

Major Projects Framework 2

JCT Major Project Construction Contract 2016 Edition



PROCUREMENT



Major Project Construction Contract (MP)

Appropriate:

- for major works where the Employer regularly procures large-scale construction work and where the Contractor to be appointed is experienced and able to take greater risk than would arise under other JCT contracts;
- where the parties have their own detailed procedures and where limited procedures only need be set out in the contract conditions;
- where the Employer has prepared his requirements and provided these to the Contractor;
- where the Contractor is not only to carry out and complete the works, but also to complete the design; and
- the Employer employs a representative to exercise the powers and functions of the Employer under the Contract.

Can be used:

- where the works are to be carried out in sections.

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Conditions

This Contract

is made the _____ 20_____

Between

The Employer

[_____]

(Company No. [_____])[^[1]]

of/whose registered office is at

[_____]

And

The Contractor

[_____]

(Company No. [_____])[^[1]]

of/whose registered office is at

[_____]

[1] Where the Employer or Contractor is neither a company incorporated under the Companies Acts nor a company registered under the laws of another country, delete the references to Company number and registered office. In the case of a company incorporated outside England and Wales, particulars of its place of incorporation should be inserted immediately before its Company number.

Definitions

1 Definitions

Unless the context otherwise requires or this Contract specifically provides otherwise, the following words and phrases, where they appear in capitalised form in this Contract (excluding the Requirements and the Proposals), shall have the meanings stated or referred to below:

Base Date: the date identified in the **Contract Particulars**.

Base Rate: the rate set from time to time by the Bank of England's Monetary Policy Committee, or any successor.

BIM Protocol: (where applicable) the document identified as such in the **Contract Particulars**.

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

Change:

- any alteration in the Requirements and/or Proposals that gives rise to an alteration in the design, quality or quantity of anything that is required to be executed in accordance with this Contract; or
- any alteration by the Employer of any restriction or obligation set out in the Requirements and/or Proposals as to the manner in which the Contractor is to execute the Project, or the imposition of additional restrictions or obligations; or
- any matter that this Contract requires to be treated as giving rise to a Change.

Provided always that the alteration or matter referred to above is not required as a result of any negligence or default on the part of the Contractor.

CIS: the current Construction Industry Scheme under the Finance Act 2004.

Completion Date: the Completion Date stated in the **Contract Particulars** or fixed from time to time in accordance with clause 18 (*Extension of time*). Where the Contract Particulars identify that there is more than one Section then references to the Completion Date are to the Completion Date of the relevant Section.

Construction Act: the Housing Grants, Construction and Regeneration Act 1996.

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

Contract: these Conditions, the Contract Particulars, Schedule 1, Schedule 2 and its annexes, the applicable Supplemental Provisions, the Requirements and the Proposals and (where applicable) the BIM Protocol.

Contractor: the Party to this Contract named as such or any assignee to whom the Employer has consented in accordance with **clause 35** (*Assignment*).

Contract Sum: the amount stated in the **Contract Particulars**.

Defect: any fault in the Project that arises as a consequence of a failure by the Contractor to comply with his obligations under this Contract, together with the consequences of that fault.

Design Documents: drawings, specifications, details, schedules of levels, setting out dimensions and the like which are required to be prepared by the Contractor for the purposes of explaining and amplifying the Requirements and/or Proposals, which are necessary to enable the Contractor to execute the Project or which are required by any provision in the Requirements, together, where applicable, with any other design documents or information to be provided by him under the BIM Protocol.

Employer: the Party to this Contract named as such or any assignee permitted by **clause 35** (*Assignment*).

Excepted Risks: ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; radioactive, toxic, explosive or other

hazardous properties of any explosive nuclear assembly or nuclear component thereof; and pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

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

Funder: the person or syndicate providing funding for the purposes of the Project, as identified in the **Contract Particulars**.

Insolvent: a Party is Insolvent if he:

- becomes insolvent within the meaning of section 113 of the Construction Act; or
- 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 any analogous arrangement, event or proceedings in any other jurisdiction.

Interim Valuation Date: each date as specified by the **Contract Particulars** (against the reference to **clause 28.1**).

Joint Fire Code: the edition of 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, that is current at any particular time.

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

Material Breach: by the Contractor:

- failure to proceed regularly and diligently with the performance of his obligations under this Contract;
- failure to comply with an instruction;
- suspension of the Project or any part thereof, otherwise than in accordance with the Construction Act or the circumstances described in **clause 41.1**;
- breach of the CDM Regulations;
- breach of the requirements of CIS;
- breach of any of the provisions of this Contract relating to Named Specialists or Pre-Appointed Consultants.

by either Party:

- failure to make payment in accordance with **clause 28.6**;
- failure to insure, as established in accordance with **clause 33.3**;
- any repudiatory breach of this Contract.

Model Form: where applicable, the model form of novation agreement that forms a part of the Requirements.

Named Specialist: a subcontractor or consultant that is either identified by name in the Requirements or that is to be selected by the Contractor from a list of specialists contained in the Requirements.

Others: persons whose presence on the Site has been authorised by the Employer, other than the Contractor, his sub-contractors and suppliers and any other persons under the control and direction of the Contractor.

Party: either the Employer or the Contractor.

PC Regulations: the Public Contracts Regulations 2015.

Pool Re Cover: such insurance against loss or damage to work executed and site materials caused by or resulting from terrorism as is from time to time generally available from insurers who are members of the Pool Reinsurance Company Limited scheme or of any similar successor scheme.

Practical Completion: Practical Completion takes place when the Project is complete for all practical

purposes and, in particular:

- the relevant Statutory Requirements have been complied with and any necessary consents or approvals obtained;
- neither the existence nor the execution of any minor outstanding works would affect its use;
- any stipulations identified by the Requirements as being essential for Practical Completion to take place have been satisfied; and
- the health and safety file and all "as built" information and operating and maintenance information required by this Contract to be delivered at Practical Completion has been so delivered to the Employer.

Where the Contract Particulars identify that there is more than one Section then, unless stated otherwise, references to Practical Completion are to be read as references to the Practical Completion of the relevant Section.

Practical Completion of the Project: Practical Completion of the Project occurs upon Practical Completion or, when there is more than one Section, when all the Sections have achieved Practical Completion.

Pre-Appointed Consultant: a consultant identified in the Requirements as having been appointed by the Employer with the intention that the appointment be novated to the Contractor in accordance with **clause 24** (*Pre-Appointed Consultants*).

Pricing Document: the provisions of **Schedule 2** together with the annexes identified therein containing the contract sum analysis and particulars of the manner in which the Contract Sum is to be paid to the Contractor.

Project: the works to be undertaken in accordance with this Contract, as defined in the **Contract Particulars**.

Proposals: the documents identified in the **Contract Particulars** that have been prepared by the Contractor in order to set out the manner in which he intends to satisfy the Requirements.

Purchasers: any and all first purchasers of all or any part of the Project.

Rectification Period: the 12 month period commencing on the date Practical Completion of the Project occurs.

Requirements: the documents identified in the **Contract Particulars** that have been prepared by the Employer in order to set out his requirements for the Project and identify the boundaries of the Site.

Scheme: the Scheme for Construction Contracts made in accordance with section 114 of the Construction Act.

Section: where the **Contract Particulars** identify more than one Section, the parts of the Project so defined by the Requirements.

Site: the area where the Project is to be constructed and whose boundaries are defined in the Requirements.

Specified Peril: fire, lightning, explosion, storm, tempest, flood, escape of water from any water tank, apparatus or pipe, earthquake, aircraft or other aerial devices or articles dropped therefrom, riot or civil commotion.

Statutory Requirements: in relation to the Project:

- any Act of Parliament and any instrument, rule or order made under any Act of Parliament;
- any regulation or bye-law of any local authority or of any statutory undertaker which has jurisdiction with regard to the Project or with whose systems those of the Project are or will be connected; and
- any directive of the European Community having the force of law.

Supplemental Provisions: the provisions of **Schedule 3**.

Tenants: any and all first tenants of all or any part of the Project.

Terrorism Cover: Pool Re Cover or other cover under any policy required to be provided by this Contract against loss or damage to work executed or site materials caused by or resulting from an act of terrorism.

VAT: Value Added Tax.

Interpretation

2 Headings, references to persons, legislation etc.

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

- 2.1 the headings, notes and footnotes are included for convenience only and shall not affect the interpretation of this Contract;
- 2.2 the singular includes the plural and vice versa;
- 2.3 a gender includes any other gender;
- 2.4 a reference to a 'person' includes any individual, firm, partnership, company and any other body corporate;
- 2.5 a reference to a statute, statutory instrument or other subordinate legislation ('legislation') is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification, and including corresponding legislation in any other relevant part of the United Kingdom; and
- 2.6 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.

3 Reckoning periods of days

Where under this Contract an act is required to be done within a specified period of days (but not weeks, months or years) after or from a specified date, the period shall begin immediately after that date. Where the period would include Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales, that day shall be excluded.

4 Contracts (Rights of Third Parties) Act 1999

Other than such rights of any Purchasers, Tenants and/or Funder as take effect pursuant to clause 36, 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.

5 Communications

- 5.1 Save as provided in clause 5.2 all communications required to be made by one Party to the other in accordance with this Contract shall be in writing and 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.^[2] All communications shall be sent to either the address notified from time to time by a Party for the purposes of communications or, if no address has been notified, the address given in these Conditions.
- 5.2 Any notice required to be given by Schedule 1 (*Third Party Rights*) or by clauses 39 to 41 (*Termination*) shall be delivered by hand or sent by Recorded Signed for or Special Delivery post and shall take effect upon delivery.

6 Applicable law

This Contract shall be governed by and construed in accordance with the law of England and the English courts shall have jurisdiction over any dispute or difference that may arise.^[3]

[2] 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 Major Project Construction Contract Guide.

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

General Obligations

7 General obligations of the Contractor

- 7.1 The Contractor shall execute and complete the Project in accordance with this Contract, including compliance with the Construction Phase Plan and the completion of the design, the specification or selection of materials and the execution of the construction works.
- 7.2 The Contractor is appointed as both principal designer and principal contractor for the purposes of the CDM Regulations and shall notify the Health and Safety Executive accordingly. The principal designer previously appointed by the Employer (if any) is identified in the Contract Particulars.
- 7.3 The Contractor warrants that he has the competence and will allocate the resources necessary to fulfil the roles of principal designer, principal contractor, designer and contractor in the manner referred to in the CDM Regulations.
- 7.4 The Contractor shall take all reasonable steps to encourage employees and agents of the Contractor and sub-contractors employed in the execution of the Project to be registered cardholders under the [Construction Skills Certification Scheme](#) (CSCS) or qualified under an equivalent recognised qualification scheme.

8 Instructions

- 8.1 The Contractor shall comply with all instructions issued by the Employer in connection with the design, execution and completion of the Project, except to the extent that the terms of this Contract restrict the Employer's right to issue any particular instruction.
- 8.2 Where this Contract provides that an instruction is not to be treated as giving rise to a Change, the Contractor shall not be entitled to any additional payment or adjustment to the Completion Date as a consequence of complying with the instruction and the issue of the instruction shall not relieve the Contractor of any of his obligations under this Contract.
- 8.3 Where the Contractor fails to comply with an instruction, the Employer may engage others to give effect to the instruction provided he has first given 7 days' notice in writing to the Contractor of his intention to do so. The Contractor shall be liable to pay the Employer the costs of engaging others, after taking into account any sums that would have been payable to the Contractor under the terms of this Contract had the Contractor complied with the instruction.

9 Statutory Requirements

- 9.1 The Contractor shall make any applications, give any notices required by and comply with the Statutory Requirements. The Contractor shall provide the Employer with copies of all applications made and notices given, and pass to the Employer all approvals, rejections or other communications received in connection with the Statutory Requirements.
- 9.2 Unless the Requirements state that specific fees and charges have been or are to be paid by the Employer, the Contractor shall pay all fees or charges payable in connection with the Statutory Requirements.

10 Conflict and discrepancy

- 10.1 If either Party identifies any discrepancy within or between the Requirements, the Proposals and/or the Statutory Requirements, including any discrepancy that arises as a consequence of an alteration to the Statutory Requirements, he shall immediately notify the other Party accordingly.
- 10.2 Where a discrepancy is identified within the Requirements, the Contractor shall notify the Employer which of the discrepant provisions he intends to adopt and proceed accordingly. If the Employer wishes the Contractor to proceed otherwise, he shall so instruct the Contractor and that instruction will be treated as giving rise to a Change.
- 10.3 Where a discrepancy is identified within the Proposals, the Employer shall instruct the Contractor which of the discrepant provisions he wishes the Contractor to adopt and that instruction will not be treated as giving rise to a Change.
- 10.4 Where a discrepancy is identified between the Requirements, the Proposals and/or the Statutory Requirements the Employer shall instruct which of the discrepant provisions he

wishes the Contractor to adopt and that instruction will not, subject to clause 10.5, be treated as giving rise to a Change. No instruction shall require the Contractor to act otherwise than in accordance with the Statutory Requirements.

- 10.5 If the Statutory Requirements alter after the Base Date in a manner that necessitates an amendment to either the Requirements or the Proposals, the Employer shall instruct the necessary amendments. That instruction shall be treated as giving rise to a Change where the alteration to the Statutory Requirements had not been announced at the Base Date. In any other case the instruction shall not be treated as giving rise to a Change.

11 Standards of design, materials and workmanship

- 11.1 The Contractor shall not be responsible for the contents of the Requirements or the adequacy of the design contained within the Requirements.
- 11.2 Subject to clause 11.1 the Contractor warrants that the design of the Project will:
- 11.2.1 comply with the Statutory Requirements;
 - 11.2.2 satisfy any performance specification contained within the Requirements; and
 - 11.2.3 use materials selected in accordance with the guidelines contained in the edition of 'Good Practice in the Selection of Construction Materials' (British Council for Offices), as current at the Base Date.
- 11.3 The Contractor warrants that he will exercise in the performance of his obligations in relation to the design of the Project the skill and care to be expected of a professional designer appropriately qualified and competent in the discipline to which such design relates and experienced in carrying out work of a similar scope, nature and size to the Project. The Contractor does not warrant that the Project, when constructed in accordance with his designs, will be suitable for any particular purpose^[4].
- 11.4 The Contractor shall in the execution of the Project use materials and goods of the kinds and standards described in this Contract or, if no such kinds or standards are described, materials and goods that are reasonably fit for their intended purpose. All materials and goods used for the Project shall be of satisfactory quality. Where materials or goods of the kinds and standards described in this Contract are not procurable the Contractor shall propose for the acceptance of the Employer an alternative that is wherever possible of an equivalent or better kind or standard, such acceptance not to be unreasonably delayed or withheld. The use of any alternative shall not be treated as giving rise to a Change unless the alternative accepted by the Employer is of a lesser kind or standard to that described in this Contract, in which case the provisions of clause 26 (*Changes*) shall apply as though the Employer had instructed a Change.
- 11.5 All workmanship shall be of the standards described in this Contract or, if no such standards are described, shall be executed in a good and workmanlike manner.

12 Design submission procedure

- 12.1 The Contractor shall prepare the Design Documents, in relation to which such design submission procedure as is specified by the BIM Protocol shall apply or, where that is not applicable, the procedure set out in the following provisions of this clause 12 subject to any modifications set out in the Requirements or the Proposals.
- 12.2 The Contractor shall submit the Design Documents to the Employer in the quantities and format identified in the Contract Particulars on the dates or on or before the expiry of the periods shown on the design programme contained in the Requirements or the Proposals or, if no date or period is shown, in sufficient time to allow any comments made by the Employer in accordance with clause 12 to be incorporated prior to the Design Document being required for procurement and/or execution of the Project.
- 12.3 Within 14 days from the date of receipt of any Design Document, or (if later) 14 days from either the date or expiry of the period for submission of the same shown on the design programme contained in the Requirements or the Proposals, the Employer shall return one copy of the Design Document to the Contractor marked 'A Action', 'B Action' or 'C Action', provided that the Employer shall only mark a Design Document 'B Action' or 'C Action' where he considers the Design Document is not in accordance with this Contract.

[4] See the Major Project Construction Contract Guide which sets out alternative model clauses.

- 12.4 If the Employer does not respond to a Design Document in accordance with the procedures stated in clause 12.3, the Employer shall be regarded as having marked that Design Document 'A Action'.
- 12.5 Where the Employer marks a Design Document as 'B Action' or 'C Action', he shall also identify by means of a written comment why he considers that the Design Document is not in accordance with this Contract.
- 12.6 When the Employer returns any Design Document under clause 12.3, the Contractor shall take the following action in relation to such Design Document:
 - 12.6.1 if it is marked 'A Action', the Contractor shall execute the Project in strict accordance with such Design Document;
 - 12.6.2 if it is marked 'B Action', the Contractor shall execute the Project in accordance with such Design Document, provided that the Employer's comments are incorporated into such Design Document and a further copy of it is promptly submitted to the Employer;
 - 12.6.3 if it is marked 'C Action', the Contractor shall take account of the Employer's comments on such Design Document and shall forthwith resubmit it to the Employer for comment in accordance with the provisions of clause 12.2. The Contractor shall not execute the Project in accordance with any Design Document marked 'C Action'.
- 12.7 The Employer shall not be liable to pay for any work executed otherwise than in accordance with Design Documents marked 'A Action' or 'B Action' in accordance with clause 12.3 or 12.4.
- 12.8 If the Contractor disagrees with a comment and considers that the Design Document is in accordance with this Contract he shall, within 7 days of receipt of the comment, notify the Employer that he considers compliance with the comment would give rise to a Change. Such notification shall be accompanied by a statement from the Contractor setting out the reasons why he considers that compliance with such comment would give rise to a Change. Upon receipt of such a notification the Employer shall within 7 days either confirm or withdraw the comment and, where the comment is confirmed, the Contractor shall amend his Design Document accordingly. The confirmation or withdrawal of a comment in accordance with clause 12.8 does not signify acceptance by the Employer that the Design Document, or amended Design Document, is in accordance with this Contract or that compliance with his comment would give rise to a Change.
- 12.9 Where the Contractor does not notify the Employer in accordance with clause 12.8, any comment by the Employer will not be treated as giving rise to a Change.
- 12.10 Compliance with the design submission procedure in clause 12 and/or with any comments from the Employer under it shall not diminish the Contractor's responsibility for ensuring both that any Design Document he prepares is in accordance with this Contract and that the Project, when completed, is in accordance with this Contract.

13 Copyright

- 13.1 All rights including (without limitation) copyright in all Design Documents prepared by the Contractor in accordance with this Contract shall remain vested in the Contractor but the Contractor grants to the Employer an irrevocable, royalty-free non-exclusive licence to copy and use the Design Documents and to reproduce the designs and content of them for any purpose relating to the Project including, without limitation, the design, execution, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Project. That licence shall enable the Employer to copy and use the Design Documents for the purposes of an extension to the Project, but such use shall not include any right or licence to reproduce the designs contained in them for any such extension. The Contractor agrees that the Employer may grant sub-licences to other persons to use and to reproduce the Design Documents and the designs and content of them for any purposes relating to the Project.
- 13.2 To the extent that the Contractor does not have ownership of the copyright in any Design Document the Contractor shall procure from the copyright holder a licence with full title guarantee to the Employer in respect of that Design Document in the same terms as are set out in clause 13.1.

- 13.3 The Contractor shall not be liable for any use made of the Design Documents that is outside of the scope of the licence granted by clause 13.

14 Ground conditions

- 14.1 If the Contractor encounters ground conditions or man-made obstructions in the ground that necessitate an amendment to the Requirements and/or Proposals he shall notify the Employer of the amendments he proposes for the agreement of the Employer, such agreement not to be unreasonably delayed or withheld. Unless clause 14.2 applies, such amendment shall not be treated as giving rise to a Change.
- 14.2 When the Contract Particulars state that clause 14.2 applies, any amendment agreed by the Employer under clause 14.1 shall be treated as giving rise to a Change to the extent that the ground conditions or man-made obstructions in the ground could not reasonably have been foreseen by an experienced and competent contractor on the Base Date, having regard to any information concerning the Site that the Contractor had or ought reasonably to have obtained.

Time

15 Commencement and completion

- 15.1 The Employer shall give the Contractor access to the Site on the date stated in the Contract Particulars and shall give to the Contractor access to such part or parts of the Site at such times and for such periods as may be reasonably necessary to enable the Contractor to execute and complete the Project in accordance with this Contract. Access to the Site shall be subject to any restrictions set out in the Requirements. The Contractor shall not be entitled to exclusive possession of the Site.
- 15.2 Upon access to the Site being given under clause 15.1, the Contractor shall commence the execution of the Project and shall proceed regularly and diligently with the Project so as to achieve Practical Completion on or before the Completion Date.
- 15.3 The Contractor shall at all times use his reasonable endeavours to prevent or reduce delay to the progress of the Project or to completion of the Project.
- 15.4 The Contractor shall notify the Employer when in his opinion Practical Completion has occurred and, if he agrees, the Employer shall issue a statement recording the date of Practical Completion. Where the Employer does not agree that Practical Completion has occurred, he shall notify the Contractor of the work that he requires to be completed before Practical Completion will occur. When the Contractor considers such work has been completed, he shall notify the Employer and, when satisfied that it has been completed, the Employer shall issue a statement recording the date of Practical Completion.

16 Damages for delay

- 16.1 If the Contractor fails to achieve Practical Completion by the Completion Date, he shall be liable to pay the Employer liquidated damages calculated at the rate stated in the Contract Particulars for the period from the Completion Date to the date of Practical Completion.
- 16.2 Where liquidated damages have been paid to the Employer and the Completion Date is subsequently adjusted in accordance with clause 18 (*Extension of time*), the Employer shall be liable to repay to the Contractor any liquidated damages to which the Employer is no longer entitled.

17 Taking over parts of the Project

- 17.1 The Employer may take over any part or parts of the Project prior to Practical Completion of the same with the consent of the Contractor, which consent shall not be unreasonably delayed or withheld.
- 17.2 Where the Employer takes over any part of the Project prior to Practical Completion, he shall issue a statement identifying the part of the Project taken over, the date when it was taken over and the value of that part.
- 17.3 From the date identified in the statement issued under clause 17.2, the part of the Project that is taken over shall be treated as having achieved Practical Completion and the rate of liquidated damages stated in the Contract Particulars in respect of the Project or the

Section or Sections of which it forms part (where applicable) shall reduce by the same proportion that the value of the part bears to the Contract Sum or the value of the Section or Sections, as stated in or calculated in accordance with the Pricing Document.

18 Extension of time

- 18.1 The Contractor shall be entitled to an adjustment to the Completion Date to the extent that, having regard to the principles set out in clause 18.7, completion of the Project or any Section (if applicable) is or is likely to be delayed by:
- 18.1.1 force majeure;
 - 18.1.2 the occurrence of one or more of the Specified Perils;
 - 18.1.3 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 person employed or engaged by the Contractor on or in connection with the Project or any part of it but which directly affects the execution of the Project, other than alterations to Statutory Requirements as referred to by clause 10.5;
 - 18.1.4 the use or threat of terrorism and/or the activities of the relevant authorities in dealing with such a threat;
 - 18.1.5 any Change;
 - 18.1.6 interference with the Contractor's regular progress of the Project by Others on the Site;
 - 18.1.7 the valid exercise by the Contractor of his rights under section 112 of the Construction Act; or
 - 18.1.8 any other breach or act of prevention by the Employer or his representative or advisers appointed pursuant to clause 21.2.

Provided always that there shall be no adjustment to the Completion Date in respect of any matter where it is specifically stated by this Contract that such matter will not give rise to a Change.

- 18.2 Whenever the Contractor becomes aware that the progress of the Project is being or is likely to be delayed due to any cause, he shall forthwith notify the Employer of the cause of the delay and its anticipated effect upon the progress and completion of the Project or any Section (if applicable).
- 18.3 Where the Contractor considers the cause of the delay is one of those identified in clauses 18.1.1 to 18.1.8 he shall also:
- 18.3.1 provide supporting documentation to demonstrate to the Employer the effect upon the progress and completion of the Project or any Section (if applicable); and
 - 18.3.2 revise any documentation provided so that the Employer is at all times aware of the anticipated or actual effect of the cause of delay upon progress and completion of the Project or any Section (if applicable).
- 18.4 Where the Contractor has notified the Employer under clause 18.2 and the cause of delay is identified as being one of those in clauses 18.1.1 to 18.1.8 the Employer shall, within 42 days of receipt of the notification, either:
- 18.4.1 notify the Contractor of such adjustment to the Completion Date as he then calculates to be fair and reasonable; or
 - 18.4.2 notify the Contractor why he considers that the Completion Date should not be adjusted.

Any adjustment made to the Completion Date shall be calculated by reference to the documentation provided by the Contractor in accordance with clause 18.3. The Employer may take account of other information available to him.

- 18.5 Any notification given under clause 18.4 may be reviewed by the Employer at any time in

the light of further documentation from the Contractor or when the effects of any identified cause of delay become more apparent.

- 18.6 No later than 42 days after Practical Completion of the Project the Contractor shall provide documentation to support any further adjustment to the Completion Date that he considers fair and reasonable. Within 42 days of receipt of that documentation the Employer shall undertake a review of his previous adjustments to the Completion Date. The review shall have regard to that documentation and the Employer shall either notify such further adjustment to the Completion Date as is fair and reasonable or confirm the Completion Date previously notified.
- 18.7 In considering any adjustment to the Completion Date the Employer shall:
- 18.7.1 implement any agreements about the Completion Date reached in accordance with clauses 19 (*Acceleration*), 25 (*Cost savings and value improvements*) and 26 (*Changes*);
 - 18.7.2 have regard to any breach by the Contractor of clause 15.3;
 - 18.7.3 make a fair and reasonable adjustment to the Completion Date notwithstanding that completion of the Project may also have been delayed due to the concurrent effect of a cause of delay that is not listed in clauses 18.1.1 to 18.1.8.
- 18.8 Except by agreement with the Contractor, no adjustment to the Completion Date shall give rise to an earlier Completion Date than one that has already been notified.

19 Acceleration

- 19.1 Where the Employer wishes to investigate the possibility of achieving Practical Completion before the Completion Date he may invite proposals from the Contractor. The Contractor shall either:
- 19.1.1 make such proposals accordingly, identifying the time that will be saved and any additional costs that would be incurred; or
 - 19.1.2 explain why it is impracticable to achieve Practical Completion at an earlier date.
- 19.2 The Employer may accept any proposals made by the Contractor or seek revised proposals. If the Employer accepts any proposals he shall issue an instruction identifying the agreed adjustment to the Completion Date and additional costs (if any), and that instruction shall be treated as giving rise to a Change.
- 19.3 Save as set out in clauses 19 (*Acceleration*) and 25 (*Cost savings and value improvements*) the Employer may not instruct the Contractor to achieve Practical Completion before the Completion Date.

20 Bonus

If the date of Practical Completion is earlier than the Completion Date the Employer shall be liable to pay to the Contractor a bonus calculated at the rate set out in the Contract Particulars for the period from the date of Practical Completion to the Completion Date.

Control

21 The Employer's representative

- 21.1 The Employer shall ensure that at all times a person is appointed to act as his representative with authority to exercise all the powers and functions of the Employer under this Contract. The appointment of a representative shall take effect upon, and may be revoked at any time by, notification to the Contractor.
- 21.2 The Employer may appoint advisers in connection with the Project and may notify the Contractor of their appointment and their role on the Project. The Contractor shall co-operate with such advisers but they shall have no authority to act on behalf of the Employer.

22 Testing and compliance

- 22.1 Where the Employer instructs the Contractor to open up for inspection or to test any work executed or materials or goods supplied for the Project and that opening up, inspection or test is not provided for by this Contract, the instruction shall be treated as giving rise to a Change unless the opening up, inspection or test discloses that the work, materials or goods are not in accordance with this Contract. Where the work, materials or goods are found not to be in accordance with this Contract the instruction shall not be treated as giving rise to a Change.
- 22.2 Where work, materials or goods are not in accordance with this Contract the Employer may:
- 22.2.1 instruct their removal from the Site, either wholly or partially;
 - 22.2.2 after consultation with the Contractor, instruct that they may be used on the Project, but subject to the Contractor becoming liable to pay the Employer an appropriate amount calculated in accordance with the prices and principles set out in the Pricing Document and without the Contractor having any entitlement to an adjustment to the Completion Date and/or to the payment of loss and/or expense;
 - 22.2.3 after consultation with the Contractor, instruct such further works as are necessary as a consequence of the removal or use of the non-conforming work, materials or goods;
 - 22.2.4 instruct such further opening up, testing or inspection as is reasonable in all the circumstances to establish to the reasonable satisfaction of the Employer that other similar work, materials or goods are in accordance with this Contract.
- 22.3 No instruction issued under clause 22.2 shall be treated as giving rise to a Change.

23 Rectification of Defects

- 23.1 During the Rectification Period the Employer may instruct the Contractor to remedy any Defect. The Contractor shall comply with any instructions within a reasonable time and at no cost to the Employer and, should he not do so, the Employer may engage others in accordance with clause 8.3.
- 23.2 After the expiry of the Rectification Period and when all Defects that the Contractor has been instructed to remedy under clause 23.1 have been remedied the Employer shall issue a statement to that effect.
- 23.3 Where there are Defects that the Contractor has been instructed to remedy under clause 23.1 but which have not been remedied within a reasonable period of the expiry of the Rectification Period the Employer shall issue a statement identifying:
- 23.3.1 those Defects that he intends to engage others to rectify, together with a proper estimate of the cost of undertaking those rectification works; and
 - 23.3.2 those Defects that he does not intend to rectify, together with particulars of the appropriate deduction he intends to make in the calculation of the amount due to the Contractor.
- 23.4 The provisions of clause 23 are without prejudice to any other rights or remedies the Parties may possess.

24 Pre-Appointed Consultants and Named Specialists

- 24.1 The provisions of clause 24 relating to Pre-Appointed Consultants apply only where so stated in the Contract Particulars.
- 24.2 Immediately upon entering into this Contract the Parties shall take all steps necessary to execute a Model Form in respect of all Pre-Appointed Consultants.
- 24.3 The Contractor shall appoint a Named Specialist to prepare any designs or execute any works that are identified by the Requirements as having to be undertaken by a Named Specialist. The Contractor shall immediately notify the Employer of the identity of any Named Specialist upon their appointment and shall supply to the Employer a copy of the

contract entered into by the Contractor with the Named Specialist (other than the financial details contained in it).

- 24.4 Subject to clause 11.1 the Contractor shall be solely responsible under this Contract for the services provided by any Pre-Appointed Consultant whether before or after the date of this Contract and the works undertaken by any Named Specialist or replacement specialist appointed in accordance with clause 24.8.
- 24.5 If the Contractor either fails to execute a Model Form in the manner provided by clause 24.2 or fails to appoint a Named Specialist in the manner provided by clause 24.3 the Employer shall not be liable to pay the Contractor in respect of services that were to be provided by that Pre-Appointed Consultant or works that were to be undertaken by the Named Specialist.
- 24.6 The Contractor shall not without the prior written consent of the Employer amend his contract with any Pre-Appointed Consultant or Named Specialist or waive strict compliance by a Pre-Appointed Consultant or Named Specialist with the performance of his obligations under such contract or estop himself from enforcing such obligations, such consent not to be unreasonably delayed or withheld. Where the Contractor amends, waives or estops himself from enforcing his contract with any Pre-Appointed Consultant or Named Specialist without such consent, the Employer shall not be liable to pay the Contractor in respect of services that are no longer being provided by the Pre-Appointed Consultant or Named Specialist.
- 24.7 The Contractor shall not terminate his contract with any Pre-Appointed Consultant or Named Specialist (or their appointment under it) without the prior written consent of the Employer, such consent not to be unreasonably delayed or withheld. If the Contractor terminates any such contract or appointment, he shall immediately notify the Employer.
- 24.8 Either before or as soon as possible after any such termination, the Contractor shall notify the Employer of his proposed replacement consultant or specialist. A replacement specialist shall where possible be selected from any list of specialists contained in the Requirements. The proposed replacement consultant or specialist shall be appointed by the Contractor unless the Employer raises reasonable objection within 7 days of the notification. Where a reasonable objection is raised by the Employer the Contractor shall propose a further replacement for consideration by the Employer.
- 24.9 The Contractor shall immediately supply to the Employer a copy of the contract entered into with any replacement consultant or specialist (other than the financial details contained in it).
- 24.10 The Contractor's liabilities and obligations under this Contract shall not be affected by the appointment of a replacement consultant or specialist and the Contractor shall be entirely responsible for any delay or additional cost incurred as a consequence of the appointment of a replacement consultant or specialist.
- 24.11 No variation or alteration in the services to be provided by the Pre-Appointed Consultant or Named Specialist to the Contractor and no waiver or forgiveness or other action or inaction by the Contractor shall serve to alter or diminish the Contractor's liability to the Employer in respect of the services provided under this Contract.

25 Cost savings and value improvements

- 25.1 The Contractor is encouraged to suggest amendments to the Requirements and/or the Proposals which, if instructed as a Change, would result in a financial benefit to the Employer. The benefit may arise in the form of:
 - 25.1.1 a reduction in the cost of the Project;
 - 25.1.2 a reduction in the life cycle costs associated with the Project;
 - 25.1.3 the achievement of Practical Completion at a date earlier than the Completion Date; and/or
 - 25.1.4 any other financial benefit to the Employer.
- 25.2 The Contractor shall provide details of his suggested amendments to the Requirements and/or Proposals together with a quotation as provided in clause 26.4 and his calculation of the benefit he believes the Employer will obtain, expressed in financial terms.

- 25.3 Where the Employer wishes to implement an amendment suggested by the Contractor the Parties shall negotiate with a view to agreeing the Contractor's quotation and the financial benefit to the Employer. Such agreement shall be confirmed by the Employer by an instruction identifying the agreed value of the Change, any agreed adjustment to the Completion Date and the agreed financial benefit to the Employer.
- 25.4 Upon Practical Completion of the Project the Employer shall be liable to pay the Contractor the proportion identified in the Contract Particulars of the agreed financial benefit.
- 25.5 Any amendment suggested by the Contractor in accordance with clause 25.2 shall be clearly identified as being an amendment suggested under the provisions of clause 25. Where the Contractor has suggested amendments in this manner, the Employer may only instruct those amendments in accordance with the procedures set out in clause 25, provided always that nothing shall prevent the Employer from utilising other contractors to implement suggested amendments after Practical Completion of the Project.

Valuation and Payment

26 Changes

- 26.1 Each Party shall immediately notify the other:
 - 26.1.1 whenever he considers that an instruction gives rise to a Change; and/or
 - 26.1.2 of the occurrence of any event that under this Contract is required to be treated as giving rise to a Change.
- 26.2 Other than in respect of Changes instructed in accordance with the provisions of clause 19 (*Acceleration*) or 25 (*Cost savings and value improvements*), the consequences of any Change shall be determined in accordance with the provisions of clause 26 so that either:
 - 26.2.1 the value of the Change and any adjustment to the Completion Date is agreed in accordance with clause 26.5 prior to an instruction being issued; or
 - 26.2.2 a fair valuation of the Change is made in accordance with clause 26.6 and any adjustment to the Completion Date is notified in accordance with clause 18 (*Extension of time*).
- 26.3 Prior to instructing any Change the Employer may provide details of the proposed Change and request the Contractor to submit a quotation in respect of the Change. The Contractor shall provide the quotation within 14 days of the request, or within such longer period as the Employer states in his request.
- 26.4 The quotation provided by the Contractor shall:
 - 26.4.1 give a valuation of the Change calculated in accordance with the principles set out in clause 26.6;
 - 26.4.2 identify any adjustment to the Completion Date that will be required as a consequence of the Change;
 - 26.4.3 be in sufficient detail for the Employer to assess the amounts and periods required and, in particular, shall state separately any amounts included in respect of loss and/or expense;
 - 26.4.4 identify the period, being not less than 14 days, for which the quotation remains open for acceptance.
- 26.5 The Employer may accept the quotation or request the Contractor to submit a revised quotation. When the Employer accepts a quotation he shall issue an instruction identifying the quotation that is being accepted, the agreed value and any agreed adjustment to the Completion Date.
- 26.6 Where agreement is not reached under clause 26.5, a fair valuation of any Change shall be made by the Employer. Such valuation shall have regard to the following:
 - 26.6.1 the nature and timing of the Change;

- 26.6.2 the effect of the Change on other parts of the Project;
 - 26.6.3 the prices and principles set out in the Pricing Document, so far as applicable; and
 - 26.6.4 any loss and/or expense that will be incurred as a consequence of the Change, provided always that the fair valuation shall not include any element of loss and/or expense if that element was contributed to by a cause other than a Change or a matter set out in clause 27.2.
- 26.7 Within 14 days of a Change being identified by either Party the Contractor shall provide to the Employer details of his proposed valuation of the Change together with such information as is reasonably necessary to permit a fair valuation to be made.
- 26.8 Within 14 days of receipt of the information referred to by clause 26.7 the Employer shall notify the Contractor of his valuation of the Change, that valuation being calculated by reference to the information provided by the Contractor. The valuation shall be in sufficient detail to permit the Contractor to identify any differences between it and the Contractor's proposed valuation.
- 26.9 No later than 42 days after Practical Completion of the Project the Contractor shall provide particulars of any further valuation he considers should be made in respect of any Change. Within 42 days of the receipt of those particulars the Employer shall undertake a review of his previous valuations of each Change to which those particulars relate and notify the Contractor of such further valuation as he considers appropriate.

27 Loss and/or expense

- 27.1 No Change or matter that is required by this Contract to be treated as giving rise to a Change shall, either individually or in conjunction with other Changes, give rise to an entitlement to be reimbursed for loss and/or expense under clause 27.
- 27.2 Subject to clause 27.1 the only matters for which the Employer will be liable to the Contractor in respect of loss and/or expense are:
- 27.2.1 a breach or act of prevention on the part of the Employer or his representative or advisers appointed pursuant to clause 21.2, other than any matters or actions that are expressly permitted by this Contract and are stated not to give rise to a Change;
 - 27.2.2 interference with the Contractor's regular progress of the Project by Others on the Site.
- 27.3 As soon as the Contractor becomes aware that the regular progress of the Project is or is likely to be materially affected as a consequence of any of the matters set out in clause 27.2 so as to cause loss and/or expense to be incurred he shall notify the Employer. The Contractor shall take all practicable steps to reduce the loss and/or expense to be incurred.
- 27.4 The Contractor shall provide to the Employer his assessment of the loss and/or expense incurred or to be incurred as a consequence of any matter notified in accordance with clause 27.3 together with such information as is reasonably necessary to enable the Employer to ascertain the loss and/or expense incurred. Such assessment and information shall be updated at monthly intervals until such time as the Contractor has provided all of the information that is reasonably necessary to allow the whole of the loss and/or expense that has been incurred to be ascertained.
- 27.5 Upon receipt of any information referred to by clause 27.4 regarding loss and/or expense that has been incurred the Employer shall within 14 days notify the Contractor of his ascertainment of the loss and/or expense incurred, that ascertainment being made by reference to the information provided by the Contractor and being in sufficient detail to permit the Contractor to identify any differences between it and the Contractor's assessment of the loss and/or expense incurred.
- 27.6 No later than 42 days after Practical Completion of the Project the Contractor shall provide documentation in support of any further ascertainment he considers should be made in respect of any matter notified in accordance with clause 27.3. Within 42 days of receipt of such documentation the Employer shall undertake a review of his previous ascertainment in respect of each matter for which further documentation has now been provided and notify the Contractor of any further ascertainment that he considers appropriate.

- 27.7 The Employer shall be liable to pay the Contractor any loss and/or expense that has been ascertained in accordance with clause 27.
- 27.8 No ascertainment of loss and/or expense under clause 27 shall include any element of loss and/or expense to the extent that that element was contributed to by any cause which is neither a Change nor a matter set out in clause 27.2. Any loss and/or expense incurred as a consequence of a Change is to be included in a valuation made under clause 26 (*Changes*).

28 Payments

- 28.1 The due date for an interim payment shall in each case be the date 7 days after the relevant Interim Valuation Date. Where the Contractor considers an interim payment will be due to him at the due date for an interim payment, he shall not later than the relevant Interim Valuation Date submit a detailed payment application to the Employer setting out the amounts he considers should in accordance with clause 28.3 be included in the Employer's interim payment advice, the sum that he considers due to him at the due date and the basis on which that sum has been calculated.
- 28.2 Where the Contractor makes an application in accordance with clause 28.1 or the Employer considers a sum is due for repayment to him, the Employer shall not later than 5 days after the due date issue an interim payment advice to the Contractor, save that after the interim payment due on or immediately following Practical Completion of the Project, no payment shall become due, and the Employer shall not be obliged to issue a payment advice, where and so long as the sum due to either Party would be less than the minimum amount stated in the Contract Particulars.
- 28.3 Each interim payment advice, or an accompanying statement, shall state:
- 28.3.1 the proportion of the Contract Sum to which the Contractor is entitled, calculated in the manner set out in the Pricing Document;
 - 28.3.2 the value of any Changes executed by the Contractor;
 - 28.3.3 the amount of any reductions made under clause 12.7 (or other equivalent provision of the applicable procedure), 24.5 or 24.6;
 - 28.3.4 any other amounts that either Party is liable to pay the other in accordance with this Contract; and
 - 28.3.5 the total amount of payments previously made,
- each calculated as at the Interim Valuation Date. The sum to be stated as due shall be that proportion of the Contract Sum, as adjusted for the other values and amounts referred to in this clause 28.3.
- 28.4 In respect of the amount stated as due to the Contractor, the Contractor shall promptly issue an appropriate VAT invoice to the Employer.
- 28.5 The final date for payment of any sum due in accordance with clause 28 shall be:
- 28.5.1 where an amount is payable by the Employer, 14 days after the due date or, if later, 7 days after the date of receipt by the Employer of the Contractor's VAT invoice;
 - 28.5.2 where an amount is payable to the Employer, 14 days after the due date.
- 28.6 Subject to any pay less notice given under clause 29.1 and no later than the final date for payment:
- 28.6.1 the Employer shall pay the Contractor (or, where appropriate, the Contractor shall repay the Employer) the sum stated as due in the interim payment advice; or
 - 28.6.2 if that advice (where required) is not issued in accordance with clause 28.2, the Employer shall pay the sum stated as due in the Contractor's payment application.
- 28.7 Upon the issue by the Employer of the statement referred to in clause 23.2 or in clause

23.3, the Employer shall issue a final payment advice in respect of the total amount to which the Contractor is entitled, stating:

- 28.7.1 the Contract Sum;
- 28.7.2 the final values and amounts referred to in clauses 28.3.2 to 28.3.5;
- 28.7.3 any deduction recorded by a statement issued under clause 23.3 in respect of Defects that the Employer does not intend to rectify

and showing the balance due to the Contractor or Employer, as the case may be.

- 28.8 The final payment advice shall be final and binding upon the Parties in relation to sums due from the Employer to the Contractor under or in connection with this Contract, including any amounts due to the Contractor as a consequence of claims for breach of contract, breach of statutory duty, negligence or otherwise, unless prior to or within 28 days after the final payment advice is issued the Contractor disputes any aspect of it by reference to adjudication or legal proceedings as provided in clause 42 (*Resolution of disputes*).
- 28.9 If the Employer is or at any time up to the date of the final payment becomes a 'contractor' for the purposes of the CIS, his obligation to make any payment under this Contract is subject to the provisions of the CIS.

29 Pay less notices and general provisions

- 29.1 If the Employer intends to pay less than the sum stated as due to the Contractor in a payment advice (or, in the circumstances referred to in clause 28.6, less than the sum stated in the Contractor's payment application) on account of:
 - 29.1.1 any amount that the Contractor is liable to pay the Employer in accordance with the terms of this Contract (or, in the circumstances referred to in clause 28.6, any miscalculation in the Contractor's payment application);
 - 29.1.2 any sums owed to the Employer by the Contractor as a consequence of any breach of this Contract; and/or
 - 29.1.3 where a final payment advice has been issued, a proper estimate of the cost to the Employer of rectifying any Defects referred to in clause 23.3.1,

or if a payment advice states that a sum is due to the Employer and the Contractor intends to pay less than the sum stated, the Party by whom the payment is or would otherwise be payable shall no later than 5 days before the final date for payment of the relevant sum give the other Party notice of that intention (a 'pay less notice'), specifying the sum that he considers to be due to the other Party at that date and the basis on which that sum has been calculated.
- 29.2 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.
- 29.3 In relation to the requirements for the issue of payment advices under clause 28.2 (but subject as mentioned in that clause) and in relation to the requirements for giving pay less notices under clause 29, it is immaterial that the amount then considered to be due may be zero.

30 Interest and suspension costs

- 30.1 If either Party fails to make payment in accordance with this Contract the other Party shall be entitled to simple interest on the amounts outstanding calculated at a rate of 5% per annum in excess of the Base Rate for the period from the final date for payment until payment is made.
- 30.2 It is agreed that the provisions of clause 30.1 constitute a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 30.3 If, in connection with any exercise of his rights of suspension under section 112 of the Construction Act, the Contractor claims an entitlement to costs and expenses incurred as a result, he shall with his application to the Employer or promptly on request supply such details of those costs and expenses as are reasonably necessary to enable his entitlement to be ascertained.

31 VAT

- 31.1 All amounts within this Contract are exclusive of any VAT that may be due to the Contractor in respect of the Project.
- 31.2 Where required by applicable legislation VAT shall be added to any payment by either Party to the other and, in addition to the necessary invoice, the Party receiving payment shall provide any other documentation reasonably necessary in order to permit such a payment to be properly made.

Indemnities and Insurance

32 Indemnities

- 32.1 The Contractor shall be liable for and shall indemnify the Employer against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of:
- 32.1.1 the personal injury to or the death of any person; and
- 32.1.2 the loss, injury or damage to any property real or personal,
- to the extent that such expense, liability, loss, claim or proceedings arise out of or in the course of carrying out of the Project and not as a consequence of any act or neglect on the part of the Employer or any person for whom the Employer is responsible (excluding the Contractor but including Others on the Site) but excluding any amount recoverable (or which but for any default by the Employer, policy excess or insurer's insolvency would have been recoverable) by the Employer under any policy required by clause 33.
- 32.2 The Employer shall be liable for and shall indemnify the Contractor against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of:
- 32.2.1 the personal injury to or the death of any person; and
- 32.2.2 the loss, injury or damage to any property real or personal,
- to the extent that such expense, liability, loss, claim or proceedings arise out of or in the course of carrying out of the Project as a consequence of any act or neglect on the part of the Employer or any person for whom the Employer is responsible (excluding the Contractor but including Others on the Site) but excluding any amount recoverable (or which but for any default by the Contractor, policy excess or insurer's insolvency would have been recoverable) by the Contractor under any policy required by clause 33.
- 32.3 Notwithstanding clause 32.1 and without affecting such obligations as he has under this Contract with respect to site security, the Contractor shall not be liable to the Employer for or to insure against any loss, injury or damage of any kind to any person or property caused by or resulting from an Excepted Risk or any act of terrorism, except for any obligation that the Contractor has under clause 33.7 to effect and maintain Terrorism Cover.

33 Insurances

- 33.1 Policies of insurance shall be provided and maintained in the manner indicated by the Contract Particulars and each Party shall comply with the terms and conditions of those policies to which he is a party including, where applicable, compliance with the Joint Fire Code. Where either Party is notified of any remedial measures considered necessary by an insurer as a consequence of non-compliance with the Joint Fire Code, the other Party shall be notified and the Contractor shall implement the remedial measures without delay but this shall not be treated as giving rise to a Change.
- 33.2 Where a Party is required by this Contract to provide and maintain a policy of insurance, the other Party may request the production of documentary evidence that the policy has been effected and remains in force and, apart from any policy required by clause 34 (*Professional Indemnity*), may also request a copy of the policy document.
- 33.3 If a Party fails to provide the documentary evidence referred to by clause 33.2 within 7 days of a request being made, the other Party may assume that there has been a failure to insure. Where there has been a failure to insure by one Party the other Party may insure against any risk to which he is exposed as a consequence and the Party that has failed to insure will be liable to pay the other any costs incurred in effecting and maintaining that

insurance.

- 33.4 Upon the occurrence of an event giving rise to a claim under any policy of insurance required to be provided by this Contract the Party intending to make the claim shall notify the other Party.
- 33.5 The occurrence of an event giving rise to a claim shall be disregarded in the computation of the amount due to the Contractor in accordance with this Contract and, subject to clauses 32 (*Indemnities*) and 33.6, neither the Employer nor the Contractor shall be entitled to receive any payment from the other in respect of the event giving rise to the claim.
- 33.6 Where any policy of insurance required to be provided by this Contract contains a policy excess, the Party making a claim under the policy shall pay or bear the policy excess stated in the Contract Particulars.^[5]
- 33.7 Where any policy of insurance covering the works and site materials for the Project excludes loss or damage caused by terrorism, the Party who is required by this Contract to provide and maintain that policy of insurance shall effect and maintain (either as an extension to the existing policy or as a separate policy) such Terrorism Cover as is stated in the Contract Particulars in the same amount as for the other risks.
- 33.8 Where any part of the Terrorism Cover ceases to be available the Party responsible for providing and maintaining the relevant policy shall immediately notify the other.
- 33.9 From the later of the date of the cessation of such Terrorism Cover or the date of any required notification to the Employer by the Contractor under clause 33.8 the risk of any loss that would otherwise have been covered by a policy of insurance required by this Contract shall rest with the Employer. Any additional works necessary to complete the Project as a consequence of a loss due to terrorism that would otherwise have been covered by a policy of insurance required by this Contract shall be treated as a Change.

34 Professional Indemnity

- 34.1 The provisions of clause 34 only apply when so stated in the Contract Particulars.
- 34.2 The Contractor shall take out a Professional Indemnity insurance policy with limits of indemnity of the types and in amounts not less than those stated in the Contract Particulars. Thereafter, provided it is generally available at commercially reasonable rates, such insurance shall be maintained until the expiry of 12 years from the date of Practical Completion of the Project.
- 34.3 Where the Contractor considers that any insurance required by clause 34.2 is no longer generally available at commercially reasonable rates he shall notify the Employer and co-operate with the Employer in seeking means by which the Contractor can be protected against professional liability claims arising out of the Project.

Assignment and Third Party Rights

35 Assignment

- 35.1 The Contractor may not assign either the benefit or the burden of this Contract without the consent of the Employer.
- 35.2 The Employer may assign the benefit of this Contract at any time without the consent of the Contractor.
- 35.3 The Contractor hereby consents to an assignment by the Employer of both the benefit and the burden of this Contract to the Funder at any time.

36 Third Party Rights from Contractor

- 36.1 The rights set out in Part 1 of Schedule 1 shall vest in a Purchaser or Tenant on the date on which the Employer serves on the Contractor a notice identifying such person and the nature of his interest in the Project.
- 36.2 The rights of the Employer and/or the Contractor

[5] See the Major Project Construction Contract Guide.

- 36.2.1 to terminate the Contractor's employment under this Contract (whether pursuant to clauses 39 to 41 (*Termination*) or otherwise) or to agree to rescind this Contract;
- 36.2.2 to agree to amend or otherwise vary or to waive any terms of this Contract; or
- 36.2.3 to agree to settle any dispute or other matter arising out of or in connection with this Contract, in each case in or on such terms as they in their absolute discretion shall think fit,
- shall not be subject to the consent of any Purchaser or Tenant.
- 36.3 Notwithstanding the provisions of clause 36.2, where rights have vested in any Purchaser or Tenant under clause 36.1 the Employer and the Contractor shall not be entitled without the consent of such Purchasers or Tenants to amend or vary the express provisions of clauses 36.1 to 36.3 or of Part 1 of Schedule 1.
- 36.4 The rights set out in Part 2 of Schedule 1 are hereby vested in the Funder.
- 36.5 Where rights have vested in the Funder pursuant to clause 36.4:
- 36.5.1 no amendment or variation shall be made to the express terms of clause 36.4 or 36.5 or of Part 2 of Schedule 1 without the prior written consent of the Funder; and
- 36.5.2 neither the Employer nor the Contractor shall agree to rescind this Contract and the rights of the Contractor to terminate his employment thereunder or to treat this Contract as repudiated shall in all respects be subject to the provisions of paragraphs 5.1 to 5.3 of Part 2 of Schedule 1
- but, subject thereto, unless and until the Funder gives notice pursuant to paragraph 4 or 5.4 of Part 2 of Schedule 1, the Contractor shall remain free without the consent of the Funder to agree with the Employer to amend or otherwise vary or to waive any term of this Contract and to settle any dispute or other matter arising out of or in connection with this Contract in each case in such terms as they think fit without any requirement on the part of the Contractor to obtain any consent from the Funder.

Performance Bonds and Guarantees

37 Performance Bonds and Guarantees

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

- 37.1 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;
- 37.2 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.

Default and Dispute Resolution

38 Provisions applicable to termination generally

The provisions of clauses 39 to 41 (*Termination*) are without prejudice to any other rights or remedies that the Parties may possess.

39 Termination by Employer

- 39.1 If the Contractor commits a Material Breach of this Contract the Employer may give the Contractor a notice identifying the Material Breach and stating that he may terminate the Contractor's employment under this Contract if the Contractor fails to remedy the Material Breach within 14 days of the notice.

- 39.2 If the Material Breach has not been remedied within 14 days of the Employer's notice under clause 39.1 the Employer may by a further notice issued at any time within the subsequent 14 days terminate the Contractor's employment under this Contract.
- 39.3 In the event that the Contractor becomes Insolvent the Employer may at any time by notice to the Contractor terminate the Contractor's employment under this Contract.
- 39.4 If the Contractor's employment is terminated under clause 39:
- 39.4.1 the Contractor shall not remove any materials, plant or equipment from the Site unless expressly permitted to do so by the Employer;
 - 39.4.2 the Contractor shall provide to the Employer all Design Documents prepared in connection with the Project;
 - 39.4.3 the Employer may make such other arrangements as he considers appropriate to complete the Project;
 - 39.4.4 the Employer shall not be obliged to make any further payment to the Contractor other than in accordance with clause 39, and the Employer need not pay any sum that has already become due either:
 - 39.4.4.1 to the extent that he has given a pay less notice under clause 29; or
 - 39.4.4.2 if the Contractor, after the last date upon which a pay less notice could have been given by the Employer in respect of that sum, has become insolvent within the meaning of section 113 of the Construction Act.
- 39.5 Subject to clause 39.7, when the Project has been completed and the defects rectification provisions of this Contract fulfilled the Employer shall within 3 months thereafter issue a payment advice setting out:
- 39.5.1 the additional costs incurred by the Employer in undertaking the Project compared with the costs that would have been incurred had the Project been completed by the Contractor in accordance with this Contract;
 - 39.5.2 any loss and/or damage suffered by the Employer and for which the Contractor is liable, whether arising as a consequence of the termination or otherwise;
 - 39.5.3 the sum the Employer considers due to him or to the Contractor; and
 - 39.5.4 the basis on which those amounts have been calculated.
- 39.6 The Employer may issue interim payment advices to the Contractor in respect of amounts due to the Employer under clause 39.5 as and when they are incurred.
- 39.7 If the Employer does not commence to make other arrangements for the completion of the Project within a 6 month period commencing on the date of termination the Employer shall issue a payment advice setting out:
- 39.7.1 the amount that the Employer was liable to pay the Contractor at the date of termination, calculated in accordance with this Contract as if the Contractor's employment had not been terminated; and
 - 39.7.2 any loss and/or damage suffered by the Employer and for which the Contractor is liable, whether arising as a consequence of the termination or otherwise
- and the basis on which those amounts have been calculated. Allowance shall be made for payments made to date in order to determine the amount payable by one Party to the other.
- 39.8 Any amount stated as payable by a payment advice issued under clause 39 shall become due on its issue and shall have a final date for payment 14 days later.

40 Termination by Contractor

- 40.1 If the Employer commits a Material Breach of this Contract the Contractor may give a notice to the Employer identifying the Material Breach and stating that the Contractor may terminate his employment under this Contract if the Employer fails to remedy the Material

Breach within 14 days of the notice.

- 40.2 If the Material Breach has not been remedied within 14 days of the Contractor's notice under clause 40.1 the Contractor may by a further notice issued at any time within the subsequent 14 days terminate his employment under this Contract.
- 40.3 In the event that the Employer becomes Insolvent the Contractor may at any time by notice to the Employer terminate his employment under this Contract.
- 40.4 In the event that the Contractor's employment is terminated under clause 40 the Contractor shall:
 - 40.4.1 remove all of his materials, plant or equipment from the Site without delay;
 - 40.4.2 prepare an account setting out his valuation of his entitlements under this Contract at the date of termination (including any entitlements in respect of Changes and other amounts for which the Employer is liable) together with his reasonable costs of removal from the Site as a consequence of the termination and any loss and/or damage suffered by the Contractor and for which the Employer is liable, whether arising as a consequence of the termination or otherwise;
 - 40.4.3 issue a statement that compares the total amount included in the above account with the total payments previously received by the Contractor in order to determine the balance that is to be paid by one Party to the other.
- 40.5 Any amount identified by the statement issued under clause 40.4.3 as properly payable to the Contractor shall become due for payment upon the receipt of a VAT invoice by the Employer and any amount identified as payable to the Employer shall become due upon the issue of the statement. The final date for payment shall be 14 days after the amount to be paid becomes due.

41 Termination by either Party

- 41.1 If the carrying out of the Project or a substantial proportion of the Project is suspended for the period stated in the Contract Particulars as a consequence of force majeure, the occurrence of any Specified Peril or hostilities involving the United Kingdom, or the use or threat of terrorism, either Party may issue to the other a notice specifying the circumstances of the suspension and stating that if the circumstances continue for a further 14 days he may terminate the Contractor's employment under this Contract.
- 41.2 If the circumstances continue for a further 14 days the Party that issued the notice may by a further notice at any time within the subsequent 14 days terminate the Contractor's employment under this Contract.
- 41.3 Where Terrorism Cover is no longer available or will only continue to be available with a reduction in the scope or level of cover the Employer may, by notice, terminate the Contractor's employment under this Contract.
- 41.4 If the Contractor's employment is terminated under clause 41 the Contractor shall:
 - 41.4.1 remove all of his materials, plant or equipment from the Site without delay;
 - 41.4.2 provide to the Employer all Design Documents prepared in connection with the Project;
 - 41.4.3 prepare an account setting out his valuation of his entitlements under this Contract at the date of termination (including any entitlements in respect of Changes and other amounts for which the Employer is liable) together with his reasonable costs of removal from the Site as a consequence of the termination;
 - 41.4.4 issue a statement that compares the total amount included in the above account with the total payments previously received by the Contractor in order to determine the balance that is to be paid by one Party to the other.
- 41.5 Any amount identified by the statement issued under clause 41.4.4 as properly payable to the Contractor shall become due for payment upon the receipt of a VAT invoice by the Employer and any amount identified as payable to the Employer shall become due upon the issue of the statement. The final date for payment shall be 14 days after the amount to

be paid becomes due.

42 Resolution of disputes

Should any dispute or difference arise between the Parties in relation to this Project:

- 42.1 where the Parties agree to do so, the dispute or difference may be submitted to mediation in accordance with the provisions of clause 43 (*Mediation*);
- 42.2 the dispute or difference may be referred to adjudication in accordance with the provisions of clause 44 (*Adjudication*);
- 42.3 the dispute or difference may be resolved by legal proceedings.

43 Mediation

- 43.1 Either Party may identify to the other any dispute or difference as being a matter that he considers to be capable of resolution by mediation and, upon being requested to do so, the other Party shall within 7 days indicate whether or not he consents to participate in a mediation with a view to resolving the dispute. The objective of mediation under clause 43 shall be to reach a binding agreement in resolution of the dispute.
- 43.2 The mediator or selection method for the mediator shall be determined by agreement between the Parties.

44 Adjudication

- 44.1 Either Party may at any time refer any dispute or difference arising under this Contract to adjudication in accordance with the provisions of the Scheme.
- 44.2 The Adjudicator shall be the person named in the Contract Particulars. Where no person is named or where the named Adjudicator is unable to act the Adjudicator shall be selected in the manner set out in the Contract Particulars.

Contract Particulars

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

1

Base Date

[]

BIM Protocol (where applicable)

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

[]

Completion Date

(where completion by Sections does not apply)

[]

or such other date as may be established by the operation of clause 18 (*Extension of time*)

Sections: Completion Dates of Sections^[6]

Section [] : []

or such other dates as may be established by the operation of clause 18 (*Extension of time*)

Contract Sum

£[]

Funder (if any)

[]

Project

[]

as more fully described by the Requirements and the Proposals

Proposals

[]

Requirements

[]

7.2

Principal designer previously appointed by the Employer (if any)

[]

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

12

Design Documents

(To be completed where the design submission procedure applicable is that set out in clause 12.)

shall be submitted to the Employer for review in the following quantities and format

[]

14.2

Ground conditions

(If no alternative is selected, clause 14.2 does not apply.)

Clause 14.2

* applies/does not apply

15.1

Date on which the Contractor will be given access to the Site

[]

16.1

Daily rate of liquidated damages

(where completion by Sections does not apply)

£[]

Sections: daily rate of liquidated damages for each Section^[6]

Section [] : £[]

20

Daily rate of bonus for early Practical Completion

(where completion by Sections does not apply)

(Where no rate is specified, the rate shall be NIL.)

£[]

Sections: daily rate of bonus for early Practical Completion for each Section^[6]

(Where no rate is specified, the rate shall be NIL.)

Section [] : £[]

24

Pre-Appointed Consultants

(Where no selection is made, the provisions shall not apply.)

The provisions of clause 24 in relation to Pre-Appointed Consultants

* apply/do not apply

25.4

Proportion of any benefit to be paid to the Contractor

(Where no proportion is specified, the proportion shall be 50 per cent.)

[] per cent

28.1

Interim payments – Interim Valuation Dates

(If no date is stated, the Interim Valuation Date shall be the 28th day of each month.)

The Interim Valuation Date in each month shall be the

day of the month

28.2

Interim payments after Practical Completion of the Project – minimum amount

(Where no amount is stated, the amount is to be £10,000.00.)

Neither Party is obliged to make any interim payment after Practical Completion of the Project where the amount payable would be less than

£

33.1

Policies of insurance

(The policies of insurance to be provided and maintained in accordance with this Contract are those defined by the documents listed in the following table, copies of which documents are annexed to this Contract. The Party responsible for providing and maintaining each policy of insurance is identified below.)

Type of insurance:

As detailed in annexed documents reference:

Insurance to be provided and maintained by

Amount of policy excess (Clause 33.6)^[7]

£

Type of insurance:

As detailed in annexed documents reference:

Insurance to be provided and maintained by

Amount of policy excess (Clause 33.6)^[7]

£

Type of insurance:

As detailed in annexed documents reference:

[7] See the Major Project Construction Contract Guide.

Insurance to be provided and maintained by

[_____]

Amount of policy excess (Clause 33.6)^[7]

£[_____]

Type of insurance:

[_____]

As detailed in annexed documents reference:

[_____]

Insurance to be provided and maintained by

[_____]

Amount of policy excess (Clause 33.6)^[7]

£[_____]

Type of insurance:

[_____]

As detailed in annexed documents reference:

[_____]

Insurance to be provided and maintained by

[_____]

Amount of policy excess (Clause 33.6)^[7]

£[_____]

33.7

Terrorism Cover – details of the required cover
(Unless otherwise stated, Pool Re Cover is required.)

are set out in the following document(s)

[_____]

34.1

Professional Indemnity
(Where no selection is made, clause 34 does not apply.)

Clause 34
* applies/does not apply

34.2

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
* is the aggregate amount for any one period of insurance

(If no amount is stated, insurance under clause 34.2 shall not be required.)

and is

£[_____]

Cover for pollution and contamination claims

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

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

£[_____]

* is not required

37.1

Performance bond or guarantee from bank or other approved surety^[8]

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

* is required/is not required

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

[_____]

Initial value

[_____] per cent of the Contract Sum

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

* the date of Practical Completion of the Project

* 2 weeks after the date of expiry of the Rectification Period for the Project

* the date for issue by the Employer of the statement referred to in clause 23.2 or 23.3

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

[_____] per cent

37.2

Guarantee from the Contractor's parent company

* is required/is not required

Parent company's name and registration number

[_____]

The required form of the guarantee is set out in

[_____]

41

Period of suspension before a notice may be issued in accordance with clause 41.1

(Where none is stated, the period is to be 13 weeks.)

[8] 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.

[]

44

Adjudication^[9]

The Adjudicator is []

Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)^[10]

(Where an Adjudicator is not named and a nominating body has not been selected, the nominating body shall be one of the bodies listed below selected by the Party requiring the reference to adjudication.)

- * Royal Institute of British Architects
- * The Royal Institution of Chartered Surveyors
- * constructionadjudicators.com^[11]
- * Chartered Institute of Arbitrators

Paragraph 1.1.2 of Schedule 1, Part 1

Third Party Rights from the Contractor for the Purchasers and/or Tenants

Applicability of paragraph 1.1.2

(Where no selection is made, paragraph 1.1.2 does not apply.)

Paragraph 1.1.2

- * applies/does not apply

Maximum liability

(Unless paragraph 1.1.2 is stated to apply and the maximum liability is stated, paragraph 1.1.2 shall not apply.)

The maximum liability is

£[]

Paragraph 2 of Schedule 2

Pricing Document

Applicable rule within the Pricing Document for payment of the Contract Sum^[12]

(Where no selection is made, Rule A shall apply.)

Schedule 2:

- * Rule A
- * Rule B
- * Rule C
- * Rule D

[9] 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.

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

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

[12] Delete all but one.

Schedule 3

Supplemental Provisions^[13]

(Where neither entry against one of Supplemental Provisions 1 to 5 below is deleted, that Supplemental Provision applies.)

Supplemental Provision 1: Collaborative working
* applies/does not apply

Supplemental Provision 2: Health and safety
* applies/does not apply

Supplemental Provision 3: Sustainable development and environmental considerations
* applies/does not apply

Supplemental Provision 4: Performance Indicators and monitoring
* applies/does not apply

Supplemental Provision 5: Notification and negotiation of disputes
* applies/does not apply

Where Supplemental Provision 5 applies, the respective nominees of the Parties are

Employer's nominee

[_____]

Contractor's nominee

[_____]

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

[13] Supplemental Provision 6 (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 7 (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.

Attestation

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 three methods of execution, **(A)** to **(C)**, for use as appropriate. The full name of the Employer or Contractor (whether 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.

Execution as a Deed

Executed as a Deed by the Employer

namely ¹

- (A)** acting by a Director and the Company Secretary/two Directors **of the company** ^{2, 3}

(Print name of signatory)

Signature Director

and

(Print name of signatory)

Signature Company Secretary/Director

- (B)** by affixing hereto the common seal **of the company/other body corporate** ^{2, 4}

in the presence of

Signature Director

Signature Company Secretary/Director

[Common seal of company]

- (C)** by attested signature of a single Director **of the company** ^{2, 5}

Signature Director

in the presence of

Witness' signature _____ *(Print name)* _____

Witness' address _____

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

Execution as a Deed

Executed as a Deed by the Contractor

namely ¹

- (A)** acting by a Director and the Company Secretary/two Directors **of the company** ^{2, 3}

(Print name of signatory)

Signature Director

and

(Print name of signatory)

Signature Company Secretary/Director

- (B)** by affixing hereto the common seal **of the company/other body corporate** ^{2, 4}

in the presence of

Signature Director

Signature Company Secretary/Director

[Common seal of company]

- (C)** by attested signature of a single Director **of the company** ^{2, 5}

Signature Director

in the presence of

Witness' signature _____ *(Print name)* _____

Witness' address _____

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

Schedules

Schedule 1 Third Party Rights

(Clause 36)

Part 1: Third Party Rights for Purchasers and Tenants

1

- 1.1 The Contractor warrants as at and with effect from Practical Completion that he has carried out the Project in accordance with this Contract. In the event of any breach of this warranty and subject to paragraphs 1.2 and 1.3 of this Part 1 of this Schedule:
- 1.1.1 the Contractor shall be liable for the reasonable costs of repair, renewal and/or reinstatement of any part or parts of the Project to the extent that the Purchaser or Tenant incurs such costs and/or the Purchaser or Tenant is or becomes liable either directly or by way of financial contribution for such costs; and
- 1.1.2 (if paragraph 1.1.2 is stated in the Contract Particulars to apply) the Contractor shall in addition to the costs referred to in paragraph 1.1.1 be liable for any other losses incurred by the Purchaser or Tenant up to the maximum liability stated in the Contract Particulars.
- 1.2 If in or by the Contract Particulars paragraph 1.1.2 is stated or deemed not to apply, the Contractor shall not be liable for any losses incurred by the Purchaser or Tenant other than the costs referred to in paragraph 1.1.1.
- 1.3 The Contractor shall be entitled in any action or proceedings by the Purchaser or Tenant to rely on any term in this Contract and to raise the equivalent rights in defence of liability as he would have against the Employer under this Contract.
- 1.4 The obligations of the Contractor under or pursuant to clause 36.1 shall not be released or diminished by the appointment of any person by the Purchaser or Tenant to carry out any independent enquiry into any relevant matter.

- 2 The Purchaser or Tenant has no authority to issue any direction or instruction to the Contractor in relation to this Contract.
- 3 Subject to the Employer (or the Funder in accordance with paragraph 6 of Part 2 of this Schedule) having paid all monies due and payable under this Contract, the Purchaser or Tenant is granted the same rights in respect of the Design Documents as are granted to the Employer by clause 13 (*Copyright*) and any use made of the Design Documents is subject to the same conditions as are set out in clause 13.
- 4 Where clause 34 (*Professional Indemnity*) applies the Contractor shall, upon request, provide to a Purchaser or Tenant evidence that the insurance required by clause 34 is being maintained. At the time of its issue the Contractor shall provide to any Purchaser or Tenant notified in accordance with clause 36.1 a copy of any notification provided under clause 34.3.
- 5 The rights contained in this Schedule may be assigned without the Contractor's consent by a Purchaser or Tenant, by way of absolute legal assignment, to another person (P1) taking an assignment of the Purchaser's or Tenant's interest in the Project and by P1, by way of absolute legal assignment, to another person (P2) taking an assignment of P1's interest in the Project. In such cases the assignment shall only be effective upon written notice thereof being given to the Contractor. No further or other assignment of a Purchaser's or Tenant's rights under this Schedule will be permitted and in particular P2 shall not be entitled to assign these rights.
- 6 Any notices required to be given by this Schedule shall be given in accordance with clause 5.2.

- 7 No action or proceedings for any breach of the rights contained in this Schedule shall be commenced against the Contractor after the expiry of 12 years from the date of Practical Completion of the Project or the relevant Section (if applicable), whichever is the earlier.
- 8 For the avoidance of doubt, the Contractor shall have no liability to the Purchaser or Tenant under this Schedule for delay in completion of the Project.
- 9 This Schedule shall be governed by and construed in accordance with the law of England and the English courts shall have jurisdiction over any dispute or difference between the Contractor and any Purchaser or Tenant which arises out of or in connection with this Schedule.

Part 2: Third Party Rights for a Funder

- 1
- 1.1 The Contractor warrants that he has complied and will continue to comply with this Contract.
- 1.2 The Contractor shall be entitled in any action or proceedings by the Funder to rely on any term in this Contract and to raise the equivalent rights in defence of liability as he would have against the Employer under this Contract.
- 1.3 The obligations of the Contractor under or pursuant to clause 36.4 shall not be released or diminished by the appointment of any person by the Funder to carry out any independent enquiry into any relevant matter.
- 2 The Funder has no authority to issue any direction or instruction to the Contractor in relation to this Contract unless and until the Funder has given notice under paragraph 4 or 5.4 of this Part 2 of this Schedule.
- 3 The Funder has no liability to the Contractor in respect of amounts due under this Contract unless and until the Funder has given notice under paragraph 4 or 5.4.
- 4 The Contractor agrees that, in the event of the termination of the Finance Agreement by the Funder, the Contractor shall, if so required by written notice given by the Funder and subject to paragraph 6, accept the instructions of the Funder or its appointee to the exclusion of the Employer in respect of the Project upon the terms and conditions of this Contract. The Employer acknowledges that the Contractor shall be entitled to rely on a notice given to the Contractor by the Funder under this paragraph 4 as conclusive evidence for the purposes of this Contract of the termination of the Finance Agreement by the Funder; and further acknowledges that such acceptance of the instructions of the Funder to the exclusion of the Employer shall not constitute any breach of the Contractor's obligations to the Employer under this Contract.
- 5
- 5.1 The Contractor shall not exercise any right of termination of his employment under this Contract without having first:
- 5.1.1 copied to the Funder any notices required by this Contract to be sent to the Employer prior to the Contractor being entitled to give notice under this Contract that his employment under this Contract is terminated; and
- 5.1.2 given to the Funder written notice that he has the right under this Contract forthwith to notify the Employer that his employment under this Contract is terminated.
- 5.2 The Contractor shall not treat this Contract as having been repudiated by the Employer without having first given to the Funder written notice that he intends so to inform the Employer.
- 5.3 The Contractor shall not:
- 5.3.1 issue a notice to the Employer to which paragraph 5.1.2 refers; or
- 5.3.2 notify the Employer that he is treating this Contract as having been repudiated by the Employer as referred to in paragraph 5.2
- before the lapse of 7 days from receipt by the Funder of the written notice by the Contractor

which the Contractor is required to give under paragraph 5.1.2 or 5.2.

- 5.4 The Funder may, not later than the expiry of the 7 days referred to in paragraph 5.3, require the Contractor by notice in writing and subject to paragraph 6 to accept the instructions of the Funder or its appointee to the exclusion of the Employer in respect of the Project upon the terms and conditions of this Contract. The Employer acknowledges that the Contractor shall be entitled to rely on a notice given to the Contractor by the Funder under this paragraph 5.4 and that acceptance by the Contractor of the instructions of the Funder to the exclusion of the Employer shall not constitute any breach of the Contractor's obligations to the Employer under this Contract. Provided that nothing in this paragraph 5.4 shall relieve the Contractor of any liability he may have to the Employer for any breach by the Contractor of this Contract.
- 6 It shall be a condition of any notice given by the Funder under paragraph 4 or 5.4 that the Funder or its appointee accepts liability for payment of the sums due and payable to the Contractor under this Contract and for performance of the Employer's obligations including payment of any sums outstanding at the date of such notice. Upon the issue of any notice by the Funder under paragraph 4 or 5.4, this Contract shall continue in full force and effect as if no right of termination of the Contractor's employment under this Contract, nor any right of the Contractor to treat this Contract as having been repudiated by the Employer, had arisen and the Contractor shall be liable to the Funder and its appointee under this Contract in lieu of his liability to the Employer. If any notice given by the Funder under paragraph 4 or 5.4 requires the Contractor to accept the instructions of the Funder's appointee, the Funder shall be liable to the Contractor as guarantor for the payment of all sums from time to time due to the Contractor from the Funder's appointee.
- 7 Subject to the Employer having paid all monies due and payable under this Contract, or the Funder having made payment of such sums in accordance with paragraph 6, the Funder is granted the same rights in respect of the Design Documents as are granted to the Employer by clause 13 (*Copyright*) and any use made of the Design Documents is subject to the same conditions as are set out in clause 13.
- 8 Where clause 34 (*Professional Indemnity*) applies the Contractor shall, upon request, provide to the Funder evidence that the insurance required by clause 34 is being maintained. At the time of its issue, the Contractor shall provide to the Funder a copy of any notification provided under clause 34.3.
- 9 The rights contained in this Schedule may be assigned without the Contractor's consent by the Funder, by way of absolute legal assignment, to another person (P1) providing finance or re-finance in connection with the carrying out of the Project and by P1, by way of absolute legal assignment, to another person (P2) providing finance or re-finance in connection with the carrying out of the Project. In such cases the assignment shall only be effective upon written notice thereof being given to the Contractor. No further or other assignment of the Funder's rights under this Contract will be permitted and in particular P2 shall not be entitled to assign these rights.
- 10 Any notices required to be given by this Schedule shall be given in accordance with clause 5.2.
- 11 No action or proceedings for any breach of the rights contained in this Schedule shall be commenced against the Contractor after the expiry of 12 years from the date of Practical Completion of the Project or the relevant Section (if applicable), whichever is the earlier.
- 12 Notwithstanding the rights contained in this Schedule, the Contractor shall have no liability to the Funder for delay under this Contract unless and until the Funder serves notice pursuant to paragraph 4 or 5.4. For the avoidance of doubt the Contractor shall not be required to pay damages in respect of the period of delay where the same has been paid to or deducted by the Employer.
- 13 This Schedule shall be governed by and construed in accordance with the law of England and the English courts shall have jurisdiction over any dispute or difference between the Contractor and the Funder which arises out of or in connection with this Schedule.

Schedule 2 Pricing Document

(Clause 1)

- 1 This Pricing Document contains:
 - 1.1 the rules for determining the manner in which the Contractor is to receive payments in respect of the Contract Sum; and
 - 1.2 the contract sum analysis and the pricing information.

The rules for determining the manner in which the Contractor is to receive payments in respect of the Contract Sum
- 2 The applicable rule is that identified by the Contract Particulars.

Rule A – Interim valuation
- 3 The proportion of the Contract Sum to be included in an interim payment advice shall be the value of work properly executed by the Contractor up to the relevant Interim Valuation Date, determined by reference to the rates and prices in the contract sum analysis.

Rule B – Stage payment
- 4
 - 4.1 The proportion of the Contract Sum to be included in an interim payment advice shall be the total of the amounts identified in the contract sum analysis in respect of all of the stages completed by the relevant Interim Valuation Date.
 - 4.2 Where the contract sum analysis indicates that any stage payment is to be treated as an advance payment, the issue of a payment advice in respect of that payment is conditional upon the receipt by the Employer of a bond in the form of the annexed draft.

Rule C – Progress payment
- 5
 - 5.1 The proportion of the Contract Sum to be included in an interim payment advice shall be as set out in the annexed schedule.
 - 5.2 Where the schedule indicates that any progress payment is to be treated as an advance payment, the issue of that payment advice of that payment is conditional upon the receipt by the Employer of a bond in the form of the annexed draft.
 - 5.3 Where the Employer considers that Practical Completion will not be achieved by the date stated in the Contract Particulars, whether due to some matter entitling the Contractor to an adjustment to the Completion Date or otherwise, the Employer shall notify the Contractor of the date when he considers Practical Completion is likely to be achieved and, in consultation with the Contractor, determine the reasonable amendments necessary to the schedule.
 - 5.4 Any amendments made shall have regard to the prolonged duration over which future payments are to be made and reflect the proportions and intervals indicated by the schedule in respect of those payments that have not yet been the subject of a payment advice. No amendment shall be made in respect of payments that should have been the subject of a payment advice by the date of the Employer's notification to the Contractor under paragraph 5.3.
 - 5.5 The amendments to the schedule shall take effect in relation to any payment advice issued by the Employer more than 14 days after the notification under paragraph 5.3.

Rule D – Some other procedure
- 6 The Contractor shall receive payment of the Contract Sum in the manner set out in the annexed

procedure.

The contract sum analysis and the pricing information

7

- 7.1 The contract sum analysis and the pricing information are annexed.
- 7.2 The contract sum analysis sets out the manner in which the Contractor has calculated the Contract Sum in the detail and containing such additional information as is specified by the Requirements.
- 7.3 Where there is more than one Section, the contract sum analysis identifies the value of each Section.
- 7.4 Where Rule B applies, the contract sum analysis also identifies the stages into which the Project is divided for payment purposes and the amounts applicable to each stage.
- 7.5 The pricing information comprises such information as is specified by the Requirements or provided by the Contractor for use in the valuation of Changes.

Annexes:

The form of advance payment bond to be provided by the Contractor:^[14]

[_____]

The schedule for the operation of Rule C, comprising:^[14]

[_____]

The procedure referred to by Rule D:^[14]

[_____]

The contract sum analysis, comprising:

[_____]

The pricing information, comprising:

[_____]

[14] Delete as appropriate.

Schedule 3 Supplemental Provisions

Supplemental Provisions 1 to 5 apply unless otherwise stated in the Contract Particulars. Supplemental Provision 6 applies where the Employer is a Local or Public Authority or other body of the type mentioned in that provision; Supplemental Provision 7 applies where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations.

Collaborative working

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

Health and safety

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

Sustainable development and environmental considerations

- 3
- 3.1 The Contractor is encouraged to suggest economically viable amendments to the Project which, if instructed as a Change, may result in an improvement in environmental performance in the carrying out of the Project or of the completed Project.
- 3.2 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

- 4
- 4.1 The Employer shall monitor and assess the Contractor's performance by reference to any performance indicators stated or identified in the Contract Documents.
- 4.2 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.
- 4.3 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

- 5 With a view to avoidance or early resolution of disputes or differences (subject to clause 44), 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

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

- 6.1 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;
- 6.2 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

- 7 Where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations^[15]:
- 7.1 where regulation 113 of the PC Regulations applies to this Contract, the Contractor shall include in any sub-contract entered into by him for work included in this Contract suitable provisions to impose the requirements of regulation 113(2)(c)(i) and (ii);
- 7.2 the Contractor shall include in any sub-contract entered into by him provisions requiring the sub-contractor:
- 7.2.1 to supply and notify to the Contractor the information required (as applicable) under regulations 71(3), 71(4) and 71(5) of the PC Regulations; and
- 7.2.2 to include in any sub-subcontract he in turn enters into provisions to the same effect as required under paragraph 7.2.1 of Supplemental Provision 7;
- 7.3 where regulation 73(1) applies to this Contract, the Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment under this Contract where any of the grounds set out in that regulation apply. Upon termination under this paragraph 7.3, the consequences of termination in clause 41 (in the case of termination under regulation 73(1)(a) or 73(1)(c)) and clause 39 (in the case of termination under regulation 73(1)(b)) shall apply;
- 7.4
- 7.4.1 the Contractor shall include in any sub-contract entered into by him provisions that shall entitle him to terminate the sub-contractor's contract where there are grounds for excluding the sub-contractor under regulation 57;
- 7.4.2 in the event the Employer requires the Contractor to terminate a sub-contractor's contract pursuant to regulation 71(9) the Contractor shall take the appropriate steps to terminate that contract 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.

[15] An explanatory summary of those provisions in the PC Regulations that are reflected in this Contract is contained in the Major Project Construction Contract Guide