. Extent of cover: office hours only.

## **A32 MANAGEMENT OF THE WORKS**

### **GENERALLY**

#### **110 SUPERVISION**

- General: Accept responsibility for coordination, supervision and administration of the Works, including subcontracts.
- Coordination: Arrange and monitor a programme with each subcontractor, supplier, local authority and statutory undertaker, and obtain and supply information as necessary for coordination of the work.

#### **120 INSURANCE**

- Documentary evidence: Before starting work on site submit details, and/ or policies and receipts for the insurances required by the Conditions of Contract.

#### **130 INSURANCE CLAIMS**

- Notice: If any event occurs which may give rise to any claim or proceeding in respect of loss or damage to the Works or injury or damage to persons or property arising out of the Works, immediately give notice to the Employer, the person named in clause A10/140 and the Insurers.
- Failure to notify: Indemnify the Employer against any loss, which may be caused by failure to give such notice.

#### **140 CLIMATIC CONDITIONS**

- Information: Record accurately and retain:
  - Daily maximum and minimum air temperatures (including overnight).
  - Delays due to adverse weather, including description of the weather, types of work affected, and number of hours lost.

#### **150 OWNERSHIP**

- Alteration/ clearance work: Materials arising become the property of the Contractor except where otherwise stated. Remove from site as work proceeds.

## **PROGRAMME/ PROGRESS**

#### **210 PROGRAMME**

- Master programme: When requested and before starting work on site, submit in an approved form a master programme for the Works, which must include details of:
  - Design, production information and proposals provided by the Contractor/ Subcontractors/ Suppliers, including inspection and checking (see section A31).

- Planning and mobilization by the Contractor.
- Earliest and latest start and finish dates for each activity and identification of all critical activities.
- Running in, adjustment, commissioning and testing of all engineering services and installations
- Work resulting from instructions issued in regard to the expenditure of provisional sums (see section A54)
- Work by or on behalf of the Employer and concurrent with the Contract (see section A50). The nature and scope of which, the relationship with preceding and following work and any relevant limitations are suitably defined in the Contract Documents.
- Exclusions: Where and to the extent that the programme implications for work which is not so defined are impossible to assess, the Contractor should exclude it and confirm this when submitting the programme.
- Submit: one copy.

## **230 SUBMISSION OF PROGRAMME**

- Further information: Submission of the programme will not relieve the Contractor of the responsibility to advise of the need for further drawings or details or instructions in accordance with the Contract.

## **240 COMMENCEMENT OF WORK**

- Notice: Before the proposed date for commencement of work on site give minimum notice of two weeks.

## **250 MONITORING**

- Progress: Record on a copy of the programme kept on site.
- Avoiding delays: If any circumstances arise which may affect the progress of the Works submit proposals or take other action as appropriate to minimize any delay and to recover any lost time.
- Key Performance Indicators:
  - Details: N/A.
  - Performance: Record progress against each KPI.
  - Corrective action: If performance falls below target, submit proposals as soon as possible.

## **260 SITE MEETINGS**

- General: Site meetings will be held to review progress and other matters arising from administration of the Contract.
- Frequency: Every two weeks.
- Location: Site Cabin.

- Accommodation: Ensure availability at the time of such meetings.
- Attendees: Attend meetings and inform subcontractors and suppliers when their presence is required.
- Chairperson (who will also take and distribute minutes): Contract Administrator.

## **265 CONTRACTOR'S PROGRESS REPORT**

- General: Submit a progress report at least 24 hours before the site meeting.
- Content: Notwithstanding the Contractor's obligations under the Contract the report must include:
  - A progress statement by reference to the master programme for the Works.
  - Details of any matters materially affecting the regular progress of the Works.
  - Subcontractors' and suppliers' progress reports.
  - Any requirements for further drawings or details or instructions to fulfil any obligations under the Conditions of Contract.

## **270 CONTRACTOR'S SITE MEETINGS**

- General: Hold meetings with appropriate subcontractors and suppliers shortly before main site meetings to facilitate accurate reporting of progress.

## **285 PARTIAL POSSESSION BY EMPLOYER**

- Clause 2.25 of Conditions of Contract: Ensure all necessary access, services and other associated facilities are also complete.

## **290 NOTICE OF COMPLETION**

- Requirement: Give notice of the anticipated dates of completion of the whole or parts of the Works.
- Associated works: Ensure necessary access, services and facilities are complete.
- Period of notice (minimum): Two weeks.

## **310 EXTENSIONS OF TIME**

- Notice: When a notice of the cause of any delay or likely delay in the progress of the works is given under the contract, written notice must also be given of all other causes which apply concurrently.
- Details: As soon as possible submit:
  - Relevant particulars of the expected effects, if appropriate, related to the concurrent causes.
  - An estimate of the extent, if any, of the expected delay in the completion of the Works beyond the date for completion.
  - All other relevant information required.

## **CONTROL OF COST**

### **410 CASH FLOW FORECAST**

- **Submission:** Before starting work on site, submit a forecast showing the gross valuation of the Works at the date of each Interim Certificate throughout the Contract period. Base on the programme for the Works.

### **420 REMOVAL/ REPLACEMENT OF EXISTING WORK**

- **Extent and location:** Agree before commencement.
- **Execution:** Carry out in ways that minimize the extent of work.

### **430 PROPOSED INSTRUCTIONS**

- **Estimates:** If a proposed instruction requests an estimate of cost, submit without delay and in any case within seven days.
- **Include:**
  - A detailed breakdown of the cost, including any allowance for direct loss and expense.
  - Details of any additional resources required.
  - Details of any adjustments to be made to the programme for the Works.
  - Any other information as is reasonably necessary to fully assess the implications of issuing such an instruction.
- **Inability to comply:** Inform immediately if it is not possible to comply with any of the above requirements.

### **470 PRODUCTS NOT INCORPORATED INTO THE WORKS**

- **Ownership:** At the time of each valuation, supply details of those products not incorporated into the Works which are subject to any reservation of title inconsistent with passing of property as required by the Conditions of Contract, together with their respective values.
- **Evidence:** When requested, provide evidence of freedom of reservation of title.

### **475 LISTED PRODUCTS STORED OFF SITE**

- **Evidence of Title:** Submit reasonable proof that the property in 'listed items' is vested in the Contractor.
- **Include for products purchased from a supplier:**
  - A copy of the contract of sale and a written statement from the supplier that any conditions of the sale relating to the passing of property have been fulfilled and the products are not subject to any encumbrance or charge.
- **Include for products purchased from a supplier by a subcontractor or manufactured or assembled by any subcontractor:**

- Copies of the subcontract with the subcontractor and a written statement from the subcontractor that any conditions relating to the passing of property have been fulfilled.

## **A33 QUALITY STANDARDS/ CONTROL**

### **STANDARDS OF PRODUCTS AND EXECUTIONS**

#### **110 INCOMPLETE DOCUMENTATION**

- General: Where and to the extent that products or work are not fully documented, they are to be:
  - Of a kind and standard appropriate to the nature and character of that part of the Works where they will be used.
  - Suitable for the purposes stated or reasonably to be inferred from the project documents.
- b) Contract documents: Omissions or errors in description and/ or quantity shall not vitiate the Contract nor release the Contractor from any obligations or liabilities under the Contract.

#### **120 WORKMANSHIP SKILLS**

- Operatives: Appropriately skilled and experienced for the type and quality of work.
- Registration: With Construction Skills Certification Scheme.
- Evidence: Operatives must produce evidence of skills/ qualifications when requested.

#### **130 QUALITY OF PRODUCTS**

- Generally: New. (Proposals for recycled products may be considered).
- Supply of each product: From the same source or manufacturer.
- Whole quantity of each product required to complete the Works: Consistent kind, size, quality and overall appearance.
- Tolerances: Where critical, measure a sufficient quantity to determine compliance.
- Deterioration: Prevent. Order in suitable quantities to a programme and use in appropriate sequence.

#### **135 QUALITY OF EXECUTION**

- Generally: Fix, apply, install or lay products securely, accurately, plumb, neatly and in alignment.
- Colour batching: Do not use different colour batches where they can be seen together.
- Dimensions: Check on-site dimensions.
- Finished work: Not defective, e.g. not damaged, disfigured, dirty, faulty, or out of tolerance.
- Location and fixing of products: Adjust joints open to view so they are even and regular.

#### **140 COMPLIANCE**

- Compliance with proprietary specifications: Retain on site evidence that the proprietary product specified has been supplied.

- **Compliance with performance specifications:** Submit evidence of compliance, including test reports indicating:
  - Properties tested.
  - Pass/ fail criteria.
  - Test methods and procedures.
  - Test results.
  - Identity of testing agency.
  - Test dates and times.
  - Identities of witnesses.
  - Analysis of results.

## **150 INSPECTIONS**

- **Products and executions:** Inspection or any other action must not be taken as approval unless confirmed in writing referring to:
  - Date of inspection.
  - Part of the work inspected.
  - Respects or characteristics which are approved.
  - Extent and purpose of the approval.
  - Any associated conditions.

## **160 RELATED WORK**

- **Details:** Provide all trades with necessary details of related types of work. Before starting each new type or section of work ensure previous related work is:
  - Appropriately complete.
  - In accordance with the project documents.
  - To a suitable standard.
  - In a suitable condition to receive the new work.
- **Preparatory work:** Ensure all necessary preparatory work has been carried out.

## **170 MANUFACTURER'S RECOMMENDATIONS/ INSTRUCTIONS**

- **General:** Comply with manufacturer's printed recommendations and instructions current on the date of the Invitation to tender.
- **Changes to recommendations or instructions:** Submit details.
- **Ancillary products and accessories:** Use those supplied or recommended by main product manufacturer.
- **Agrément certified products:** Comply with limitations, recommendations and requirements of relevant valid certificates.

## **180 WATER FOR THE WORKS**

- Mains supply: Clean and uncontaminated.
- Other: Do not use until:
  - Evidence of suitability is provided.
  - Tested to BS EN 1008 if instructed.

## **SAMPLES/ APPROVALS**

### **210 SAMPLES**

- Products or executions: Comply with all other specification requirements and in respect of the stated or implied characteristics either:
  - To an express approval.
  - To match a sample expressly approved as a standard for the purpose.

### **220 APPROVAL OF PRODUCTS**

- Submissions, samples, inspections and tests: Undertake or arrange to suit the Works programme.
- Approval: Relates to a sample of the product and not to the product as used in the Works. Do not confirm orders or use the product until approval of the sample has been obtained.
- Complying sample: Retain in good, clean condition on site. Remove when no longer required.

### **230 APPROVAL OF EXECUTION**

- Submissions, samples, inspections and tests: Undertake or arrange to suit the Works programme.
- Approval: Relates to the stated characteristics of the sample. (If approval of the finished work as a whole is required this is specified separately). Do not conceal or proceed with affected work until compliance with requirements is confirmed.
- Complying sample: Retain in good, clean condition on site. Remove when no longer required.

## **ACCURACY/ SETTING OUT GENERALLY**

### **320 SETTING OUT**

- General: Submit details of methods and equipment to be used in setting out the Works.
- Levels and dimensions: Check and record the results on a copy of drawings. Notify discrepancies and obtain instructions before proceeding.
- Inform: When complete and before commencing construction.

### **330 APPEARANCE AND FIT**

- Tolerances and dimensions: If likely to be critical to execution or difficult to achieve, as early as possible either:
  - Submit proposals; or
  - Arrange for inspection of appearance of relevant aspects of partially finished work.
- General tolerances (maximum): To BS 5606, tables 1 and 2.

### **350 LEVELS OF STRUCTURAL FLOORS**

- Maximum tolerances for designed levels to be:
  - Floors to be self-finished, and floors to receive sheet or tile finishes directly bedded in adhesive: +/- 10 mm.
  - Floors to receive dry board/ panel construction with little or no tolerance on thickness: +/- 10 mm.
  - Floors to receive mastic asphalt flooring/ underlays directly: +/- 10 mm.
  - Floors to receive mastic asphalt flooring/ underlays laid on mastic asphalt levelling coat(s): +/- 15 mm.
  - Floors to receive fully bonded screeds/ toppings/ beds: +/- 15 mm.
  - Floors to receive unbonded or floating screeds/ beds: +/- 20 mm.

### **360 RECORD DRAWINGS**

- Site setting out drawing: Record details of all grid lines, setting-out stations, benchmarks and profiles. Retain on site throughout the Contract and hand over on completion.

## **SERVICES GENERALLY**

### **410 SERVICES REGULATIONS**

- New or existing services: Comply with the Byelaws or Regulations of the relevant Statutory Authority.

### **420 WATER REGULATIONS/ BYELAWS NOTIFICATION**

- Requirements: Notify Water Undertaker of any work carried out to or which affects new or existing services and submit any required plans, diagrams and details.
- Consent: Allow adequate time to receive Undertaker's consent before starting work. Inform immediately if consent is withheld or is granted subject to significant conditions.

### **430 WATER REGULATIONS/ BYELAWS CONTRACTOR'S CERTIFICATE**

- On completion of the work: Submit (copy where also required to the Water Undertaker) a certificate including:
  - The address of the premises.

- A brief description of the new installation and/ or work carried out to an existing installation.
- The Contractor's name and address.
- A statement that the installation complies with the relevant Water Regulations or Byelaws.
- The name and signature of the individual responsible for checking compliance.
- The date on which the installation was checked.

#### **435 ELECTRICAL INSTALLATION CERTIFICATE**

- Submit: When relevant electrical work is completed.
- Original certificate: To be lodged in the Building Manual.

#### **440 GAS, OIL AND SOLID FUEL APPLIANCE INSTALLATION CERTIFICATE**

- Before the completion date stated in the Contract: Submit a certificate stating:
  - The address of the premises.
  - A brief description of the new installation and/ or work carried out to an existing installation.
  - Any special recommendations or instructions for the safe use and operation of appliances and flues.
  - The Contractor's name and address.
  - A statement that the installation complies with the appropriate safety, installation and use regulations.
  - The name, qualification and signature of the competent person responsible for checking compliance.
  - The date on which the installation was checked.
- Certificate location: Building Manual.

#### **445 SERVICE RUNS**

- General: Provide adequate space and support for services, including unobstructed routes and fixings.
- Ducts, chases and holes: Form during construction rather than cut.
- Coordination with other works: Submit details of locations, types/ methods of fixing of services to fabric and identification of runs and fittings.

#### **450 MECHANICAL AND ELECTRICAL SERVICES**

- Final tests and commissioning: Carry out so that services are in full working order at completion of the Works.
- Building Regulations notice: Copy to be lodged in the Building Manual.

## **SUPERVISION/ INSPECTION/ DEFECTIVE WORK**

### **510 SUPERVISION**

- **General:** In addition to the constant management and supervision of the Works provided by the Contractor's person in charge, all significant types of work must be under the close control of competent trade supervisors to ensure maintenance of satisfactory quality and progress.
- **Evidence:** Submit, including details of the person proposed, their relevant skills training and knowledge; practical experience; qualifications; membership or registration with professional bodies; employment history, work related assessments and management structure.
- **Submittal date:** Within one week of request.
- **Replacement:** Give maximum possible notice before changing person in charge or site agent.

### **520 COORDINATION OF ENGINEERING SERVICES**

- **Suitability:** Site organisation staff must include one or more persons with appropriate knowledge and experience of mechanical and electrical engineering services to ensure compatibility between engineering and the Works generally.
- **Evidence:** Submit when requested CVs or other documentary evidence relating to the staff concerned.

### **530 OVERTIME WORKING**

- **Notice:** Prior to overtime being worked, submit details of times, types and locations of work to be done.
  - Minimum period of notice: One day.
- **Concealed work:** If executed during overtime for which notice has not been given, it may be required to be opened up for inspection and reinstated at the Contractor's expense.

### **540 DEFECTS IN EXISTING WORK**

- **Undocumented defects:** When discovered, immediately give notice. Do not proceed with affected related work until response has been received.
- **Documented remedial work:** Do not execute work which may:
  - Hinder access to defective products or work, or
  - Be rendered abortive by remedial work.

### **550 ACCESS FOR INSPECTION**

- **Removal:** Before removing scaffolding or other facilities for access, give notice of not less than one week.

## **560 TESTS AND INSPECTIONS**

- **Timing:** Agree and record dates and times of tests and inspections to enable all affected parties to be represented.
- **Confirmation:** One working day prior to each such test or inspection. If sample or test is not ready, agree a new date and time.
- **Records:** Submit a copy of test certificates and retain copies on site.

## **580 CONTINUITY OF THERMAL INSULATION**

- **Record and report:** Confirm that work to new, renovated or upgraded thermal elements has been carried out to conform to specification. Include:
  - The address of the premises.
  - The Contractor's name and address.
  - The name, qualification and signature of the competent person responsible for checking compliance.
  - The date on which the installation was checked.
- **Submit:** Before completion of the Works.
- **Copy:** To be lodged in the Building Manual.

## **610 PROPOSALS FOR RECTIFICATION OF DEFECTIVE PRODUCTS/ EXECUTIONS**

- **Proposals:** Immediately any work or product is known, or appears, to be not in accordance with the Contract, submit proposals for opening up, inspection, testing, making good, adjustment of the Contract Sum, or removal and re-execution.
- **Acceptability:** Such proposals may be unacceptable and contrary instructions may be issued.

## **620 MEASURES TO ESTABLISH ACCEPTABILITY**

- **General:** Wherever inspection or testing shows that the work, materials or goods are not in accordance with the contract and measures (e.g. testing, opening up, experimental making good) are taken to help in establishing whether or not the work is acceptable, such measures:
  - Will be at the expense of the Contractor.
  - Will not be considered as grounds for revision of the completion date.

## **630 QUALITY CONTROL**

- **Procedures:** Establish and maintain to ensure that the Works, including the work of subcontractors, comply with specified requirements.
- **Records:** Maintain full records, keep copies on site for inspection, and submit copies on request.
- **Content of records:**
  - Identification of the element, item, batch or lot including location in the Works.
  - Nature and dates of inspections, tests and approvals.

- Nature and extent of nonconforming work found.
- Details of corrective action.

## **WORK AT OR AFTER COMPLETION**

### **710 WORK BEFORE COMPLETION**

- General: Make good all damage consequent upon the Works.
- c) Temporary markings, coverings and protective wrappings: Remove unless otherwise instructed.
- Cleaning: Clean the Works thoroughly inside and out, including all accessible ducts and voids. Remove all splashes, deposits, efflorescence, rubbish and surplus materials.
- Cleaning materials and methods: As recommended by manufacturers of products being cleaned, and must not damage or disfigure other materials or construction.
- COSHH dated data sheets: Obtain for all materials used for cleaning and ensure they are used only as recommended by their manufacturers.
- Minor faults: Touch up in newly painted work, carefully matching colour and brushing out edges. Repaint badly marked areas back to suitable breaks or junctions.
- Moving parts of new work: Adjust, ease and lubricate as necessary to ensure easy and efficient operation, including doors, windows, drawers, ironmongery, appliances, valves and controls.

### **720 SECURITY AT COMPLETION**

- General: Leave the Works secure with, where appropriate, all accesses closed and locked.
- Keys: Account for and adequately label all keys and hand over to Employer with itemized schedule, retaining duplicate schedule signed by Employer as a receipt.

### **730 MAKING GOOD DEFECTS**

- Remedial work: Arrange access with Contract Administrator.
- Rectification: Give reasonable notice for access to the various parts of the Works.
- Completion: Notify when remedial works have been completed.

## **A34 SECURITY/ SAFETY/ PROTECTION**

### **SECURITY, HEALTH AND SAFETY**

#### **110 PRECONSTRUCTION INFORMATION**

- Location: Integral with the project Preliminaries, including but not restricted to the following sections:
  - Description of project: Sections A10 and A11.
  - Client's consideration and management requirements: Sections A12, A13 and A36.
  - Environmental restrictions and on-site risks: Section A12, A35 and A34.
  - Significant design and construction hazards: Section A34.
  - The Health and Safety File: Section A37.

#### **140 CONSTRUCTION PHASE HEALTH AND SAFETY PLAN**

- Submission: Present to the Employer/ Client no later than 1 week before starting on site.
- Confirmation: Do not start construction work until the Employer has confirmed in writing that the Construction Phase Health and Safety Plan includes the procedures and arrangements required by the CDM Regulations.
- Content: Develop the plan from and draw on the Outline Construction Phase Health and Safety Plan, clause A30/570, and the Pre-tender Health and Safety Plan/ Preconstruction information.

#### **150 SECURITY**

- Protection: Safeguard the site, the Works, products, materials, and any existing buildings affected by the Works from damage and theft.
- Access: Take all reasonable precautions to prevent unauthorized access to the site, the Works and adjoining property.
- Special requirements: N/A.

#### **160 STABILITY**

- Responsibility: Maintain the stability and structural integrity of the Works and adjacent structures during the Contract.
- Design loads: Obtain details, support as necessary and prevent overloading.

#### **170 OCCUPIED PREMISES**

- Extent: Existing buildings will be occupied and/ or used during the Contract as follows: Fire stations will remain operational during the works and the Contractor must work closely with the Station Management, Operations Team and Consultant Team to agree working methods which enable this.

- **Works:** Carry out without undue inconvenience and nuisance and without danger to occupants and users.
- **Overtime:** If compliance with this clause requires certain operations to be carried out during overtime, and such overtime is not required for any other reason, the extra cost will be allowed, provided that such overtime is authorized in advance.

## **180 ACCESS CONTROL**

- **Controlled areas:** Fire stations secured by a mixture of Paxton swipe cards and keys.
- **Control type:** Access card with reader.
- **Authorised persons:** Submit a list of the names of all persons requiring access together with any other related information reasonably required.
- **Return of credentials:** When requested or on completion of the work to which the controlled area relates.

## **190 OCCUPIER'S RULES AND REGULATIONS**

- **Compliance:** Conform to the occupier's rules and regulations affecting the site.
- **Copies:**
  - **Location:** Individual station rules.
  - **Arrangements for inspection:** Liaise with station manager.

## **200 MOBILE TELEPHONES AND PORTABLE ELECTRONIC EQUIPMENT**

- **Restrictions on use:**
  - d) Limit to essential calls whilst working on site.

## **210 EMPLOYER'S REPRESENTATIVES SITE VISITS**

- **Safety:** Submit details in advance, to the Employer or the person identified in clause A10/140, of safety provisions and procedures (including those relating to materials, which may be deleterious), which will require their compliance when visiting the site.
- **Protective clothing and/ or equipment:** Provide and maintain on site for the Employer and the person stated in clause A10/140 and other visitors to the site.

## **220 WORKING PRECAUTIONS/ RESTRICTIONS**

- **Hazardous areas:** Operatives must take precautions as follows:
  - **Work area:** See PCI.
  - **Precautions:** See PCI.
- **Permit to work:** Operatives must comply with procedures in the following areas:
  - **Work area:** See PCI.
  - **Procedures:** See PCI.

## **PROTECT AGAINST THE FOLLOWING**

### **310 EXPLOSIVES**

- Use: Not permitted

### **330 NOISE AND VIBRATION**

- Standard: Comply with the recommendations of BS 5228-1, in particular clause 7.3, to minimize noise levels during the execution of the Works.
- Noise levels from the Works: Maximum level: N/A dB(A) when measured from N/A.
- Equipment: Fit compressors, percussion tools and vehicles with effective silencers of a type recommended by manufacturers of the compressors, tools or vehicles.
- Restrictions: Do not use:
  - Percussion tools and other noisy appliances without consent during the hours of 2300-0700.
  - Radios or other audio equipment or permit employees to use in ways or at times that may cause nuisance.

### **340 POLLUTION**

- Prevention: Protect the site, the Works and the general environment including the atmosphere, land, streams and waterways against pollution.
- Contamination: If pollution occurs inform immediately, including to the appropriate Authorities and provide relevant information.

### **350 PESTICIDES**

- Use: Not permitted.

### **360 NUISANCE**

- Duty: Prevent nuisance from smoke, dust, rubbish, vermin and other causes.
- Surface water: Prevent hazardous build-up on site, in excavations and to surrounding areas and roads.

### **370 ASBESTOS CONTAINING MATERIALS**

- Duty: Report immediately any suspected materials discovered during execution of the Works.
  - Do not disturb.
  - Agree methods for safe removal or encapsulation.

### **371 DANGEROUS OR HAZARDOUS SUBSTANCES**

- Duty: Report immediately suspected materials discovered during execution of the Works.

- Do not disturb.
- Agree methods for safe removal or remediation.

### **380 FIRE PREVENTION**

- Duty: Prevent personal injury or death, and damage to the Works or other property from fire.
- Standard: Comply with Joint Code of Practice 'Fire Prevention on Construction Sites', published by Construction Industry Publications and The Fire Protection Association (The 'Joint Fire Code').

### **390 SMOKING ON SITE**

- Smoking on site: Not permitted.

### **400 BURNING ON SITE**

- Burning on site: Not permitted.

### **410 MOISTURE**

- Wetness or dampness: Prevent, where this may cause damage to the Works.
- Drying out: Control humidity and the application of heat to prevent:
  - Blistering and failure of adhesion.
  - Damage due to trapped moisture.
  - Excessive movement.

### **420 INFECTED TIMBER/ CONTAMINATED MATERIALS**

- Removal: Where instructed to remove material affected by fungal/ insect attack from the building, minimize the risk of infecting other parts of the building.
- Testing: carry out and keep records of appropriate tests to demonstrate that hazards presented by concentrations of airborne particles, toxins and other microorganisms are within acceptable levels.

### **430 WASTE**

- Includes: Rubbish, debris, spoil, surplus material, containers and packaging.
- General: Minimize production. Prevent accumulations. Keep the site and Works clean and tidy.
- Handling: Collect and store in suitable containers. Remove frequently and dispose off site in a safe and competent manner:
  - Non-hazardous material: In a manner approved by the Waste Regulation Authority.
  - Hazardous material: As directed by the Waste Regulation Authority and in accordance with relevant regulations.
- Recyclable material: Sort and dispose at a Materials Recycling Facility approved by the Waste Regulation Authority.

- Voids and cavities in the construction: Remove rubbish, dirt and residues before closing in.
- Waste transfer documentation: Retain on site.

#### **440 ELECTROMAGNETIC INTERFERENCE**

- Duty: Prevent excessive electromagnetic disturbance to apparatus outside the site.

#### **450 LASER EQUIPMENT**

- Construction laser equipment: Install, use and store in accordance with BS EN 60825-1 and the manufacturer's instructions.
- Class 1 or Class 2 laser equipment: Ensure laser beam is not set at eye level and is terminated at the end of its useful path.
- Class 3A and Class 3B laser equipment: Do not use without approval and subject to submission of a method statement on its safe use.

### **PROTECT THE FOLLOWING**

#### **510 EXISTING SERVICES**

- Confirmation: Notify all service authorities, statutory undertakers and/ or adjacent owners of proposed works not less than one week before commencing site operations.
- Identification: Before starting work, check and mark positions of utilities/ services. Where positions are not shown on drawings obtain relevant details from service authorities, statutory undertakers or other owners.
- Work adjacent to services:
  - Comply with service authority's/ statutory undertaker's recommendations.
  - Adequately protect and prevent damage to services: Do not interfere with their operation without consent of service authorities/ statutory undertakers or other owners.
- Identifying services:
  - Below ground: Use signboards, giving type and depth;
  - Overhead: Use headroom markers.
- Damage to services: If any results from execution of the Works:
  - Immediately give notice and notify appropriate service authority/ statutory undertaker.
  - Make arrangements for the work to be made good without delay to the satisfaction of service authority/ statutory undertaker or other owner as appropriate.
  - Any measures taken to deal with an emergency will not affect the extent of the Contractor's liability.
- Marker tapes or protective covers: Replace, if disturbed during site operations, to service authority's/ statutory undertakers recommendations.

## **520 ROADS AND FOOTPATHS**

- Duty: Maintain roads and footpaths within and adjacent to the site and keep clear of mud and debris.
- Damage caused by site traffic or otherwise consequent upon the Works: Make good to the satisfaction of the Employer, Local Authority or other owner.

## **530 EXISTING TOPSOIL/ SUBSOIL**

- Duty: Prevent over compaction of existing topsoil and subsoil in those areas which may be damaged by construction traffic, parking of vehicles, temporary site accommodation or storage of materials and which will require reinstatement prior to completion of the Works.
- Protection: Before starting work submit proposals for protective measures.

## **540 RETAINED TREES/ SHRUBS/ GRASSED AREAS**

- Protection: Preserve and prevent damage, except those not required.
- Replacement: Mature trees and shrubs if uprooted, destroyed, or damaged beyond reasonable chance of survival in their original shape, as a consequence of the Contractor's negligence, must be replaced with those of a similar type and age at the Contractor's expense.

## **550 RETAINED TREES**

- Protected area: Unless agreed otherwise do not:
  - Dump spoil or rubbish, excavate or disturb topsoil, park vehicles or plant, store materials or place temporary accommodation within an area which is the larger of the branch spread of the tree or an area with a radius of half the tree's height, measured from the trunk.
  - Sever roots exceeding 25 mm in diameter. If unintentionally severed give notice and seek advice.
  - Change level of ground within an area 3 m beyond branch spread.

## **560 EXISTING FEATURES**

- Protection: Prevent damage to existing buildings, fences, gates, walls, roads, paved areas and other site features, which are to remain in position during execution of the Works.
- Special requirements: N/A.

## **570 EXISTING WORK**

- Protection: Prevent damage to existing work, structures or other property during the course of the work.
- Removal: Minimum amount necessary.
- Replacement work: To match existing.

## **580 BUILDING INTERIORS**

- Protection: Prevent damage from exposure to the environment, including weather, flora, fauna, and other causes of material degradation during the course of the work.

## **600 EXISTING FURNITURE, FITTINGS AND EQUIPMENT**

- Protection: Prevent damage or move as necessary to enable the Works to be executed. Reinstall in original positions.
- Extent: Before work in each room starts the Employer will remove the following:
  - e) TBC.

## **620 ADJOINING PROPERTY**

- Permission: Obtain as necessary from owners if requiring to erect scaffolding on or otherwise use adjoining property.

## **625 ADJOINING PROPERTY RESTRICTIONS**

- Precautions:
  - Prevent trespass of workpeople and take precautions to prevent damage to adjoining property.
  - Pay all charges.
  - Remove and make good on completion or when directed.
- Damage: Bear cost of repairing damage arising from execution of the Works.

## **630 EXISTING STRUCTURES**

- Duty: Check proposed methods of work for effects on adjacent structures inside and outside the site boundary.
- Supports: During execution of the Works:
  - Provide and maintain all incidental shoring, strutting, needling and other supports as may be necessary to preserve stability of existing structures on the site or adjoining, that may be endangered or affected by the Works.
  - Do not remove until new work is strong enough to support existing structure.
  - Prevent overstressing of completed work when removing supports.
- Adjacent structures: Monitor and immediately report excessive movement.
- Standard: Comply with BS 5975 and BS EN 12812.

## **640 MATERIALS FOR RECYCLING/ REUSE**

- Duty: Sort and prevent damage to stated products or materials, clean off bedding and jointing materials and other contaminants.
- Storage: Stack neatly and protect until required by the Employer or for use in the Works as instructed.

## **A35 SPECIFIC LIMITATIONS ON METHOD/ SEQUENCE/ TIMING**

### **110 SCOPE**

- General: The limitations described in this section are supplementary to limitations described or implicit in information given in other sections or on the drawings.

### **130 METHOD/ SEQUENCE OF WORK**

- Specific Limitations: Include the following in the programme:

Each fire station must remain operational at all times during the works. The Contractor is to review the Scope of Works for all three sites, and produce a programme which enables efficient of working and rotating of trades across the site. Each site is to have a dedicated foreman at all times.

### **140 SCAFFOLDING**

- Scaffolding: Make available to subcontractors and others at all times.

### **170 WORKING HOURS**

- Specific limitations: To be agreed at pre-start meetings. Generally, standard working hours will be allowed on all sites.

### **180 COMPLETION IN SECTIONS OR IN PARTS**

- General: Where the Employer is to take possession of any Section or part of the Works and such Section or part will, after its practical completion, depend for its adequate functioning on work located elsewhere on the site: Complete such other work in time to permit such possession to take place.
- Remainder of the Works: During execution, ensure that completed Sections or parts of the Works have continuous and adequate provision of services, fire precautions, means of escape and safe access.

## **A36 FACILITIES/ TEMPORARY WORK/ SERVICES**

### **GENERALLY**

#### **110 SPOIL HEAPS, TEMPORARY WORKS AND SERVICES**

- Location: Give notice and details of intended siting.
- Maintenance: Alter, adapt and move as necessary. Remove when no longer required and make good.

### **ACCOMMODATION**

#### **210 ROOM FOR MEETINGS**

- Facilities: Provide suitable temporary accommodation for site meetings, adequately heated and lit. The room may be part of the Contractor's own site offices.
- Furniture and Equipment: Provide table and chairs for 10 people.

#### **230 TEMPORARY ACCOMMODATION**

- Proposals for temporary accommodation and storage for the Works: Submit two weeks prior to starting on site.
- Details to be included: Type of accommodation and storage, its siting and the programme for site installation and removal.

### **TEMPORARY WORKS**

#### **340 NAME BOARDS/ ADVERTISEMENTS**

- Name boards/ advertisements: Allow for Contractor's sign-board (to be approved before erection) with space for RLB and other Consultant's sign-boards.

### **SERVICES AND FACILITIES**

#### **420 LIGHTING AND POWER**

- Supply: Electricity from the Employer's mains may be used for the Works (free of charge)
- Continuity: The Employer will not be responsible for the consequences of failure or restriction in supply.

#### **430 WATER**

- Supply: The Employer's mains may be used for the Works (free of charge)
- Continuity: The Employer will not be responsible for the consequences of failure or restriction in supply.

#### **440 MOBILE TELEPHONES**

- Direct communication: As soon as practicable after the start on site:
  - provide the Contractor's person in charge with a mobile telephone.
  - pay all charges reasonably incurred.

#### **520 USE OF PERMANENT HEATING SYSTEM**

- Permanent heating installation: May be used for drying out the Works/ services and controlling temperature and humidity levels.
- Installation: If used:
  - Take responsibility for operation, maintenance and remedial work.
  - Arrange supervision by and indemnification of the appropriate Subcontractors.
  - Pay costs arising.

#### **530 BENEFICIAL USE OF INSTALLED SYSTEMS**

- Permanent systems: Unless specific permission is given by the Employer and installer, do not use for any purpose other than running in, testing and commissioning.
- Other uses: If permission is given for any other use of a system before the Works are accepted as complete, enter into a separate written agreement recording details of the terms and conditions of use.

#### **540 METER READINGS**

- Charges for service supplies: Where to be apportioned ensure that:
  - Meter readings are taken by relevant authority at possession and/ or completion as appropriate.
  - Copies of readings are supplied to interested parties.

## **A37 OPERATION/ MAINTENANCE OF THE FINISHED WORKS**

### **GENERALLY**

#### **110 THE BUILDING MANUAL**

- **Purpose:** The Manual is to be a comprehensive information source and guide for owners and users of the completed Works. It should provide an overview of the main design principles and describe key components and systems to enable proper understanding, efficient and safe operation and maintenance.
- **Scope:**
  - Part 1: General: Content as clause 120.
  - Part 2: Fabric: Content as clause 130.
  - Part 3: Services: Content as clause 140.
  - Part 4: The Health and Safety File: Content as clause 150.
  - Part 5: Building User Guide: Content as clause 151.
- **Responsibility:** The Building Manual is to be produced by The Contractor and must be complete no later than 2 weeks after PC.
- **Information provided by others:** Details: N/A.
- **Compilation:**
  - Prepare all information for Contractor designed or performance specified work including as-built drawings.
  - Obtain or prepare all other information to be included in the Manual.
- **Reviewing the Manual:** Submit a complete draft. Amend in the light of any comments and resubmit. Do not proceed with production of the final copies until authorized.
- **Final copies of the Manual:**
  - Number of copies: 2.
  - Format: 2 nr hard copy and made available electronically.
  - Latest date for submission: 1 weeks before the date for completion stated in the contract.
- **As-built drawings and schedules:**
  - Number of copies: 2.
  - Format: 2 Nr hard copy and made available electronically.

#### **115 THE HEALTH AND SAFETY FILE**


- **Responsibility:** The Principal Designer.
- **Content:** Obtain and provide the following information: All required.
- **Format:** 2 Nr hard copy and made available electronically
- **Delivery to:** Contract Administrator By (date): 1 month after PC.

## 120 CONTENT OF THE BUILDING MANUAL PART 1: GENERAL

- Content: Obtain and Provide the following, including all relevant details not included in other parts of the manual:
- Index: list the constituent parts of the manual, together with their location in the document.
- The Works:
  - Description of the buildings and facilities.
  - Ownership and tenancy, where relevant
  - Health and Safety information – other than that specifically required by the Construction (Design and Management) Regulations.
- The Contract:
  - Names and addresses and contact details of all significant consultants, contractors, subcontractors, suppliers and manufacturers.
  - Overall design criteria.
  - Environmental performance requirements
  - Relevant authorities, consents and approvals.
  - Third party certification, such as those made by "competent" persons in accordance with the Building Regulations
- Operational requirements and constraints of a general nature:
  - Maintenance contracts and contractors.
  - Fire safety strategy for the buildings and the site. Include drawings showing emergency escape and fire appliance routes, fire resisting doors location of emergency alarm and firefighting systems, services, shut off valves switches, etc.
  - Emergency procedures and contact details in case of emergency.
  - Other specific requirements: N/A.
- Description and location of other key documents.
- Timescale for completion: 1 month after PC.

## 130 CONTENT OF THE BUILDING MANUAL PART 2: BUILDING FABRIC

- Content: Obtain and Provide the following, including all relevant details not included in other parts of the manual:
- Detailed design criteria, including:
  - Floor and roof loadings.
  - Durability of individual components and elements.
  - Loading restrictions.
  - Insulation values.
  - Fire ratings.
  - Other relevant performance requirements.
- Construction of the building:
  - A detailed description of methods and materials used.
  - As-built drawings recording the construction, together with an index.

- Information and guidance concerning repair, renovation or demolition/ deconstruction.
- Periodic building maintenance guide chart.
- Inspection reports.
- Manufacturer's instructions index, including relevant COSHH data sheets and recommendations for cleaning, repair and maintenance of components.
- Fixtures, fittings and components schedule and index.
- Guarantees, warranties and maintenance agreements – obtain from manufacturers, suppliers and subcontractors.
- Test certificates and reports required in the specification or in accordance with legislation, including:
  - Air permeability.
  - Resistance to passage of sound.
  - Continuity of insulation.
  - Electricity and Gas safety.
- f) 
- Other specific requirements: -.
- Timescale for completion: 1 month after PC.

#### **140 CONTENT OF THE BUILDING MANUAL PART 3: BUILDING SERVICES**

- Content: Obtain and Provide the following, including all relevant details not included in other parts of the manual:
- Detailed design criteria and description of the systems, including:
  - Services capacity, loadings and restrictions
  - Services instructions.
  - Services log sheets.
  - Manufacturers' instruction manuals and leaflets index.
  - Fixtures, fittings and component schedule index.
- Detailed description of methods and materials used.
- As-built drawings for each system recording the construction, together with an index, including:
  - Diagrammatic drawings indicating principal items of plant, equipment and fittings
  - Record drawings showing overall installation
  - Schedules of plant, equipment, valves, etc. describing location, design performance and unique identification cross referenced to the record drawings.
  - Identification of services – a legend for colour coded services.
- Product details, including for each item of plant and equipment:
  - Name, address and contact details of the manufacturer.
  - Catalogue number or reference
  - Manufacturer's technical literature, including detailed operating and maintenance instructions.
  - Information and guidance concerning dismantling, repair, renovation or decommissioning.
- Operation: A description of the operation of each system, including:

- Starting up, operation and shutting down
  - Control sequences
  - Procedures for seasonal changeover
  - Procedures for diagnostics, troubleshooting and fault-finding.
- Guarantees, warranties and maintenance agreements – obtain from manufacturers, suppliers and subcontractors.
- Commissioning records and test certificates list for each item of plant, equipment, valves, etc. used in the installations – including:
  - Electrical circuit tests.
  - Corrosion tests.
  - Type tests.
  - Work tests.
  - Start and commissioning tests.
- Equipment settings: Schedules of fixed and variable equipment settings established during commissioning.
- Preventative maintenance: Recommendations for frequency and procedures to be adopted to ensure efficient operation of the systems
- Lubrication: Schedules of all lubricated items
- Consumables: A list of all consumable items and their source.
- Spares: A list of recommended spares to be kept in stock, being those items subject to wear and tear or deterioration and which may involve an extended delivery time when replacements are required.
- Emergency procedures for all systems, significant items of plant and equipment.
- Annual maintenance summary chart.
- Other specific requirements: -.
- Timescale for completion: 1 month after PC

## **150 CONTENT OF THE BUILDING MANUAL PART 4: THE HEALTH AND SAFETY FILE**

- Content: obtain and provide the following, including all relevant details not included in other parts of the manual, including:
  - residual hazards and how they have been dealt with
  - hazardous materials used
  - information regarding the removal or dismantling of installed plant and equipment
  - health and safety information about equipment provided for cleaning or maintaining the structure;
  - the nature, location and markings of significant services,
  - information and as-built drawings of the structure, its plant and equipment
- g) .
- Information prepared by others: Details: -.
- Timescale for completion: 1 month after PC.
- Submit to: Principal Designer.

## **151 CONTENT OF THE BUILDING MANUAL PART 5: THE BUILDING USER GUIDE**

- Content: Obtain and provide the following:
  - Building services information.
  - h) Emergency information.
  - i) Energy & environmental strategy.
  - j) Water use.
  - k) Transport facilities.
  - l) Materials & waste policy.
  - m) Re-fit/ re-arrangement considerations.
  - n) Reporting provision.
  - o) Training.
  - p) Links & references.
- Other specific requirements: -.
- q) • Timescale for completion: 1 month after PC.

## **160 PRESENTATION OF BUILDING MANUAL**

- Format: A4 size, plastics covered, loose leaf, four ring binders with hard covers, each indexed, divided and appropriately cover titled.
- Selected drawings needed to illustrate or locate items mentioned in the Manual: Where larger than A4, to be folded and accommodated in the binders so that they may be unfolded without being detached from the rings.
- As-built drawings: The main sets may form annexes to the Manual.

## **220 TRAINING**

- Objective: Before Completion, explain and demonstrate to designated maintenance staff the purpose, function and operation of the installations including items and procedures listed in the Building Manual.
- Level of training Handover of controls / function of mechanical and electrical systems.
- Time allowance: Include a minimum of 3 days.

## **230 SPARE PARTS**

- General: Before Completion submit a priced schedule of spare parts that the Contractor recommends should be obtained and kept in stock for maintenance of the services installations.
- Content: Include in the priced schedule for:
  - Manufacturers' current prices, including packaging and delivery to site.
  - Checking receipts, marking and numbering in accordance with the schedule of spare parts.
  - Referencing to the plant and equipment list in Part 3 of the Building Manual.
  - Painting, greasing, etc. and packing to prevent deterioration during storage.
- Latest date for submission: 1 month after PC.

## **250 TOOLS**

- **General:** Provide tools and portable indicating instruments for the operation and maintenance of all services plant and equipment (except any installed under Named Subcontracts) together with suitable means of identifying, storing and securing.
- **Quantity:** Two complete sets.
- **Time of submission:** At completion.

## **A41 CONTRACTOR'S GENERAL COST ITEMS: SITE ACCOMMODATION**

### **110 SITE ACCOMMODATION**

- Details: Site accommodation required or made/ not made available by the Employer: See section A36.
- Cost significant items: Contractor to provide all necessary site accommodation, storage and welfare which they require to complete the works - this to be priced as part of the Preliminaries section of the Work Schedule.

## **A50 WORK/ PRODUCTS BY/ ON BEHALF OF THE EMPLOYER**

### **120 PRODUCTS PROVIDED BY/ ON BEHALF OF EMPLOYER**

- General: Details of such products are given in the work sections, for fixing as part of the contract. Use for no other purpose than the Works.
- Handling: Accept delivery, check against receipts and take into appropriate storage.
- Surplus products: Keep safe and obtain instructions.



**YORBUILD2 CONTRACTORS FRAMEWORK  
AGREEMENT**

**CALL OFF CONTRACT SUPPLEMENT**

**FOR USE WHEN NOT USING THE YORBUILD2 CALL  
OFF CONTRACT TEMPLATE DOCUMENTS  
(INCLUDING WHEN A JCT CONTRACT IS BEING  
USED)**

**CALL OFF CONTRACT REF:1928-2020**

**MAY 2019**

<u>Contents</u>	<u>Page no.</u>
-----------------	-----------------

0. Guidance notes – Removed not required	
1. Tendering Instructions – Removed not required	
2. Works Information/Scope/Specification – Removed not required	
3. Optional Clauses	3

Appendices

Appendix 1 – Criteria for selection and award of call-off contracts	17
Appendix 2 - Additional Clauses	25
Appendix 3 - Prelims Book – see separate document	46

WI 2005

Optional Clause – Specification of Steel

Any steel used in this project shall be specified to BES6001 or other equivalent standard. If another equivalent standard is being used, please specify the equivalent standard and how your proposed product meets the hallmarks set out in BES6001

The contractor shall retain copies of all orders and receipts which document its compliance with this Standard. These shall be made immediately available to the *Employer* at their request

## **APPENDIX 1 - CRITERIA FOR SELECTION AND AWARD OF CALL-OFF CONTRACTS**

### **1.2 Single Stage mini competition**

**1. Prices**

Prices are assessed as per ITT Part 2 Instruction To Tender document.

**2. Quality**

Quality is assessed as per the Section 5 of ITT Part 3 Response To Tender.

**APPENDIX 2 – ADDITIONAL CLAUSES****NOTE**

1. When using JCT contracts users should include equivalent versions of these clauses.

<b>6. Termination</b>	<ul style="list-style-type: none"> <li>the <i>Employer</i> can terminate the <i>Contractor's</i> obligation to Provide the Works under this contract if the <i>Contractor</i> is prosecuted for Blacklisting as defined within the Employment Relations Act 1999 (Blacklists) Regulations 2010 during the course of this contract, whether directly on this contract or elsewhere. Termination shall occur immediately on receipt of a Termination Certificate issued by the <i>Project Manager</i>. The <i>Contractor</i> is liable for the <i>Employer's</i> additional costs due to the termination of the contract, including those associated with the completion of Works by a different Contractor. No payments are due to the <i>Contractor</i> upon termination on these grounds. This is in addition to the Council's Rights and Remedies included within clause 2.14 of Volume 2 of the YORbuild2 Contractors Framework Agreement.</li> </ul>
<b>8. Equipment</b>	<ul style="list-style-type: none"> <li>Rates for Equipment shall be in accordance with the Schedule of Rates in Appendix 4.2.6 of Volume 4 of the YORbuild2 Contractors Framework Agreement.</li> </ul>



## OFFICIAL

### SPECIAL TERMS & CONDITIONS

#### INDEX

1. DEFINITIONS
  2. PRIORITY OF TERMS AND CONDITIONS
  3. INDEMNITY
  4. WORK ON THE PREMISES
  5. SUSPENSION
  6. REPUTATION
  7. PUBLICITY
  8. VETTING
  9. INDEPENDENT POLICE COMPLAINT COMMISSION
  10. TRANSPARENCY
  11. THIRD PARTY RIGHTS
  12. BARRED LIST
  13. DATA PROTECTION
  14. IMPROVING VISIBILITY OF SUBCONTRACT OPPORTUNITIES AVAILABLE TO SMEs AND VCSEs IN THE SUPPLY CHAIN
  15. MANAGEMENT CHARGES AND INFORMATION
  16. FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS
  17. ANTI-BRIBERY AND FRAUD
  18. COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS
  19. OFFICIAL SECRETS ACT AND CONFIDENTIAL INFORMATION
- SPECIAL CLAUSES

#### 1. DEFINITIONS

In these Special Conditions, the following definitions apply:

**"Authority"** means the contracting Authority referred to in the Contract or any successor organisation responsible for the tendering, award and overall management (including the issue of any variations and modifications to Contract) of the Contract on behalf of that contracting Authority and where that Authority is a PCC then it is entering into this Contract on behalf of itself and the Chief Constable and all the Conditions will apply to both legal entities.

**"Chief Constable"** means the Chief Constable of the same relevant policing area as the Authority.

**"Contract"** means the contract between the Authority and the Supplier for the supply of Goods and Services.

**"Data Controller"** has the meaning set out in the Data Protection Legislation.

**"Data Controller's Data"** means any Personal Data, any special categories of personal data as referred to in Article 9(1) of the GDPR and any Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR belonging to either the Authority or the Chief Constable.

**"Data Processor"** has the meaning set out in the Data Protection Legislation.

**"Data Processing Details"** means the description of the data Processing being carried out under the Contract, the details of which are set out in the data processing agreement with the relevant Data Controller.

**"Data Protection Legislation"** means the DPA 2018, the GDPR, the applied GDPR (as applied by the DPA 2018), regulations made under the DPA 2018, regulations made under section 2(2) of the European Communities Act

## OFFICIAL

1972 which relate to the GDPR or Law Enforcement Directive (Directive (EU) 2016/680) and any replacement or supplementary legislation coming into effect from time to time.

**"Data Subject"** has the meaning set out in the Data Protection Legislation.

**"Data Subject Access Request"** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**"DPA 2018"** means the Data Protection Act 2018;

**"Goods"** means the goods (or any part of them) set out in the Order.

**"Intellectual Property Rights"** means patents, copyright, registered and unregistered design rights, utility models, trade marks (whether or not registered), database rights, rights in know-how and confidential information and all other intellectual and industrial property rights and similar or analogous rights existing under the laws of any country and all rights to apply for or register such rights.

**"Laws"** means any law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body or any approval of any local authority or statutory undertaker having jurisdiction in relation to the Goods and Services or with whose systems the Goods and Services are, or are to be, connected, from time to time.

**"Order"** means an official purchase order raised against the Contract by the Authority.

**"PCC"** means the Police and Crime Commissioner(s) and/or Police, Fire and Crime Commissioner referred to in the Contract.

**"Personal Data"** has the meaning set out in the Data Protection Legislation.

**"Premises"** means the Authority's premises where the Goods and/or Services are to be delivered or performed.

**"Process"** has the meaning set out in the Data Protection Legislation.

**"Services"** means the services to be provided by the Supplier under the Contract.

**"SME"** means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

**"Special Conditions"** means the terms and conditions set out in this document.

**"Sub-processor"** means any third party appointed to process Personal Data on behalf of the supplier related to this Contract.

**"Supplier"** means the supplier referred to in the Contract.

**"VCSE"** means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

## OFFICIAL

### **2. INDEMNITY**

Where the Authority is a PCC, references to any indemnity being given by the Supplier to the Authority shall be construed as also being given to the relevant Chief Constable.

### **3. PRIORITY OF TERMS AND CONDITIONS**

If there is any ambiguity or inconsistency in or between the terms and conditions of the call off contract and these special conditions, these special conditions prevail.

### **4. WORK ON THE PREMISES**

4.1 If the Contract involves any Goods and Services which the Supplier delivers or performs on the Premises then, when required, the Supplier and their employees, sub-contractors and their employees shall comply with any security requirements including a right to search when entering or leaving the Premises and being escorted in certain areas. The Authority reserves the right to remove from the Premises anyone not complying with the Authority's security arrangements or suspected of being under the influence of alcohol, or any other substance which has the effect of impairing performance.

4.2 The Authority's decision as to whether any person is to be refused access to any Premises occupied by or on behalf of the Authority shall be final and conclusive and the Supplier shall replace promptly any such person to ensure that its requirements under the Contract are met.

4.3 The Supplier shall bear the cost of or costs arising from any decision of the Authority under this clause 4.

### **5. SUSPENSION**

5.1 Without limiting its other rights or remedies the Authority may suspend the Contract in whole or in part by giving written notice of such suspension to the Supplier if the Supplier or any of their employees or agents are or become;

- (a) subject to a criminal investigation in respect of allegations arising out of or relating to their professional practice whether in respect of work undertaken in performance of the Contract or otherwise; or
- (b) subject to a criminal investigation relating to an allegation, which if substantiated, would constitute a breach of the terms of the Contract; or
- (c) subject to any allegation of professional negligence;
- (d) in the reasonable opinion of the Authority, subject to a material detrimental change in the financial standing and/or credit rating which adversely impacts on the Supplier's ability to deliver the Goods or supply the Services under the Contract or could be reasonably expected to have an adverse impact on the Supplier's ability to deliver the Goods or supply the Services under the Contract; or
- (e) subject to investigation by a relevant regulatory body in respect of any alleged breach of a relevant code of practice.

5.2 The Supplier must inform the Authority immediately upon becoming aware of any of the matters set out above.

5.3 The Authority shall have no liability to accept delivery of any Goods or performance of any Services during the period of suspension and the sums payable by the Authority under the Contract shall be

## OFFICIAL

reduced during the period of suspension by an amount equivalent to the value of the Goods and Services suspended for the duration of such suspension and the Authority shall have no liability whatsoever to make any payment to the Supplier of any sums withheld during the period of suspension.

- 5.4 For the avoidance of doubt the Authority will be entitled during any period of suspension to engage other Supplier to provide the Goods and / or Services which the Supplier is unable to provide by reason of the suspension.
- 5.5 Following a suspension pursuant to clause 5.1 above the Authority shall keep the matter under review and should the reasons for the suspension be resolved to the satisfaction of the Authority then the Authority may give written notice lifting suspension of the Contract.
- 5.6 If the Investigations or allegations at clause 5.1(a) are substantiated, this shall entitle the Authority to terminate the Contract with immediate effect.

## 6. REPUTATION

- 6.1 The Supplier shall not, and shall procure that neither its employees or subcontractors:
  - (a) do any act or make any omission that has or could reasonably be expected to have an adverse impact upon the security of the business, operations, systems or properties or Premises of the Authority;
  - (b) take any action which might or shall:
    - (i) harm or be prejudicial to the public confidence in the Authority and/or the Chief Constable or to its public image(s); or
    - (ii) bring the Authority and/or the Chief Constable into disrepute.
- 6.2 Without limiting clause 6.1, the Supplier shall comply with the provisions of the standards, policies, procedures and regulations provided from time to time to the Supplier by the Authority.

## 7. PUBLICITY

- 7.1 Unless expressly permitted in writing by the Authority, the Supplier shall not publish or permit to be published either alone or in conjunction with any other person any information, articles, photographs or other illustrations relating to or connected with the Contract.
- 7.2 This Contract shall not entitle the Supplier or any of their sub-contractors, agents or employees to endorse its goods or services with any reference to the Authority, the relevant police force or Chief Constable if applicable and the Supplier shall not exhibit for advertising or any other reason any goods or services or equipment supplied under the Contract which can be identified with the Authority without the prior written consent of the Authority.
- 7.3 Clause 7 includes any such reference made in any form of written, pictorial or audible advertising campaign, marketing, sales or promotion campaign.

## 8. VETTING

- 8.1 The Authority may request and such employees of the Supplier, or any sub-contractor, who are involved in delivering the Goods or performing the Services that it deems necessary to undergo a security vetting procedure or have the Authority's approval and secure vetting to the appropriate level prior to commencing and work on the Contract.

## OFFICIAL

- 8.2 To facilitate the relevant vetting when so requested by the Authority, the Supplier shall provide a list of the names and addresses of all persons (if any) who it is expected will be engaged in the provision of the Goods and Services, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably require to permit appropriate security checking. This may include the requirement for the Individuals concerned to provide personal details about family members and financial circumstances and make a personal declaration as to the accuracy of the Information provided.
- 8.3 For the avoidance of doubt, where the Authority has requested employees to undergo security vetting, only employees who have completed the vetting process and/or received written confirmation of their successful application can work on the Contract.
- 8.4 If requested by the Authority, the Supplier will be responsible for the vetting costs of all of the Supplier's employees who are required to be vetted under clause 8.1 above.
- 8.5 The outcome of vetting and the decision from the Authority is final and binding. Employees who have not received vetting clearance by the Authority are not permitted to work on the Contract and the Supplier shall replace any of its employees who, the Authority shall have decided in its absolute discretion, have failed the appropriate security checking. The Authority shall not have to disclose why an employee has failed security checking. Following the removal of any of the Supplier's employees for failing vetting, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Contract.
- 8.6 The Supplier is responsible for ensuring all personnel supporting the contract, including but not limited to, sub-contractors employees are successfully vetted in line with any requested vetting by the Authority and shall ensure throughout the term of the Contract that they are at all times compliant with the vetting requirements of the Authority.
- 8.7 It is the Supplier's responsibility to ensure all staff working on the Contract in line with any requested vetting by the Authority and supply any information required by the Authority's vetting unit and any changes in circumstances that occur after vetting has taken place during the term of the Contract are notified to the Authority. Any delay in the performance of the Contract resulting from the Supplier's employees or sub-contractor employees not submitting fully and accurately completed forms and submitting any further information required or from declined vetting applications shall be the responsibility of the Supplier.
- 8.8 The Supplier shall keep an accurate and up to date record of their vetted employees and sub-contractors employees and must ensure that vetting remains current for any individual involved in the delivery of the Contract.

## 9. INDEPENDENT POLICE COMPLAINT COMMISSION

The Supplier must ensure that all personnel are made aware of the ability of the Independent Police Complaints Commission to investigate any matters reported to them under the Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015 including but not limited to the conduct of the Supplier and its personnel.

## 10. TRANSPARENCY

- 10.1 Following the publication of the Statutory Instrument 2012 – Amendment 2479 (<http://www.legislation.gov.uk/ukSI/2012/2479/made>), all Police Forces of England and Wales have an obligation to make publicly available a copy of each contract with a value exceeding £10,000 to which

## OFFICIAL

(i) the elected local policing body, or (ii) the chief officer of the police force maintained by the body, is or is to be a party.

10.2 As part of the transparency agenda, Government has made the following commitments with regard to procurement and contracting:

- (a) All new contracts over the value of £10,000 to be published in full online;
- (b) All items of spending over £500 per month to be published online.

10.3 To meet this requirement the Authority intends to publish all contracts over a value exceeding £10,000 on the Freedom of Information (FOI) page of the Bluelight Procurement Database ([www.blpd.gov.uk](http://www.blpd.gov.uk)).

10.4 The full list of criteria for which redactions may be permitted as set out as follows:

- (a) Exemptions (absolute or qualified) provided for by the Freedom of Information Act 2000, regarding the disclosure of information;
- (b) Provisions provided for in the Public Contracts Regulations 2015, regarding the disclosure of confidential information;
- (c) Protection of personal privacy as required under the Data Protection Act;
- (d) The protection of Intellectual Property Rights (IPR);
- (e) Third party confidential information e.g. contracts with foster carers and child minders.

10.5 Information and guidance on understanding exemptions and other FOI matters can be accessed from the Information Commissioner's Office [www.ico.gov.uk](http://www.ico.gov.uk).

## 11. THIRD PARTY RIGHTS

11.1 Except as expressly provided in clause 11.2(b) below, a person who is not party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

11.2 The Chief Constable also has the benefit of the Contract and is able to enforce all the Supplier's obligations set out in the Contract.

11.3 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under the Contract are not subject to any other party.

## 12. BARRED LIST

12.1 This clause 12 shall apply where the Services being provided under the Contract include functions of a public nature which relate to policing and law enforcement.

12.2 In accordance with the Part 4A of the Police Act 1996, no employees of the Supplier, or any subcontractor, are permitted to be involved in the provision of the Services if they are on the police barred list published from time to time by the College of Policing ("Barred List").

12.3 The Supplier is responsible for ensuring all personnel supporting the contract, including but not limited to, sub-contractors employees are not on the Barred List and shall ensure throughout the term of the Contract that they are at all times compliant with the requirements of clause 12.2 above.

## OFFICIAL

- 12.4 To enable the Authority to comply with its duties under Part 4A of the Police Act 1996, when so requested by the Authority, the Supplier shall provide a list of the names of all persons who it is expected will be engaged in the provision of the Goods and/or performance of the Services, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably require to permit the Barred List and the Police Advisory List to be checked.
- 12.5 The outcome of any check made pursuant to clause 12.4 above and the decision from the Authority in respect of the same is final and binding. Employees who are found by the Authority or notified to the Authority as being on the Barred List are not permitted to work on this Contract and the Supplier shall replace any of its employees or sub-contractor's employees who are on the Barred List.
- 12.6 Following the removal of any of the Supplier's or sub-contractor's employees in accordance with clause 12.5 above, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Contract.

### 13. DATA PROTECTION

- 13.1 The Supplier warrants that it will comply with the Data Protection Legislation and this clause is in addition to, and does not relieve, remove or replace the Supplier's obligations under the Data Protection Legislation.
- 13.2 The Supplier agrees that if it acts at any time under this Contract as a Data Processor of the Data Controller's Data, it shall enter into a data processing contract in the relevant Data Controller's standard form, such data processing contract to include the Data Processing Details setting out the scope, nature and purpose of the Processing by the Supplier, the duration of the Processing, the types of the Data Controller's Data and categories of Data Subject Involved and the obligations and rights of the Supplier and the Data Controller.
- 13.3 The Supplier shall comply at all times with its obligations under the data processing contract referred to in clause 13.2 above and shall only process the Data Controller's Data to the extent, and in such a manner, as is necessary for the purposes identified by the Data Controller and in the manner specified by the Data Controller and for no other purpose or in any manner except on the written instructions of the Data Controller or as required by any Laws. The Supplier shall not determine at any time the purpose or means of the Processing and, if it is so required by any Laws, the Supplier shall promptly notify the Data Controller before processing the Data Controller's Data unless prohibited by such Laws. The Supplier will keep a record of any Processing of the Data Controller's Data it carries out under the Contract.
- 13.4 In addition to the provisions of any data processing agreement, where the Supplier processes Data Controller's Data on behalf of either the Authority or the Chief Constable if applicable, the following provisions of this clause 13 shall apply.
- 13.5 The Supplier shall notify the Authority immediately if it considers that any of the Data Controller's instructions infringe the Data Protection Legislation.
- 13.6 The Supplier shall provide all reasonable assistance to the Data Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Data Controller, include:
- (a) a systematic description of the envisaged Processing operations and the purpose of the Processing;
  - (b) an assessment of the necessity and proportionality of the Processing operations in relation to the Services;

## OFFICIAL

- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 13.7 The Supplier shall Process Personal Data only to the extent, and in such a manner, as is necessary for the purposes specified in the Data Processing Details Form and in accordance with the Data Controller's instructions if applicable from time to time and shall not Process the Personal Data for any other purpose. The Supplier will keep a record of any Processing of Personal Data it carries out under this Contract.
- 13.8 The Supplier shall promptly comply with any request from the Data Controller requiring the Supplier to amend, transfer or delete the Personal Data.
- 13.9 The Supplier shall only collect any Personal Data in a form which is fully compliant with the Data Protection Legislation which will contain a data protection notice informing the Data Subject of the identity of the Data Controller, the identity of any data protection representative it may have appointed, the purposes or purposes for which their Personal Data will be Processed and any other information which is necessary having regard to the specific circumstances in which the data is, or is to be, Processed to enable Processing in respect of the Data Subject to be fair.
- 13.10 If the Supplier receives any complaint, notice or communication which relates directly or indirectly to the Processing of the Personal Data or to either Party's compliance with the Data Protection Legislation and the data protection principles set out therein, it shall immediately notify the Data Controller and it shall provide the Data Controller with full co-operation and assistance in relation to any such complaint, notice or communication.
- 13.11 At the Data Controller's request, the Supplier shall provide to the Data Controller a copy of all Personal Data held by it in the format and on the media reasonably specified by the Data Controller.
- 13.12 The Supplier shall not transfer the Personal Data outside the European Economic Area without the prior written consent of the Data Controller and in accordance with the Data Protection Legislation.
- 13.13 The Supplier shall promptly inform the Data Controller if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable. The Supplier will restore such Personal Data at its own expense.
- 13.14 The Supplier shall ensure that access to the Personal Data is, in accordance with the Data Protection Legislation, limited to:
- (a) those employees who need access to the Personal Data to meet the Supplier's obligations under this Contract; and
  - (b) in the case of any access by any employee, such part or parts of the Personal Data as is strictly necessary for performance of that employee's duties.
- 13.15 The Supplier shall ensure that all employees:
- (a) are informed of the confidential nature of the Personal Data;
  - (b) have undertaken training in the Data Protection Legislation relating to handling Personal Data; and
  - (c) are aware both of the Supplier's duties and their personal duties and obligations under the Laws, the Data Protection Legislation and this Contract.
- 13.16 The Supplier shall take reasonable steps to ensure the reliability of any of the Supplier's employees who have access to the Personal Data including any vetting status required.

## OFFICIAL

- 13.17 The Supplier shall provide the Data Controller with full co-operation and assistance in relation to any request made by a Data Subject to have access to that person's Personal Data.
- 13.18 The Supplier shall not disclose the Personal Data to any Data Subject or to a third party other than at the request of the Data Controller or as provided for in this Contract in accordance with the Data Protection Legislation.
- 13.19 The Supplier warrants that:
- (a) It will Process the Personal Data in compliance with the Data Protection Legislation;
  - (b) where applicable, it will comply with all obligations of any data Processing contract the Data Controller requires the Supplier to sign; and
  - (c) It will take appropriate technical and organisational measures against the unauthorised or unlawful Processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure the Data Controller's compliance with the seventh data protection principle.
- 13.20 The Supplier shall notify the Data Controller immediately if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Contract; or
  - (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law.
- 13.21 The Supplier shall notify the Data Controller immediately if it becomes aware of any unauthorised or unlawful Processing, loss of, damage to or destruction of the Personal Data.
- 13.22 The Supplier shall, at the written direction of the Data Controller, delete or return Personal Data (and any copies of it) to the Data Controller on termination of the Contract unless the Supplier is required by Law to retain the Personal Data.
- 13.23 The Supplier agrees to indemnify and keep indemnified and defend at its own expense the Data Controller against all costs, claims, damages or expenses incurred by the Data Controller or for which the Data Controller may become liable due to any failure by the Supplier or its employees or agents to comply with any of its obligations under this clause 13.
- 13.24 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:
- (a) notify the Data Controller in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Data Controller;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 13 such that they apply to the Sub-processor; and
  - (d) provide the Data Controller with such information regarding the Sub-processor as the Data Controller may reasonably require.
- 13.25 The Supplier shall remain fully liable for all acts or omissions of any of its Sub-processors.

## OFFICIAL

- 13.26 The Supplier shall comply with the Authority's or the Chief Constable's baseline security requirements as updated from time to time by the relevant body and notified to the Supplier.
- 13.27 If requested by the Authority, the Supplier to enter into a Security Aspects Letter ("SAL") with the relevant force if applicable and the Supplier shall comply with that the protocols set out in that SAL. In the event the Supplier fails to adhere to the SAL protocols, the Authority shall have the right to terminate this Contract and to recover from the Supplier the amount of any loss resulting from any such termination.

### **14. IMPROVING VISIBILITY OF SUBCONTRACT OPPORTUNITIES AVAILABLE TO SMES AND VCSES IN THE SUPPLY CHAIN**

- 14.1 This clause 14 and clause 15 shall apply where the advertised contract value for the Contract was valued above £5 million per annum.
- 14.2 The Supplier shall:
- (a) subject to clause 14.4, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Goods and/or Services above a minimum threshold of £25,000 that arise during the term of the Contract;
  - (b) within 90 days of awarding a subcontract to a subcontractor, update the notice on Contracts Finder with details of the successful subcontractor;
  - (c) monitor the number, type and value of the subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the term of the Contract;
  - (d) provide reports on the information at clause 14.2(c) to a Authority in the format and frequency as reasonably specified by the Authority; and
  - (e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 14.3 Each advert referred to at clause 14.2(a) above shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 14.4 The obligation at clause 14.2(a) shall only apply in respect of subcontract opportunities arising after the contract award date.
- 14.5 Notwithstanding clause 14.2, the Authority may by giving its prior written approval, agree that a subcontract opportunity is not required to be advertised on Contracts Finder.

### **15. MANAGEMENT CHARGES AND INFORMATION**

- 15.1 In addition to any other management information requirements set out in this Contract, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME Management Information (MI) Reports to the Authority which incorporate the data described in the MI Reporting template which is:
- (a) the total contract revenue received directly on a specific contract;
  - (b) the total value of sub-contracted revenues under the contract (including revenues for non-SMEs/non-VCSEs); and
  - (c) the total value of sub-contracted revenues to SMEs and VCSEs.

## OFFICIAL

15.2 The SME Management Information Reports shall be provided in the correct format as required by the MI Reporting Template and any guidance issued by the Authority from time to time. The Supplier shall use the Initial MI Reporting Template which is set out in the Annex to Public Procurement Policy Note 01/08: Supply Chain Visibility Action and which may be changed from time to time (including the data required and/or format) by the Authority by issuing a replacement version. The Authority shall give at least thirty (30) days' notice in writing of any such change and shall specify the date from which it must be used.

15.3 The Supplier further agrees and acknowledges that it may not make any amendment to the current MI Reporting Template without the prior written approval of the Authority.

### **16. FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS**

16.1 The Supplier acknowledges that the Authority and the Chief Constable if applicable are subject to the requirements of the Freedom Of Information Act 2000, (FOIA), and the Environmental Information Regulations 2004 (EIR) and the Supplier agrees to assist and cooperate with the Authority and the Chief Constable if applicable (at the Supplier's expense) as mandated by the Authority or Chief Constable if applicable in relation to these laws.

16.2 Any Requests received by the Supplier shall be forwarded to the Authority or Chief Constable immediately.

16.3 The provisions of this clause 16 shall extend to sub-contractors and the Supplier shall ensure compliance with this requirement.

16.4 The Supplier acknowledges that the Authority and the Chief Constable if applicable may, acting in accordance with the FOIA, or the EIR be obliged to disclose information relating to the Contract:

- (a) without consulting with the Supplier; or
- (b) following consultation with the Supplier and having taken the Supplier's views into account; or
- (c) in accordance with legislation and procedural transparency requirements.

16.5 Where it is necessary for the Supplier to provide information to the Authority which it believes to be information falling into the exemptions set out in the FOIA ("Exempt Information"), it shall state in writing to the Authority the nature of the information and the relevant exemption. The Authority will use reasonable endeavours to consult with the Supplier before disclosing such information under the FOIA. The Supplier acknowledges that the final decision whether to disclose such information will rest with the Authority and not with the Supplier. Nothing contained in this Contract or any documents or negotiations relating to this Contract shall prevent the Authority from disclosing any information which (in the Authority's reasonable opinion or in accordance with any recommendation, notice or decision of a competent Authority) it is required to disclose under the FOIA.

16.6 When requested to do so by the Authority, the Supplier shall promptly provide the information in its possession relating to this Contract and shall assist and co-operate with the Authority to enable it to respond to a Request within the time limit set out in the relevant legislation.

16.7 The Supplier shall observe the Authority's Retention and Destruction Policy (details of which shall be provided by the Authority to the Supplier upon request) and shall not destroy information other than in accordance with this policy. If the Authority notifies the Supplier of a request for information held by the Supplier, which is due for destruction the Supplier shall immediately suspend destruction of that information to allow disclosure to take place. Upon the termination of this Contract the parties shall

## OFFICIAL

agree which party has the control of the retained information. Should the Supplier retain control of the information this clause 16 shall remain in force beyond the termination of this Contract.

- 16.8 The Supplier shall maintain an adequate records management system which will enable it to access the information within the time limits prescribed.
- 16.9 The Supplier shall indemnify the Authority against all claims, demands, actions, costs, proceedings and liabilities that the Authority directly incurs due to the Supplier's or any sub-contractor breach of this clause 16 or any part of it.

### **17. ANTI-BRIBERY AND FRAUD**

- 17.1 The Supplier shall not offer or give, or agree to give, to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act relating to obtaining or the signing of the Contract or any other contract with the Authority or any other public body or showing or refraining from showing favour or disfavour to any person, in relation to the Contract or any other Contract with the Authority, or if similar acts have been done by any person employed by the Supplier, or acting on the Supplier's behalf (whether with or without the knowledge of the Supplier).
- 17.2 The Supplier warrants that it has not paid commission or agreed to pay commission to the Authority or any other public body or any person employed by or on behalf of the Supplier or any other public body in connection with the Contract.
- 17.3 The Supplier shall:
- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");
  - (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
  - (c) have and shall maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and clause 17.3(b), and will enforce them where appropriate;
  - (d) promptly report to the Authority any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Contract;
  - (e) immediately notify the Authority if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier (and the Supplier warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Contract); and
  - (f) ensure that all persons associated with the Supplier or other persons who are performing services in connection with this Contract comply with this clause 17.
- 17.4 The Supplier shall not engage in any activity practice or conduct which would constitute an offence under the Prevention of Corruption Acts 1889 to 1916 or Fraud Act 2006.

## OFFICIAL

- 17.5 The Supplier shall not receive any fee or reward the receipt of which is offence under the sub-section (2) of Section 117 of the Local Government Act 1972.
- 17.6 Breach of this clause 17 shall entitle the Authority to terminate the Contract with immediate effect.
- 17.7 In the event of any breach of this clause 17 by the Supplier or by anyone employed by it or acting on its behalf (whether with or without the knowledge of the Supplier):
- (a) the Supplier shall immediately give the Authority full details of any such breach and shall co-operate fully with the Authority in disclosing information and documents which the Authority may request; and/or
  - (b) the Authority shall (without prejudice to any of its rights or remedies under this Contract or otherwise) be entitled by notice in writing to terminate this Contract immediately; and
  - (c) the Supplier shall be liable for and shall indemnify and keep the Authority and the Chief Constable if applicable indemnified in respect of any and all loss resulting from such termination.
- 17.8 In any dispute, difference or question arising in respect of:
- (a) the interpretation of this clause 17; or
  - (b) the right of the Authority to terminate this Contract; or
  - (c) the amount or value of any gift, consideration or commission
- the decision of the Authority shall be final and conclusive.
- 18. COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS**
- 18.1 In performing its obligations under this Contract, the Supplier shall:
- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
  - (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; ]
  - (c) include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this clause 18.
  - (d) notify the Authority as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.
  - (e) maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Authority in connection with this Contract; and permit the Authority and its third party representatives to inspect the Supplier's premises, records, and to meet the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause 18.
- 18.2 The Supplier represents and warrants that it not has been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

## OFFICIAL

18.3 The Authority may terminate this Contract with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of this clause 18.

### 19. OFFICIAL SECRETS ACT AND CONFIDENTIAL INFORMATION

19.1 The Supplier undertakes to comply with the provisions of the Official Secrets Acts 1911 to 1989. This may include if reasonably requested to do so by the Authority the requirement for the Supplier to have individuals involved in the delivery of this Contract to sign a copy of the Official Secrets Act.

19.2 The Supplier shall keep confidential all technical or commercial know-how, specifications, inventions, operational matters, processes or initiatives which are of a confidential nature ("Confidential Information") and have been disclosed to the Supplier by the Authority (or its agents) or acquired by the Supplier from the Authority (or its agents). The Supplier shall also keep confidential any other confidential information concerning the Authority or their business or the fact of this Contract or any document that makes up the Contract. The Supplier shall restrict disclosure of the confidential material to those of its employees, agents or subcontractors as need to know the information to enable them to carry out the Supplier's obligations to the Authority and shall ensure that all employees, agents or subcontractors are subject to similar obligations of confidentiality as those imposed on the Supplier. Under no circumstances without the prior approval of the Authority shall such information be published, copied, amended or otherwise disclosed to any other persons and the Supplier shall ensure that all its subcontractors are also aware of their obligations under this clause.

19.3 This clause shall not apply to information to be disclosed by law as long as the Supplier shall notify the Authority and agree the nature of any such disclosure with the Authority in advance or which is in the public domain other than by a breach of this clause.

18.4 If the Authority has required the Supplier or its sub-contractors or suppliers to sign a mutual confidentiality agreement, the Supplier shall comply and procure its sub-contractors or suppliers shall comply at all times with its obligations under that mutual confidentiality agreement.

18.5 The provisions of the previous provisions of this clause shall apply during the continuance of this Contract and after it has been terminated however arising.

## OFFICIAL

### SPECIAL CLAUSES

- The *additional conditions of contract* are as follows.

See Clauses 1 to 20 below

#### 1 INDEPENDENT POLICE COMPLAINTS COMMISSION

##### 1 Independent Police Complaints Commission

- 1.1 The Parties recognise that the Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) (Regulations) 2015 apply to this contract which means that the Employer has oversight of complaints made against any persons working for the Contractor including subcontractors.
- 1.2 The Contractor must have appropriate internal processes to ensure compliance with these regulations and must make all persons working for them aware of the behaviours and standards that they are required to comply with under the regulations and the ability of the Employer to investigate any matters reported to them including but not limited to a person's conduct.

#### 2. TRANSPARENCY

##### 2 Transparency

- 2.1 Following the publication of the Statutory Instrument 2012 – Amendment 2479 (<http://www.legislation.gov.uk/ukSI/2012/2479/made>), all Police Forces of England and Wales have an obligation to make publicly available a copy of each contract with a value exceeding £10,000 to which (i) the elected local policing body, or (ii) the chief officer of the police force maintained by the body, is or is to be a party.
- 2.2 As part of the transparency agenda, Government has made the following commitments with regard to procurement and contracting:
  - All new contracts over the value of £10,000 to be published in full online;
  - All items of spending over £500 per month to be published

## OFFICIAL

online;

- 2.3 To meet this requirement the Employer intends to publish all contracts over a value exceeding £10,000 on the Freedom of Information (FOI) page of the Bluelight Procurement Database ([www.blpd.gov.uk](http://www.blpd.gov.uk)).
- 2.4 The full list of criteria for which redactions may be permitted as set out as follows:
  - 2.4.1 Exemptions (absolute or qualified) provided for by the Freedom of Information Act 2000, regarding the disclosure of information;
  - 2.4.2 Provisions provided for in the Public Contracts Regulations 2015, regarding the disclosure of confidential information;
  - 2.4.3 Protection of personal privacy as required under the Data Protection Act;
  - 2.4.4 The protection of Intellectual Property Rights (IPR);
  - 2.4.5 Third party confidential information e.g. contracts with foster carers and child minders.
- 2.5 Information and guidance on understanding exemptions and other FOI matters can be accessed from the Information Commissioner's Office [www.ico.gov.uk](http://www.ico.gov.uk).
- 2.6 Where requested to do so by the Contractor, all published information described within clause 2 shall have the persons names removed and will have fee percentages removed.

### **3 CONSTRUCTION DESIGN MANAGEMENT**

#### **3 Construction Design Management**

- 3.1 The Contractor shall accept responsibility as Principal Contractor for the development of the Construction Phase Plan from the Information provided with these documents and for the incorporation and co-ordination of the activities of all subcontractors to ensure their compliance with health and safety law and make full allowance for the costs associated with the development and compliance with the Construction Phase Plan. A detailed Construction Phase Plan for the provision of the service must be submitted to the Service Manager not less than 4 weeks before the proposed date for the start of the service.
- 3.2 The provision of the service will not start until the Employer has confirmed in writing that in his view the Construction Phase Plan includes the procedures and arrangements required by the CDM regulations.

### **4 INSPECTION AND COMMISSIONING**

#### **4 Inspection and Commissioning**

- 4.1 A staged inspection and commissioning process shall be agreed in writing and adopted by the Employer and the Contractor. This process shall include: HP Quality Inspections; HP Staged Witness Testing and HP Witness of Commissioning. If the Employer requirements are not met as agreed then the Employer will not accept a practical completion.
- 4.2 The Contractor shall allow the Employer's representatives access to the site in order to carryout ad-hoc quality inspections. The Employer shall adhere to the Contractors Health & Safety policies and the Contractor shall provide all induction required for the Employer's representatives to enter the construction site.
- 4.3 If any activities commissioned pursuant to the terms of this Contract are suspended terminated or delayed as a result of the Contractor proceeding without or failing to obtain the

## OFFICIAL

necessary approvals, the cost of any potential remedial / rework shall be borne solely by the Contractor.

### 5. BRIBERY AND CORRUPTION

5.1 The Employer shall be entitled to cancel the Contract immediately at any time and to recover from the Contractor the amount of any loss resulting from cancellation in any of the following circumstances:

5.1.1 the Contractor shall have offered or have given, or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing, or agreeing to do or for having done or had agreed to do, any action relating to obtaining or the signing of the Contract or any other Contract with the Employer; or

5.1.2 the Contractor showing or agreeing to show favour or disfavour to any person, in relation to the Contract or any other Contract with the Employer, or if similar acts have been done by any person employed by the Contractor, or acting on the Contractor's behalf (whether with or without the knowledge of the Contractor); or

5.1.3 if in relation to the Contract or any other Contract with the Employer the Contractor or any person employed by the Contractor or acting on the Contractor's behalf shall have committed an offence under the Prevention of Corruption Acts 1889 to 1916 or Fraud Act 2006; or

5.1.4 if the Contractor 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 197

#### 5 Bribery and Corruption

**6 Official Secrets  
Act and  
Confidentiality**

**6. OFFICIAL SECRETS ACT AND CONFIDENTIALITY**

- 6.1 The Contractor undertakes to comply with the provisions of the Official Secrets Acts 1911 to 1989. This may include if reasonably requested to do so by the Employer the requirement for the Contractor to have individuals involved in the delivery of this Contract to sign a copy of the Official Secrets Act.
- 6.2 The Contractor shall keep confidential all technical or commercial know-how, specifications, inventions, operational matters, processes or initiatives which are of a confidential nature ("Confidential Information") and have been disclosed to the Contractor by the Employer (or its agents) or acquired by the Contractor from the Employer (or its agents). The Contractor shall also keep confidential any other confidential information concerning the Employer or their business or the fact of this Contract or any document that makes up the Contract. The Contractor shall restrict disclosure of the confidential material to those of its employees, agents or Subcontractors as need to know the information to enable them to carry out the Contractor's obligations to the Employer and shall ensure that all employees, agents or Subcontractors are subject to similar obligations of confidentiality as those imposed on the Contractor. Under no circumstances without the prior approval of the Employer shall such information be published, copied, amended or otherwise disclosed to any other persons and the Contractor shall ensure that all its Subcontractors are also aware of their obligations under this Clause 6
- 6.3 This clause shall not apply to information to be disclosed by law as long as the Contractor shall notify the Employer and agree the nature of any such disclosure with the Employer in advance or which is in the public domain other than by a breach of this Clause 6.

## OFFICIAL

6.4 The provisions of the previous paragraphs shall apply during the continuance of this Contract and after it has been terminated however arising.

### 7 Data Protection Act

#### 7. DATA PROTECTION ACT

The Contractor and his subcontractors shall comply with all the provisions of the Data Protection Act 2018 and any other regulations made under the Data Protection Act 2018 or any Act of Parliament or statutory modification, re-enactment or extension relating to the disclosure of information and will indemnify the Employer against all actions, costs, expenses, claims, proceedings and demands which may be brought against the Employer for breach of statutory duty under the Act which arises from the use, disclosure or transfer of personal data by the Contractor.

#### 8. FREEDOM OF INFORMATION ACT

8.1 "FOI" means the Freedom of Information Act 2000, "Exempt Information" means information falling into the exemptions set out in the FOI, "Confidential Information" means information to which the confidentiality or commercial interests' exemptions within the FOI apply and "Working Day" means Monday to Friday inclusive except bank holidays.

### 8 Freedom of Information Act

8.2 The Employer is bound by the provisions of the FOI and information relating to this Contract and to the Service may need to be disclosed to third parties in order for the Employer to meet its obligations under the FOI.

8.3 The Contractor shall make all reasonable efforts to assist the Employer in meeting its obligations under the FOI. If the Employer receives an access request under the FOI, the Contractor shall upon request provide:

## OFFICIAL

8.3.1 to the Employer a copy of information requested which is held by the Contractor on behalf of the Employer within a period of 10 Working Days.

8.3.2 access to an authorised officer of the Employer, within a period of 10 Working Days, to inspect information held by the Contractor on behalf of the Employer.

8.4 Where it is necessary for the Contractor to provide information to the Employer which it believes to be Exempt Information it shall state in writing to the Employer the nature of the information and the relevant exemption. The Employer will use reasonable endeavours to consult with the Contractor before disclosing such information under the FOI. The Contractor acknowledges that the final decision whether to disclose such information will rest with the Employer and not with the Contractor. Nothing contained in this Contract or any documents or negotiations relating to this Contract shall prevent the Employer from disclosing any information which (in the Employer's reasonable opinion or in accordance with any recommendation, notice or decision of a competent Employer) it is required to disclose under the FOI.

8.5 The Contractor shall observe the Employer's Retention and Destruction Policy (details of which shall be provided by the Employer to the Contractor upon request) and shall not destroy information other than in accordance with this policy. If the Employer notifies the Contractor of a request for information held by the Contractor, which is due for destruction the Contractor shall immediately suspend destruction of that information to allow disclosure to take place. Upon the termination of this Contract the parties shall agree which party has the control of the retained information. Should the Contractor retain control of the information this clause shall remain in force beyond the termination of this Contract.

8.8 The Contractor shall maintain an adequate records management system which will enable it to access the information within the time limits prescribed.

## OFFICIAL

8.9 The Contractor shall indemnify the Employer against all claims, demands, actions, costs, proceedings and liabilities that the Employer directly incurs due to the Contractor's or any sub-contractor breach of this clause 8 or any part of it.

### 9. INFORMATION MANAGEMENT

#### 9 Information Management

9.1 The Contractor shall adhere to Humberside Police's Security Aspects Letter (S.A.L) protocols. In the event the Contractor fails to adhere to the S.A.L protocols, the Employer shall have the right to terminate this contract: In this event the Employer will be liable only to pay reasonably and properly incurred fees and costs up to the date of termination.

9.2 Mutual Confidentially Agreements (MCA) are required by the Employer from all the Contractors and sub-contractors when they are designers of security systems. These are required in advance of the Contractor engaging with a sub-contractor/supplier. In the event that a sub-Contractor declines signing a M.C.A the Contractor must escalate to the Employer who shall risk assess and advise the Contractor accordingly. In the event that the Contractor fails to adhere to this requirement the Employer shall have the right to terminate this Contract: In this event the Employer will be liable only to pay reasonably and properly incurred fees and costs up to the date of termination.

### 10. PUBLICITY

10.1 This Contract shall not entitle the Contractor or any of their sub-contractors, agents or employees to endorse its goods or services with any reference to the Employer, Humberside Police or the Chief Constable of Humberside and the Contractor shall not exhibit for advertising or any other reason any goods or services or equipment supplied under the Contract which can be identified with the Employer without the prior written consent of the Employer.

## OFFICIAL

### 10 Publicity

10.2 Clause 10.1 includes any such reference made in any form of written, pictorial or audible advertising campaign, marketing, sales or promotion campaign.

## 11. AGENCY

11.1 Neither the Contractor nor its employees shall in any circumstance hold itself or themselves out as being the servant or agent of the Employer, otherwise than in circumstances expressly permitted by this Contract.

11.2 Neither the Contractor nor its employees shall in any circumstances hold itself or themselves out as being authorised to enter into any contract on behalf of the Employer, or in any other way to bind the Employer in the performance, variation, release or discharge of any obligation.

### 11 Agency

11.3 This Contract constitutes a contract for the provision of services and not a contract of employment and accordingly the Contractor shall be fully responsible for and shall indemnify the Employer for and in respect of:

- (a) any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the Services or any payment or benefit received by the Contractor's personnel in respect of the Services, where such recovery is not prohibited by law. The Contractor shall further indemnify the Employer and the Chief Constable against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Employer or the Chief Constable in connection with or in consequence of any such liability, deduction, contribution, assessment or claim;
- (b) any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by

## OFFICIAL

the Contractor's personnel against the Employer or the Chief Constable arising out of or in connection with the provision of the Services.

- 11.4 The Employer may at its option satisfy such Indemnity (in whole or in part) by way of deduction from payments due to the Contractor.
- 11.5 The Contractor warrants that it is not nor will it prior to the cessation of this Contract, become a managed service company, within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.

### 12 Employer's Property

#### 12. EMPLOYER'S PROPERTY

Neither the Contractor nor any of its subcontractors, agents or other contractors shall have any lien over the Employer's property for any sum or sums due from the Employer.

### 13 Materials

#### 13. MATERIALS

The Employer reserves the right to separately procure materials for installation by the Contractor.

#### 14. SUSPENSION

### 14 Suspension

- 14.1 Without limiting its other rights or remedies the Employer may suspend the Contract in whole or in part by giving written notice of such suspension to the Contractor if the Contractor or any of their employees or agents are or become;
- (f) subject to a criminal investigation in respect of allegations arising out of or relating to their professional practice whether in respect of work undertaken in performance of the Contract or otherwise; or
- (g) subject to a criminal investigation relating to an allegation, which if substantiated, would constitute a breach of the

## **OFFICIAL**

terms of this Contract; or

(h) subject to any allegation of professional negligence; or

(i) subject to investigation by a relevant regulatory body in respect of any alleged breach of a relevant code of practice.

**14.2** The Contractor must inform the Employer immediately upon becoming aware of any of the matters set out above.

**14.3** The sums payable by the Employer under the Contract shall be reduced during the period of suspension by an amount equivalent to the value of the Works suspended for the duration of such suspension and the Employer shall have no liability whatsoever to make any payment to the Contractor of any sums withheld during the period of suspension.

**14.4** For the avoidance of doubt the Employer will be entitled during any period of suspension to engage other Contractor to provide the Services which the Contractor is unable to provide by reason of the suspension.

**14.5** Following a suspension pursuant to clause 15.1 above the Employer shall keep the matter under review and should the reasons for the suspension be resolved to the satisfaction of the Employer then the Employer may give written notice lifting suspension of the Contract.

**14.6** For the avoidance of doubt, if the investigations or allegations at clause 15.1 are substantiated this will constitute a Material Breach for which the Employer reserves the right to terminate the Contract under clause 9 of NEC ECC Short Form termination clauses.

## **15 Indemnity**

### **15. INDEMNITY**

**15.1** The 'Employer' means The Police and Crime Commissioner for Humberside or any successor organisation responsible for the tendering, award and overall management (including the issue

## OFFICIAL

of any variations and modifications to Contract) of the Contract on behalf of the Chief Constable and for the undertaking of any commercial negotiations in connection with the Contract.

15.2 References to any indemnity being given by the Contractor to the Employer shall be construed as also being given to the Chief Constable.

### 16. PROTECTION OF THE EMPLOYER'S RIGHTS

#### 16 Protection of the Employer's rights

16.1 If the Employer shall fail or delay in exercising any right, power or remedy under this Contract it shall not in any circumstances affect such right, power or remedy even if it would have done so if this clause did not exist. The single or partial exercise by the Employer of any right, power or remedy under this Contract shall not in any circumstances prevent the Employer using that right again or any other right, power or remedy under the Contract

16.2 The rights, powers and remedies provided in this Contract are cumulative and are not exclusive of any rights, powers and remedies provided by law

16.3 Acceptance by the Employer of any breach or default under any of the conditions of the Contract shall not be deemed to be an acceptance of any later breach or default and shall not affect the other of the said Contract conditions.

## 17 REPUTATION

### 17 Reputation

17.1 The Contractor shall not:

- (c) do any act or make any omission that has or could reasonably be expected to have an adverse impact upon the security of the business, operations, systems or properties or the site;
- (d) take any action which might or shall:
  - (i) harm or be prejudicial to the public confidence in the Employer and/or the Chief Constable of Humberside or to its public image(s); or
  - (ii) bring the Employer and/or the Chief Constable of Humberside into disrepute.

17.2 Without limiting clause 17.1, the Contractor shall comply with the provisions of the standards, policies, procedures and regulations provided from time to time to the Contractor by the Employer.

### 18 Risk Assessment

### and Method Statements

## 18. RISK ASSESSMENTS AND METHOD STATEMENTS

All works should be subject to a hazard identification and risk assessment process.

The result and any necessary method statements must be provided to the Project Manager prior to commencement of the works in order to allow sufficient time to review and comment. The timescale will be agreed with the Project Manager.

### 19 Asbestos Regulations

## 19. ASBESTOS REGULATIONS

The Supplier must be aware that unidentified asbestos materials not detailed in the pre-construction information may exist in the premises. Should any suspect material be exposed during the works, work must cease immediately and the Project Manager informed. All Supplier's staff and sub-contractors MUST undertake regular asbestos awareness training courses and provide written proof of this to the Project Manager prior to commencing works.

## OFFICIAL

The Supplier will be expected to comply with the HP Asbestos Policy in regard to all activities and procedures relating to ACM's see appendix.

### 20 Identification Cards

#### 20. IDENTIFICATION CARDS

For security purposes the Supplier must provide all sub-contractors and operatives on the works with company identification cards incorporating a recent photograph of the cardholder, to be worn at all times when on Humberside Police property.

## **Annex 4 – Security Aspects Letter**

**Geo Houlton & Sons Ltd**  
**Hyperion Street**  
**Hull**  
**HU9 1BD**

### **Security Aspects Letter for Refurbishment Works to Bridlington & Scunthorpe** **Fire Stations**

#### **Version 1**

**Date:-19/10/2020**

**Dear Sir/Madam,**

**Police and Crime Commissioner for Humberside – Refurbishment Works to Bridlington and Scunthorpe**  
**Fire Stations**

This letter acts as an appendix to the *Contract* between the Police and Crime Commissioner for Humberside, hereinafter referred to as the *Force*, and *Geo Houlton & Sons*, hereinafter referred to as the Supplier. It establishes the security provisions that the Supplier shall comply with in provision of services to the *Force*.

The purpose of this Security Aspects Letter (SAL) is to formally communicate the expectations that the *Force*, has regarding the Supplier handling of information relating to the *Project*. The standard of protection required varies with the sensitivity of the information being shared. The primary objective of this letter is to ensure the appropriate handling of HMG/Policing material by the Supplier, and the correct allocation of Classifications/Protective Markings and their associated handling instructions to material related to the services generated by (and provided to) the Supplier relating to *Project*.

In handling HMG/policing information, the *Error! Unknown document property name.* must comply with the Security Policy Framework (SPF). It is also governed by the following policies and standards:

- National Policing IS Community Security Policy
- Guidance on the Management of Police Information (2<sup>nd</sup> Edition, 2010)
- National Policing Vetting Policy for the Police Community (v3.1, Feb 2012)
- National systems Codes of Connection/Community Code of Connection
- HMG IA standards and Good Practice Guides
- PSN Code of Practice
- PSN-P Enhanced Requirements for Policing

The Supplier is expected to comply with those standards in the design, development and operation of the *Works* provided as part of *Project*.

This letter does not preclude the security responsibilities detailed in the *Contract*. This version of the SAL supersedes any previous versions issued.

#### **1 Sub-Contractors and Suppliers**

Where the Supplier makes use of sub-contractors or other suppliers, it is the responsibility of the Supplier to ensure that the obligations and responsibilities of this SAL are flowed down to them. It is additionally the responsibility of the Supplier to ensure that the sub-contractors / suppliers understand and comply with these obligations and responsibilities.

## **2 Off Shoring**

Offshoring of any information or data associated with the *project* must not be implemented without the direct approval of the *Force*.

## **3 Confidentiality and Non-disclosure of Government/Police Information**

The information *to be held* in relation to the *Project* could have a direct impact on operational policing, the effective working of the criminal justice system and potentially the security of the nation. The Supplier's attention is therefore drawn to the provisions of the Official Secrets Acts 1911 to 1989 in general, and to the provisions of Section 4 of the Official Secrets Act 1989 in particular. The Supplier shall take all reasonable steps to make sure that all individuals employed on any work in connection with the *Contract* have notice that these statutory provisions apply to them and shall continue to apply after the completion or earlier termination of this *Contract*.

The nature of the *project* dictates that information about [Information System], or the data held in [Information System], be handled with a 'need to know' principle in accordance with the associated Classification/Protective Marking.

## **4 Classification and Protective Marking of Information Aspects**

Currently the *Force* applies Government Protective Marking Scheme (GPMS) to all information it generates. The Supplier shall apply the [GSC/GPMS] in accordance with this SAL to any information generated as part of this *Contract*.

By default all information provided by the *Force* is RESTRICTED. Any information falling into other categories shall be marked as such.

From March 2016, the Police will apply the Government Security Classification (GSC) to all information it generates.

By default all information provided under the GSC will be classed as OFFICIAL but will generally have no marking to identify it as OFFICIAL. The *Force* will label OFFICIAL SENSITIVE as such.

The Supplier will apply the relevant controls for the Marking/Classification as outlined below.

## **5 Police Descriptors**

Any information that bears a 'Police' descriptor shall be subject to additional controls as described in the National Policing Policy and summarised below:

- Non Police Personnel must hold an appropriate Non-Police Personnel Vetting clearance as detailed in Section 5 Clearance Requirements below.
- Systems which hold or process data marked with a 'Police' descriptor must be accredited by an authority recognised by the Police Service.
- Sites that hold or process Police data must be audited and meet the Police Assured Secure Facilities requirements.

## **6 Clearance requirements**

The Classification associated with various Information related to the Project varies from item to item. Accordingly the clearance requirements of an Individual will vary depending on what aspects they have access too.

The Force reserves the right to approve the vetting of all staff involved with this project. Confirmation of clearance must be passed to the Force who reserves the right to validate it.

## **7 IA Responsibilities**

Full responsibilities of the Supplier with regard to information assurance and security are detailed in the contract 1928-2019.

## **8 Specific Vetting, Handling and Storage of Policing Information**

Information asset received by or generated by the Supplier must be treated according to the guidelines in this SAL. Some documents or other information provided by the Force, or developed by the Supplier (as directed by the Force) will have specific handling rules. The handling rules associated with a specific deliverable will supersede the guidance in the following section.

Information shall be handled by the Supplier in accordance with the following handling instructions. The following guidance is not exhaustive. The Supplier must contact the Force for guidance on the handling and storage of any information related to the project that is not covered in the following sections.

<b><u>OFFICIAL Information of the following type:</u></b> <ul style="list-style-type: none"><li>• Existence of project</li><li>• SAL letter</li><li>• Contractual material – post contract award</li><li>• Management Information</li><li>• High-level summary description of system</li></ul>
<b><u>OR GPMS: NOT PROTECTIVELY MARKED</u></b>
<b>Staff Vetting Requirement of staff being allowed access (subject to need to know):</b> <b>BPSS</b>
<b>Storage</b>  <b><u>Documents and Media</u></b> - Kept separate from documents and media unrelated to the design, build, ongoing operation of [Information System].  <b><u>Electronic Information</u></b> - May be stored on Geo Houlton & Sons corporate network.
<b>Disposal</b>  Supplier may follow own corporate guidelines.
<b>Transmission</b>  <b><u>Mail</u></b> :- By post or courier, in a sealed envelope.  <b><u>Telephone</u></b> :- May be used.

**Facsimile:** - May be used. Check recipient is on hand to receive before transmission.

**Service Provider networks:** - May be used.

**Public networks/Internet (including email):** - May be used.

**CIX, GSI, PSN Networks:** - May be used.

**OFFICIAL/OFFICIAL SENSITIVE data of the following types**

- Personal Data<sup>1</sup> (DPA Term)
- Contract material – pre-contract award
- Location details of end users
- High Level Design of the system

**OR GPMS: PROTECT**

**Staff Vetting Requirement of staff being allowed access (subject to need to know):**  
**BPSS and NPPV Level 2 for information about customers location/address.**

**Storage**

**Documents and Media** - Protected by at least one physical barrier and only accessible by those with a need to know.

**Electronic Information** - May be stored on the Supplier laptops/desktops that have been equipped with FIPS140-2 disk encryption deemed suitable to protect OFFICIAL SENSITIVE or PROTECT material. May only be stored on the Supplier network/systems which have been provisioned for the use of the project and only allows access by those individuals involved with the project.

**Disposal**

Dispose of according to HMG guidelines – see HMG Information Assurance Standard 5.

**Transmission**

**Mail:** - By post or courier. Do not show protective marking on the envelope. The document must be marked appropriately. Envelope must be fully addressed to the named recipient and include return address details.

**Telephone:** - Public Service Telephone Network (PSTN) and digital mobile telephones may be used.

**Facsimile:** - Check recipient is on hand to receive prior to transmission. Send cover sheet first and wait for confirmation before sending the document itself.

<sup>1</sup> Personal data relates to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.

**Service Provider Networks:** - May be used if previously accredited to, handle Business Impact Level 2 data on an OFFICIAL or OFFICIAL SENSITIVE system, or PROTECT Information.

**Internet:** - In exceptional circumstances and not for routine communications, documents protectively marked as PROTECT may be sent through Internet, for example via email, if basic precautions have been taken to prevent accidental or opportunistic access to the document:

**Personal Data<sup>2</sup>** Items must be encrypted using WinZip (AES-256) or better

Other data, including specified OFFICIAL SENSITIVE items, good password-protection or encryption using WinZip (AES-256) is also required

**CIX/GSI, PSN Network:** - May be used to send material to Force addressees or other CIX/GSI/PSN email addressees.

**CISM Email:** - May be used for the transmission of information with the Force or other CIX/GSI emails addressees.

**OFFICIAL SENSITIVE data of the following types:**

- Sensitive Personal Data<sup>3</sup> (DPA term)
- Operational Policing Data
- Specific design details of all or part of the system
- Configuration details of the system
- Detailed information of the Hardware/Software components including security related material

<sup>2</sup> Personal data relates to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.

<sup>3</sup> Sensitive Personal Data consists of information relating to –

(a) the racial or ethnic origin of the data subject,

(b) his political opinions,

(c) his religious beliefs or other beliefs of a similar nature,

(d) whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992),

(e) his physical or mental health or condition,

(f) his sexual life,

(g) the commission or alleged commission by him of any offence, or

(h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.

**Staff Vetting Requirement of staff being allowed access (subject to need to know):  
National non-Police Personnel Vetting (NPPV) level 3 and SC**

**Storage**

**Documents and media** - Protected by at least one physical barrier and only accessible by those with a need to know. Mechanisms used must be deemed adequate for such classification/protective marking by the Force.

**Electronic Information**

- May be stored on stand-alone networks that have been accredited to, store data of Business Impact Level 3 as an OFFICIAL SENSITIVE system, or RESTRICTED Information.
- May also be stored on laptops/desktops that are accredited to hold data of Business Impact Level 3 as an OFFICIAL SENSITIVE system or RESTRICTED Information and are equipped with government-approved CPA Foundation or CAPS Baseline grade whole disk encryption. A list of serial numbers of these laptops must be maintained by the Service Provider and made available to the Force on request.
- USB storage portable devices must be encrypted that has at least FIPS140-2 level 2 certification.
- The number of Information Assets must be kept at the minimum necessary.

**Disposal**

Dispose of according to HMG guidelines – see HMG Information Assurance Standard 5.

**Transmission**

**Mail:** - By post or courier, double enveloped. Do not show protective marking on the outer envelope. Label the inner envelope OFFICIAL SENSITIVE or RESTRICTED. Both envelopes should be fully addressed to the named recipient and include return address details.

**Telephone:** - Public Service Telephone Network (PSTN) should generally not be used for conversations with OFFICIAL SENSITIVE or RESTRICTED content unless operationally urgent (and then guarded language should be used).

**Facsimile:** - Should not be used for OFFICIAL SENSITIVE or RESTRICTED content unless operationally urgent. In such cases, check recipient is on hand to receive prior to transmission, send cover sheet first and wait for confirmation before sending the document itself.

**Service Provider Networks:** - May be used if previously accredited to process data, up to and including Business Impact Level 3 as an OFFICIAL SENSITIVE system, or for RESTRICTED Information.

**Internet:** - Using a government approved encryption product deemed adequate for the Business Impact Level of the data, or for RESTRICTED information.

In exceptional circumstances and not for routine communications, data with a Business Impact Level 3, from or to an OFFICIAL SENSITIVE system or assets protectively marked as RESTRICTED may be sent through Internet if the information asset has been encrypted to appropriate level before transmission. As a minimum WinZip version 10.0 using AES-256 (or equivalent) with a

complex 14 character password. Passwords must be sent via an entirely separate communication channel.

CIX/GSI/PSN Network: - May be used to send material to Force addressees or other CIX/GSI email addressees.

CISM Email: - May be used for the transmission of information with the Force or other CIX/GSI emails addressees. PSN should use the rules for transmission across the Internet above. Attachments must use the same measures identified for Internet above.

**OFFICIAL SENSITIVE data of the following type:**

- Operational Policing Data

**OR GPMS: CONFIDENTIAL**

**Staff Vetting Requirement of staff being allowed access (subject to need to know):**  
**National non-Police Personnel Vetting (NPPV) level 3 and SC**  
**Storage**

Documents and media- Protected by at least two physical barriers from those without a need to know and only accessible by those with a need to know.

**Electronic Information**

May be stored on standalone systems that have been accredited to, store/process data up to and including Business Impact Level 4 as an OFFICIAL SENSITIVE system, or CONFIDENTIAL information (with use of CPA Foundation or CAPS Enhanced/High grade encryption). Arrangements must be approved by the Accreditor.

**Disposal**

Dispose of according to HMG guidelines – see HMG Information Assurance Standard 5.

**Transmission**

**Mail**: -

- May be used for electronic copies of Information Assets protectively marked as CONFIDENTIAL when using an Enhanced-encrypted media to store the electronic copies.
- It may not be used for paper copies of Information Assets protectively marked as CONFIDENTIAL.

**Hand delivery by the Supplier personnel:**

- May be used, provided that OFFICIAL SENSITIVE or CONFIDENTIAL Information Assets (e.g. documents, notebooks) are carried in a lockable container approved for carrying CONFIDENTIAL assets.

**Telephone, Facsimile, Service Provider Networks, Internet, CIX/GSI/PSN Network:** must not be used.

Other sensitive matters may be identified during the life cycle of *project*. The Supplier should consult the Force for advice on the appropriate classification for such matters.

Other sensitive matters may be identified during the life cycle of *[Information System]*. The Contractor should consult the Authority for advice on the appropriate classification for such matters.

**Actions:**

You are requested to acknowledge receipt of this letter and to confirm by signature (below) that the levels of Government Classifications, Police Protective Marking and Descriptors associated with Refurbishment works to Bridlington & Scunthorpe Fire Stations have been brought to the attention of the person directly responsible for the security of this project, that they are fully understood, and that the required security controls can and will be taken to safeguard the material concerned.

If you have any difficulty in interpreting the meaning of the above classification or in safeguarding the materials, please let me know.

Yours sincerely,

**Accreditor**

 info security officer 21/1/2020

**Procurement Manager**



**Project Manager**



**Signed on behalf of the Contractor<sup>4</sup>**



<sup>4</sup> A board level member who has responsibility and accountability for Information Risk within the Contractor organisation.