

Contract Number
NPH_2025_23 – Plastering and Associated Works

DATED 03/02/2026

Start Date 09/02/2026

End Date 08/02/2028

Extension Options Two Years/24 Months

PLASTERING AND ASSOCIATED WORKS

between

NORTHAMPTONSHIRE PARTNERSHIP HOMES LTD

and

SEMILONG SERVICES LTD

Please see below appendices which reference and inform this contract:

Appendix A – Quality submission
Appendix B – Pricing submission
Appendix C – Specification incl. KPIs
Appendix D – Invitation to Tender

JCT Measured Term Contract (2016 edition)
Schedule of Amendments is attached at the end of this document.

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

MTC 2016
Measured Term Contract 2016

2016
MEASURED TERM CONTRACT

Measured Term Contract (MTC)

Appropriate for use:

- by Employers who have a regular flow of maintenance and minor works, including improvements, to be carried out by a single contractor over a specified period of time and under a single contract;
- where the work is to be instructed from time to time and measured and valued on the basis of an agreed schedule of rates; and
- where a Contract Administrator is to administer the conditions.

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For details of 2016 Edition changes, see the Measured Term Contract Guide (MTC/G) and the Tracked Change Document.

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Agreement

This Agreement

is made the 3rd February 2026

Between

The Employer

Northamptonshire Partnership Homes Limited

Place of incorporation: England and Wales

(Company No. 09019453)¹¹

whose registered office is at Guildhall, St Giles Square, Northampton, Northamptonshire, NN1 1DE

And

The Contractor

Semilong Services Ltd

Place of incorporation: England and Wales

(Company No. 06842550)¹¹

whose registered office is at 15 Gate Lodge Close, Round Spinney Industrial Estate, Northampton, NN3 8RJ

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

Recitals

Whereas

First

the Employer requires maintenance and minor works to be carried out in:

The contract area for the required maintenance and minor works includes Plastering and Associated Works within Northamptonshire Partnership Homes properties located across Northamptonshire. ('the Contract Area')
in accordance with the details set out or referred to in the Contract Particulars;

Second

the Contractor has offered to carry out the required works at specified rates or as otherwise determined in accordance with the Conditions and the Employer has accepted that offer;

Third

the Employer has appointed a Contract Administrator to issue Orders for the required works and carry out the functions ascribed to the Contract Administrator by the Conditions;

Fourth

the Contractor has supplied to the Employer the Contractor's safety policy complying with Statutory Requirements, a copy of which is annexed;

Fifth

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

Articles

Now it is hereby agreed as follows

Article 1 Contractor's obligations

The Contractor shall carry out all Orders that are placed with him during the Contract Period in accordance with the Contract Documents.

Article 2 Payment

The Employer shall pay the Contractor at the times *and* in the manner specified in the Conditions amounts calculated by reference to the Schedule of Rates identified in the Contract Particulars (item 12), adjusted and, if appropriate, revised as therein mentioned, or (where applicable and appropriate) calculated by reference to a Schedule of Hourly Charges (subject to items 13 *and* 14).

Article 3 Contract Administrator

For the purposes of this Contract the Contract Administrator is

Victoria Robinson

of

Westbridge Depot 9-13 St James Mill Road, Northampton NN5 5JW

or, if he ceases to be the Contract Administrator, such other person as the Employer nominates in accordance with clause 3.10 of the Conditions.

Article 4 Principal Designer

The Principal Designer for the purposes of the COM Regulations is the Contract Administrator or such other person as the Employer at any time appoints to fulfil that role either in relation to all Orders or for specific Orders.

Article 5 Principal Contractor

The Principal Contractor for the purposes of the COM Regulations is the Contractor or such other contractor as the Employer at any time appoints to fulfil that role either in relation to all Orders or for specific Orders.

Article 6 Adjudication

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

Article 7 Arbitration

Not applicable

Article 8 **Legal proceedings¹²¹**

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

[2] If it is intended, subject to the right of adjudication and exceptions stated in Article 7, that disputes or differences should be determined by arbitration and not by legal proceedings, the Contract Particulars **must** state that Article 7 and clauses 9.3 to 9.8 apply and the words "do not apply" **must** be deleted. If the Parties wish any dispute or difference to be determined by the courts of another jurisdiction the appropriate amendment should be made to Article 8 (see also clause 1.7).

Contract Particulars

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

1 Properties and description of the types of work
(First Recital)

1.1 List of properties in the Contract Area in respect of which Orders may be issued:

Various properties in Northamptonshire as directed by Northamptonshire Partnership Homes including but not limited to flats, houses, community hubs and offices etc. NPH will provide full address details for each work order issued.

1.2 Description of the types of work for which Orders may be issued:¹

Plastering and Associated Works

Please see below appendices which reference and inform this contract:

Appendix A – Quality submission

Appendix B – Pricing submission

Appendix C – Specification incl. KPIs

Appendix D – Invitation to Tender

Appendix E – NPH Schedule of Amendments.

2 Supplemental Provisions¹⁴¹
(Fifth Recital and Schedule 1)

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

Supplemental Provision 1: Collaborative working
• applies

Supplemental Provision 2: Health and safety
• applies

Supplemental Provision 3: Cost savings and value improvements
• applies

Supplemental Provision 4: Sustainable development and environmental considerations
• applies

Supplemental Provision 5: Performance Indicators and monitoring
• applies

Supplemental Provision 6: Notification and negotiation of disputes
• applies

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

Employer's nominee

Victoria Robinson

Contractor's nominee

Sully Elliot

[3] Where the National Schedule of Rates is to apply (see items 12.1 and 12.2 of the Contract Particulars) but some (or all) of the work is of a type for which it is appropriate to use as a basis for pricing a version of the National Schedule other than 'Building Works', the Parties, in Comparison must be provided.

addition to stating that in item 12.2, should make appropriate entries here (or in any separate document incorporated by reference here) indicating the types of work to which it is agreed that such alternative version of the National Schedule shall apply.

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

Amended from published version.

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Comparison must be provided.

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

3 Contract Period^[5]

(Article 1 and clause 7.1)

Subject to clause 7.1, the Contract Period will be two years

commencing on Monday 9th February 2025

4 Arbitration

(Article 7)

(If neither entry is deleted, Article 7 and clauses 9.3 to 9.8 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must be stated that Article 7 and clauses 9.3 to 9.8 apply.)

Article 7 and clauses 9.3 to 9.8 (Arbitration)

- apply

5 BIM Protocol

(Clause 1.1)

BIM Protocol (where applicable)

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

Not applicable

6 Orders - minimum and maximum value

(Clause 2.4)

Minimum value of any one Order to be issued

N/A

Maximum value of any one Order to be issued

N/A

7 Orders - value of work to be carried out

(Clause 2.5)

Approximate anticipated value of work to be carried out under this Contract

- £ 550,000 (*words Five Hundred and Fifty Thousand Pounds*) for the Contract Period of up to four years.

8 Orders - priority coding^[7]

(Clause 2.6)

Not required

[5] The period is envisaged as normally being at least one year.

[6] On factors to be taken into account by the Parties in considering whether disputes are to be determined by arbitration or by legal proceedings, see the Measured Term Contract Guide. See also footnote [2].

[7] To be completed if the Employer requires; as an example the code might be:

'A': response time to be 4 hours;

'B': to be commenced within 2 days;

'C': to be commenced within 14 days;

'D': to be commenced as agreed.

9 Construction Industry Scheme (CIS)
(Clause 4.2)

The Employer at the commencement of the Contract Period

- is a 'contractor' for the purposes of the CIS

10 Payments
(Clauses 4.3, 4.4 and 4.5)

Estimated value of an Order above which progress payments can be applied for
(If none is stated, it is £2,500.)

£1

Valuation Dates
(If no date is stated, the Valuation Date is the last day of each month.)

The Valuation Date in each month is the
Last day of the month day of the month

11 Responsibility for measurement and valuation
(Clause 5.2)

(Unless one of the three options below is selected and, if relevant, an estimated value specified, the Contract Administrator shall measure and value all Orders.)

- The Contractor shall measure and value all Orders

12 Schedule of Rates
(Clauses 5.3, 5.6.1 and 5.6.2)

12.1 The Schedule of Rates is

- Refer to appendix A – NHF SOR version 8
(identify the Schedule of Rates to be used)

subject to adjustment of the rates listed in that Schedule by

- Minus 13% for Plastering and Associated Works Plumbing, Decorating & Carpentry; and equal to the rates for the Electrical Associated Works.

of the Adjustment Percentage, which is

- as set out in Appendix B – Semilong Pricing submission

12.2 Not applicable

12.3 Rates - Fluctuations

Clause 5.6.1
(Unless 'applies' is deleted, the clause shall be deemed to apply.)

- does not apply

12.4 Basis and dates of revision

Not applicable

13 Daywork
(Clauses 5.4, 5.6.3 and 5.6.4)

13.1 Valuation - percentage additions

Where not included in or annexed to the Schedule of Hourly Charges, the percentage additions to the invoice price of non-labour items are as follows:

Overheads and profit on Materials

N/A

Overheads and profit on Plant, Services and Consumable Stores

N/A

Overheads and profit on Sub-Contractors

N/A

13.2 Revision of Schedule of Hourly Charges

Clause 5.6.3

(Unless 'applies' is deleted, the clause shall be deemed to apply.)

- does not apply

14 Overtime work
(Clause 5.7)

The percentage addition in respect of overheads and profit on non-productive overtime rates is
(Not applicable where an inclusive rate for such overtime is included in the Schedule of Hourly Charges)

N/A

15 Insurance
(Clauses 6.4.1, 6.7, 6.8, 6.9 and 6.12)

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

£5 million

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

15.2 Percentage to cover professional fees

(If no other percentage is stated, it shall be 15 per cent.)

N/A

15.3 Insurance of existing structures - clause 6.7.11^{*1}

(Unless otherwise stated, clause 6.7.1 applies. If it is not to apply, state the reference number and date or other identifier of the replacement document(s).)

- does not apply

15.4 Insurance of work or supply comprised in Orders - clause 6.8

(If neither entry is deleted, the clause does not apply.)

- does not apply

15.5 Not applicable

15.6 Terrorism Cover - details of the required cover

(Unless otherwise stated, Pool Re Cover is required.)

are set out in the following document(s) N/A

[8] As to choice of applicable insurance provisions, see the Measured Term Contract Guide. In respect of existing structures, it is vital that any prospective Employer who is not familiar with clause 6.7 and the alternative solutions under clause 6.7.1 - in particular, any Employer who is a tenant - or an appropriate member of the Employer's professional team, should consult specialist insurance advisers prior to the tender stage. Any Employer who is a tenant should also consult his insuring landlord prior to that stage.

16 Break Provisions - Employer or Contractor
(Clause 7.1)

The period of notice is 13 weeks

17 Settlement of Disputes
(Clauses 9.2, 9.3 and 9.4.1)

Adjudication^{9]}

The Adjudicator is to be appointed upon request

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.)

- The Royal Institution of Chartered Surveyors

[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.

Attestation

Note on Execution

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

Execution under hand

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

Execution as a Deed

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

Other forms of Attestation

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

As witness

the hands of the Parties
or their duly authorised representatives

Signed by or on behalf of
the Employer

in the presence of:

witness' signature

witness' witness'

address

Signed by or on behalf of
the Contractor

SHogan

Sean Hogan (Feb 2, 2026, 3:03pm)

02 Feb 2026

in the presence of:

Sully Elliot

Sully Elliot (Feb 2, 2026, 3:27pm)

02 Feb 2026

witness' name

witness' address

15 Gate Lodge Close, Round Spinney Industrial Estate, Northampton, NN3 8RJ

Conditions

Section 1 Definitions and Interpretation

Definitions

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

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

Adjustment Percentage: the percentage tendered by the Contractor on or off the rates listed in the Schedule of Rates and stated in the **Contract Particulars (item 12.1)** (which shall not apply to any valuation of an Order or a part of it as daywork).

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

All Risks Insurance: see **clause 6.6**.

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

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

BIM Protocol: (where applicable) the document identified as such in the **Contract Particulars (item 5)**.

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

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

Clause 6.7.1 Replacement Schedule: (where applicable) the insurance schedule and/or other documents identified as such in the **Contract Particulars (item 15.3)**.

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

Construction Industry Scheme (or 'CIS'): the current scheme under the Income and Corporation Taxes Act 1988.

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

Contract Administrator: the person named in **Article 3** or any successor nominated or otherwise agreed under **clause 3.10**.

Contract Area: see the **First Recital**.

Contract Documents: the Agreement, these Conditions, the Schedule of Rates and (where applicable) the BIM Protocol.

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

Contract Period: subject to **clause 7.1**, the period stated in the **Contract Particulars (item 3)**.

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

Contractor's Persons: the Contractor's employees and agents, all other persons employed or engaged in the execution of Orders or any part of them and any other person properly on the Site in connection therewith, excluding the Contract Administrator, the Employer, Employer's Persons and any Statutory Undertaker.

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

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

Excepted Risks: see **clause 6.6**.

Insolvent: see **clause 8.1**.

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

Joint Names Policy: see **clause 6.6**.

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

National Schedule of Rates: the National Schedule of Rates (Building Works) and/or such alternative version of the National Schedule of Rates (published by NSR Management Ltd.) identified in the **Contract Particulars (item 12.2)**.

Order: the written description and/or drawings of any work and/or the supply of labour, plant, materials and/or goods to be carried out under this Contract on instructions from the Contract Administrator, including any Variation thereto.

Order Completion Date: see **clause 2.11**.

Parties: the Employer and the Contractor together.

Party: either the Employer or the Contractor.

PC Regulations: the Public Contracts Regulations 2015.

Principal Contractor: the Contractor or such other contractor as is either named in **Article 5** or appointed by the Employer in relation to any Order.

Principal Designer: the Contract Administrator or such other person as is either named in **Article 4** or appointed by the Employer in relation to any Order.

Public Holiday: Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.¹¹¹

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

Schedule of Hourly Charges: see **clause 5.4.1**.

Schedule of Rates: the schedule of rates identified in the **Contract Particulars (item 12)**, together with the preliminaries and specification preambles applicable to this Contract included in or annexed to it.

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

Site: the building(s) and/or land within the Contract Area to which an Order relates.

Site Materials: all unfixed materials and goods delivered to and placed on or adjacent to a Site which are intended for incorporation in the work under an Order relating to that Site.

Specified Perils: see **clause 6.6**.

Statutory Requirements: any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the work in any Order or performance of any obligations under this Contract and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to that work or with whose systems the work is, or is

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

to be, connected.

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

Terrorism Cover: see clause 6.6.

Valuation Date: each date as specified by the **Contract Particulars (item 10)**.

Variation: see clause 5.1.

VAT: Value Added Tax.

Works Insurance Policy: the Joint Names Policy or policies covering the work or supply comprised in Orders to be effected and maintained under clause 6.7.2 or 6.8.

Agreement etc. to be read as a whole

The Agreement and these Conditions are to be read as a whole. Nothing contained in any other Contract Document or in any drawing or specification issued as part of an Order shall override or modify the Agreement or these Conditions.

Headings, references to persons, legislation etc.

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

the headings, notes and footnotes are included for convenience only and shall not affect the interpretation of this Contract;

the singular includes the plural and vice versa;

a gender includes any other gender;

a reference to a 'person' includes any individual, firm, partnership, company and any other body corporate;

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

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

Reckoning periods of days

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

Contracts (Rights of Third Parties) Act 1999

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

Notices and other communications

Each Order, notice, instruction or other communication referred to in the Agreement or these Conditions shall be in writing.

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

Applicable law

This Contract shall be governed by and construed in accordance with the law of England.¹¹²¹

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

Section 2

Carrying out Work

2.1 Contractor's obligations

On receipt of an Order the Contractor shall carry it out in a proper and workmanlike manner and in accordance with the Contract Administrator's instructions, the Contract Documents, the Construction Phase Plan and Statutory Requirements, and shall give all notices required by the Statutory Requirements.

2.2 Materials, goods and workmanship

2.2.1 The Contractor in carrying out each Order shall use materials, goods and workmanship of the quality and standards specified in the Order or, if not so specified, as specified in the Schedule of Rates.

2.2.2 Insofar as the quality of materials or goods or of the standards of workmanship are stated to be a matter for the Contract Administrator's approval, such quality and standards shall be to his reasonable satisfaction.

2.2.3 To the extent that the quality of materials and goods or standards of workmanship are not described in the Order or Schedule of Rates nor stated to be a matter for such approval or satisfaction, they shall be of a standard appropriate to the relevant work.

2.2.4 For the purposes of carrying out each Order the Contractor, subject to clause 2.3.1.2, shall:

2.2.4.1 provide all the labour, materials and goods necessary;

2.2.4.2 provide, unless otherwise stated in the Contract Documents, the requisite plant and equipment for the proper execution of all Orders, including scaffolding, tackle, machinery, tools or other appliances and everything necessary for the use of his workmen and shall be responsible for carrying them to the place where they are required, for any necessary erection and for subsequent removal;

2.2.4.3 provide all items necessary to comply with the Statutory Requirements in respect of safety, health and welfare,

and for the purposes of this Contract shall take all reasonable steps to encourage Contractor's Persons to be registered cardholders under the Construction Skills Certification Scheme (CSCS) or qualified under an equivalent recognised qualification scheme.

2.3 Rights of Employer

2.3.1 The Employer reserves the right:

2.3.1.1 to place orders for similar work with other contractors or his own labour within the Contract Area;

2.3.1.2 to supply any of the materials, goods or plant and equipment necessary for the carrying out of any Order.

2.3.2 Materials and goods supplied by the Employer under clause 2.3.1.2 shall remain the property of the Employer and shall be used by the Contractor for the carrying out of an Order and for no other purpose and the Contractor shall be responsible for their safe storage whilst on the Site. Any such materials or goods not required for the carrying out of an Order shall, on completion of the Order or on the termination of the Contractor's employment, whichever first occurs, be disposed of or dispatched by the Contractor as directed by the Contract Administrator; the cost of such disposal or dispatch shall be certified by the Contract Administrator for payment by the Employer under clause 4.6.

2.3.3 The Contractor shall give a receipt for any materials or goods handed over to him by the Contract Administrator and shall obtain a receipt for any returned.

- 2.3.4 The Contractor shall be responsible for the safe storage of any plant and equipment supplied for him by the Employer under clause 2.3.1.2 and shall return such plant and equipment to the Contract Administrator at the Site on completion of the Order for which it is supplied or on termination of the Contractor's employment, whichever first occurs. The Contractor shall give a receipt for such plant and equipment and obtain a receipt from the Contract Administrator on its return.
- 2.3.5 The Employer shall notify the Contractor of the then current value of any materials or goods or usage of plant supplied under this clause 2.3 and the Contractor shall be entitled to a handling charge of 5% on that value. The Adjustment Percentage shall not be applied to that charge.
- 2.3.6 Materials and goods supplied by the Employer for any Order shall be of the respective kinds described in the Schedule of Rates; the Contractor shall not be liable for any loss or damage resulting from failure of such materials or goods to conform with this clause 2.3.6.

2.4 Size and duration of Orders

Unless otherwise agreed between the Contractor and the Contract Administrator, Orders shall be of a size consistent with the Contract Particulars (item 6) and shall be reasonably capable of being carried out within the Contract Period.

2.5 Value of work to be carried out under this Contract

With regard to the anticipated value of work as stated in the Contract Particulars (item 7), the Employer gives no warranty or undertaking as to the actual amount of work that will be ordered and no variance in the actual value of work ordered shall give rise to a change in any rate, price or percentage adjustment.

2.6 Orders - completion

Unless covered by a priority coding referred to in the Contract Particulars (item 8), each Order shall state a commencement date and a reasonable date for its completion and, subject to clause 2.10.2, the Contractor shall complete each Order by that completion date.

2.7 Programme

Where the Contract Administrator requests, the Contractor, without charge to the Employer, shall provide the Contract Administrator with a programme for carrying out the Orders identified by the Contract Administrator in his request and, within a reasonable time after the issue of a Variation, with amendments and revisions to that programme to take account of the Variation. Nothing in the programme or in any amendment or revision of it shall impose any obligations beyond those imposed by the Contract Documents.

2.8 Divergences from Statutory Requirements

- 2.8.1 If the Contractor becomes aware of any divergence between the Statutory Requirements and either an Order or a Variation, he shall immediately give to the Contract Administrator a notice specifying the divergence.
- 2.8.2 Provided the Contractor is not in breach of clause 2.8.1, the Contractor shall not be liable under this Contract if the work comprised in an Order does not comply with the Statutory Requirements to the extent that the non-compliance results from the Contractor having carried out work in accordance with the Order or with any instruction requiring a Variation.

2.9 Fees or charges

The Contractor shall pay all fees and charges (including any rates or taxes) legally demandable under any of the Statutory Requirements in respect of an Order. The Contractor shall be reimbursed for payment of such fees and charges to the extent that they are not included in the rates or prices in the Schedule of Rates.

2.10 Extension of time

- 2.10.1 The Contractor shall forthwith give notice to the Contract Administrator of any matter which is causing or is likely to cause delay in the completion of an Order beyond the date stated for its completion but shall constantly use his best endeavours to carry out each Order by the stated date.

- 2.10.2 If the Contractor is unable to complete an Order by its stated date for completion, due to a suspension by the Contractor of the performance of his obligations under this Contract pursuant to clause 4.7 or for reasons beyond his control (including compliance with any instruction of the Contract Administrator that does not arise from the Contractor's default), the Contract Administrator shall fix such later date for completion as may be fair and reasonable and notify the Parties accordingly. Provided the Order when issued complied with clause 2.4, the Contractor shall not be relieved of his obligations to complete the Order by the later date so fixed by reason of that later date being outside the Contract Period.

2.11 Order Completion Date

- 2.11.1 The Contractor shall notify the Contract Administrator the date when in his opinion an Order has been completed and/or supplied in accordance with this Contract. If the Contract Administrator does not dissent by notice, giving reasons, within 14 days of receipt of the Contractor's notice, the date so notified shall for all the purposes of this Contract be the date when the Order was completed and/or supplied in accordance with this Contract (the 'Order Completion Date').
- 2.11.2 If the Contract Administrator dissents, then, as soon as he is satisfied that the Order has been duly completed and/or supplied, he shall as soon as practicable notify the Contractor and, unless otherwise agreed or determined in accordance with the dispute resolution procedures of this Contract, the Order Completion Date shall be the date stated in the Contract Administrator's notice.

2.12 Defects

Any defects, shrinkages or other faults which appear within 6 months of the Order Completion Date and which are due to materials or workmanship not in accordance with this Contract, shall be made good by the Contractor at no cost to the Employer.

3.1 Assignment

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

3.2 Sub-contracting

The Contractor shall not without the prior consent of the Contract Administrator sub-contract any Order or part of an Order. Such consent shall not be unreasonably delayed or withheld and shall apply to all Orders except to the extent otherwise stated in that consent. Where considered appropriate, the Contractor shall engage the Sub-Contractor using the JCT Short Form of Sub-Contract.

3.3 Contractor's representative

The Contractor shall employ a competent Contractor's representative and any Orders or Variations given to him by the Contract Administrator shall be deemed to have been issued to the Contractor.

3.4 Access to the Site

3.4.1 Except to the extent that the Schedule of Rates otherwise provides, access to the Site shall be arranged by, and in accordance with instructions of, the Contract Administrator who, where the Site is occupied, shall also be responsible for ensuring that the occupier removes such fixtures, fittings or other items as are necessary to enable the Contractor to carry out the Order and does not otherwise unreasonably prevent or impede the Contractor from carrying out such Order.

3.4.2 If the Contractor is unable to gain access to the Site in accordance with the Contract Administrator's instructions or, having been granted access to an occupied Site, cannot reasonably carry out the Order by reason of the Contract Administrator's or occupier's non-compliance with clause 3.4.1, he shall forthwith notify the Contract Administrator; the time necessarily spent unproductively by the Contractor in consequence shall be assessed or recorded and valued as daywork under clause 5.4.1, and clause 5.4.2 shall apply so far as relevant.

3.4.3 To the extent that clauses 3.4.1 and 3.4.2 do not apply because the Schedule of Rates provides otherwise, the Contractor shall comply with the access provisions of that Schedule.

3.5 Variations

3.5.1 The Contract Administrator may from time to time require Variations, through instructions and/or the issue of further drawings, details, directions and/or explanations.

3.5.2 The Contractor shall not make any alteration in, addition to or omission from the work and/or supply comprised in any Order except as required under clause 3.5.1. If the Contractor carries out a Variation otherwise than pursuant to an instruction or other requirement of the Contract Administrator, the Contract Administrator may sanction it.

3.5.3 No Variation required by the Contract Administrator or subsequently sanctioned by him shall invalidate the Order or vitiate this Contract.

3.5.4 The value of any Variation issued or sanctioned by the Contract Administrator shall be ascertained in accordance with section 5 and, as soon as ascertained in whole or in part, the ascertained amount shall be included in the estimated value of the relevant Order for the purposes of clause 4.3 (progress payments) and in the valuation of it for the purposes of clause 4.4 or 4.5 (final payment).

3.6 Cancellation of an Order

3.6.1 The Contract Administrator may cancel any Order.

3.6.2 On the cancellation of an Order:

3.6.2.1 the Contract Administrator shall value and certify, in accordance with clause 4.4, for payment by the Employer under that clause, any work or supply which in his opinion has been properly carried out or made by the Contractor against that Order, taking into account any amounts previously certified in respect of it; and

3.6.2.2 the Employer shall reimburse the Contractor such additional direct costs as may reasonably have been incurred by the Contractor as a result.

3.7 Exclusion from the Site

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

3.8 Non-compliance with instructions

If within 7 days after receipt of a notice from the Contract Administrator requiring compliance with a Contract Administrator's instruction the Contractor does not comply, the Employer may employ and pay other persons to execute any work whatsoever which may be necessary to give effect to that instruction. The Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and such costs may be withheld or deducted by the Employer from any monies due or to become due to the Contractor under this Contract or shall be recoverable from the Contractor as a debt.

3.9 COM Regulations

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

3.9.1 the Employer shall in each case ensure that the Principal Designer carries out his duties and, where the Contractor is not the Principal Contractor, shall ensure that the Principal Contractor carries out his duties under those regulations;

3.9.2 the Contractor shall comply with regulations 8 and 15 and, where he is the Principal Contractor, with regulations 12 to 14;¹³¹

3.9.3 whether or not the Contractor is the Principal Contractor, compliance by the Contractor with his duties under the regulations, including any such directions as are referred to in regulation 15(3), shall be at no cost to the Employer and shall not entitle the Contractor to an extension of time;

3.9.4 if the Employer appoints any other person as the Principal Designer or Principal Contractor either in relation to all Orders or for specific Orders, the Employer shall immediately upon that appointment notify the Contractor with details of the new appointee.

3.1 D Replacement of Contract Administrator

If the Contract Administrator at any time ceases to hold that post for the purposes of this Contract, the Employer shall as soon as reasonably practicable, and in any event within 14 days of the cessation, nominate a replacement. No replacement Contract Administrator appointed for this Contract shall be entitled to disregard or overrule any certificate, opinion, decision, approval or instruction given or expressed by any predecessor in that post, save to the extent that that predecessor if still in the post would then have had power under this Contract to do so.

(13) Where the Employer is a domestic client, as defined in regulation 2, the Principal Contractor may also be responsible for carrying out certain of the client's duties under regulations 4, 6 and 8.

4.1 VAT

Sums certified for payment are exclusive of VAT and in relation to each payment to the Contractor under this Contract, the Employer shall in addition pay the amount of any VAT properly chargeable in respect of it.

4.2 Construction Industry Scheme (CIS)

Where it is stated in the Contract Particulars (item 9) that the Employer is a 'contractor' for the purposes of the Construction Industry Scheme (CIS) or if at any time up to the final payment in respect of the last Order outstanding under this Contract the Employer becomes such a 'contractor', his obligation to make any payment under this Contract is subject to the provisions of the CIS.

4.3 Progress payments

4.3.1 Where at the date of issue of an Order or of any Variation to it (after adjustment for the effects of any relevant Variations):

4.3.1.1 the value of the Order is estimated by the Contract Administrator to exceed the amount stated in the Contract Particulars (item 10); and/or

4.3.1.2 the duration of the work comprised in that Order is estimated to be 45 days or more

the Contractor may not later than each subsequent Valuation Date make an application to the Contract Administrator for a progress payment of the amount he considers due for the work carried out or supplies made pursuant to the Order calculated as at the relevant Valuation Date. The application shall state the basis on which that sum has been calculated and shall be accompanied by such further information as may be specified in the Contract Documents.

4.3.2 The due date for a progress payment shall in each case be the date 7 days after the relevant Valuation Date.

4.3.3 Where an application is made in accordance with clause 4.3.1, the Contract Administrator shall not later than 5 days after the due date issue a certificate, stating the sum that he considers to be, or to have been, due to the Contractor at the due date in respect of the progress payment, after taking into account any amounts previously certified and {where relevant} any sums paid under clause 4.6.3 in respect of any application made after the issue of the latest certificate. The certificate shall state the basis on which that sum has been calculated.

4.4 Final payment where Contract Administrator measures and values Orders

Where the Contract Administrator is to value an Order pursuant to clause 5.2:

4.4.1 the due date shall be 28 days after the Order Completion Date or, for Orders where progress payments are to be made, 51 days after the Order Completion Date;

4.4.2 the Contract Administrator shall not later than 5 days after the relevant due date issue a certificate stating as the sum due the total amount that he considers to be or have been due to the Contractor under these Conditions in respect of the completed Order, less any amounts previously certified in respect of it under clause 4.3.3 and (where relevant) any sums paid in respect of any such application as is mentioned in clause 4.3.3, and stating the basis on which the sum has been calculated;

4.4.3 if the Contract Administrator does not issue a certificate in respect of the Order in accordance with clause 4.4.2 within 33 days of the Order Completion Date or, for Orders where progress payments are to be made, within 56 days of the Order Completion Date, the Contractor may make an application stating the sum that he considers will or has become due to him in respect of the Order and the basis on which that sum has been calculated.

4.5 Final payment where Contractor measures and values Orders

Where the Contractor is to value an Order pursuant to clause 5.2:

- 4.5.1 the Contractor shall following the Order Completion Date make an application to the Contract Administrator in respect of the completed Order, stating the sum that the Contractor considers will become due to him on the due date in respect of the Order and the basis on which that sum has been calculated, accompanied by such further information as may be specified in the Contract Documents;
- 4.5.2 the due date for payment in respect of the completed Order shall be the date 7 days after the next monthly Valuation Date following receipt by the Contract Administrator of the Contractor's application. Not later than 5 days after the due date the Contract Administrator shall issue a certificate stating the sum that he considers to be due to the Contractor in respect of the completed Order, after taking into account any amounts previously certified in respect of the Order, and the basis on which that sum has been calculated;
- 4.5.3 if the Contractor fails to make an application in accordance with clause 4.5.1 within 56 days after the Order Completion Date, the Contract Administrator may at any time give the Contractor notice that, unless the Contractor makes an application within a period of 28 days after the date of issue of the notice, the Contract Administrator will arrange for the measurement and valuation of the work and/or supply comprising the Order;
- 4.5.4 if the Contractor fails to make an application within the period of notice given under clause 4.5.3:
 - 4.5.4.1 the Contract Administrator shall arrange for measurement and valuation of the Order;
 - 4.5.4.2 the due date shall be 35 days from the date of expiry of the notice period; and
 - 4.5.4.3 the Contract Administrator shall not later than 5 days after the due date issue a certificate in accordance with clause 4.5.2 but, in addition to deducting any amounts previously certified in respect of the Order, shall also be entitled to deduct the amount of the costs reasonably and properly incurred by or on behalf of the Employer in respect of the measurement and valuation;
- 4.5.5 if clause 4.5.4 applies but the Contract Administrator fails to issue a certificate as required by clause 4.5.4.3, the Contractor may at any time after the expiry of the 5 day period referred to in clause 4.5.4.3 make an application giving the details required by clause 4.5.1.

4.6 Payments - final date and amount

- 4.6.1 Subject to clause 4.6.4, the final date for payment of each payment under clauses 4.3 to 4.5 shall be 14 days from its due date.
- 4.6.2 Subject to any notice given by the Employer under clause 4.6.5, the Employer shall pay the sum stated as due in the relevant certificate on or before the final date for payment.
- 4.6.3 If a certificate is not issued in accordance with clause 4.3.3, 4.4.2, 4.5.2 or 4.5.4, the Employer shall, subject to any notice given under clause 4.6.5, pay the Contractor the sum stated as due in the application.
- 4.6.4 Where an application is made by the Contractor in the circumstances mentioned in clause 4.4.3 or 4.5.5, the final date for payment of the sum specified in it shall for all purposes be regarded as postponed by the same number of days after the last date for issue of the certificate referred to in clause 4.4.2 or 4.5.4.3 that the application is made but notice by the Employer under clause 4.6.5 may not be given prior to the application being made.
- 4.6.5 Where the Employer intends to pay less than the sum stated as due from him in the certificate or application, he shall not later than 5 days before the final date for payment give the Contractor notice of that intention specifying the sum he considers to be due to the Contractor at the date the notice is given and the basis on which that sum has been calculated. Where such notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated as due in the notice.
- 4.6.6 If the Employer fails to pay a sum, or any part of it, due to the Contractor under these Conditions by its final date for payment, the Employer shall, in addition to any unpaid amount that should properly have been paid, pay the Contractor simple interest on that

amount at the Interest Rate for the period from the final date for payment until payment is made.

- 4.6.7 Any such unpaid amount and any interest under clause 4.6.6 shall be recoverable as a debt. Acceptance of a payment of interest shall not in any circumstances be construed as a waiver either of the Contractor's right to proper payment of the principal amount due, to suspend performance under clause 4.7 or to terminate his employment under section 8.
- 4.6.8 A notice to be given by the Employer under clause 4.6.5 may be given on his behalf by the Contract Administrator or by any other person who the Employer notifies the Contractor as being authorised to do so.
- 4.6.9 In relation to the requirements for the issue of certificates and the giving of notices under section 4, it is immaterial that the amount then considered to be due may be zero.

4.7 Contractor's right of suspension

- 4.7.1 If the Employer fails to pay a sum payable to the Contractor in accordance with clause 4.6 (together with any VAT properly chargeable in respect of that payment) by the final date for payment and the failure continues for 7 days after the Contractor has given notice to the Employer, with a copy to the Contract Administrator, of his intention to suspend the performance of his obligations under this Contract and the grounds for such suspension, the Contractor, without affecting his other rights and remedies, may suspend performance of any or all of those obligations until payment is made in full.
- 4.7.2 Where the Contractor exercises his right of suspension under clause 4.7.1, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of exercising the right.
- 4.7.3 Applications in respect of any such costs and expenses shall be made to the Contract Administrator and the Contractor shall with his application or on request submit such details of them as are reasonably necessary for ascertaining the amount in question. When ascertained or agreed, the amount shall be included in the next certificate.

Section 5 Measurement and Valuation

5.1 Definition of Variations

The term 'Variation' means:

- 5.1.1 the alteration or modification of the design, quality or quantity of work or supply comprised in an Order;
- 5.1.2 any other addition to, omission from or alteration of any Order; or
- 5.1.3 the removal of any inconsistencies in or between any documents included in an Order.

5.2 Measurement and Valuation - responsibility

Unless otherwise agreed by the Contract Administrator and the Contractor, all work carried out pursuant to an Order (including any Variations required by the Contract Administrator or subsequently sanctioned by him) shall be valued in accordance with clauses 5.3 to 5.8. Such valuation of an Order shall be undertaken by whichever of them is designated in the Contract Particulars (item 11).

5.3 Valuation - measurement

- 5.3.1 Subject to clauses 2.3.5, 5.4.1 and 5.5 the valuation of an Order shall be ascertained by measurement and valuation in accordance with the principles of measurement and the rates or prices in the Schedule of Rates applicable at the date of the Order, insofar as such rates or prices apply, subject to adjustment by the Adjustment Percentage.
- 5.3.2 Where the Contract Administrator is to undertake measurement of an Order, he shall give the Contractor an opportunity to be present at the time of such measurement and to take such notes and measurements as the Contractor may require.

5.4 Valuation - daywork

- 5.4.1 Where in the Contract Administrator's opinion the appropriate basis for valuation of an Order or part of an Order is daywork, the direct labour element shall be calculated in accordance with the all-in labour rates (inclusive of incidental costs, overheads and profit) set out in the Schedule of Hourly Charges annexed to this Contract, with related charges being calculated in accordance with that Schedule and/or the Contract Particulars¹⁴¹.
- 5.4.2 The Contractor shall give to the Contract Administrator reasonable prior notice of the commencement of any work (or supply of labour and/or materials) which he considers should be carried out as daywork and not later than 7 Business Days after the work has been executed the Contractor shall deliver to the Contract Administrator for verification return(s) in the form required by the Contract Administrator specifying the time spent daily upon the work, the workmen's names, and the plant, materials and other items employed. A copy of the returns, if approved by the Contract Administrator, shall be returned to the Contractor.

5.5 Derived rates

- 5.5.1 Where the rates or prices in the Schedule of Rates do not apply or where there is no applicable all-in labour rate in the Schedule of Hourly Charges, as the case may be, the value shall be based upon such rates or prices as may fairly be deduced therefrom, rates and prices deduced from the Schedule of Rates being subject to adjustment by the Adjustment Percentage.
- 5.5.2 If it is not practicable or would not be fair and reasonable to apply the rates or prices in the Schedule of Rates or Schedule of Hourly Charges or to deduce rates or prices therefrom, the value shall be agreed between the Parties, failing which it shall be ascertained on a fair

[14] In addition to the inclusive labour rates set out in the Schedule of Hourly Charges, this Contract envisages that that Schedule, alone or in combination with the Contract Particulars, will set out the basis of charging for any daywork sub-contracted and will provide for any percentage or other handling charges that are to be added to the cost of materials, goods, plant, services, consumables and (if appropriate) sub-contract work supplied.

and reasonable basis by the Contract Administrator after consultation with the Contractor.

5.6 Rates - Fluctuations

- 5.6.1 Unless it is stated in the Contract Particulars (item 12.3) that this clause 5.6.1 does not apply:
- 5.6.1.1 where the Schedule of Rates is the National Schedule of Rates, the rates in that Schedule current at the commencement of the Contract Period will apply to the valuation of Orders issued prior to the next following 1 August and subsequently the update for those rates at 1 August in each year will apply to Orders issued on or after 1 August; or
- 5.6.1.2 where the Schedule of Rates is not the National Schedule of Rates, the basis on which and the dates as at which the rates in that Schedule are to be revised during the Contract Period shall be those stated or referred to in the Contract Particulars (item 12.4).
- 5.6.2 If it is stated in the Contract Particulars that clause 5.6.1 does not apply or, where the Schedule of Rates is not the National Schedule of Rates, if there is no identified basis for revision as referred to in clause 5.6.1.2, the rates given in the Schedule of Rates current at the commencement of the Contract Period shall remain fixed for all Orders.
- 5.6.3 Unless it is stated in the Contract Particulars (item 13.2) that this clause 5.6.3 does not apply, the all-in labour rates set out in the Schedule of Hourly Charges shall be revised at 1 August in each year, or such other annual revision date as is stated in that item, in accordance with the basis (if any) set out in that Schedule or identified in the Contract Particulars or, if none, in accordance with clause 5.6.5.
- 5.6.4 Whether or not clause 5.6.3 applies, any all-in hourly rate deduced or fixed under clause 5.5 shall be revised on such revision date (if any) as is fixed for revision of the relevant Schedule or, if none is fixed, as at 1 August in each year.
- 5.6.5 In the absence of any express basis for revision where clause 5.6.3 applies or in the case of revision under clause 5.6.4, the revised rates shall be agreed between the Contractor and the Contract Administrator or, failing agreement, determined by the Contract Administrator on a fair and reasonable basis.

5.7 Overtime work

- 5.7.1 For the purposes of this clause 5.7:
- 5.7.1.1 'overtime' means time worked in addition to 'normal working hours' as defined in the rules or decisions of the Construction Industry Joint Council or other wage-fixing body applicable to the work comprised in the Order, as promulgated at the date of the Order; and
- 5.7.1.2 'non-productive overtime rates' means the net amounts, in excess of the rates paid for work in normal working hours, which are to be paid for overtime in accordance with the rules or decisions mentioned above as promulgated at the date of the Order.
- 5.7.2 Where overtime work for an Order is specifically directed by the Contract Administrator, unless an all-in non-productive overtime rate is included in the Schedule of Hourly Charges, the Contractor, in addition to the amount otherwise due under this section 5 in respect of the valuation of the Order, shall be paid the amount of the non-productive overtime rates paid by the Contractor, adjusted by the percentage set out in the Contract Particulars (item 14).
- 5.7.3 No payment shall be due under clause 5.7.2 unless the Contractor has submitted to the Contract Administrator returns, in a formal directed by the Contract Administrator or as provided in the preliminaries in the Schedule of Rates, stating the amount of overtime worked in accordance with the directions referred to in clause 5.7.2 and the amount of the non-productive overtime rates paid by the Contractor. A copy of those returns, if approved, shall be certified by the Contract Administrator and returned to the Contractor.

5.8 Interruption of work - unproductive costs

If, while carrying out the work comprised in any Order, the Contractor is required by the Contract

Administrator during normal working hours (as referred to in clause 5.7.1) to interrupt such work and to carry out other work in priority to that comprised in the Order, any agreed lost time or other unproductive costs shall be valued as daywork under clause 5.4.1, and clause 5.4.2 shall apply so far as relevant.

Section 6

Injury, Damage and Insurance

6.1 Contractor's liability - personal injury or death

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

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

Subject to clause 6.3, the Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of an Order and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor or any Contractor's Person.

6.3 loss or damage to existing structures or their contents

6.3.1 Where clause 6.7.1 applies, the Contractor's liability and indemnity under clause 6.2 excludes any loss or damage to existing structures or to any of their contents required to be insured under clause 6.7 that is caused by any of the risks or perils required or agreed to be insured against under that clause.

6.3.2 The exclusion in clause 6.3.1 shall apply notwithstanding that the loss or damage is or may be due in whole or in part to the negligence, breach of statutory duty, omission or default of the Contractor or any Contractor's Person.

6.3.3 Where a Clause 6.7.1 Replacement Schedule applies in lieu of clause 6.7.1, the Contractor's liability and indemnity under clause 6.2 shall, in respect of loss, injury or damage to the existing structures and their contents due to the causes specified in that clause, be subject only to such limitations or exclusions as are specified in that schedule.

6.3.4 The reference in clause 6.2 to 'property real or personal' does not include the work comprised in an Order, work executed or Site Materials up to and including whichever is the earlier of the Order Completion Date or the date of termination of the Contractor's employment.

6.4 Contractor's insurance of his liability

6.4.1 Without limiting or affecting his indemnities to the Employer under clauses 6.1 and 6.2, the Contractor shall effect and maintain insurance in respect of claims arising out of the liabilities referred to in those clauses which:

6.4.1.1 in respect of claims for personal injury to or the death of any employee of the Contractor arising out of and in the course of such person's employment, shall comply with all relevant legislation; and

6.4.1.2 for all other claims to which clause 6.4.1 applies¹⁵¹, shall indemnify the Employer in like manner to the Contractor (but only to the extent that the Contractor may be liable to indemnify the Employer under the terms of this Contract) and shall for any one occurrence or series of occurrences arising out of one event be in a sum not less than that stated in the Contract Particulars (item 15.1).^{11,1}

6.4.2 As to evidence that such insurances have been effected and are being maintained and the consequences of failure to comply, clause 6.11 shall apply.

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

[16] The Contractor may, if he wishes, insure for a sum greater than that stated in the Contract Particulars (item 15).

6.5 Excepted Risks

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

6.6 Related definitions

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

All Risks Insurance¹¹⁷¹: insurance which provides cover against any physical loss or damage to work executed or supplies made pursuant to an Order and Site Materials (whether supplied by the Employer or by the Contractor) and against the reasonable cost of the removal and disposal of debris and of any shoring and propping which results from such physical loss or damage but excluding the cost necessary to repair, replace or rectify:

- (a) property which is defective due to:
 - (i) wear and tear,
 - (ii) obsolescence, or
 - (iii) deterioration, rust or mildew;
- (b) any work executed or supplies made or any Site Materials lost or damaged as a result of its own defect in design, plan, specification, material or workmanship or any other work executed which is lost or damaged in consequence thereof where such work relied for its support or stability on such work which was defective¹¹⁸¹;
- (c) loss or damage caused by or arising from:
 - (i) any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation, commandeering, nationalisation or requisition or loss or destruction of or damage to any property by or under the order of any government *de jure* or *de facto* or public, municipal or local authority,
 - (ii) disappearance or shortage if such disappearance or shortage is only revealed when an inventory is made or is not traceable to an identifiable event, or
 - (iii) an Excepted Risk.

Excepted Risks: the risks comprise:

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

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

[18] In an All Risks Insurance policy in respect of works to be carried out under this Contract, cover should not be reduced by any exclusion that goes beyond the terms of paragraph (b) in this definition. For example, an exclusion in terms that 'This Policy excludes all loss of or damage to the property insured due to defective design, plan, specification, materials or workmanship' would not be in accordance with the terms of clause 6.7.2 or 6.8 or that definition. Wider All Risks cover than that specified may be available, though it is not standard.

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

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

Pool Re Cover: such insurance against loss or damage to work executed and Site Materials caused by or resulting from terrorism as is from time to time generally available from insurers who are members of the Pool Reinsurance Company Limited scheme or of any similar successor scheme.¹

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

Terrorism Cover: Pool Re Cover or other insurance against loss or damage to work executed or supplies made pursuant to an Order and Site Materials (and/or, for the purposes of clause 6.13.1, to an existing structure and/or its contents) caused by or resulting from terrorism.¹

6.7 Joint Names Insurance of work or supply comprised in Orders and existing structures by the Employer²⁰¹

The Employer shall:

- 6.7.1 unless otherwise stated by the Contract Particulars (item 15.3) effect and maintain a Joint Names Policy in respect of the existing structures for which Orders may be issued, together with the contents of them owned by him or for which he is responsible, for the full cost of reinstatement, repair or replacement of loss or damage due to any of the Specified Perils;
- 6.7.2 subject to clause 6.8 where the Contract Particulars state that that clause applies (item 15.4), effect and maintain a Joint Names Policy for All Risks Insurance with cover no less than that specified in clause 6.6 for the full reinstatement value of each and every Order (plus the percentage, if any, stated in the Contract Particulars to cover professional fees (item 15.2))

and shall maintain such Joint Names Policies up to and including the end of the Contract Period (or up to the Order Completion Date of any Order which either pursuant to clause 2.10 or by agreement pursuant to clause 2.4 occurs after the end of the Contract Period), or (if earlier) the date of termination of the Contractor's employment under this Contract. In respect of the insurance referred to in this clause 6.7 the Employer shall notify his insurer of the identity of the properties in respect of which Orders may be issued and the Contract Period (but with the proviso that work or supply in respect of such properties may continue to be carried out or made by the Contractor until any later Order Completion Date).

6.8 Joint Names Insurance of work or supply comprised in Orders by the Contractor

If the Contract Particulars (item 15.4) state that this clause 6.8 applies, the Contractor shall effect and maintain with insurers approved by the Employer a Joint Names Policy for All Risks Insurance with cover no less than that specified in clause 6.6²¹¹ for the full reinstatement value of each and every Order (plus the percentage, if any, stated in the Contract Particulars (item 15.2) to cover professional

[19] As respects Terrorism Cover and the insurance requirements, see footnote [17] and the Measured Term Contract Guide.

[20] **Clause 6.7 can be used in its existing printed form by those Employers who are able to effect the Joint Names, Specified Perils cover referred to for the Contractor in respect of existing structures and their contents that are owned by the Employer or for which he is responsible.**

However, the Joint Names Policy required by clause 6.7.1 or the extension of a subsisting structure and contents policy to being a Joint Names Policy may not be readily available - and that provision is often not now appropriate for - refurbishment projects or alterations by tenant Employers where existing structures insurance is the landlord's responsibility.

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

The Contract Particulars for clause 6.7.1 (item 15.3) therefore expressly allow the Parties in those circumstances to disapply clause 6.7.1 and, by means of a Clause 6.7.1 Replacement Schedule, to include in place of that clause provisions that are tailored to their particular requirements.

In JCRs view the preparation of such replacement provisions must be assigned to insurance professionals.

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

[21] In some cases it may not be possible for insurance to be taken out against certain of the risks covered by the definition of All Risks Insurance and note the potential difficulty with respect to Terrorism Cover mentioned at footnote (17).

fees) up to and including the Order Completion Date for that Order and shall maintain that policy up to and including:

6.8.1 the end of the Contract Period or (if later) the last Order Completion Date; or

6.8.2 (if earlier) the date of termination of the Contractor's employment.

6.9 Clause 6.8 - use of Contractor's annual policy - as alternative

If and so long as the Contractor independently of this Contract maintains an annual insurance policy which in respect of the work or supplies comprised in Orders:

6.9.1 provides (inter alia) All Risks Insurance with cover and in amounts no less than those specified in clause 6.8; and

6.9.2 is a Joint Names Policy,

that policy shall satisfy the Contractor's obligations under clause 6.8. The annual renewal date of the policy, as supplied by the Contractor, is stated in the Contract Particulars (item 15.5).

6.10 Notification by Contractor of occupation and use

Where clause 6.8 applies, the Contractor shall before commencing to carry out the first Order under this Contract notify the insurer of the Joint Names Policy to which clause 6.8 refers that the Employer may have occupation and use of any property in respect of which Orders may be issued, and shall obtain the agreement of the insurer that any exclusion in the policy relating to such occupation and use shall not apply.

6.11 Evidence of insurance

6.11.1 Where a Party is required by this Contract to effect and maintain an insurance policy or cover under any of clauses 6.4, 6.7, 6.8 and 6.12, that Party shall at the request of the other Party supply such documentary evidence as the other Party may reasonably require that the policy or cover has been effected and remains in force.

6.11.2 If a Party required to provide such documentary evidence fails to provide it within 7 days of a request being made, the other Party may assume that there has been a failure to insure, and may insure against any risk, liability or expense to which he may be exposed as a consequence, but shall not be obliged to do so. If the other Party insures, the defaulting Party shall be liable for the costs that the other Party incurs in taking out and maintaining that insurance. Any costs payable to the Contractor shall be reimbursed to him by the Employer and shall be recoverable from the Employer as a debt; any costs payable to the Employer may be deducted by him from any sums due or to become due to the Contractor under this Contract or shall be recoverable from the Contractor as a debt.

6.12 Terrorism Cover- policy extensions and premiums

6.12.1 To the extent that the Works Insurance Policy excludes (or would otherwise exclude) loss or damage caused by terrorism, the Contractor, where clause 6.8 applies, or the Employer, where clause 6.7.2 applies, shall unless otherwise agreed effect and maintain, either as an extension to the Works Insurance Policy or as a separate Joint Names Policy, in the same amount and for the same period as the Works Insurance Policy, such Terrorism Cover as is specified in or by the Contract Particulars (item 15.6), subject to clauses 6.12.4 and 6.13.

6.12.2 Where clause 6.8 applies and the Contractor is required to take out and maintain Pool Re Cover, the cost of that cover and its renewal shall be deemed to be included in the Contractor's rates and prices save that, if at any renewal of the cover there is a variation in the rate on which the premium is based, the amounts payable to the Contractor shall be adjusted by the net amount of the difference between the premium paid by the Contractor and the premium that would have been paid but for the change in rate.

6.12.3 Where clause 6.8 applies and Terrorism Cover other than Pool Re Cover is specified as required, the cost of such other cover and of its renewal shall be added to the amounts payable to the Contractor.

6.12.4 Where clause 6.8 applies and the Employer is a Local or Public Authority, if at any renewal of the Terrorism Cover (of any type) there is an increase in the rate on which the premium is based, he may instruct the Contractor not to renew the Terrorism Cover. If he so instructs, clause 6.14.5.3 shall apply with effect from the renewal date.

6.13 Terrorism Cover - non-availability - Employer's options

- 6.13.1 If the insurers named in any Joint Names Policy notify either Party that, with effect from a specified date (the 'cessation date'), Terrorism Cover will cease and will no longer be available or will only continue to be available with a reduction in the scope or level of such cover, the recipient shall immediately notify the other Party.
- 6.13.2 The Employer, after receipt of such notification but before the cessation date, shall give notice to the Contractor:
- 6.13.2.1 that, notwithstanding the cessation or reduction in scope or level of Terrorism Cover, the Employer requires that the work comprised in all or certain specified Orders continue to be carried out; and/or
- 6.13.2.2 that on the date stated in the Employer's notice (which shall be a date after the date of the insurers' notification but no later than the cessation date) work on all or certain specified Orders shall terminate.
- 6.13.3 Where clause 6.8 applies and the Employer gives notice under clause 6.13.2 requiring continuation of the work comprised in any Orders, he may instruct the Contractor to effect and maintain any alternative or additional form of Terrorism Cover then reasonably obtainable by the Contractor; the net additional cost to the Contractor of any such cover and its renewal shall be added to the amounts payable to the Contractor.
- 6.13.4 If the Employer gives notice of termination under clause 6.13.2 in respect of any Orders, a valuation of work completed (or of labour, materials and/or plant supplied) that has not been valued and certified before such termination shall be made and certified in respect of those Orders in accordance with sections 4 and 5 and the Employer shall pay the certified amount in accordance with clause 4.6.
- 6.13.5 In the case of any Orders in respect of which notice of termination is not given under clause 6.13.2.2, but work executed and/or Site Materials under any such Order thereafter suffer physical loss or damage caused by terrorism, clauses 6.14 and 6.15 shall as appropriate apply.

6.14 Loss or damage - insurance claims and reinstatement

- 6.14.1 If loss or damage affecting any executed work, Site Materials or other supplies made pursuant to an Order is occasioned by any of the risks covered by the Works Insurance Policy or an Excepted Risk or there is any loss of or damage of any kind to any existing structure or its contents, the Contractor shall forthwith upon it occurring or becoming apparent give notice both to the Contract Administrator and to the Employer of its nature, location and extent.
- 6.14.2 Subject to clauses 6.14.5.1 and 6.14.6, the occurrence of such loss or damage shall be disregarded in computing any amounts payable to the Contractor under this Contract.
- 6.14.3 The Contractor, for himself and his sub-contractors, shall authorise the insurers to pay to the Employer all monies from the Works Insurance Policy, and from any policies covering existing structures or their contents that are effected by the Employer.
- 6.14.4 Where loss or damage affecting executed work or Site Materials or other supplies made pursuant to an Order is occasioned by any risk covered by the Works Insurance Policy, and subject to clause 6.15 where relevant, the Contractor shall after any inspection required by the insurers under the Works Insurance Policy and with due diligence restore the damaged work, replace or repair any lost or damaged Site Materials or supplies made, remove and dispose of any debris (collectively 'reinstatement work') and proceed with the carrying out and completion of the Order(s).
- 6.14.5 Where clause 6.8 applies:
- 6.14.5.1 unless the Employer cancels the Order affected by the loss or damage, the Employer shall pay all monies from such insurance to the Contractor by instalments under separate reinstatement work certificates issued by the Contract Administrator at the same dates as those for certificates under section 4 less only the amounts referred to in clause 6.14.5.2;
- 6.14.5.2 the Employer may retain from those monies any amounts properly incurred by the Employer and notified by him to insurers in respect of professional fees up to

the aggregate amount of the percentage cover for those fees or (if less) the amount paid by insurers in respect of those fees;

6.14.5.3 in respect of reinstatement work, the Contractor shall not be entitled to any payment other than amounts received under the Works Insurance Policy except where there has been a cessation of or reduction in Terrorism Cover under clause 6.12.4 or 6.13 and loss or damage is then caused by or results from terrorism, in which case the reinstatement work shall, to the extent that its cost is no longer recoverable under the policy, be treated as a Variation and under section 4 or clause 6.14.5.1 included in Contract Administrator's certificates. In neither case shall there be any reduction in any amount payable by reason of any act or neglect of the Contractor or of any sub-contractor which may have contributed to the physical loss or damage.

6.14.6 Where clause 6.7.2 applies or where loss or damage is caused by an Excepted **Risk**, reinstatement work shall be treated as a Variation.

6.15 Loss or damage to existing structures - right of termination in respect of Orders

If there is material loss of or damage to any existing structure, the Employer shall be under no obligation to reinstate that structure, but either Party may, if it is just and equitable, give notice to the other within 28 days of the occurrence of that loss or damage that work on any affected Orders shall terminate. If such notice is given, then:

6.15.1 unless within 7 days of receiving the notice (or such longer period as may be agreed) the Party to whom it is given invokes a dispute resolution procedure of this Contract to determine whether the termination is just and equitable, it shall be deemed to be so;

6.15.2 upon the giving of that notice or, where a dispute resolution procedure is invoked within that period, upon any final upholding of the notice, the provisions of clause 6.13.4 shall apply.

Section 7

Break Provision - Rights of each Party

7.1 Break notice

Each Party shall have the right to reduce the duration of the Contract Period by giving the other Party not less than 13 weeks' notice to that effect (or such lesser period of notice as is stated in the Contract Particulars (item 16)). That notice may in either case expire at any time not less than 6 months after the date of commencement of the Contract Period.

7.2 Existing and subsequent Orders

As from receipt by the Employer or the Contractor, as the case may be, of notice under clause 7.1 the Contractor shall not, unless otherwise agreed between him and the Contract Administrator, be under any obligation to accept any subsequent Orders which cannot reasonably be completed before the expiration of the notice, but the Contractor shall not be relieved of his obligation to complete all Orders properly given prior to the receipt of the notice, even if such Orders cannot be, or are not, completed before the expiry of such notice, and to complete any subsequent Orders that can reasonably be completed before that expiration or that he otherwise accepts.

8.1 Meaning of insolvency

For the purposes of these Conditions:

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

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

8.2 Notices under section 8

- 8.2.1 Notice of termination of the Contractor's employment shall not be given unreasonably or vexatiously.
- 8.2.2 Such termination shall take effect on receipt of the relevant notice.
- 8.2.3 Each notice referred to in this section shall be delivered by hand or sent by Recorded Signed for or Special Delivery post. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.

B.3 Other rights, reinstatement

- 8.3.1 The provisions of this section 8 are without prejudice to any other rights and remedies

available to either Party.

- 8.3.2 Irrespective of the grounds of termination, the Contractor's employment may at any time be reinstated, either generally or in respect of any particular Order or Orders, if and on such terms as the Parties agree.

8.4 Default by Contractor

- 8.4.1 If the Contractor:

8.4.1.1 fails to comply with the COM Regulations; or

8.4.1.2 without reasonable cause fails in such a manner to comply with his obligations under this Contract that the carrying out of any Order or Orders is materially disrupted, suspended or delayed,

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

- 8.4.2 If the Contractor continues a specified default for 14 days from receipt of the notice under clause 8.4.1, the Employer may on, or within 21 days from, the expiry of that 14 day period by a further notice to the Contractor terminate the Contractor's employment under this Contract.

- 8.4.3 If the Employer does not give the further notice referred to in clause 8.4.2 (whether as a result of the ending of any specified default or otherwise) but the Contractor repeats a specified default (whether previously repeated or not), then, upon or within a reasonable time after such repetition, the Employer may by notice to the Contractor terminate that employment.

8.5 Insolvency of Contractor

- 8.5.1 If the Contractor is Insolvent, the Employer may at any time by notice to the Contractor terminate the Contractor's employment under this Contract.

- 8.5.2 The Contractor shall immediately notify the Employer if he makes any proposal, gives notice of any meeting or becomes the subject of any proceedings or appointment relating to any of the matters referred to in clause 8.1.

- 8.5.3 As from the date the Contractor becomes Insolvent, whether or not the Employer has given such notice of termination:

8.5.3.1 clause 8.10 shall apply as if such notice had been given;

8.5.3.2 the Contractor's obligations under Article 1 and these Conditions to carry out and complete any Orders shall be suspended; and

8.5.3.3 the Employer may take reasonable measures to ensure that each Site, the work under each Order and any Site Materials are adequately protected and that such Site Materials are retained on site; the Contractor shall allow and shall not hinder or delay the taking of those measures.

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

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

8.7 Default by Employer

- 8.7.1 If the Employer:

8.7.1.1 does not pay by the final date for payment the amount due to the Contractor in accordance with clause 4.6 and/or any VAT properly chargeable on that amount; or

- 8.7.1.2 without reasonable cause fails in such a manner to comply with his obligations under this Contract that the ability of the Contractor to comply with his obligations under it is materially prejudiced; or
- 8.7.1.3 interferes with or obstructs the issue of any certificate; or
- 8.7.1.4 fails to comply with the COM Regulations,

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

- 8.7.2 If the Employer continues a specified default for 14 days from the receipt of notice under clause 8.7.1, the Contractor may on, or within 21 days from, the expiry of that 14 day period by a further notice to the Employer terminate the Contractor's employment under this Contract.
- 8.7.3 If the Contractor for any reason does not give the further notice referred to in clause 8.7.2, but the Employer repeats a specified default (whether previously repeated or not), then, upon or within a reasonable time after such repetition, the Contractor may by notice to the Employer terminate the Contractor's employment under this Contract.

8.8 Insolvency of Employer

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

8.9 Termination by Employer- regulations 73(1)(a) and 73(1)(c) of the PC Regulations

Where this Contract is one to which regulation 73(1) of the PC Regulations applies the Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment under this Contract where the grounds set out in regulation 73(1)(a) or 73(1)(c) of the PC Regulations apply.

8.10 Consequences of termination under clauses 8.4 to 8.6

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

- 8.10.1 the Employer may employ and pay other persons to carry out and complete uncompleted Orders;
- 8.10.2 no further sum shall become due to the Contractor under this Contract other than any amount that may become due to him under clause 8.10.3 and the Employer need not pay any sum that has already become due either:
 - 8.10.2.1 insofar as the Employer has given or gives a notice under clause 4.6.5; or
 - 8.10.2.2 if the Contractor, after the last date upon which such notice could have been given by the Employer in respect of that sum, has become insolvent within the meaning of clauses 8.1.1 to 8.1.3;
- 8.10.3 the Contract Administrator shall within 13 weeks of the date of termination make a valuation and issue a certificate showing:
 - 8.10.3.1 the value of such work properly executed (or of labour, materials and/or plant supplied) and any other amounts due to the Contractor under this Contract that have not been valued and certified before such termination; and
 - 8.10.3.2 the amount of any direct loss and/or damage caused to the Employer by the termination;
- 8.10.4 if the amount of direct loss and/or damage exceeds the value certified under clause 8.10.3 the difference shall be a debt payable by the Contractor to the Employer or, if it is less, by the Employer to the Contractor;

8.10.5 the final date for payment of the amount of the difference referred to in clause 8.10.4 shall be 28 days from the date of the certificate.

8.11 Consequences of termination under clauses 8.7 to 8.9

8.11.1 Where the Contractor's employment is terminated under clause 8.7, 8.8 or 8.9, the Contractor shall within 13 weeks of the date of termination submit an account in respect of:

8.11.1.1 the value of such work properly executed (or of labour, materials and/or plant supplied) as has not been valued and certified before such termination; and

8.11.1.2 only where the Contractor's employment is terminated under clause 8.7 or 8.8, the amount of any direct loss and/or damage caused to the Contractor by the termination.

8.11.2 The Employer shall pay to the Contractor the amount properly due in respect of the account within 28 days of its submission by the Contractor.

Section 9 Settlement of Disputes

9.1 Mediation

Subject to Article 6, if a dispute or difference arises under this Contract which cannot be resolved by direct negotiations, each Party shall give serious consideration to any request by the other to refer the matter to mediation.¹²²¹

9.2 Adjudication

If a dispute or difference arises under this Contract which either Party wishes to refer to adjudication, the Scheme shall apply except that for the purposes of the Scheme the Adjudicator shall be the person (if any) and the nominating body shall be that stated in the Contract Particulars (item 17).

9.3 Not applicable

9.4 Not applicable

9.5 Not applicable

9.6 Not applicable

9.7 Not applicable

9.8 Not applicable

[22] See the Measured Term Contract Guide.

Schedule 1 Supplemental Provisions

(Fifth Recital)

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

Collaborative working

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

Health and safety

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

Cost savings and value improvements

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

Sustainable development and environmental considerations

4

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

Performance Indicators and monitoring

5

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

Notification and negotiation of disputes

6

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

Transparency

7

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

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

The Public Contracts Regulations 2015

8

Where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations¹²³¹:

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

[23] An explanatory summary of those provisions in the PC Regulations that are reflected in this Contract is contained in the Measured Term Contract Guide. Provisions relating to the PC Regulations are also set out in section B (Termination) of this Contract. The JCT Short Form of Sub-Contract (ShortSub) meets the requirements of Supplemental Provision B.

under regulations 71(3), 71(4) and 71(5) of the PC Regulations; and

8.2.2 to include in any sub-subcontract he in turn enters into provisions to the same effect as required under paragraph 8.2.1 of Supplemental Provision 8;

8.3

8.3.1 the Contractor shall include in any sub-contract entered into by him provisions that shall entitle him to terminate the sub-contractor's employment where there are grounds for excluding the sub-contractor under regulation 57;

8.3.2 in the event the Employer requires the Contractor to terminate a sub-contractor's employment pursuant to regulation 71(9) the Contractor shall take the appropriate steps to terminate that employment and where required by the Employer under regulation 71(9) shall, or in circumstances where there is no such requirement may, appoint a replacement sub-contractor.



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Northampton Partnership Homes Limited
and
Semilong Services Ltd

JCT Measured Term Contract (2016 edition)
Schedule of Amendments

In relation to

Plastering and Associated Works

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SECTION 1 – DEFINITIONS AND INTERPRETATION

Clause 1.1

Delete the definitions of **Adjustment Percentage, Agreement, Arbitrator, BIM Protocol, Conditions, Construction Industry Scheme, Contract Documents and National Schedule of Rates**.

Clause 1.1 – Amend definition of Schedule of Rates to read; “the Schedule of Rates identified in Appendix 2 (Schedule of Rates) together with Appendix 1 (Specification) applicable to this Contract included in or annexed to it.

Insert new definitions as follows:

Agreement : the Agreement to which these Conditions are annexed consisting of the Recitals, the Articles, the Contract Particulars and appendices 1 to 2.

Anti-corruption Policy: the Employer's ethics, anti-bribery and anti-corruption policies as may be amended from time to time and notified to the Contractor.

Anti-slavery Policy : the Employer's anti-slavery policy as amended by notification to the Contractor from time to time

Associated Person : a person (including an employee, agent or subsidiary) who performs services for or on the Contractor's behalf.

Bribery Act: the Bribery Act 2010.

Conditions : the clauses set out in sections 1 to 10 of the conditions of the JCT Measured Term Contract 2016 and the Schedule as amended by appendix 1 to the Agreement.

Construction Industry Scheme : the current scheme under the Finance Act 2004

Contract Documents: the Agreement, the Conditions, the Preliminaries/General Conditions/Specifications and the Schedule of Rates.

Corrupt Activity : extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money-laundering or any similar activity [bribery and/or corruption including, without limitation, any activity, practice or conduct which would or could constitute an offence under sections 1, 2 or 6 of the Bribery Act if such practice or conduct had been carried out in the United Kingdom whether in connection with an Order or otherwise.

Environment : all and any of the following media being water (wherever situate), air (wherever situate) as well as humans and their property, plants, animals and eco-systems.

Environmental Laws : all statutes and codes of practice, circulars, guidance notes and the like concerning the protection of human health and the Environment or the condition of the workplace or the generation, storage, use, treatment or disposal of Hazardous Substances in force at the time of undertaking the Works.

Funder : a person (whether acting for himself and/or where leading for a syndicate of persons as agent and trustee for such persons) who is providing or shall provide interim or other finance for the carrying out of the works comprised in the Orders.

Hazardous Substances : waste (as defined in the Environmental Protection Act 1990) and any substance whatsoever in any form (whether alone or in combination with any other substance) which is capable of causing harm to man or to any living organism supported by the Environment or of damaging the Environment or public health or welfare or the presence of which would be a breach of any Environmental Law.

Human Trafficking Statement : a statement made in accordance with S.54 of the Modern Slavery Act 2015 together with any guidance issued by the Secretary of State.

KPIs : the key performance indicators set out in Appendix C – Contract Specific Specification.

Master Programme: the Contractor's programme for the duration and sequence of the Order and of work in each Property submitted by the Contractor prior to the acceptance of the Contractor's tender and agreed at that time by the Employer or agreed pursuant to clause 2.7.4.

Materials: any plant, materials, goods, scaffold and/or access equipment approved by the Employer in writing required to be installed by the Contractor in respect of any Order;

Modern Slavery Legislation : the legislation referred to in S.54 of the Modern Slavery Act 2015.

Occupier: any person lawfully occupying a Property from time to time.

Order: the written description and/or drawings of any work and/or the supply of labour and Materials to be carried out under this Contract on instructions from the Contract Administrator;

Order Date for Completion : the date for completion of each Order stated within the Order whether by any priority coding or otherwise as referred to in clause 2.6.

Quality inspector: an independent quantity surveyor and member of the Royal Institute of Chartered Surveyors or Chartered Institute of Building Services Engineers employed by an independent firm of chartered surveyors to be appointed by the Employer and notified to the Contractor.

Properties : the properties stated in the Contract Particulars (item 1.1).

Relevant Event : see clause 2.10.3.

Sub-Contractors : those sub-contractors and/or suppliers engaged or to be engaged by the Contractor in respect of the works.

Third Party Agreements: any and all agreements between third parties and the Employer in relation to the Works.

Works Programme: the Contractor's Programme for the duration and sequence of that part of the Order to be undertaken and completed in any Property.

Clause 1.2

Delete clause and insert:

"The Agreement and these Conditions are to be read as a whole. The Contract Documents shall be treated as complementary and it shall be the duty of the Parties to warn each other of any error, omission or discrepancy of which they become aware and to put forward proposals to resolve any such error, omission or discrepancy fairly and constructively. In the event that the Parties cannot resolve any discrepancy, the priority between the Contract Documents shall be as follows:

1.2.1 The Agreement;

1.2.2 The Conditions;

1.2.3 The Schedule of Rates; and

1.2.4 Preliminaries/General Conditions/Specification."

Clause 1.5

In line 1 after "Contract" insert "but subject to clause 3.1"

Clause 1.7

Delete clause 1.7 and insert:

"This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales."

Clause 1.8

Insert new clause 1.8 – 'Liability period':

"Neither party shall commence any action or proceedings against the other under this Contract after 12 years from the date of practical completion of the Works and any adjudicator's decision under clause 9.2 shall be finally binding on them unless either party has referred that dispute for final determination by arbitration or legal proceedings, or has commenced any action or proceedings to recover any overpayment to which the decision has led, before that date."

SECTION 2 – CARRYING OUT WORK

Clause 2.1

At end of clause insert "When requested to do so by the Employer the Contractor shall provide the Employer with evidence that he has complied with and given all notices required by the Statutory Requirements."

Clause 2.2.2

At the end of the clause insert:

"No approval, express or implied, by the Contract Administrator shall in any way diminish the Contractor's obligations under this Contract or relieve him from compliance with any of its terms, nor shall any approval of drawings constitute an instruction for, or sanction of, any variations incorporated in it."

Clause 2.2.4

In line 1 of the final paragraph delete "encourage" and insert "procure"

Clause 2.2.5

Insert new clause 2.2.5 :

"The Contractor shall not use or permit to be used any materials which by their nature or application contravene any British Standard or EU equivalent and are not UKCA marked. The Contractor shall inform the Contract Administrator in writing as soon as reasonably practicable upon becoming aware of any material being used or specified for use in connection with the Order which is not in compliance with this sub-clause."

Clause 2.2.6

Insert new clause 2.2.6:

"Where any Order so requires, the Contractor shall carry out all and any design works necessary to fulfil the Order. Without prejudice to any express or implied warranties or conditions in respect of such design works the Contractor shall have the like liability to the Employer as would a professionally competent and qualified designer experienced in carrying out designs of a similar nature to that specified in the Order."

Clause 2.2.7

Insert new clause 2.2.7:

"The Contractor shall not transport to or from, use, generate, dispose of or install at or from any of the Properties any Hazardous Substances except in accordance with Environmental Laws applicable at the time of carrying out the relevant Order. The Contractor shall use the skill and care which may reasonably be expected of a contractor experienced in undertaking works of a nature and size and complexity equivalent to those governed by this Contract not to cause any release of Hazardous Substances into, or contamination of, the Environment except in accordance with Environmental Laws applicable at the time of carrying out the relevant Order."

Clause 2.3.1.1

In line 1 after "similar work" insert "or work removed from this Contract pursuant to clause 2.3.1.3"

Clause 2.3.1.2

At end of clause delete "." and insert ";

Clause 2.3.1.3

Insert new clause 2.3.1.3:

"to increase or decrease the scope of this Contract including (without limitation) the Contract Area, workstreams, or number of Properties at any time upon prior notification to the Contractor."

Clause 2.3.5

Delete clause and replace with "Not Applicable"

Clause 2.3.7

Insert new clause 2.3.7:

"If the Employer exercises its rights under clause 2.3.1.3 the Contractor shall have no claim against the Employer (whether under contract, statute, tort or otherwise) in respect of any consequential or indirect loss or any actual or expected loss of profit, loss of revenue, loss of goodwill or loss of opportunity except by way of agreed adjustments to the Schedule of Rates in accordance with these Conditions and the Contractor acknowledges that the Employer shall be at liberty to award any Works omitted from this Agreement under clause 2.3.1.3 to a third party (or alternatively undertake the relevant Works itself)."

Clause 2.5

In line 2 after "work that will be ordered" insert "or as to the number of Orders that will be issued"

Clause 2.7

Clause 2.7 shall be renumbered as clause 2.7.1

At the end of clause 2.7.1 before "." insert "or relieve the Contractor from any of the obligations contained in the Contract Documents"

The following new clauses shall be inserted after clause 2.7.1:

"2.7.2 The Contractor shall submit to the Employer and to the Occupier of the relevant Property a Property specific Works Programme in respect of work in that Property at least 2 weeks prior to the date indicated in the Master Programme. In the case of no Master Programme or the Property not previously being part of the Master Programme the Property specific Works Programme is required at least 2 weeks prior to the commencement of work in that Property.

2.7.3 The Contractor shall adhere to the Master Programme and the Works Programme unless by reason of clause 2.10 the Contract Administrator is satisfied that any revision is required to the Master Programme or any Works Programme but so that notwithstanding any other term of this Contract such an event affecting work in any one or more Properties shall not entitle the Contractor to claim any extension of time or loss and/or expense or other additional payment if such event does not delay the completion of an Order as a whole.

- 2.7.4 Any failure or delay in gaining access to a Property and any disturbance or disruption to an Order as a whole shall not entitle the Contractor to claim any extension of time or loss and/or expense or otherwise to make any claim against the Employer or any Occupier whether under this Contract or otherwise in the event the failure and/or delay and/or disturbance and/or disruption is a consequence of any non-compliance or non-performance by the Contractor with the Master Programme or any Works Programme.
- 2.7.5 The Contractor shall commence the Order in accordance with its instruction and shall regularly and diligently proceed with and complete the Works Programme on or before the relevant Order Completion Date. Non-exclusive possession of each Property shall be given to the Contractor on or before the date indicated for possession of that Property in the Master Programme or the Works Programme subject to the prior receipt by the Employer and the Occupier of that Property of the Works Programme in respect of that Property and subject to clause 2.7.8. The occupation of Properties by Occupiers throughout the Order shall not entitle the Contractor to claim any extension of time or loss and/or expense or otherwise to make any claim against the Employer or any Occupier whether under this Contract or otherwise.
- 2.7.6 If the Contractor fails to obtain access to any Property by reason of non-co-operation of an Occupier then:
- 2.7.6.1 the Contractor shall immediately give notice in writing to this effect to the Employer specifying the Property and the Occupier and the circumstances in question and shall continue to attempt to gain access to the relevant Property;
- 2.7.6.2 during a period of two (2) weeks following the date of receipt of such notice the Employer shall use all reasonable endeavours to ensure that the Occupier permits such access and the Contractor shall not be entitled to claim any extension of time or loss and/or expense or otherwise to make any claim against the Employer or the Occupier whether under this Contract or otherwise in respect of any consequent delay in the Order or any part thereof during such two (2) week period;
- 2.7.6.3 if the Contractor has not obtained access to a Property by reason of non-co-operation of an Occupier by the expiry of such two (2) week period then any further delay for such reason shall constitute deferment of possession of the said Property in accordance with clause 2.7.6.5 provided that the Employer may at any time during the period of such deferment either:
- (a) exercise its right under clause 3.5 to vary the Order by omission of all work at the said Property from the Order; or
- (b) substitute an alternative Property or Properties for the Property for which access has not been obtained;
- and upon the expiry of the said period of deferment if access to a Property has not been obtained by reason of absence or non-co-operation of an Occupier and no action has been taken by the Employer pursuant to clauses 2.7.6.1 or 2.7.6.2 then such Property automatically will be omitted from the Order and the Contractor shall

have no claim for loss of profit or other loss, damage, or expense as a result of any such omission; save for the recovery of costs associated with any installed plant or access equipment that has been hired or installed specifically to carry out the Works for that Property.

- 2.7.6.4 having omitted all work at a Property from the scope of the Order in accordance with clause 2.7.6.3, the Employer may at any time up to the Order Completion Date issue an instruction requiring the Contractor to reintroduce work at such Property at an appropriate point in the Master Programme. Such instruction shall be treated as an instruction under clause 3.5; and
 - 2.7.6.5 the Employer may defer the giving of nonexclusive possession of any Property for a time not exceeding six (6) weeks calculated from the expiry of the two (2) week period referred to in clause 2.7.6.2.”.
- 2.7.7 The Contractor must:
- 2.7.7.1 take all necessary precautions to ensure the safety of the Occupier(s) of the affected Properties, and any visitors to the Properties or surrounding communal areas, and;
 - 2.7.7.2 ensure that all deliveries of materials are arranged so as not to unreasonably interfere with the Occupier(s) of the affected Properties or any adjacent Properties.
- 2.7.8 For the avoidance of doubt, the Contractor shall not commence any Works at any Property until all practicable steps have been taken to prevent danger to any persons employed or living in that relevant Property at that time from any live electric cable or apparatus, plumbing works, exposed asbestos or any other hazard which could reasonably be regarded as a source of danger to the occupants and/or the general public and the Contractor shall take all necessary safety measures accordingly to manage any such dangers.
- 2.7.9 The Contractor is to make its own arrangements in unoccupied buildings for temporary electrical supply in accordance with the Health and Safety at Work etc. Act 1974, the Management of Health and Safety at Work Regulations 1992 and all current and future health and safety legislation (and subsequent amendments or re-enactments).
- 2.7.10 The Contractor:
- 2.7.10.1 acknowledges that some Properties may be occupied by elderly, frail; ill or otherwise vulnerable Occupiers and the Contractor shall be required to take due care and consideration and allowances of these Occupiers when undertaking the Works. For the avoidance of doubt the Schedule of Rates is deemed to include for any extra costs that the Contractor may incur in satisfying the requirements of this clause 2.7.10.1; and
 - 2.9.10.2 shall not enter a Property to carry out any works in the event that a child, children or a person or persons who appears to be under the age of eighteen

(18) is present in the property either by themselves or without an adult who appear to be over the age of eighteen (18) also being present in the Property,

and in the event that the Contractor becomes aware that an occupier or occupiers of a premises where the Contractor is carrying out Works appears to be vulnerable or at risk, or may pose a risk to the Contractors operatives it shall notify the Employer of its concerns immediately and await further instruction.

2.7.11 The Contractor is to ensure that at the end of every Business Day the following:

- a) The Occupiers of the Properties having works carried out have suitable light, heat, power, cooking, washing, drinking water and sanitation facilities available to them within the property;
- b) Properties having works carried out (as well as all adjoining/ adjacent buildings forming part of the relevant Property, including but not limited to garages and sheds) and any adjoining communal areas shall be left safe and secured;
- c) Safe access routes are maintained where necessary and clearly marked, and areas where safe access is not possible must be suitably secured and clearly marked.

Clause 2.10.1

Delete clause and insert:

The Contractor shall forthwith give notice to the Contract Administrator of any matter which is causing or is likely to cause delay in the completion of an Order beyond the Order Date for Completion for that Order and which is a Relevant Event and shall constantly use his best endeavours to carry out each Order by the stated date its Order Date for Completion.

Clause 2.10.2

In line 1 delete "stated date for completion" and insert "Order Date for Completion"

In lines 3 – 4 delete "for reasons beyond his control (including compliance with any instruction of the Contract Administrator that does not arise from the Contractor's default)" and insert "by reason of any matter which the Contractor shall have notified to the Employer under clause 2.10.1 and which is a Relevant Event"

In line 5 delete "date for completion" and insert "Order Date for Completion".

Clause 2.10.3

Insert new clause 2.10.3:

"Each of the following are a Relevant Event as referred to in clauses 2.10.1 and 2.10.2:

2.10.3.1 force majeure;

2.10.3.2 exceptionally adverse weather conditions;

2.10.3.3 loss or damage occasioned by any one or more of the Specified Perils;

- 2.10.3.4 compliance with any instruction of the Contract Administrator under this Contract the issue of which is not due to an omission or a default of the Contractor;
- 2.10.3.5 the Contractor not having received necessary instructions, drawings, details or levels from the Contract Administrator which he is entitled to receive under this Contract **provided that** such application was made on a date which having regard to the stated Order Date for Completion was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same;
- 2.10.3.6 the Contractor having attended the site of the works comprising an Order requiring a variation to that Order or an additional Order **provided that** such application was made on a date which having regard to the stated Order Date for Completion was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same;
- 2.10.3.7 the execution of work not forming part of the Order by the Employer himself or by persons employed or otherwise engaged by the Employer or the supply by the Employer of materials and goods which the Employer has agreed to provide for the carrying out of any Order or the failure so to supply; and
- 2.10.3.8 any other act of prevention or breach on the part of the Employer or the Contract Administrator which would, but for this clause cause the Contractor to be relieved of his obligations to complete the relevant Order by the Order Date for Completion in relation thereto."

Clause 2.10.4

Insert new clause 2.10.4:

"If the Contractor fails to complete any Order by the Order Date for Completion stated therein or within any extended time fixed under this clause 2.10 in respect of that Order then the Contract Administrator may issue a certificate to that effect and at any time thereafter may employ and pay other persons to execute and complete the work described in such Order and all costs incurred thereby may be deducted by the Employer from any monies due or to become due to the Contractor under this Contract or shall be recoverable from the Contractor by the Employer as a debt."

Clause 2.11.1

In line 1 delete "The Contractor shall notify the Contract Administrator the date" and insert "The Contractor shall give the Contract Administrator at least 48 hours' notice of"

Clause 2.11.3

Insert new clause 2.11.3:

"If the Contract Administrator is required to attend any Property for the purposes of assessing whether or not an Order has been completed in accordance with this Contract on more than two occasions, then the cost to the Employer of any further attendance by the Contract Administrator or other persons nominated by the Employer shall be borne by the Contractor."

Clause 2.11.4

Insert new clause 2.11.4:

“2.11.4 Notwithstanding anything expressed or implied elsewhere in this Contract, the Contract Administrator shall not be obliged to confirm the Order Completion Date in accordance with this clause 2.11 and completion of the Order shall not for any purpose of this Contract have occurred:

2.11.4.1 unless and until the Contractor shall first supply to the Employer all documentation required by the Contract Documents and/or the Order;

2.11.4.2 unless and until the Contractor shall first follow the procedure for handover of the completed Order set out in the Contract Documents and/or the Order; and

2.11.4.3 at any time excluded under the terms set out in the Contract Documents and/or the Order.”

Clause 2.12

Delete clause 2.12 and insert:

“2.12.1 Any defects, shrinkages or other faults which appear within twelve (12) months of an Order Completion Date shall be made good by the Contractor at no cost to the Employer in accordance with the time limits set out in clause 2.12.2.

2.12.2 The time limits for rectification of defects reported pursuant to clause 2.12.1 shall be:

2.12.2.1 For items which represent a breach of security or a health and safety risk: respond and make safe within three (3) hours and rectify within forty eight (48) hours of notification (verbal or written) from the Contract Administrator.

2.12.2.2 For items which result in discomfort or loss of amenity for a Occupant or which could, if ignored, represent a breach of security or health and safety risk: rectify within three (3) Working Days of notification (verbal or written) from the Contract Administrator.

2.12.2.3 For any other item: rectify as soon as reasonably practicable and in any event within fifteen (15) Working Days of written notification from the Contract Administrator.

2.12.3 The Contractor shall be responsible for arranging access to the Properties for the purposes of rectifying any defect.

2.12.4 In the event the Contractor fails to attend and rectify the identified faults within the time periods set out in clause 2.12.2.1 to 2.12.2.3, the Employer may employ and pay other persons to execute and rectify the defect and all costs incurred thereby may be deducted by the Employer from any monies due or to become due to the Contractor under this Contract or shall be recoverable from the Contractor by the Employer as a debt.

2.12.5 At the end of the period of twelve (12) months referred to in clause 2.12.1, the Contract Administrator shall, in accordance with the procedures laid down in the Contract Documents, inspect the works which are the subject of the Order (including any rectification works carried out during such twelve (12) month period), and if satisfied that all defects, shrinkages or other faults have been made good, shall issue a notice to that effect (the **Order Completion of Defects Notice**).”

Clause 2.13

Insert a new clause 2.13 – ‘Defects by Other Persons’:

- "2.13.1 The Contractor shall notify the Employer in writing of any defect in any Property which the Contractor and/or an Associated Person (their employees, agents or other persons employed or engaged by or on behalf of the Contractor and/or an Associated Person in connection with the Works) become aware of (or should acting reasonably have become aware of) whilst carrying out Works.
- 2.13.2 For the purposes of this clause 2.13 only "defect" shall mean any state of affairs in a Property which might be harmful to the health and safety of the occupiers and/or any third party who may be present at the Property and/or cause damage to any property (whether real or personal) of the occupiers and/or any third party.
- 2.13.3 Any notice issued in accordance with clause 2.13.1 shall be issued as soon as reasonably practicable after the date on which the defect was noticed or should have been noticed) and shall set out details of the Property, the defect, the location of the defect within the Property and identify the operative who noticed the defect and the date on which they did so."

Clause 2.14

Insert a new clause 2.14 – ‘Defects for Products with Extended Warranties’:

- "2.13.1 The Contractor is required to support the Client and the product manufacturer, or any specialist third party appointed by the Employer in the investigation of any latent defects identified outside of the Rectification Period and within the warranty or guarantee period of the installed product.
- 2.13.2 Where it is proven that the early failure of the product within its warranty or guarantee period is a result of poor workmanship or incorrect installation, the Contractor will be required to rectify the issues to the satisfaction of Employer and at no cost to the Employer in accordance with the time limits set out in clause 2.12.2.
- 2.13.3 In the event the Contractor fails to attend and rectify the identified faults within the time periods set out in clause 2.12.2.1 to 2.12.2.3, the Employer may employ and pay other persons to execute and rectify the defect and all costs incurred thereby may be deducted by the Employer from any monies due or to become due to the Contractor under this Contract or shall be recoverable from the Contractor by the Employer as a debt."

Clause 2.15

Insert new clause 2.15 – ‘Third Party Agreements’:

- "2.15.1 To the extent that the Contractor has been provided with copies of Third-Party Agreements prior to the date of this Agreement, the Contractor shall be deemed to have full knowledge of such agreements and shall perform its obligations under this Agreement in such a manner so as not to constitute, cause or contribute to the Employer's breach of such agreements.

- 2.15.2 Upon being supplied with copies of, or relevant extracts from any further Third Party Agreements, the Contractor shall, with effect from the date on which it was provided with such copies or extracts perform its obligations under this Agreement in such a manner so as not to constitute, cause or contribute to the Employer's breach of such agreements it being acknowledged that such compliance may be treated as a Variation pursuant to clause 5.1."

Clause 2.16

Insert new clause 2.16 – 'Noise and Nuisance':

- 2.16.1 "Without prejudice to the generality of clause 6.2 the Contractor shall at all times take all reasonable steps to prevent any nuisance (including, but without limitation, any noisy working operations noxious fumes or the deposit on public highways of any material or debris) or other interference with the rights of any adjoining landowner, tenant or occupier or any statutory undertaker arising out of the carrying out of the Works or of any obligation pursuant to clause 2.12 and shall defend or, at the Employer's option, assist the Employer in defending any action or proceeding which may be instituted in relation thereto.
- 2.16.2 The Contractor shall be liable for and shall indemnify the Employer from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the Contractor in performing his obligations under this clause 2.16 save only where such nuisance or interference is the consequence of a Change or other instruction of the Employer (which is not itself the result of any negligence default or breach of contract by or on behalf of the Contractor) and which could not have been avoided by the Contractor using all reasonable and practical means."

Clause 2.17

Insert a new clause 2.17 - Disclosing and Barring Checks:

- "2.17.1 The Contractor shall procure that in respect of all staff or persons performing any of the Works (each a **Named Employee**), before a Named Employee begins to perform any of the Works:
- 2.17.1.1 each Named Employee is questioned as to whether he or she has any convictions; and
 - 2.17.1.2 insofar as a Named Employee holds a position that is eligible for such checks as prescribed by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and the Police Act 1997 (Criminal Records) Regulations, results are obtained of a check of the most extensive kind available made with the Disclosure and Barring Service in respect of that Named Employee; and
 - 2.17.1.3 copy of the results of such checks as are referred to in clause 2.17.1.2 are notified to the Employer forthwith.
- 2.17.2 The Contractor shall ensure that any person who appears on a barred list following the results of a Disclosure and Barring Service check pursuant to clause 2.17.1.2 shall not be employed or engaged in the performance of any of the Works.

- 2.17.3 In the event that any member of staff involved in the provision of Works is subsequently added to a barred list, the Contractor shall ensure that such member of staff shall immediately cease to be engaged in the performance of the Works.
- 2.17.4 The Contractor shall ensure that it has in place a safeguarding policy which complies with all applicable laws, enactments, orders or regulations relating to the protection or safeguarding of children and vulnerable adults and in any event complies with any safeguarding policies of the Employer notified to it from time to time.

SECTION 3 – CONTROL OF WORK

Clause 3.1

Delete clause 3.1 and insert:

"3.1.1 The Employer may assign its entire rights and benefits under this Contract to any person having or acquiring an interest in the Works and the Employer's said rights and benefits may be charged and/or assigned by way of security and may be re-assigned on redemption. The Contractor may not assign the benefit of this Contract without the prior consent of the Employer.

3.1.2 The Contractor undertakes with the Employer not to contend that any person to whom this Contract may be assigned will be precluded from recovering under this Contract any loss resulting from any breach of this Contract either by reason that the person is an assignee and not the original party to this Contract or by reason that the Employer named in this Contract or any intermediate owner of the Employer's interest in the Works shall escape loss resulting from such breach by reason of the disposal of its interest in the Works."

Clause 3.2

At end of clause insert:

"Where the Contract Administrator consents to such sub-contracting (whether or not having approved the form of sub-contract) this shall not in any way exclude or limit the responsibilities and obligations of the Contractor under this Contract."

Clause 3.6.2.1

Delete "and" at the end of the clause.

Clause 3.6.2.2

Delete clause 3.6.2.2 and insert:

"Save as provided under clause 3.6.2.1, cancellation of an Order shall not give rise to any entitlement claim by the Contractor for abortive costs or any claim for loss of profit or other consequential loss of any kind or for any other amount under this Contract."

Clause 3.9.1

Delete clause 3.9.1 and insert "Not used."

Clause 3.9.2

Delete clause 3.9.2 and insert:

"Unless otherwise instructed by the Employer, the Contractor shall be the Principal Contractor for the purposes of each Order and he shall fulfil in relation to each Order all the obligations of the Principal Contractor as set out in or reasonably to be inferred from the CDM Regulations. No such compliance or fulfilment shall be treated as a Variation to the works under the provisions of clause 3.5 or to this Contract or give rise to any claim for additional payment or extension of time or loss and/or expense or otherwise."

Clause 3.9.3

Delete clause 3.9.3 and insert:

"The Contractor warrants that it has the competence and will allocate adequate resources to fulfil its obligations as the Principal Contractor for each Order in compliance with the CDM Regulations and that all information provided by the Contractor regarding such competence and resources and its record in health and safety is accurate and complete and that it has fulfilled and will continue to fulfil the said obligations in such manner and at such times so that no act, omission or default of the Contractor in relation thereto shall constitute, cause or contribute to any breach by the Employer of its obligations under or pursuant to the CDM Regulations."

Clause 3.9.5

Insert a new clause 3.9.5:

"3.9.5 Where the Contractor is not the Principal Designer but is the Principal Contractor and the Principal Designer's appointment concludes or is terminated prior to the expiry of 12 months following the end of the Contract Period or earlier termination, the Contractor shall review, update and revise the health and safety file in accordance with regulations 12(8) to (10) of the CDM Regulations"

Clause 3.11

Insert new clause 3.11 - Contractor Liability:

3.11 "No admission, consent, comment, sanction, acknowledgement, confirmation or advice made or given by or on behalf of the Contract Administrator shall operate to exclude or limit the Contractor's liability for any breach of his obligations under this Contract."

SECTION 4 – PAYMENT

Clause 4.1

In this clause 4, the following definitions shall apply:

HMRC means HM Revenue & Customs;

Order means the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 (SI 2019 No. 892);

Reverse Charge means, in relation to a supply, that under section 55A(6) of the Value Added Tax Act 1994 it is for the recipient, on the supplier's behalf, to account for and pay VAT on the supply and not for the supplier; and

Supply means a supply made for VAT purposes under or in connection with this Agreement by the Contractor and Supplies shall be construed accordingly.

Renumber clause 4.1 as clause 4.1.1.

Clause 4.1.2

Insert new clause 4.1.2:

"The parties agree and confirm that the procedure for the payment of VAT (if any) by either party to the other shall be governed entirely and exclusively by the provisions of this clause 4.1 notwithstanding any other provision of this Agreement."

Clause 4.1.3

Insert new clause 4.1.3:

"Any consideration (whether monetary consideration or non-monetary consideration) paid or provided under or in connection with this Agreement is to be treated as exclusive of any VAT. If the person making the supply (or the representative member of the VAT group of which it is a member) is required to account for VAT on any supply, the recipient of the supply shall pay (in addition to paying or providing any other consideration) an amount equal to the amount of that VAT upon the later of:

- a) the time for payment or provision of the consideration; and
- b) the receipt by the recipient of the supply of a VAT invoice in respect of that VAT."

Clause 4.1.4

Insert new clause 4.1.4:

"The requirements specified in article (8)(1)(b) of the Order will be satisfied in respect of any Supply and the parties consider that the Reverse Charge will not apply to the Supplies so it is for the Contractor to account for and pay VAT to HMRC."

Clause 4.1.5

Insert new clause 4.1.5:

"Where the Contractor has accounted for VAT on Supplies (on the understanding that the Reverse Charge did not apply) but HMRC notifies the Employer in writing that:

4.1.6.1 the Reverse Charge did apply in respect of those Supplies, and

4.1.6.2 notwithstanding that the Contractor has accounted for VAT to HMRC in respect of those Supplies, the Employer has to account for VAT under the Reverse Charge on those Supplies,

the Contractor shall, within two Working Days of receipt of a copy of such notice, issue a credit note to the Employer in respect of those Supplies and at the same time pay to the Employer the amount of VAT included in such credit note."

Clause 4.3

Delete clause 4.3 and substitute with new clause 4.3.1:

"All applications for payment shall set out and be accompanied by:

- a) the relevant addresses where Works are carried out and the corresponding Order number or project title; .
- b) the name of the Employer representative that placed the Order; .
- c) a breakdown of the Works that have been carried out by reference to the item code in the schedule of rates and/or Specification and description; .
- d) the precise period to which the request for payment relates, together with a breakdown of the time worked; .
- e) a breakdown of the costs submitted as part of an application for payment, including the net price payable for the Works; .
- f) evidence the application has been valued in accordance with the agreed rates; and;
- g) Compliance certificates, copies of warranties or guarantees and/or any other information or documents which the Contract Administrator has given notice to the Contractor it considers is necessary in its reasonable opinion to approve payment.

Clause 4.3.2

Insert new clause 4.3.2:

"Payments under the Contract will be made on the following terms:

4.3.2.1 No later than 5 Working Days after the end of each month and no earlier than the first day of the month ("Application Window"), the Contractor shall provide the Employer with an application for payment in respect of all Works completed in the previous month. The application for payment shall contain a detailed breakdown of the sums due and shall be supported with all documentation set out within clause 4.3.1. The application for payment must only seek payment in respect of completed Works. By

submitting an application for payment, the Contractor is representing that all Works set out within the application has been completed in accordance with the Contract. If the monthly application for payment is not provided within the Application Window, it shall be considered null and void and the Contractor shall be entitled to re-submit the application for payment within the following Application Window.

- 4.3.2.2 Provided each application for payment (or part thereof) is supported by the information set out in clause 4.3.1, and is in respect of completed Works only, the due date for payment shall be 14 days from the date of receipt of the application for payment.
- 4.3.2.3 The Contract Administrator shall be entitled to reject any application for payment or any part thereof where in his opinion:
- a) it is not supported by the information set out in clause 4.3.1; or
 - b) the application for payment contains any Order (or any Work completed pursuant to an Order) that is incomplete, contains defective Works or otherwise breaches any requirement of this Contract; or
 - c) the application is inaccurate in one or other respect either in terms of value or Order information.
- 4.3.2.4 In the event the Contract Administrator rejects an application for payment in accordance with clause 4.3.3 or any part thereof the Contractor will not be entitled to payment for any rejected sums until such time as those rejected sums have been included within a further application for payment that the re-submitted application for payment shall be issued no earlier than the intervals set out at clause 4.3.2.1.
- 4.3.2.5 Where an application for payment is not rejected in its entirety, then no later than five days after the due date for payment the Contract Administrator shall provide the Contractor with a payment notice setting out the sum that the Employer considers to be or to have been due at the due date for payment and the basis on which that sum is calculated. A payment notice shall be issued by the Contract Administrator even where the sum due to the Contractor in respect of any application for payment is zero.
- 4.3.2.6 The final date for payment shall be 21 days from the due date for payment, subject to the Employer receiving an invoice in respect of each application for payment from the Contractor no later five days following receipt of the Employer's payment notice. Where the Contractor fails to provide its invoice within the timeframes set out herein, the final date for payment shall be extended by the number of days the Contractor is in delay in providing an invoice.
- 4.3.2.7 The Contract Administrator or Employer may issue a pay less notice no later than 5 working days prior to the final date for payment setting out the sums it considers due and the basis upon which such sums have been calculated.
- 4.3.2.8 Any payments that are due to the Contractor shall be subject to the Employer's rights of set off without limitation.
- 4.3.2.9 The Employer shall have no liability to make any payment to the Contractor for Works that are completed more than three months prior to the date of an application for

payment. Where an application for payment includes any Works completed more than three months prior to the date of the application for payment then the Employer may value those Works as a £NIL value and the Employer shall have no liability to make any payment in respect of them whatsoever.

- 4.3.2.10 The Contractor may be required to provide the Employer with evidence that it has paid all sub-contractors (where such sums owed to them have been included in the application for payment) within a maximum of 5 working days of receiving payment from the Employer. The Employer shall be under no obligation to make any further payment under this Contract (subject to issuing a relevant notice under clause 4.3.5 or 4.3.7) until evidence is provided by the Contractor.
- 4.3.2.11 Neither the issue by the Contract Administrator of any certificate nor the payment of any amount by the Employer to the Contractor pursuant thereto shall constitute or imply or be evidence of the Employer's approval or acceptance of any work, materials or equipment or shall relieve the Contractor of any of its obligations under this Contract.

Clause 4.4

Delete clause 4.4 and substitute with "Not used"

Clause 4.5

Delete clause 4.5 and substitute with "Not used"

Clause 4.6

Delete Clause 4.6 and substitute with Clause 4.6 - Final Account

"The Final Account process shall proceed as follows:

- 4.6.1 The Contractor must submit a final application for payment, for Works it considers it has carried out and completed, to the Contract Administrator within 20 Working Days after the earlier of:
- a) The Expiry Date; or
 - b) the Termination Date, where termination is for a Contractor Default or Employer Default; or
 - c) the date set out in a termination notice served by either party under clause 7.1 (Break Notice).
- 4.6.2 Within the final application for payment the Contractor must provide such information as required by clause 4.3.1 and if such documentation is not provided the final application for payment will not to be valid and will be rejected accordingly.
- 4.6.3 The Contract Administrator must issue the Final Account to the Contractor indicating the amount due to the Contractor or owed to the Employer within 20 Working days of receipt of the final application for payment provided by the Contractor in accordance with clause 4.3.1, and any specific requirement of the Contract Administrator.
- 4.6.4 In the Final Account, the Contract Administrator must set out:

- a) all amounts valued as due to the Contractor under previous applications for payment;
 - b) all subsequent adjustments to those approved valuations in accordance with this Contract;
 - c) any sums the Employer may recover from the Contractor in accordance with the terms of the Contract.
 - d) the amount (even if the amount is zero) of the actual payment proposed to be made by the Employer to the Contractor or of any amount due from the Contractor to the Employer; accompanied by detail setting out how that amount is calculated.
- 4.6.5 If the Contractor does not submit its final application for payment and other documentation as required by this clause 4.6.2 the Contract Administrator may calculate all amounts that are to be included in the Final Account based on the information the Contract Administrator has available at that time.
- 4.6.6 Within 10 Working Days of receipt of the Final Account under clause 4.6.3, if the Final Account is agreed, the Contractor must sign and return a copy of the Final Account to the Employer. By doing so, the Contractor accepts that the stated amount to be paid will be in full and final settlement of all amounts due to the Contractor under the Contract and that no further payment will be due to the Contractor.
- 4.6.7 Following signature of the Final Account the Contractor must issue a valid invoice within 10 Working Days. An invoice will not be considered valid unless:
- a) all conditions precedent to payment becoming due in relation to the final valuation to which it relates have been satisfied; and
 - b) it is for the amount due as set out in the agreed and signed Final Account.
- 4.6.9 The date of the invoice submitted by the Contractor is the due date for payment of the amount stated in the Final Account.
- 4.6.10 The final date for payment shall be 14 Working days from the due date for payment.
- 4.6.11 The Contract Administrator or Employer may issue a pay less notice no later than 5 Working Days prior to the final date for payment setting out the sums it considers due and the basis upon which such sums have been calculated. A pay less notice shall be issued by the Contract Administrator or Employer even where the sum due to the Contractor in respect of any application for payment is zero.
- 4.6.12 The Contractor shall not be entitled to submit an interim application for payment once the Parties have commenced negotiations in respect of the Final Account. The Employer shall be entitled at any time to recover any overpayment it considers it has made to the Contractor in respect of any interim application for payment or the Final Account or shall otherwise be entitled to recover such sum as a debt from the Contractor.

- 4.6.13. In the event of the Contractor suffering an event of insolvency as described in clause 8.1 the Employer need not pay any sum that has already become due to the Contractor if the Employer as the Employer has given or gives a notice prior to the event, or the event occurs after the date on which the notice in relation to that sum would have been served in accordance with clause 4.3.7 or 4.6.11.

Clause 4.7.1

Change reference from clause 4.6 to "clause 4.3 (Payment)"

Clause 4.9

Insert new clause 4.8 – 'Right of Audit'

- “4.9.1 If at any time, and notwithstanding the issue of the Final Certificate, it is discovered that the Contractor has included in valuations/invoices submitted, quantities and/or monetary amounts in respect of Work which has not been carried out and/or properly executed in accordance with the Contract, whether or not payment for such Work has already been made by the Employer, then the Employer shall have the right to:
- 4.9.1.1 Inspect any/all premises in respect of which Works have been instructed to the Contractor since the start of the Contract Period where it is purported that Work has been carried out by the Contractor under the Contract, and
- 4.9.1.2 determine at their sole discretion the extent of such inspection that is deemed necessary for the purposes of further checking, and
- 4.9.1.3 recover from the Contractor all reasonable costs and/or expenses which the Employer has incurred or may incur consequential to carrying out such inspection (only where the inspection finds that the Contractor has included in valuations/invoices submitted, quantities and/or monetary amounts for Work which has not been carried out and/or properly executed in accordance with the Contract, whether or not payment for such Work has already been made by the Employer), and
- 4.9.1.4 determine and recover from the Contractor the apparent excess amount in respect of any overcharge and/or overpayment as appropriate.
- 4.9.2 Any amount due to the Employer arising from the above provisions shall be recoverable as a debt from the Contractor to the Employer and may also be set-off or deducted from any monies due or which may become due to the Contractor, provided a notice has been issued in accordance with clause 4.3.2.7. Recovery of such debt shall be without prejudice to any other rights or remedies the Employer may have.
- 4.9.3 The Employer may appoint an independent Quality Inspector to carry out the audit on the Employers' behalf to perform any such inspection and/or investigation, which the Employer has the right to undertake pursuant to clause 4.9.1.
- 4.9.4 If having carried out the audit, the Quality Inspector determines that a sum of money is due to the Employer then the Contractor shall pay that sum of money forthwith, or subject to clause 4.3.2.7, the Employer shall have the right to set-off such sum against any sums owed to the Contractor under this Contract or otherwise recover such sums as a debt.

4.9.10 Any audit undertaken by the Quality Inspector for the purpose of clause 4.9 shall be final and binding upon the Parties provided that a copy of all reports prepared by the Quality Inspector are made available in full to the Contractor and the Quality Inspector acts in accordance with the terms of his/her appointment at all times.”

SECTION 5 – MEASUREMENT AND VALUATION

Clause 5.3.1:

Delete ", subject to adjustment by the Adjustment Percentage." and insert ".".

Clause 5.3.3

Insert new clause 5.3.3:

"Where an Order contains Materials costs, the Contractor shall, on request, provide to the Contract Administrator copies of all quotations and invoices relating to the Materials supplied and installed by the Contractor on an open book basis for measurement and valuation of such Order. All Materials shall be supplied on a net cost basis to the Employer, and the Contractor shall declare all applicable special arrangements, trade discounts and/or rebates (**Discounts**) to the Employer."

Clause 5.3.4

Insert new clause 5.3.4:

"Where an Order relates to the provision of an Annual Lump Sum, the Annual Lump Sum shall be paid by the Employer to the Contractor in equal monthly instalments and the Contractor shall submit its applications for payment on this basis in accordance with clause 4.3.1."

Clause 5.3.5

Insert new clause 5.3.5:

"Where the Contractor is to undertake measurement of an Order the Contractor shall give the Contract Administrator not less than 5 Business Days prior written notice of the time when the Contractor is to undertake measurement of an Order in order for the Contract Administrator or an alternative individual authorised by the Employer to be present at the time of such measurement should he so decide."

Clause 5.4

Delete clause 5.4 and insert "Not used."

Clause 5.5.1

In line 4 after the word "Rates" delete the remainder of the sentence and replace with "."

Clause 5.6

Delete clause 5.6 and substitute with new clause 5.6:

- "5.6.1 The Contractor's Tendered Prices shall remain fixed for the initial period set out in the tender documents issued by the Employer.
- 5.6.1 Thereafter any adjustment to the Contractor's Tendered Rates or Prices may be considered by the Employer on each anniversary of the initial Contract Period in accordance with the Price Change Mechanism set out in the tender documents.
- 5.6.2 If the Contractor requires an adjustment to the Contractor's Tendered Prices, pursuant to clause 5.6.1, then it shall provide the Contract Administrator with a written request no later than 4 weeks and no earlier than 8 weeks prior to the Inflation Date and provide the basis for calculating the adjustment.

- 5.6.3 Upon receipt of this written request and supporting calculation the Contract Administrator shall ascertain the increase or decrease applicable to the Contractor's Tendered Prices and shall provide written notice of that calculation as soon as reasonably practicable prior to the Inflation Date. For the avoidance of doubt, the Employer does not have an obligation to agree any adjustment to the Contractor's Tendered Rates or any revised rates
- 5.6.4 In the event the Contractor fails to provide the written request in accordance with clause 5.6.3, then it shall be at the Employer's discretion as to whether any adjustment is made for that particular year in accordance with this clause 5.6.
- 5.6.5 Following the Contract Administrator's assessment pursuant to clause 5.6.3, any adjustment to the Contractor's Tendered Rates or Prices that are agreed by the Employer shall only apply in respect of orders placed by the Employer after the Inflation Date.
- 5.6.5 Either Party can request a unscheduled review of the Contractor's Tendered Rates if it considers there has been a significant fluctuation in one or more of the cost elements that comprise the Contractor's Tendered Rates or Prices, which would not otherwise be captured within the inflation adjustment. The Party submitting the review request must provide a statement detailing the reason for the review and provide all supporting documentation that demonstrates a significant fluctuation in the Contractor's Tendered Rates or Prices.
- 5.6.6 Within 10 Business Days of a written request under clause 5.6.5, the Contractor shall provide the Contract Administrator with a detailed breakdown of the associated costs that demonstrate the increase to the Contractor's Tendered Rates or Prices. Upon receipt of the detailed cost breakdown, the Contract Administrator will carry out an assessment of the information within 10 Business Days and will arrange a subsequent meeting with the Contractor to discuss the assessment and agree any adjustments to the Contractor's Tendered Rates that are deemed reasonable by the Contract Administrator. The Contract Administrator may call further meetings to discuss the assessment if the Contract Administrator considers necessary.
- 5.6.7 Subject the agreement of an adjustment to the Tendered Rates pursuant to clause 5.6.5 and 5.6.6, the Contract Administrator shall provide written notice of that of such agreement. The adjusted rates shall only apply in respect of orders placed by the Employer after the Date stated on the confirmation notice provided by the Contract Administrator.
- 5.6.8 Subject the agreement of an adjustment to the Tendered Rates pursuant to clause 5.6.5 and 5.6.6, it will be at the Contractor Administrators' discretion whether to allow a review of the Tendered Prices at the next anniversary of the Contract, pursuant to this clause 5.6.

Clause 5.7

Delete clause 5.7 and insert "Not used."

Clause 5.8

In line 2 delete "during normal working hours (as referred to in clause 5.7.1)"

SECTION 6 – INJURY, DAMAGE AND INSURANCE

Clause 6.1

In line 3 after "Order" insert "including the performance of the Contractor's obligations under clause 2.12"

Clause 6.2

In line 4 after "Order" insert "including performance of the Contractor's obligations under clause 2.12"

Clause 6.6

Amend the definition of "Joint Names Policy" as follows:

After the word "Contractor" in line 1 insert "and, if required by the Employer, the funder of the Works"

Clause 6.7A.3

Insert new clause 6.7A.3:

"The Contractor shall remain responsible for any loss or damage not covered by any Joint Names Policy."

SECTION 7 – BREAK PROVISION

Clause 7.1

Delete clause 7.1 and insert:

- "7.1.1 The Employer shall have the right to reduce the duration of the Contract Period by giving the Contractor not less than 8 weeks' notice to that effect.
- 7.1.2 The Contractor shall have the right to reduce the duration of the Contract Period by giving the Contractor not less than 12 weeks' notice to that effect.

Clause 7.2.1

At the end of the existing clause add the following sentence:

“For the avoidance of doubt, in the event of a reduction of the Contract Period, the Contract coming to an end, a reduction in the scope of Works or removal of a Workstream under clause 7.1 (Break Notice) the Employer shall not be liable for any direct or indirect loss of profits, loss of contracts or other costs, expense”

SECTION 8 – TERMINATION

Clause 8.1.4.2

Delete the full stop and insert "; or"

Clause 8.1.4.3

Insert a new clause 8.1.4.3:

"he applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986."

Clause 8.6

Delete clause 8.6 and insert:

- "8.6.1 The Contractor undertakes to the Employer that:
- 8.6.1.1 it has not and its current and former directors, officers and employees have not and shall not engage in any Corrupt Activity;
 - 8.6.1.2 it has not and its current and former directors, officers and employees have not and shall not engage in any activity, practice or conduct which could or would place the Employer in breach of section 7(1) Bribery Act;
 - 8.6.1.3 it has and shall maintain and implement procedures to ensure compliance with clauses 8.6.1.1 and 8.6.1.2 and adequate procedures designed to prevent any Associated Person from undertaking any Corrupt Activity and/or conduct that would give rise to an offence under section 7 Bribery Act and it shall comply with the Employer's Anti-corruption Policy;]
 - 8.6.1.4 it shall include undertakings similar to those contained in this clause 8.6.1 in any contract it may enter into with sub-contractors and suppliers;
 - 8.6.1.5 from time to time, at the reasonable request of the Employer, it will confirm in writing that it has complied with its undertakings under clauses 8.6.1.1 to 8.6.1.4 inclusive and will provide any information reasonably requested by the Employer in support of such compliance;
 - 8.6.1.6 it shall maintain adequate records to assist in verifying its compliance with the provisions of this clause 8.6.1 (including without limitation books of account showing all payments made by the Contractor in connection with this Contract) and shall permit the Employer and its third party representatives, on reasonable notice during normal business hours, but without notice in the case of any reasonably suspected breach of clauses 8.6.1.1 to 8.6.1.3 inclusive, to access and take copies of such records and to meet with the Contractor's personnel to audit the Contractor's compliance with its obligations under this clause 8.6.1. The Contractor shall give all necessary assistance to the conduct of such audits.
- 8.6.2 The Contractor shall indemnify the Employer against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Employer as a result of any breach of clause 8.6.1 by the Contractor or

any breach of provisions equivalent to clause 8.6.1 in any contract with a sub contractor or supplier.

- 8.6.3 The Employer may by notice to the Contractor terminate the Contractor's employment under this Contract and (if applicable) any other contract between the Employer and the Contractor:
 - 8.6.3.1 in the event of breach of clauses 8.6.1.1 to 8.6.1.4 inclusive; and/or
 - 8.6.3.2 if an Associated Person (or anyone employed by or acting on behalf of them) engages or has engaged in Corrupt Activity or any activity, practice or conduct which could or would place the Employer in breach of section 7(1) Bribery Act; and/or
 - 8.6.3.3 where the Employer is a local authority if the Contractor gives or has given any fee or reward the receipt of which is an offence under section 117(2) Local Government Act 1972."

Clause 8.10

In line 1 delete "8.6" and insert "8.6.3"

Clause 8.12

Insert new clause 8.12 – 'Vacation of Site':

" Upon any determination of the Contractor's employment under this Contract the Contractor shall immediately vacate the Site and shall comply with all instructions of the Employer for the protection of any works and any goods and materials and the safe and orderly removal of all plant equipment and other items belonging to the Contractor and shall immediately deliver to the Employer possession of the Site and any works in a safe and tidy condition.

Clause 8.13

Insert new clause 8.13 – 'Obligations under the Equality Act':

- "8.13.1 The Contractor acknowledges that the Employer has duties under section 149 Equality Act to have due regard to the need to eliminate discrimination, harassment and any other conduct prohibited by the Equality Act and to promote equality of opportunity and foster good relations between persons sharing a protected characteristic and those who do not share it. For the purposes of this duty (the Equality Duty) the protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation.
- 8.13.2 The Contractor warrants that it will not and shall procure that its sub-contractors will not through their conduct or practices cause the Employer to be in breach of any of the obligations placed upon the Employer under any duty imposed by any regulation issued under section 153 Equality Act and will indemnify the Employer for any loss, expense or damage incurred as a result of any breach of such obligations.
- 8.13.3 The Employer may having regard to its statutory duties under the Equality Act and having due regard to any statutory code of practice issued in relation to those statutory duties make requests or issue instructions to the Contractor relating to the supply of information, monitoring and other matters) for the purposes of ensuring that the that the

conduct or practices of the Contractor and/or its sub-contractors will not result in the Employer being a breach of its obligations under the Equality Act. The Contractor agrees that it will and shall procure that its sub-contractors will provide the Employer with all information reasonably requested by the Employer to allow it to monitor compliance with the obligations imposed by this clause 8.13.

- 8.13.4 Without prejudice to the generality of this clause 8.13 the Employer may require the Contractor to comply at no cost to the Employer with the Employer's policies relating to the Equality Duty (which shall be made available on request) or to have policies which have been approved by the Employer and the Contractor will and agrees that it shall procure that its sub-contractors comply with such requirements."

Clause 8.14

Insert a new clause 8.14 – 'Expiry':

- 8.14.1 During the 3 (three) months preceding the Expiry Date the Contractor must continue to carry out and complete Orders assigned by the Contractor Administrator that can started and completed within the final 3 (three) months of the Contract.
- 8.14.2 In the event an Order is instructed during the final 3 (three) months of the Contract which cannot be reasonably completed before the Expiry Date the Contractor shall notify the Contract Administrator (on receipt of the Order) of this, and request confirmation on whether:
- a) The order should be withdrawn by the Contract Administrator
 - b) The Contract Administrator and Contractor agree to proceed with the Order with the understanding the Order will not be completed by the Expiry Date.
- 8.14.3 Where the Contractor completes Orders pursuant to Clause 8.14.2(b) the Expiry Date will be the date of completion of the last Order to the reasonable satisfaction of the Contract Administrator.

SECTION 9 – SETTLEMENT OF DISPUTES

Clause 9.3

Delete clause 9.3 and insert "Not used."

Clause 9.4

Delete clause 9.4 and insert "Not used."

Clause 9.5

Delete clause 9.5 and insert "Not used."

Clause 9.6

Delete clause 9.6 and insert "Not used."

Clause 9.7

Delete clause 9.7 and insert "Not used."

Clause 9.8

Delete clause 9.8 and insert "Not used."

insert as a new Section 10

SECTION 10 COMPLIANCE WITH MODERN SLAVERY LEGISLATION

10 Modern Slavery Legislation

10.1 The Contractor undertakes to the Employer that:

10.1.1 it has not and its current and former directors, officers and employees have not and shall not engage in activity which would amount to a breach of the Modern Slavery Legislation or activity which would constitute an offence under the Modern Slavery Legislation if the conduct took place in the United Kingdom;

10.1.2 it has not and its current and former directors, officers and employees have not and shall not engage in any activity, practice or conduct which could or would place the Employer in breach of the Modern Slavery Legislation or activity which would constitute an offence under the Modern Slavery Legislation if the conduct took place in the United Kingdom;

10.1.3 it has and shall maintain and implement:

- a) procedures to ensure compliance with the Modern Slavery Legislation; and
- b) adequate procedures designed to prevent conduct that would give rise to an offence under the Modern Slavery Legislation;

10.1.4 it shall include undertakings similar to those contained in these clauses 10.1 and 10.2 in any contract it may enter into with sub-consultants and/or sub-contractors and provisions similar to those contained in clauses 10.3 and 10.4;

10.1.5 from time to time, at the reasonable request of the Employer, it will confirm in writing that it has complied with its undertakings under clause 10.1 and will provide any information reasonably requested by the Employer in support of such compliance.

10.2 The Contractor shall maintain adequate records to assist in verifying its compliance with the provisions of this clause 10 and shall permit the Employer and its third party representatives, immediately upon request [during normal business hours] to access and take copies of such records and to meet with the Contractor's personnel to audit the Contractor's compliance with its obligations under this section 10. The Contractor shall give all necessary assistance to the conduct of such audits.

10.3 Audit access by any third party representative of the Employer in accordance with clause 10.2 shall be subject to such representative agreeing to be bound by confidentiality obligations in respect of the information obtained provided that all information obtained may be disclosed to the Employer.

10.4 In the event of breach of clauses 10.1.1 10.1.2 10.1.3 by the Contractor and/or breach by any sub-consultant or sub-contractor of equivalent clauses required under clause 10.1.4 and/or if the Contractor, sub-consultant or sub-contractor is convicted of an offence under the Modern Slavery Legislation in relation to this Contract or any other Contract (whether or not the Employer is a party to that Contract), the parties agree

that the Employer may at its sole discretion terminate the Contractor's employment under:

- 10.4.1 this Contract and the provisions of clause 8.4 shall apply; and
 - 10.4.2 (if applicable) any other contract between the parties (whether in relation to the Works or otherwise) and any such termination shall be deemed to be termination for default by the Contractor.
- 10.5 The Contractor further undertakes to the Employer that:
- 10.5.1 If required by law to do so, it shall, for each and every financial year of the Contractor, comply with its obligations under S.54 of the Modern Slavery Act by publishing a Human Trafficking Statement;
 - 10.5.2 It shall include an undertaking similar to that contained in this clause 10.2 in any contract it may enter into with sub-consultants, sub-contractors and/or suppliers.
- 10.6 In the event of breach of clause 10.1.4, 10.1.5, 10.2, 10.5 and/or 10.7, the parties agree that the Employer may by notice in writing to the Contractor require that such breaches will be rectified within 7 days of receipt. If the Contractor fails to rectify such breaches in accordance with the notice the Employer may in its sole discretion terminate the Contractor's employment under:
- 10.6.1 this Contract and the provisions of clause 8.4 shall apply; and
 - 10.6.2 (if applicable) any other contract between the parties (whether in relation to the Works or otherwise) and any such termination shall be deemed to be termination for Contractor default.
- 10.7 The Contractor shall indemnify the Employer against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Employer as a result of:
- 10.7.1 any breach of clauses 10.1, 10.2, 10.3, 10.4, or 10.5 by the Contractor or ;
 - 10.7.2 any breach of provisions equivalent to clauses 10.1, 10.2, 10.3, 10.4 or 10.5 in any contract with a sub-consultant or sub-contractor;
 - 10.7.3 any act or omission by a sub-consultant or sub-contractor which would have amounted to a breach of the relevant sub contract had the Contractor complied with its undertaking set out in clause 10.1.4. "

THE SCHEDULE - SUPPLEMENTAL PROVISIONS

Paragraph 3.1

In line 1 delete "is encouraged to" and insert "shall, when it is reasonably practicable to do so,"

Paragraph 4

In line 1 delete "is encouraged to suggest" and insert "shall, when it is reasonably practicable to do so,"

Paragraph 5

Delete paragraph 5.1 and insert "The Contractor shall use reasonable skill and care to achieve the KPIs and shall take all practicable steps to ensure that its sub-contractors, suppliers and sub-consultants are subject to the KPIs. The Employer shall monitor and assess the Contractor's performance by reference to the KPIs (a **KPI Review**)."

In line 2 of paragraph 5.2 delete "performance targets" and insert "KPIs"

In line 1 of paragraph 5.3 delete "performance targets" and insert "KPIs"

Insert paragraph 5.4

"5.4 If as part of any KPI Review undertaken pursuant to this paragraph 5 and this section, the Contractor is found to have failed to achieve the KPIs, the Contractor shall submit to the Employer and the Contract Administrator an action plan setting out how the Contractor intends to rectify the notified failures within a two (2) month period from the date of the relevant KPI Review."

Insert Paragraph 5.5

"5.5 The Employer and the Contract Administrator shall consider any such proposals submitted by the Contractor and amend or clarify them as appropriate and within ten (10) Working Days from the receipt of the Contractor's proposals the Contract Administrator shall issue the agreed finalised proposals as an action plan (each an **Action Plan**) and the Contractor shall implement the Action Plan forthwith."

Insert paragraph 5.6

"5.6 The Contract Administrator and the Contractor shall meet one (1) month from the date of the relevant KPI Review to review the Contractor's performance against the Action Plan. If this review notifies a continued failure by the Contractor to achieve the agreed KPIs, the Employer may, at its sole discretion:

- 5.6.1 request that the Contractor provides a revised Action Plan and repeat the procedure described in this paragraph 5;
 - 5.6.2 shorten the Contract Period or reduce to scope of works or services to be carried out by the Constructor with immediate effect;
 - 5.6.3 deduct sums due to the Contractor in accordance with the KPI schedule;
- or

5.6.4 terminate the Contractor's appointment under this Agreement with immediate effect.

Paragraph 6

In line 1 delete "With" and insert "The parties shall each notify the other as soon as they are aware of any matter adversely affecting this Contract or either party's performance of it. Such notice shall include proposals for avoiding or mitigating such matter. In addition with"

Appendix 1

List of Properties

All properties that are owned and managed by Northampton Partnership homes (NPH) are subject to this contract agreement and services which directly affect the business in which NPH manage properties and carry out works. This will be directed by the contract lead or his delegated persons as appropriate to the works being agreed and issued by contract lead or delegated persons.

Appendix 2

Northampton Partnership homes have agreed the schedule or rates as per the quotes receive and procurement process for this contract. If this is to be altered or extra works carried out, then this will need to be agreed by both sides.

ADD SCHEDULE OF RATES HERE

Appendix 3

Employment and Skill Document

1.1 All Employees and staff connected to delivering this contract as mentioned above shall be necessary skilled, to deliver and implement this agreement in the safest, cost effective and efficient means possible.

1.2 A qualified person is knowledgeable, competent and experienced to carry out the tasks of which they have been issued. All contractors and staff **MUST** have the suitable skills and qualifications to be classed as competent.

1.3 All works must be carried out in line with current legislation and regulations to ensure all works is compliant with the required standards.



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