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MWD 2024
Minor Works Building Contract
with contractor's design 2024

2024
MINOR WORKS BUILDING CONTRACT

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

Appropriate:

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

Can be used:

- by both private and local authority employers.

Not suitable:

- as a design and build contract;
- where bills of quantities are required;
- where provisions are required to govern work carried out by named specialists;
- where detailed control procedures are needed including (but not limited to) detailed provisions governing extensions of time and loss and expense.

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For details of 2024 Edition changes, see the Guidance Notes and the Tracked Change Document.

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Agreement

This Agreement

is made the _____ 20_____

Between

The Employer

Orbit Group Ltd

Place of incorporation: England and Wales

(Company No. 28503R)^[1]

whose registered office is at Binley Business Park, Garden Court, Coventry CV3 2SU

And

The Contractor

Colours Decorating Limited

Place of incorporation: England and Wales

(Company No. 03902490)^[1]

whose registered office is at Office 7 15-20 Gresley Road, St Leonards On Sea, East Sussex, United Kingdom, TN38 9P

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

Recitals

Whereas

First

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

Garden reinstatement works

at

63/65 Deepdene Gardens, Hastings TN35 5TB ('the Works')
under the direction of the Architect/Contract Administrator referred to in Article 4;

Second

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

Erection of temporary scaffold and access ramp to side of building
Removal of existing trees and vegetation dispose
Removal of all existing timber structures to include, decking, sleeper, retaining wall
Rebuild of existing brick retaining wall, finished within concrete copings
Landscaping works to reinstate original sloped gradient, finished with topsoil and seed
Construction of new rock filled gabion retaining wall
Construction of new brickwork steps
Installation of new timber fencing
(the Contractor's Designed Portion)
(('the Contractor's Designed Portion'));

Third

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

the drawings listed in Appendix A - E14260_01 Garden Reinstatement Works
Appendix B - E14260_02 Garden Enabling Works
Appendix C - Colours-63-65 Deepdene Gardens - Schedule of Works (Pricing) ('the Contract Drawings')^{[4][5]}

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

Work Schedules^[4]

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

which for identification have been signed or initialled by or on behalf of each Party; those documents together with this Agreement, the Conditions and, if applicable, a Schedule of Rates as referred to in

-
- [2] State nature and location of intended works.
- [3] State nature of work in the Contractor's Designed Portion either here or by reference to an identified Annex to this Contract. The Annex or any continuation sheets to a description here should be signed or initialled by or on behalf of each Party.
- [4] Delete as appropriate.
- [5] State the identifying numbers of the Contract Drawings or identify the schedule of drawings or other document listing them.

the Fourth Recital (collectively 'the Contract Documents') are annexed to this Agreement^[6]

Fourth

the Contractor has supplied the Employer with a copy of the priced Work Schedules^[4];

Fifth

for the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004, the status of the Employer is, as at the Base Date, that stated in the Contract Particulars;

Sixth

for the purposes of the Construction (Design and Management) Regulations 2015 (the 'CDM Regulations') the status of the project that comprises or includes the Works is stated in the Contract Particulars;

Seventh

the Contract is not supplemented by a Framework Agreement;

Eighth

whether any of Supplemental Provisions 1 to 3 apply is stated in the Contract Particulars;

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

Articles

Now it is hereby agreed as follows

Article 1 Contractor's obligations

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

Article 2 Contract Sum

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

sixty eight thousand two hundred thirty seven pounds and fifty five pence (£68237.55) ('the Contract Sum')

or such other sum as becomes payable under this Contract.

Article 3 Collaborative working

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.

Article 4 Architect/Contract Administrator

For the purposes of this Contract the Architect/Contract Administrator^[7] is

Orbit Group Limited

of

Binley Business Park, Garden Court, Coventry CV3 2SU

or, if it ceases to be the Architect/Contract Administrator, such other person as the Employer nominates (such nomination to be made within 14 days of the cessation). No replacement appointee as Architect and/or Contract Administrator shall be entitled to disregard or overrule any certificate, opinion, decision, approval or instruction given by any predecessor in that post, save to the extent that that predecessor if still in the post would then have had power under this Contract to do so.

Article 5 CDM Regulations – Principal Designer and Principal Contractor

For the purposes of the CDM Regulations:

the Principal Designer is

Colours Decorating Limited

of

[7] Unless the person appointed by or under Article 4 is entitled to use the title 'Architect' under the Architects Act 1997, the term 'Architect' shall so long as that person holds that post be deemed deleted throughout this Contract. Any appointee as Contract Administrator should be suitably experienced for the role. Irrespective of experience or qualifications, the Employer should not at any time appoint itself to the role without the Contractor's prior agreement.

Office 7 15-20 Gresley Road, St Leonards On Sea, East Sussex, United Kingdom, TN38 9PL

or such replacement as the Employer at any time appoints to fulfil that role;

the Principal Contractor is the Contractor or such replacement as the Employer at any time appoints to fulfil that role.

Article 6 Building Regulations – Principal Designer and Principal Contractor

For the purposes of the Building Regulations (where applicable):

the Principal Designer is

Colours Decorating Limited

of

Office 7 15-20 Gresley Road, St Leonards On Sea, East Sussex, United Kingdom, TN38 9PL

or such replacement as the Employer at any time appoints to fulfil that role;

the Principal Contractor is the Contractor or such replacement as the Employer at any time appoints to fulfil that role.

Article 7 Adjudication

If any dispute or difference arises under this Contract either Party may refer it to adjudication in accordance with clause 7.3.^[8]

Article 8 Arbitration

Where Article 8 applies^[9], then, subject to Article 7 and the exceptions set out below, any dispute or difference between the Parties of any kind whatsoever arising out of or in connection with this Contract shall be referred to arbitration in accordance with Schedule 1 and the JCT 2024 edition of the [Construction Industry Model Arbitration Rules \(CIMAR\)](#)^[10]. The exceptions to this Article 8 are:

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

Article 9 Legal proceedings^[9]

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

[8] As to adjudication in cases where the Employer is a residential occupier within the meaning of section 106 of the Housing Grants, Construction and Regeneration Act 1996, see the Guidance Notes.

[9] If it is intended, subject to the right of adjudication and exceptions stated in Article 8, that disputes or differences should be determined by arbitration and not by legal proceedings, the Contract Particulars **must** state that the arbitration provisions of Article 8 and Schedule 1 apply and the words "do not apply" **must** be deleted. If the Parties wish any dispute or difference to be determined by the courts of another jurisdiction the appropriate amendment should be made to Article 9 (see also clause 1.8).

[10] See the Guidance Notes.

Contract Particulars

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

Fifth Recital and the JCT Fluctuations Option (paragraphs 1.1, 1.2, 1.5, 1.6, 2.1 and 2.2)

Base Date

Fifth Recital and clause 4.2

Construction Industry Scheme (CIS)

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

Sixth Recital

CDM Regulations^[11]

the project
* is notifiable

Eighth Recital and Schedule 2

Supplemental Provisions^[12]

(Where neither entry against one of Supplemental Provisions 1 to 3 below is deleted, that Supplemental Provision applies.)

Supplemental Provision 1: Health and safety
* applies

Supplemental Provision 2: Cost savings and value improvements
* applies

Supplemental Provision 3: Performance Indicators and monitoring
* does not apply

Article 8

Arbitration

(If neither entry is deleted, Article 8 and Schedule 1 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must be stated that Article 8 and Schedule 1 apply.)^[13]

Article 8 and Schedule 1 (*Arbitration*)

- [11] Under the CDM Regulations a project is notifiable if the construction work on a construction site is scheduled either to last longer than 30 working days and have more than 20 workers working simultaneously at any point in the project or to exceed 500 person days.
- [12] Supplemental Provision 4 (Transparency) applies only where the Employer is a Local or Public Authority or other body to which the Freedom of Information Act 2000 applies; Supplemental Provision 5 (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.
- [13] On factors to be taken into account by the Parties in considering whether disputes are to be determined by arbitration or by legal proceedings, see the Guidance Notes. See also footnote [9].

* apply

1.6.2

Addresses for service of notices by the Parties

(If a Party's address is not stated, it shall, subject to clause 1.6.2, be that shown at the commencement of the Agreement.)

Employer

Binley Business Park, Garden Court, Coventry CV3 2SU

Contractor

Office 7 15-20 Gresley Road, St Leonards On Sea, East Sussex, United Kingdom, TN38 9PL

The respective email addresses for the Parties are

Employer's email

Joseph.Makowski@orbit.org.uk

Contractor's email

sean@colours-ltd.com

or, subject to clause 1.6.2, such other email address as each Party may notify to the other from time to time

2.3

Works commencement date

16th February 2026

Date for Completion

30th March 2026

or such later date for completion as is fixed under clause 2.8

2.9

Liquidated damages

at the rate of

£500 per Week^[14]

2.11

Rectification Period

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

12 months^[15]

from the date of practical completion

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

[15] An insertion is needed here only if the default position is not to apply. If no retention is required, insert '100' in the percentage entries for clause 4.4.

4.3

Interim payments – Interim Valuation Dates^[16]

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

The first Interim Valuation Date is

one month
and thereafter at intervals of
one month

4.4

Payments due prior to practical completion – percentage of the total value of work etc.

(The percentage is 95 per cent unless a different rate is stated.)

95 per cent^[15]

Payments becoming due on or after practical completion – percentage of the total amount to be paid to the Contractor

(The percentage is 97½ per cent unless a different rate is stated.)

97.5 per cent^[15]

4.4 and 4.9

Fluctuations provision^[17]

(Unless another provision or entry is selected, the JCT Fluctuations Option applies. References in this Contract to the JCT Fluctuations Option (or any provision as set out in such Option) are references to the JCT 2024 edition of that Option.)

* no fluctuations provision applies

4.9.1

Supply of documentation for computation of amount to be finally certified

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

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

5.3

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

£5,000,000
for any one occurrence or series of occurrences arising out of one event

5.4, 5.5 and 5.6

Insurance of the Works etc. – alternative provisions^[18]

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

[17] Unless the fluctuations provision is to be the JCT Fluctuations Option, delete all but one of the asterisked choices. The printed text of the JCT Fluctuations Option is no longer included in JCT contract documents but continues to be available on the JCT website www.jcttd.co.uk. If an alternative fluctuation is to be used, the document(s) in which it is contained should be identified here.

[18] **As to choice of applicable insurance provisions, see the Guidance Notes.**
Where there are existing structures, it is vital that any prospective Employer – in particular any Employer which is a tenant or a domestic homeowner – which is not familiar with clause 5.5 and the possible solutions under clause 5.6, or an appropriate member of the Employer's professional team, should consult the Employer's insurance advisers prior to the tender stage. Any

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

5.4 and 5.5

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

N/A per cent

6.2.3.2

Service of notices by email
(*If neither entry is deleted or an email address for each Party is not specified, clause 6.2.3.2 shall not apply.*)

Clause 6.2.3.2
* applies

Employer's email

Joseph.Makowski@orbit.org.uk

Contractor's email

sean@colours-ltd.com

7.1

Notification and negotiation of disputes

The respective nominees of the Parties are

Employer's nominee

Joseph Makowski

Contractor's nominee

Sean Edmunds

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

7.3

Adjudication^[19]

Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established) the nominating body is

*(Delete all but one of the asterisked choices. If the body is to be other than one of those listed, insert the name here.)
(If a body has not been selected from those listed below or another body chosen and inserted, 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

Employer which is a tenant should also consult its insuring landlord prior to that stage.

[19] 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.

Schedule 1 (paragraph 2.1)

Arbitration^[20]: appointor of Arbitrator (and of any replacement) – the appointor is
(Delete all but one of the asterisked choices. If the body is to be other than one of those listed, insert the name here.)
(If no body is selected from those listed below or another body chosen and inserted, the appointor shall be the President or a Vice-President of the body listed below selected by the Party serving the first notice of arbitration under paragraph 2 of Schedule 1. For any subsequently served notice of arbitration from any Party under paragraph 2 of Schedule 1, the appointor shall be the President or a Vice-President of the same body that was selected for the first notice of arbitration.)

President or a Vice-President:

- * The Royal Institution of Chartered Surveyors

[20] This only applies where the Contract Particulars state (against the reference to Article 8) that Article 8 and Schedule 1 (*Arbitration*) apply.

Attestation

Note on Execution

This Agreement should be executed by both the Employer and the Contractor either under hand or as a deed. As to the main factor relevant to that choice, see the Guidance Notes.

Execution under hand

If this Agreement is to be executed under hand, use the form set out on the following page. Each Party or its authorised representative should sign where indicated in the presence of a witness who should then sign and set out their 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 its behalf, the appropriate form(s) may be inserted in the vacant space opposite and/or below.

Electronic execution

In 2019, the Law Commission published a report on "Electronic execution of documents" to assist in clarifying the legal status of electronic signatures. It reached the general conclusion that: "An electronic signature is capable in law of being used to validly execute a document (including a deed) provided that (i) the person signing the document intends to authenticate the document and (ii) any formalities relating to execution of that document are satisfied."^[21] The practice of electronic execution has been growing in recent years and JCT understands that this is now commonplace. E-signature platforms are understood to be widely available, but JCT does not endorse any particular software company.

[21] See Statement of Law paragraph (1) at page 2 of the report. The full text of the report is available at www.lawcom.gov.uk/project/electronic-execution-of-documents.

Notes on Execution as a Deed

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

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

Execution as a Deed

Executed as a Deed by the Employer

namely ¹ Orbit Group Ltd

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

Signature Director

Signature Company Secretary/Director

[Common seal of company]

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

Execution as a Deed

Executed as a Deed by the Contractor

namely ¹ Colours Decorating Limited

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

 _____
Signature Director SEAN EDMUNDS

in the presence of

Witness' signature J. Graham (Print name) JOANNE GRAHAM

Witness's address 163 BEMBROOK ROAD, TN34 3PD

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

Conditions

Section 1 Definitions and Interpretation

1.1 Definitions

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

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

All Risks Insurance^[22]: insurance which provides cover against any physical loss or damage to work executed and Site Materials and against the reasonable cost of the removal and disposal of debris and of any shoring and propping of the Works which results from such physical loss or damage but excluding the cost necessary to repair, replace or rectify:

- (a) property which is defective due to:
 - (i) wear and tear,
 - (ii) obsolescence, or
 - (iii) deterioration, rust or mildew;
- (b) any work executed or any Site Materials lost or damaged as a result of its own defect in design, plan, specification, material or workmanship or any other work executed which is lost or damaged in consequence thereof where such work relied for its support or stability on such work which was defective^[23];
- (c) loss or damage caused by or arising from:
 - (i) any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation, commandeering, nationalisation or requisition or loss or destruction of or damage to any property by or under the order of any government *de jure* or *de facto* or public, municipal or local authority,
 - (ii) disappearance or shortage if such disappearance or shortage is only revealed when an inventory is made or is not traceable to an identifiable event, or
 - (iii) an Excepted Risk.

Article: an article in the Agreement.

Base Date: the date stated as such date in the Contract Particulars (against the Fifth Recital and the JCT Fluctuations Option).

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

[23] In any policy for All Risks Insurance taken out under clause 5.4 or 5.5.2, cover should not be reduced by any exclusion that goes beyond the terms of paragraph (b) in this definition. For example, an exclusion in terms that 'This Policy excludes all loss of or damage to the property insured due to defective design, plan, specification, materials or workmanship' would not be in accordance with the terms of those insurance clauses or of that definition. Wider All Risks cover than that specified may be available, though it is not standard.

Building Regulations: the Building Regulations 2010.

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

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

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

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

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

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

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

Contractor's Designed Portion: see the **Second Recital**.

Contractor's Persons: the Contractor's employees and agents, all other persons employed or engaged on or in connection with the Works or any part of them and any other person properly on the site in connection therewith, excluding the Architect/Contract Administrator, the Employer, Employer's Persons and any Statutory Provider.

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

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

Excepted Risks: ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

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

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

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

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

Parties: the Employer and the Contractor together.

Party: either the Employer or the Contractor.

PC Regulations: the Public Contracts Regulations 2015.

Principal Contractor: the Contractor or other contractor named in **Article 5** or **Article 6** or any successor appointed by the Employer.

Principal Designer: the Architect/Contract Administrator or other person named in **Article 5** or **Article 6** or any successor appointed by the Employer.

Provisional Sum: includes a sum provided for work that the Employer may or may not decide to have carried out, or which cannot be accurately specified in the Contract Documents.

Public Holiday: Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.^[24]

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

Rectification Period: the period stated as such period in the **Contract Particulars** (against the

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

reference to **clause 2.11**).

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

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

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

Statutory Provider: any person executing work solely in pursuance of its statutory obligations, including any persons employed, engaged or authorised by such person upon or in connection with that work.

Statutory Requirements: any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Works or performance of any obligations under this Contract and any regulation or bye-law of any person which has any jurisdiction with regard to the Works or with whose systems the Works are, or are to be, connected.

Termination Payment: a payment to which **clauses 6.7.5, 6.11.4** and **6.12** refer.

VAT: Value Added Tax.

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

1.2 Agreement etc. to be read as a whole

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

1.3 Headings, references to persons, legislation etc.

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

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

1.4 Reckoning periods of days

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

1.5 Contracts (Rights of Third Parties) Act 1999

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

1.6 Notices and other communications

- 1.6.1 Each notice, instruction or other communication referred to in the Agreement or these Conditions shall be in writing.
- 1.6.2 Unless otherwise stated in these Conditions, any notice or other communication under this

Contract may be given to or served on the recipient by any effective means and shall be duly given or served if:

- 1.6.2.1 delivered by hand or sent by pre-paid post to the recipient's address stated in the Contract Particulars against clause 1.6.2, or to such other address as the recipient may from time to time notify to the sender, or if no such address is then current, the recipient's last known principal business address or (where a body corporate) its registered or principal office; or
- 1.6.2.2 sent by email to the recipient's email address stated in the Contract Particulars against clause 1.6.2, or to such other email address as the recipient may from time to time notify to the sender.

1.7 Consents and approvals

- 1.7.1 Where consent or approval of either Party or the Architect/Contract Administrator is expressly required under these Conditions and is requested, then, except as provided in clause 1.7.2, such consent or approval shall not be unreasonably delayed or withheld.
- 1.7.2 In the following cases the giving of consent or approval shall be at the sole discretion of the Party from which it is sought and clause 1.7.1 shall not apply, namely the Employer's consent under clause 2.11 and either Party's consent under clause 3.1.

1.8 Applicable law

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

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

Section 2 Carrying out the Works

2.1 Contractor's obligations

- 2.1.1 The Contractor shall carry out and complete the Works in a proper and workmanlike manner and in compliance with the Contract Documents, the Construction Phase Plan and Statutory Requirements, and shall give all notices required by the Statutory Requirements.
- 2.1.2 The Contractor is encouraged to suggest economically viable amendments to the Works which, if instructed as a variation under clause 3.6.1, may result in an improvement in environmental performance and sustainability in the carrying out of the Works or of the completed Works and a reduction in environmental impact, provided that no such instruction shall extend the Contractor's obligations in relation to design under this Contract.
- 2.1.3 In relation to the Contractor's Designed Portion, the Contractor:
- 2.1.3.1 using reasonable skill and care, shall complete the design for the Contractor's Designed Portion, including, so far as not described or stated in the Employer's Requirements, the selection of any specifications for the kinds and standards of the materials, goods and workmanship to be used in the CDP Works;
 - 2.1.3.2 to the extent permitted by the Statutory Requirements, shall have no greater duty, obligation or liability than to use reasonable skill and care as provided in clause 2.1.3.1 in respect of such design and under no circumstances shall the Contractor be subject to any duty, obligation or liability which requires that any such design shall be fit for its purpose;
 - 2.1.3.3 shall comply with regulations 8 to 10 of the CDM Regulations and (where applicable) regulations 11F, 11J(2), 11J(4) and 11K of the Building Regulations and with the Architect/Contract Administrator's directions for the integration of the design of the Contractor's Designed Portion with the design of the Works as a whole, subject to the provisions of clause 3.4.2;
 - 2.1.3.4 shall as and when necessary without charge provide the Architect/Contract Administrator with copies of such drawings or details, specifications of materials, goods and workmanship, and (if requested) related calculations and information, as are reasonably necessary to explain the Contractor's Designed Portion;
 - 2.1.3.5 shall not be responsible for the contents of the Employer's Requirements or for verifying the adequacy of any design contained within them. If an inadequacy is found in any design in the Employer's Requirements, then, subject to clause 2.6, the Employer's Requirements shall be altered or modified by instructions under clause 3.6.1.

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

2.2 Materials, goods and workmanship

- 2.2.1 The Contractor shall provide to the Employer all information that the Employer reasonably requests regarding the environmental impact of the supply and use of materials and goods which the Contractor selects.
- 2.2.2 Insofar as the quality of materials or standards of workmanship are stated to be a matter for the Architect/Contract Administrator's approval, such quality and standards shall be to the Architect/Contract Administrator's reasonable satisfaction. To the extent that the quality of

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

materials and goods or standards of workmanship are neither described in the Contract Documents nor stated to be a matter for such approval or satisfaction, they shall in the case of the Contractor's Designed Portion be of a standard appropriate to it and shall in any other case be of a standard appropriate to the Works.

- 2.2.3 The Contractor shall take all reasonable steps to encourage Contractor's Persons to be registered cardholders under the [Construction Skills Certification Scheme \(CSCS\)](#) or qualified under an equivalent recognised qualification scheme.

2.3 Commencement and completion

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

2.4 Architect/Contract Administrator's duties

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

2.5 Correction of inconsistencies

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

2.6 Divergences from Statutory Requirements

- 2.6.1 If the Contractor becomes aware of any divergence between the Statutory Requirements and the Contract Documents or between the Statutory Requirements and any instruction from the Architect/Contract Administrator, it shall immediately notify the latter, specifying the divergence.
- 2.6.2 Provided the Contractor is not in breach of clause 2.6.1, the Contractor shall not be liable under this Contract if the Works (other than the CDP Works) do not comply with the Statutory Requirements to the extent that the non-compliance results from the Contractor having carried out work in accordance with the Contract Documents or the Architect/Contract Administrator's instructions.

2.7 Fees or charges legally demandable

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

2.8 Extension of time

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

2.9 Damages for non-completion

- 2.9.1 If the Works are not completed by the Date for Completion as stated in the Contract Particulars or as later fixed under clause 2.8, the Employer may require the Contractor to pay or allow to the Employer liquidated damages at the rate stated in the Contract Particulars between such Date for Completion and the date of practical completion.
- 2.9.2 Subject to clause 2.9.3, the Employer may deduct the liquidated damages from any sum

due to the Contractor under this Contract (provided a notice of that deduction has been given under clause 4.6.4 or (if applicable) 6.12.3 or 6.12.5) or recover those damages from the Contractor as a debt.

2.9.3 If the Employer intends to deduct any such damages from any sum due to the Contractor under this Contract or thereafter recover such damages as a debt, it shall additionally notify the Contractor of that intention not later than the due date for the final payment under clause 4.9.1 or (if applicable) the Termination Payment under clause 6.7.4 or 6.11.3.

2.9.4 If the Contractor's employment is terminated under this Contract:

2.9.4.1 where the date of termination occurs prior to the date of practical completion, the provisions of clauses 2.9.1 to 2.9.3 shall apply in respect of the period between the Date for Completion as stated in the Contract Particulars or as later fixed under clause 2.8 and the date of termination, and the reference to the date of practical completion in clause 2.9.1 shall be deemed to be a reference to the date of termination;

2.9.4.2 in respect of the period after the date of termination, subject to clause 2.9.4.1, the Employer shall not be empowered to require the payment of or to deduct liquidated damages under clause 2.9 but the provisions of this clause 2.9.4.2 shall be without prejudice to and not in substitution of any other rights and remedies of the Employer.

2.10 Practical completion

The Architect/Contract Administrator shall certify the date when in its opinion the Works have reached practical completion and the Contractor has complied sufficiently with clauses 2.1.3.4 and 3.9 in respect of the supply of documents and information.

2.11 Defects

If any defects, shrinkages or other faults in the Works appear within the Rectification Period due to materials, goods or workmanship not in accordance with this Contract or any failure of the Contractor to comply with its obligations in respect of the CDP Works, the Architect/Contract Administrator shall not later than 14 days after the expiry of the Rectification Period notify the Contractor and the Contractor shall make good such defects, shrinkages or other faults entirely at its own cost unless the Architect/Contract Administrator with the Employer's consent instructs otherwise. If the Architect/Contract Administrator instructs otherwise, an appropriate deduction may be made from the Contract Sum.

2.12 Certificate of making good

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

Section 3 Control of the Works

3.1 Assignment

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

3.2 Person-in-charge

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

3.3 Sub-contracting

3.3.1 The Contractor shall not without the Architect/Contract Administrator's consent sub-contract the whole or any part of the Works or of any design work for the Contractor's Designed Portion. In no case shall any such consent or any sub-contracting in any way affect the Contractor's obligations under any other provision of this Contract.

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

3.3.2.1 the sub-contractor's employment under the sub-contract shall terminate immediately upon the termination (for any reason) of the Contractor's employment under this Contract;

3.3.2.2 (without limiting either party's statutory and/or regulatory duties) each party to the sub-contract shall in relation to the Works and the site comply with applicable CDM Regulations and as applicable Part 2A of the Building Regulations^[28];

3.3.2.3 if by a final date for payment under the sub-contract the Contractor fails to pay the sub-contractor any amount that should properly have been paid, the Contractor shall, in addition to that amount, pay simple interest on it at the Interest Rate for the period from the final date for payment until such payment is made, such payment of interest to be on and subject to terms equivalent to those of clause 4.7 of these Conditions.

3.4 Architect/Contract Administrator's instructions

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

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

3.5 Non-compliance with instructions

If the Contractor unreasonably delays or withholds its consent to an instruction referred to in clause 3.4.2 or fails to comply within 7 days after receipt of a notice from the Architect/Contract Administrator requiring compliance with any other instruction, the Employer may employ and pay other persons to execute work of any kind that may be necessary to give effect to that instruction. The Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and an appropriate deduction may be made from the Contract Sum.

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

[28] See footnote [29] to clause 3.9 below.

3.6 Variations

- 3.6.1 The Architect/Contract Administrator may without invalidating this Contract issue instructions requiring an addition to, omission from, or other change in the Works or the order or manner in which they are to be carried out (a 'variation'), including instructions effecting changes in the Employer's Requirements that necessitate an alteration or modification of the design of the CDP Works.
- 3.6.2 The Architect/Contract Administrator and the Contractor shall endeavour to agree a price prior to the Contractor carrying out the instruction.
- 3.6.3 Failing agreement under clause 3.6.2, any instructions for a variation and any matters that are to be treated as a variation shall be valued by the Architect/Contract Administrator on a fair and reasonable basis using any relevant prices in the priced Contract Specification/Work Schedules/Schedule of Rates, and the valuation shall include any direct loss and/or expense incurred by the Contractor due to the regular progress of the Works being affected by compliance with the instruction.

3.7 Provisional Sums

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

3.8 Exclusion from the Works

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

3.9 CDM Regulations and Part 2A of the Building Regulations

Without limiting either Party's statutory and regulatory duties and responsibilities, each Party undertakes to the other that in relation to the Works and site it will duly comply with applicable CDM Regulations and as applicable Part 2A of the Building Regulations^[29], and in particular but without limitation:

- 3.9.1 the Employer shall ensure that the Principal Designer carries out its duties and, where the Contractor is not the Principal Contractor, shall ensure that the Principal Contractor carries out its duties under those regulations;
- 3.9.2 the Contractor in addition to any obligations under clause 2.1.3.3 shall comply with:^[30]
- 3.9.2.1 regulations 8 and 15 of the CDM Regulations and, where it is the Principal Contractor for the purposes of the CDM Regulations, with regulations 12 to 14 of those regulations; and
 - 3.9.2.2 regulations 11F, 11J and 11L of the Building Regulations and, where it is the Principal Contractor for the purposes of the Building Regulations, with regulation 11N of those regulations;
- 3.9.3 if the Employer appoints a replacement for any Principal Designer or Principal Contractor, the Employer shall immediately upon that appointment notify the Contractor with details of the new appointee.

[29] Part 2A of the Building Regulations, introduced by the Building Regulations etc. (Amendment) (England) Regulations 2023 pursuant to the Building Safety Act 2022, sets out a framework of safety duties and competence requirements for those persons involved in the procurement, design and undertaking of building work to which building regulations apply (including higher-risk building work for which additional duties apply).
If any project involves higher-risk building work, see the Guidance Notes.

[30] Under the CDM Regulations and the Building Regulations, where the Employer is a domestic client (as defined in regulation 2(1) in both sets of regulations), the Principal Contractor may also be responsible for carrying out certain of the client's duties.

Section 4 Payment

4.1 VAT

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

4.2 Construction Industry Scheme (CIS)

If the Employer is or at any time up to the payment of the final certificate becomes a 'contractor' for the purposes of the CIS^[31], its obligation to make any payment under this Contract is subject to the provisions of the CIS.

4.3 Interim payments – dates and certificates

4.3.1 During the period up to the due date for the final payment fixed under clause 4.9.1, the due dates for interim payments to the Contractor shall in each case be the date 7 days after the relevant Interim Valuation Date.

4.3.2 The Architect/Contract Administrator shall not later than 5 days after each due date issue an interim certificate, stating the sum that it considers to be or have been due to the Contractor at the due date, calculated in accordance with clause 4.4, and the basis on which that sum has been calculated, including the amount of each adjustment.

4.3.3 Subject to clause 4.6.3, the final date for payment of each interim payment shall be 14 days from its due date.

4.4 Interim payments – calculation of sums due

The amount of each interim payment to be certified under clause 4.3.2 shall be the applicable percentage, as stated in the Contract Particulars, of the total value of:

4.4.1 work properly executed, adjusted where relevant for any amounts ascertained or agreed under clause 3.6, 3.7 or 4.8; and

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

in both cases calculated as at the Interim Valuation Date and adjusted for any fluctuations provision that is stated by the Contract Particulars to apply, less the total of sums stated as due to the Contractor in previous interim certificates, any sums paid in respect of any payment notice given by the Contractor after the issue of the latest interim certificate and, if applicable, any deduction under clause 2.11 or 3.5.

4.5 Contractor's applications and payment notices

4.5.1 In relation to any interim payment the Contractor may not later than its Interim Valuation Date or, in the case of the final payment, may at any time prior to issue of the final certificate make an application to the Architect/Contract Administrator, stating the sum that the Contractor considers to be due to it at the relevant due date, as fixed in accordance with clause 4.3 or 4.9, and the basis on which that sum has been calculated.

4.5.2 If a certificate is not issued in accordance with clause 4.3 or 4.9, then:

4.5.2.1 where the Contractor has made an application for that payment in accordance with clause 4.5.1, that application is for the purposes of these Conditions a payment notice; or

4.5.2.2 where the Contractor has not made such an application, it may at any time after the 5 day period referred to in clause 4.3.2 or 4.9.2 give a payment notice to the Architect/Contract Administrator, stating the sum that the Contractor considers to

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

have become due to it under clause 4.4 or 4.9 at the relevant due date and the basis on which that sum has been calculated.

4.6 Payments – amount and notices

- 4.6.1 Subject to any notice given by the paying Party under clause 4.6.4, the paying Party shall pay the sum stated as due in the relevant certificate on or before the final date for payment under clause 4.3 or 4.9.
- 4.6.2 If that certificate is not issued in accordance with clause 4.3 or 4.9 but a Contractor's payment notice has been or is then given, the Employer shall, subject to any notice subsequently given by it under clause 4.6.4, pay the Contractor the sum stated as due in the Contractor's payment notice.
- 4.6.3 Where the Contractor gives a payment notice under clause 4.5.2.2, the final date for payment of the sum specified in it shall for all purposes be regarded as postponed by the same number of days as the number of days after expiry of the 5 day period referred to in clause 4.5.2.2 that the Contractor's payment notice is given.
- 4.6.4 Where:
- 4.6.4.1 the Employer intends to pay less than the sum stated as due from it in a certificate or, where applicable, the Contractor's payment notice; or
- 4.6.4.2 if the final certificate shows a balance due to the Employer, the Contractor intends to pay less than the sum stated as due,
- the Party by which the payment is stated to be payable shall not later than 5 days before the final date for payment give the other Party notice of that intention (a 'pay less notice'), stating the sum (if any) that it considers to be due to the other Party at the date the pay less notice is given and the basis on which that sum has been calculated. Where a pay less notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated in it as due.
- 4.6.5 A pay less notice to be given by the Employer under clause 4.6.4 may be given on its behalf by the Architect/Contract Administrator or by any other person which the Employer notifies the Contractor as being authorised to do so.
- 4.6.6 In relation to the requirements for the issue of certificates and the giving of notices under section 4, it is immaterial that the amount then considered to be due may be zero.

4.7 Failure to pay amount due

- 4.7.1 If either Party fails to pay a sum, or any part of it, due to the other Party under these Conditions by the final date for payment, it shall, in addition to any unpaid amount that should properly have been paid, pay the other Party simple interest on that amount at the Interest Rate for the period from the final date for payment until payment is made.
- 4.7.2 Any such unpaid amount and any interest under clause 4.7.1 shall be recoverable as a debt. Acceptance of a payment of interest shall not in any circumstances be construed as a waiver either of the recipient's right to proper payment of the principal amount due or of the Contractor's rights to suspend performance under clause 4.8 or terminate its employment under section 6.

4.8 Contractor's right of suspension

- 4.8.1 If the Employer fails to pay a sum payable to the Contractor in accordance with clause 4.6 (together with any VAT properly chargeable in respect of that payment) by the final date for payment and the failure continues for 7 days after the Contractor has given notice to the Employer, with a copy to the Architect/Contract Administrator, of its intention to suspend performance of its obligations under this Contract and the grounds for such suspension, the Contractor, without affecting its other rights and remedies, may suspend performance of any or all of those obligations until payment is made in full.
- 4.8.2 Where the Contractor exercises its right of suspension under clause 4.8.1, it shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by it as a result of exercising the right.
- 4.8.3 Applications in respect of any such costs and expenses shall be made to the

Architect/Contract Administrator and the Contractor shall with its application or on request submit such details of them as are reasonably necessary for ascertaining the amount in question. When ascertained or agreed, the amount shall be included in the next interim certificate.

4.9 Final certificate and final payment

4.9.1 Following practical completion the Contractor shall within the period stated in the Contract Particulars supply to the Architect/Contract Administrator all documentation reasonably required for computation of the final payment. The due date for the final payment shall be 28 days after either the date of receipt of the documentation or, if later, the date specified in the certificate under clause 2.12.

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

4.9.2.1 the Contract Sum, as adjusted for the amounts referred to in clause 4.4.1, any fluctuations provision that applies and any deductions made under clause 2.11 or 3.5;

4.9.2.2 the sum of amounts stated as due in interim certificates plus any amount paid in respect of any Contractor's payment notice in accordance with clause 4.6 that is not reflected in a subsequent certificate,

and (without affecting the rights of the Contractor in respect of any interim payment not paid in full by the Employer by its final date for payment) the final payment shall be the difference (if any) between the two sums, which shall be shown in the certificate as a balance due to the Contractor from the Employer or vice versa. The certificate shall state the basis on which that amount has been calculated, including the amount of each adjustment.

4.9.3 Subject to clause 4.6.3, the final date for payment of the final payment shall be 14 days from its due date.

4.10 Fixed price and fluctuations provisions

Subject to clauses 3.6, 3.7 and 4.8 and any fluctuations provision that is stated by the Contract Particulars (for clauses 4.3 and 4.9) to apply, no account shall be taken in any payment to the Contractor under this Contract of any change in the cost to the Contractor of the labour, materials, plant and other resources employed in carrying out the Works.

Section 5 Injury, Damage and Insurance

5.1 Contractor's liability – personal injury or death

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

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

Subject to clauses 5.2.1 to 5.2.3, the Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal (other than loss, injury or damage to the Works and/or Site Materials) in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the Works and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor or any Contractor's Person. In respect of existing structures and their contents:

- 5.2.1 where clause 5.5 applies, the Contractor's liability and indemnity under this clause 5.2 also excludes any loss or damage to those existing structures or to any of their contents that are required to be insured under clause 5.5.1 that is caused by any of the risks or perils required or agreed to be insured against under clause 5.5;
- 5.2.2 the exclusion in clause 5.2.1 shall apply notwithstanding that the loss or damage is or may be due in whole or in part to the negligence, breach of statutory duty, omission or default of the Contractor or any Contractor's Person;
- 5.2.3 where clause 5.6 applies, the Contractor's liability and indemnity under this clause 5.2 shall, in respect of loss, injury or damage to those existing structures and their contents due to the causes specified in clause 5.2, be subject to any limitations and exclusions specified in the insurance arrangements under clause 5.6 identified in the Contract Particulars.

5.3 Contractor's insurance of its liability

Without limiting or affecting its indemnities to the Employer under clauses 5.1 and 5.2, the Contractor shall effect and maintain insurance in respect of claims arising out of the liabilities referred to in those clauses which:

- 5.3.1 in respect of claims for personal injury to or the death of any employee of the Contractor arising out of and in the course of such person's employment, shall comply with all relevant legislation; and
- 5.3.2 for all other claims to which clause 5.3 applies^[32], shall indemnify the Employer in like manner to the Contractor, but only to the extent that the Contractor may be liable to indemnify the Employer under the terms of this Contract and shall for any one occurrence or series of occurrences arising out of one event be in a sum not less than that stated in the Contract Particulars for clause 5.3.

5.4 Joint Names Insurance of the Works by Contractor^{[33][34]}

If the Contract Particulars state that clause 5.4 applies, the Contractor shall effect and maintain with insurers approved by the Employer a Joint Names Policy for All Risks Insurance for the full reinstatement value of the Works (plus the percentage, if any, stated in the Contract Particulars to

[32] It should be noted that the cover granted under Public Liability policies taken out pursuant to clause 5.3 may not be co-extensive with the indemnity given to the Employer in clauses 5.1 and 5.2: for example, each claim may be subject to an excess and cover may not be available in respect of loss or damage due to gradual pollution.

[33] Where the Contractor has in force an All Risks Policy which insures the Works, this Policy may be used to provide the insurance required by clause 5.4 provided the Policy recognises the Employer as a composite insured in respect of the Works.

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

cover professional fees) and shall maintain such Joint Names Policy up to and including the date of issue of the practical completion certificate or, if earlier, the date of termination of the Contractor's employment.

5.5 Joint Names Insurance of the Works and existing structures by Employer^[34]

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

- 5.5.1 a Joint Names Policy in respect of the existing structures together with the contents of them owned by it or for which it is responsible, for the full cost of reinstatement, repair or replacement of loss or damage due to any of the Specified Perils;
- 5.5.2 a Joint Names Policy for All Risks Insurance for the full reinstatement value of the Works (plus the percentage, if any, stated in the Contract Particulars to cover professional fees)

and shall maintain such Joint Names Policies up to and including the date of issue of the practical completion certificate or, if earlier, the date of termination of the Contractor's employment.

5.6 Insurance of the Works and existing structures by other means^[34]

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

5.7 Evidence of insurance

Where a Party is required by this Contract to effect and maintain an insurance policy or cover under any of clauses 5.3, 5.4, 5.5 and 5.6, or is responsible for ensuring that it is effected and maintained, that Party shall within 7 days of a request of the other Party supply such documentary evidence as the other Party may reasonably require that the policy or cover has been effected and remains in force.

5.8 Loss or damage – insurance claims and reinstatement

- 5.8.1 If during the carrying out of the Works any loss or damage affecting any executed work or Site Materials is occasioned by any of the risks covered by the Works Insurance Policy or an Excepted Risk or there is any loss of or damage of any kind to any existing structure or its contents, the Contractor shall forthwith notify the Architect/Contract Administrator and the Employer.
- 5.8.2 Subject to clauses 5.8.5.1 and 5.8.6, the occurrence of such loss or damage to executed work or Site Materials shall be disregarded in calculating any amounts payable to the Contractor under this Contract.
- 5.8.3 The Contractor, for itself and its sub-contractors, shall authorise the insurers to pay to the Employer all monies from the Works Insurance Policy, and from any policies covering existing structures or their contents that are effected by the Employer.
- 5.8.4 Where loss or damage affecting executed work or Site Materials is occasioned by any risk covered by the Works Insurance Policy, the Contractor, after any inspection required by the insurers under that policy, shall and with due diligence restore the damaged work, replace or repair any lost or damaged Site Materials, remove and dispose of any debris (collectively 'reinstatement work') and proceed with the carrying out and completion of the Works.
- 5.8.5 Where clause 5.4 applies or where clause 5.6 applies and the Contractor is responsible for effecting the Works Insurance Policy:
 - 5.8.5.1 the Employer shall pay all monies from such insurance to the Contractor by instalments under separate reinstatement work certificates issued by the Architect/Contract Administrator at the same dates as those for interim certificates under clause 4.3 but without deduction of retention and less only the amounts referred to in clause 5.8.5.2;
 - 5.8.5.2 the Employer may retain from those monies any amounts properly incurred by the Employer and notified by it to insurers in respect of professional fees up to the aggregate amount of the percentage cover for those fees or (if less) the amount paid by insurers in respect of those fees;
 - 5.8.5.3 in respect of reinstatement work, the Contractor shall not be entitled to any

payment other than amounts received under the Works Insurance Policy and for the purposes of clause 2.8, but not otherwise under these Conditions, such work shall be treated as a variation under clause 3.6.

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

5.9 Loss or damage to existing structures – right of termination

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

- 5.9.1 unless within 7 days of receiving the notice (or such longer period as may be agreed) the Party to which it is given invokes a dispute resolution procedure of this Contract to determine whether the termination is just and equitable, it shall be deemed to be so;
- 5.9.2 upon the giving of that notice or, where a dispute resolution procedure is invoked within that period, upon any final upholding of the notice, the provisions of clause 6.11 shall apply.

Section 6 Termination

6.1 Meaning of insolvency

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

- 6.1.1 the making of an administration, bankruptcy or winding-up order against it, appointment of an administrative receiver, receiver or manager of its property, its passing of a resolution for voluntary winding-up without declaration of solvency or any other event referred to in section 113, sub-sections (2) to (5), of the Housing Grants, Construction and Regeneration Act 1996;
- 6.1.2 otherwise entering administration within the meaning of Schedule B1 to the Insolvency Act 1986;
- 6.1.3 entering into an arrangement, compromise or composition in satisfaction of its debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction);
- 6.1.4 (in the case of a partnership) each partner being the subject of an individual arrangement or any other event or proceedings referred to in this clause 6.1;
- 6.1.5 (in the case of a company) the coming into force of a moratorium pursuant to Part A1 of the Insolvency Act 1986 with respect to it; or
- 6.1.6 (in the case of a company) the making of an order sanctioning a compromise or arrangement pursuant to Part 26A of the Companies Act 2006 with respect to it.

6.2 Notices under section 6

- 6.2.1 Notice of termination of the Contractor's employment shall not be given unreasonably or vexatiously.
- 6.2.2 Such termination shall take effect on receipt of the relevant notice.
- 6.2.3 Each notice referred to in this section, except for the notices referred to in clause 6.12, shall:
 - 6.2.3.1 be delivered by hand or sent by Signed For 1st class or Special Delivery Guaranteed post (or any method of posting as has replaced either method and is then current) and, where sent by post in that manner, shall be deemed to have been received on the second Business Day after the date of posting; or
 - 6.2.3.2 (where clause 6.2.3.2 is stated in the Contract Particulars to apply) be sent by email to the recipient's email address stated in the Contract Particulars against clause 6.2.3.2, or to such other email address as the recipient may from time to time notify to the sender (provided that such notification states that it is a notice of change under this clause 6.2.3.2), and shall be deemed to have been received on the next Business Day after the day on which it was sent.

6.3 Other rights, reinstatement

- 6.3.1 The provisions of clauses 6.4 to 6.7 are without prejudice to any other rights and remedies of the Employer. The provisions of clauses 6.8 and 6.9 and (in the case of termination under either of those clauses) the provisions of clause 6.11, are without prejudice to any other rights and remedies of the Contractor.
- 6.3.2 Irrespective of the grounds of termination, the Contractor's employment may at any time be reinstated if and on such terms as the Parties agree.

6.4 Default by Contractor

- 6.4.1 If, before practical completion of the Works, the Contractor:

6.4.1.1 without reasonable cause wholly or substantially suspends the carrying out of the Works or the design of the Contractor's Designed Portion; or

6.4.1.2 fails to proceed regularly and diligently with the Works or the design of the Contractor's Designed Portion; or

6.4.1.3 fails to comply with clause 3.9,

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

6.4.2 If the Contractor continues a specified default for 7 days from receipt of the notice under clause 6.4.1, the Employer may on, or within 10 days from, the expiry of that 7 day period by a further notice to the Contractor terminate the Contractor's employment under this Contract.

6.5 Insolvency of Contractor

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

6.5.2 As from the date the Contractor becomes insolvent, whether or not the Employer has given such notice of termination:

6.5.2.1 clauses 6.7.2 to 6.7.5 shall apply as if such notice had been given;

6.5.2.2 the Contractor's obligations under Article 1 and these Conditions to carry out and complete the Works shall be suspended; and

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

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

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

6.7 Consequences of termination under clauses 6.4 to 6.6

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

6.7.1 the Employer may employ and pay other persons to carry out and complete the Works, or may do so itself, and the Employer and such other persons may enter upon and take possession of the site and the Works and (subject to obtaining any necessary third party consents) may use all temporary buildings, plant, tools, equipment and Site Materials for those purposes;

6.7.2 no further sum shall become due to the Contractor under this Contract other than any amount that may become due to it under clause 6.7.5 and the Employer need not pay any sum that has already become due either:

6.7.2.1 insofar as the Employer has given or gives a notice under clause 4.6.4; or

6.7.2.2 if the Contractor, after the last date upon which such notice could have been given by the Employer in respect of that sum, has become insolvent within the meaning of clause 6.1.1 or 6.1.2;

6.7.3 upon completion of the Works and the making good of defects in them (or of instructions otherwise, as referred to in clause 2.11) ('completion'), the Employer shall forthwith notify the Contractor of the date of completion and such completion shall be deemed for the purposes of this clause 6.7 to have taken place on the date so notified;

6.7.4 the due date for the Termination Payment under clause 6.7.5 shall be 2 months after the

date of completion as referred to in clause 6.7.3;

6.7.5 the amount due on termination shall be calculated in accordance with the following amounts:

6.7.5.1 the amount of expenses properly incurred by the Employer, including those incurred pursuant to clause 6.7.1 and, where applicable, clause 6.5.2.3, and of any direct loss and/or damage caused to the Employer and for which the Contractor is liable, whether arising as a result of the termination or otherwise;

6.7.5.2 the amount of payments made to the Contractor; and

6.7.5.3 the total amount which would have been payable for the Works in accordance with this Contract,

and if the sum of the amounts referred to in clauses 6.7.5.1 and 6.7.5.2 exceeds the amount referred to in clause 6.7.5.3, the difference shall be an amount payable by the Contractor to the Employer or, if that sum is less, by the Employer to the Contractor (the 'Termination Payment').

6.8 Default by Employer

6.8.1 If the Employer:

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

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

6.8.1.3 fails to comply with clause 3.9,

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

6.8.2 If before practical completion of the Works the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for a continuous period of one month or more by reason of:

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

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

(but in either case excluding such instructions as are referred to in clause 6.10.1.2), then, unless in either case that is caused by the negligence or default of the Contractor or any Contractor's Person, the Contractor may give to the Employer a notice specifying the event or events (a 'specified' suspension event or events).

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

6.9 Insolvency of Employer

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

6.9.2 as from the date the Employer becomes insolvent, the Contractor's obligations under Article 1 and these Conditions to carry out and complete the Works shall be suspended.

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

6.10.1 If, before practical completion of the Works, the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for the relevant continuous period of one month or more by reason of one or more of the following events:

6.10.1.1 force majeure;

- 6.10.1.2 Architect/Contract Administrator's instructions under clause 3.6 issued as a result of the negligence or default of any Statutory Provider;
- 6.10.1.3 loss or damage to the Works occasioned by any risk covered by the Works Insurance Policy or by an Excepted Risk;
- 6.10.1.4 civil commotion or the use or threat of terrorism and/or the activities of the relevant authorities in dealing with such event or threat; or
- 6.10.1.5 the exercise by the United Kingdom Government or any of the devolved administrations, or any Local or Public Authority or any equivalent authority governed by public law in any of the devolved administrations of any statutory power (except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or any Contractor's Person) which affects the execution of the Works,

then either Party, subject to clause 6.10.2, may upon the expiry of that relevant period of suspension give notice to the other that, unless the suspension ceases within 7 days after the date of receipt of that notice, it may terminate the Contractor's employment under this Contract. Failing such cessation within that 7 day period, it may then by further notice terminate that employment.

- 6.10.2 The Contractor shall not be entitled to give notice under clause 6.10.1 in respect of the matter referred to in clause 6.10.1.3 where the loss or damage to the Works was caused by the negligence or default of the Contractor or any Contractor's Person.
- 6.10.3 Where this Contract is one to which regulation 73(1) of the PC Regulations applies the Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment under this Contract where the grounds set out in regulation 73(1)(a) of the PC Regulations apply.

6.11 Consequences of termination under clauses 6.8 to 6.10

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

- 6.11.1 no further sums shall become due to the Contractor otherwise than in accordance with this clause 6.11;
- 6.11.2 the Contractor shall not later than 2 months after the date of termination provide the Employer with all documents necessary for calculating the amounts referred to in clause 6.11.4. Not later than 3 months after receipt of those documents, the Employer shall prepare and send to the Contractor an account which shall set out the amounts referred to in clause 6.11.4;
- 6.11.3 the due date for the Termination Payment under clause 6.11.4 shall be the last date for issue of the Employer's account under clause 6.11.2;
- 6.11.4 the amount due on termination from the Employer to the Contractor or (if a negative amount) from the Contractor to the Employer shall be the aggregate of:
 - 6.11.4.1 the total value of work properly executed at the date of termination of the Contractor's employment, ascertained in accordance with these Conditions as if the employment had not been terminated, together with any other amounts due to the Contractor under these Conditions;
 - 6.11.4.2 the cost of materials or goods (including Site Materials) properly ordered for the Works for which the Contractor then has paid or is legally bound to pay;
 - 6.11.4.3 (only where the Contractor's employment is terminated either under clause 6.8 or 6.9, or under clause 6.10.1.3 if the loss or damage to the Works was caused by the negligence or default of the Employer or any Employer's Person) any direct loss and/or damage caused to the Contractor by the termination,

less amounts previously paid to the Contractor under this Contract, but without deduction of any retention (the 'Termination Payment'). Payment by the Employer for any such materials and goods as are referred to in clause 6.11.4.2 shall be subject to those materials and goods thereupon becoming the property of the Employer.

6.12 Termination Payment – final date, notices and amount

- 6.12.1 Subject to clause 6.12.5, the final date for payment of the Termination Payment shall be 14 days from its due date, as fixed in accordance with clause 6.7.4 or 6.11.3.
- 6.12.2 Not later than 5 days after the relevant due date the Employer shall give a termination payment notice to the Contractor, which shall state the sum that it considers to be or have been due at the due date, calculated in accordance with clause 6.7.5 or 6.11.4, and the Termination Payment shall be the difference or amount referred to in clause 6.7.5 or 6.11.4, which shall be shown in the termination payment notice as a balance due to the Contractor from the Employer or vice versa. Such notice shall state the basis on which that amount has been calculated.
- 6.12.3 If the Party by which the Termination Payment is stated to be payable ('the payer') intends to pay less than the stated balance, it shall not later than 5 days before the final date for payment give the other Party a pay less notice which shall state the sum (if any) that it considers to be due to the other Party at the date the pay less notice is given and the basis on which that sum has been calculated and where given by the Employer, the provisions of clause 4.6.5 shall correspondingly apply.
- 6.12.4 Where a pay less notice is given under clause 6.12.3, the payment to be made on or before the final date for payment shall not be less than the amount stated in it as due.
- 6.12.5 If a termination payment notice is not given by the Employer in accordance with clause 6.12.2:
- 6.12.5.1 the Contractor may at any time after the 5 day period referred to in clause 6.12.2 give a termination payment notice to the Employer, stating the sum that the Contractor considers to have become due under clause 6.7.5 or 6.11.4 at the due date and the basis on which that sum has been calculated and, subject to any pay less notice given under clause 6.12.5.3, the Termination Payment shall be the sum stated as due in the Contractor's termination payment notice;
- 6.12.5.2 if the Contractor gives a termination payment notice under clause 6.12.5.1, 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 expiry of the 5 day period referred to in clause 6.12.2 that the Contractor's termination payment notice is given;
- 6.12.5.3 following the Contractor's termination payment notice the Employer may not later than 5 days before the final date for payment give a pay less notice in accordance with clause 6.12.3 and, if it gives such notice, the provisions of clause 6.12.4 shall correspondingly apply.
- 6.12.6 If the payer fails to pay the Termination Payment, or any part of it, by the final date for its payment, the payer shall, in addition to any unpaid amount that should properly have been paid, pay the other Party simple interest on that amount at the Interest Rate for the period from the final date for payment until payment is made. Acceptance of a payment of any such interest shall not in any circumstances be construed as a waiver of any right to proper payment of the principal amount due. Any such unpaid amount and any interest under this clause 6.12.6 shall be recoverable as a debt.
- 6.12.7 In relation to the requirements in this clause 6.12 for the giving of termination payment notices by the Employer, and pay less notices, it is immaterial that the amount then considered to be due may be zero.

Section 7 Settlement of Disputes

7.1 Notification and negotiation of disputes

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

7.2 Mediation

Subject to Article 7, if a dispute or difference arises under this Contract which cannot be resolved by direct negotiations, each Party shall give serious consideration to any request by the other to refer the matter to mediation.

7.3 Adjudication

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

7.4 Arbitration

For the purposes of Article 8, if it applies, the procedures for arbitration are set out in Schedule 1.^[35]

[35] Arbitration or legal proceedings are **not** an appeal against the decision of the Adjudicator but are a consideration of the dispute or difference as if no decision had been made by an Adjudicator.

Schedules

Schedule 1 Arbitration

(Clause 7.4)

Conduct of arbitration

- 1 Any arbitration pursuant to Article 8 shall be conducted in accordance with the JCT 2024 edition of the [Construction Industry Model Arbitration Rules \(CIMAR\)](#), provided that if any amendments to that edition of the Rules have been issued by the JCT the Parties may, by a joint notice to the Arbitrator, state that they wish the arbitration to be conducted in accordance with the Rules as so amended. References in this Schedule 1 to a Rule or Rules are references to such Rule(s) as set out in the JCT 2024 edition of [CIMAR](#).

Notice of reference to arbitration

- 2
 - 2.1 Where pursuant to Article 8 either Party requires a dispute or difference to be referred to arbitration, that Party shall serve on the other Party a notice of arbitration to such effect in accordance with Rule 2.1 identifying the dispute and requiring the other Party to agree to the appointment of an arbitrator. The Arbitrator shall be an individual agreed by the Parties or, failing such agreement within 14 days (or any agreed extension of that period) after the notice of arbitration is served, appointed on the application of either Party in accordance with Rule 2.3 by the person selected in accordance with the Contract Particulars.
 - 2.2 Where two or more related arbitral proceedings in respect of the Works fall under separate arbitration agreements, Rules 2.6, 2.7 and 2.8 shall apply.
 - 2.3 After the Arbitrator has been appointed either Party may give a further notice of arbitration to the other Party and to the Arbitrator referring any other dispute which falls under Article 8 to be decided in the arbitral proceedings and Rule 3.3 shall apply.

Powers of Arbitrator

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

Effect of award

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

Appeal – questions of law

- 5 The Parties hereby agree pursuant to section 45(2)(a) and section 69(2)(a) of the Arbitration Act 1996 that either Party may (upon notice to the other Party and to the Arbitrator):
 - 5.1 apply to the courts to determine any question of law arising in the course of the reference, and
 - 5.2 appeal to the courts on any question of law arising out of an award made in an arbitration under this arbitration agreement.

Arbitration Act 1996

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

Schedule 2 Supplemental Provisions

(Eighth Recital)

Supplemental Provisions 1 to 3 apply unless otherwise stated in the Contract Particulars. Supplemental Provision 4 applies where the Employer is a Local or Public Authority or other body of the type mentioned in that provision; Supplemental Provision 5 applies where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations.

Health and safety

1

- 1.1 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.
- 1.2 In addition to the specific health and safety requirements of this Contract, the Contractor undertakes to:
 - 1.2.1 comply with any and all approved codes of practice produced or promulgated by the Health and Safety Executive;
 - 1.2.2 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;
 - 1.2.3 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
 - 1.2.4 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

2

- 2.1 The Contractor is encouraged to propose changes to designs and specifications for the Works and/or to the programme for their execution that may benefit the Employer, whether in the form of a reduction in the cost of the Works or their associated life cycle costs, through practical completion at a date earlier than the date for completion or otherwise.
- 2.2 The Contractor shall provide details of its proposed changes, identifying them as suggested under this Supplemental Provision 2, together with its assessment of the benefit it believes the Employer may obtain, expressed in financial terms, and a quotation.
- 2.3 Where the Employer wishes to implement a change proposed by the Contractor, the Parties shall negotiate with a view to agreeing its value, the financial benefit and any adjustment to the date for completion. Upon agreement, the change and the amount of any adjustment of the Contract Sum shall be confirmed in an Architect/Contract Administrator's instruction, together with the share of the financial benefit to be paid to the Contractor and any adjustment to the date for completion.
- 2.4 Original proposals by the Contractor under this Supplemental Provision 2 may only be instructed in accordance with it, provided always that nothing shall prevent the Employer from utilising other contractors to implement such changes after practical completion of the Works.

Performance Indicators and monitoring

3

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

Transparency

- 4 Where the Employer is a Local or Public Authority or other body to which 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 its 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:
 - 4.1 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;
 - 4.2 the Employer shall promptly inform the Contractor of any request for disclosure that it receives in relation to this Contract.

The Public Contracts Regulations 2015

- 5 Where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations^[36]:
 - 5.1 where regulation 113 of the PC Regulations applies to this Contract, the Contractor shall include in any sub-contract it enters into suitable provisions to impose the requirements of regulation 113(2)(c)(i) and (ii);
 - 5.2 the Contractor shall include in any sub-contract it enters into provisions requiring the sub-contractor:
 - 5.2.1 to supply and notify to the Contractor the information required (as applicable) under regulations 71(3), 71(4) and 71(5) of the PC Regulations; and
 - 5.2.2 to include in any sub-subcontract the sub-contractor in turn enters into provisions to the same effect as required under paragraph 5.2.1 of Supplemental Provision 5;
 - 5.3
 - 5.3.1 the Contractor shall include in any sub-contract it enters into provisions that shall entitle the Contractor to terminate the sub-contractor's employment where there are grounds for excluding the sub-contractor under regulation 57;
 - 5.3.2 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.

[36] See the Guidance Notes. Provisions relating to the PC Regulations are also set out in section 6 (Termination) of this Contract. The JCT Minor Works Sub-Contract with sub-contractor's design (MWSUB/D) and the JCT Short Form of Sub-Contract (ShortSub) meet the requirements of Supplemental Provision 5.

Guidance Notes

Use of Minor Works Building Contract with contractor's design

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

Outline of the Contract

General

- 10 Defined terms are dealt with in clause 1.1 and there is a short version of JCT's standard interpretation provisions set out in clauses 1.2 to 1.8. In the 2024 edition the section 1 and section 6 provisions relating to the service of notices have been extended to provide for service by email.

Architect/Contract Administrator

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

Role of the Architect/Contract Administrator

- 12 The Architect/Contract Administrator is paid by the Employer, advises the Employer on all matters in connection with the building work and administers the Contract on behalf of the Employer with a view to securing completion of the work in an efficient and economical manner. However, in relation to

decisions in that administrative role that require professional skill and judgment, it should act fairly and independently as between the Employer and the Contractor, in particular when:

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

Instructions

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

Contractor's Designed Portion

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

Price

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

Time-scale for the work

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

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

Payment

- 17** In section 4, payment is to be made under certificates issued by the Architect/Contract Administrator. Interim payments are to be made against interim certificates issued by the Architect/Contract Administrator. The final balance is paid following the issue of the final certificate. The final date for payment of certificates, together with any VAT chargeable to the Employer, is 14 days from the due date for payment. The Construction Act requires interim and final certificates to be issued not later than 5 days after their due date and clauses 4.3 (Interim payments – dates and certificates) and 4.9 (Final certificate and final payment) comply with these requirements.

The provisions relating to the due dates for payment for interim payments are set out in clause 4.3. During the period up to the due date for the final payment, the due dates for interim payments are in each case the date 7 days after the relevant Interim Valuation Date. The first Interim Valuation Date and the intervals that will apply for subsequent Interim Valuation Dates are to be specified in the entry

in the Contract Particulars for clause 4.3. JCT recommends that the first Interim Valuation Date should not be more than one month after the Works commencement date and the intervals between Interim Valuation Dates should not be more than one month. If the Contract Particulars entry is not completed, the default provisions set out in the entry apply.

The amount of each interim payment to be certified as due under clause 4.3 is to be calculated in accordance with clause 4.4. Unless a percentage for payment other than 95 per cent is inserted in the Contract Particulars for clause 4.4, interim certificates for the period up to practical completion will reflect the Employer's entitlement to retain 5 per cent. For the period between practical completion and the final certificate, the Contract envisages that the percentage retained will be halved.

The general provisions governing Contractor's payment applications (and, in default of a payment certificate, their role as a payment notice) which apply with respect to the final payment as well as to interim payments are set out in clause 4.5.

The provisions regarding payment and pay less notices, amounts to be paid and default interest are set out in clauses 4.6 and 4.7 and as the text of each indicates, these clauses apply with respect to the final payment as well as to interim payments. Clause 4.9 provides for issue of the final certificate.

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

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

Suspension

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

Termination

- 19** Either Party may end the Contractor's employment if the other Party is in breach of certain obligations (in the case of the Contractor those mentioned in clauses 6.4 and 6.6; in the case of the Employer those in clause 6.8) or becomes insolvent. There is also a right under clause 6.10.1 for either Party to terminate in the case of prolonged suspension resulting from certain neutral causes and (where applicable) clause 6.10.3 allows for termination by the Employer on the substantial modification ground set out in regulation 73(1)(a) of the PC Regulations.

The section 6 termination accounting and payment provisions have in this 2024 edition been amended to provide for the Construction Act's payment procedures. There is a new defined term, i.e. the 'Termination Payment' and some adjustments to the accounting provisions in clauses 6.7 and 6.11 including the insertion of due date provisions. The provisions regarding the final date for payment of the Termination Payment, payment and pay less notices, amount to be paid and default interest are set out in clause 6.12.

Dealing with disputes

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

As respects specifying the adjudicator nominating body in advance, the relevant entry in the Contract Particulars in this 2024 edition of the Contract has been adjusted to allow the Parties to specify a nominating body of their own choosing as an alternative to selecting a body from those listed. The bodies listed will be familiar to JCT contract users. Such bodies are required to provide feedback to JCT regarding their adjudication services on an ongoing basis. If a Party is unsure about the suitability

of a proposed alternative (non-listed) body JCT suggests seeking appropriate professional advice.

The Parties may also agree to mediate a dispute.

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

The JCT 2024 edition of the [Construction Industry Model Arbitration Rules \(CIMAR\)](#), which includes the JCT Supplementary and Advisory Procedures, will govern any arbitration that is commenced. It is recommended that anyone considering instituting arbitration proceedings should obtain a copy of the rules and, as with litigation, should take competent professional advice before taking steps to institute proceedings.

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

Rights and remedies generally

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

Supplemental Provisions

- 22** Schedule 2 includes optional Supplemental Provisions which are for use where appropriate. The previous supplemental provisions for collaborative working, sustainability (the wording of which has been adjusted slightly in this edition), and notification and negotiation of disputes have been moved into the Agreement or main text of the Conditions and are now no longer optional, a change that is in common with other JCT contract forms and is part of JCT's response to the government's Construction Playbook document. The three remaining Supplemental Provisions (1 to 3) are those relating to health and safety, cost savings and performance monitoring and their applicability will need to be considered. The choice as to which of these provisions apply is made in the Contract Particulars and if no choice is made in relation to a provision, it will apply (these provisions are generally intended to be disapplied only where there is a Framework Agreement or other contract documentation that covers the same ground).

Schedule 2 also contains Supplemental Provision 4 which relates to the Freedom of Information Act 2000 ('FOIA'); it will only apply where the Employer is a Local or Public Authority or other body to which the FOIA applies. Supplemental Provision 5 contains provisions relevant to the PC Regulations and this will only apply where the Employer is a Local or Public Authority and the Contract is subject to those regulations. For guidance on aspects of the PC Regulations relevant to JCT contracts, please go to www.jctltd.co.uk.

Terms used

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

Base Date

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

CDM Regulations

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

Part 2A of the Building Regulations

- 26 Part 2A of the Building Regulations 2010 was introduced by the Building Regulations etc. (Amendment) (England) Regulations 2023 pursuant to the Building Safety Act 2022. Part 2A sets out a framework of safety duties for those persons ('dutyholders') who commission, design and undertake building work to which building regulations apply, with a limited exclusion where the work consists only of minor work of a prescribed type. Part 2A includes obligations to appoint a Principal Designer and Principal Contractor in respect of works to which the regulations apply. Dutyholders are required to ensure that they have the necessary competence to carry out design and building work and that arrangements and systems are in place to plan, manage and monitor compliance with the regulations. Additional duties apply to higher-risk building work. For information, please go to www.jctltd.co.uk.

Principal Designer and Principal Contractor

- 27 The respective persons named in the Agreement or subsequently appointed as such, as required by the CDM Regulations and Part 2A of the Building Regulations. With a view to minimising health and safety risks, the CDM Regulations require the Employer to appoint a Principal Designer to control the pre-construction phase where there is more than one contractor, or it is reasonably foreseeable that more than one contractor will be working on the project at any time. One of the contractors must also be appointed as Principal Contractor in those circumstances. (For these purposes the term 'contractor' includes sub-contractors.) The Building Regulations provide that instead of appointing a separate principal designer and principal contractor, the client may certify that the CDM principal designer and the CDM principal contractor should be treated as appointed in these roles for the purposes of the Building Regulations (Part 2A, regulation 11D(2)). Professional advice should be sought as to whether this is appropriate in any given project.

CDM Health and safety file

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

Date for Completion

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

Date of practical completion

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

Rectification Period

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

Insurance in Joint Names

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

Clause 5.5 is for use where there are existing structures and the Employer is able to cover the works on a Joint Names, All Risks basis and, in addition to its own cover for existing structures, is able to extend at least Specified Perils cover to the Contractor in respect of the existing structures.

However, existing structures cover for the Contractor is not always readily available to Employers at

reasonable cost, in particular where the Employer is a domestic homeowner or where it is only a tenant and structures cover is effected by the freeholder or an intermediate lessor, and clause 5.6 is designed for cases in these latter categories.

The freeholder Employer may cover the Works in Joint Names and continue with its own cover under its household or existing structures policy, with the Contractor covering its liability for any damage to existing structures under the Public Liability cover required under clause 5.3.2 or an appropriate extension of it.

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

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

Liquidated damages

- 33** The rate per day/week/month stated in the Contract Particulars by the Employer, to compensate it for the Contractor's failure to finish the work on time. The prudent Employer will be alert to the legal principles and rules governing the enforceability of liquidated damages provisions and will approach calculation of the rate with these in mind. It is suggested that the Employer records an explanation of the rate and why the rate represents (i) a genuine pre-estimate of the loss that it is likely to suffer or (ii) a reasonable and proportionate protection of its legitimate commercial interest(s) in timely completion, which it can use to respond to any challenge.

It is for the Employer to decide whether to deduct any liquidated damages that it might be entitled to from any amount certified as due to the Contractor; such deduction is not taken into account by the Architect/Contract Administrator in the calculation of any certificate and the appropriate notice must be given by the Employer under clauses 2.9 and 4.6.4 or (if applicable) 6.12.3 or 6.12.5.

In the 2024 edition there is a new provision (clause 2.9.4) designed to clarify the position in relation to liquidated damages where the Contractor's employment is terminated under the Contract during a period of Contractor culpable delay which essentially confirms the approach taken in recent case law.

Provisional Sum

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

Variation

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

MWD User Checklist

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

Care has been taken in preparing these Guidance Notes but they should not be treated as a definitive legal

interpretation or commentary. Users are reminded that the effect in law of the provisions of the Minor Works Building Contract with contractor's design 2024 Edition is, in the event of a dispute as to that effect, a matter for decision in adjudication, arbitration or litigation.



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SWEET & MAXWELL





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

MWD 2024
Minor Works Building Contract
with contractor's design 2024

2024
MINOR WORKS BUILDING CONTRACT

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

Appropriate:

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

Can be used:

- by both private and local authority employers.

Not suitable:

- as a design and build contract;
- where bills of quantities are required;
- where provisions are required to govern work carried out by named specialists;
- where detailed control procedures are needed including (but not limited to) detailed provisions governing extensions of time and loss and expense.

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

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For details of 2024 Edition changes, see the Guidance Notes and the Tracked Change Document.

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Agreement

This Agreement

is made the _____ 20_____

Between

The Employer

[_____]Orbit Group Ltd

Place of incorporation: England and Wales

(Company No. [_____] 28503R)^[1]

of/whose registered office is at Binley Business Park, Garden Court, Coventry CV3 2SU

[_____]

And

The Contractor

[_____]Colours Decorating Limited

Place of incorporation: England and Wales

(Company No. [_____] 03902490)^[1]

of/whose registered office is at Office 7 15-20 Gresley Road, St Leonards On Sea, East Sussex, United Kingdom, TN38 9P

[_____]

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

Recitals

Whereas

First

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

[]Garden reinstatement works

at

[]63/65 Deepdene Gardens, Hastings TN35 5TB ('the Works')
under the direction of the Architect/Contract Administrator referred to in Article 4;

Second

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

[]Erection of temporary scaffold and access ramp to side of building
Removal of existing trees and vegetation dispose
Removal of all existing timber structures to include, decking, sleeper, retaining wall
Rebuild of existing brick retaining wall, finished within concrete copings
Landscaping works to reinstate original sloped gradient, finished with topsoil and seed
Construction of new rock filled gabion retaining wall
Construction of new brickwork steps
Installation of new timber fencing
(the Contractor's Designed Portion)
(the Contractor's Designed Portion');

Third

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

the drawings numbered/listed in []Appendix A - E14260_01 Garden Reinstatement Works
Appendix B - E14260_02 Garden Enabling Works
Appendix C - Colours-63-65 Deepdene Gardens - Schedule of Works (Pricing) ('the Contract Drawings')^{[4][5]}

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

Work Schedules^[4]

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

which for identification have been signed or initialled by or on behalf of each Party; those documents

- [2] State nature and location of intended works.
- [3] State nature of work in the Contractor's Designed Portion either here or by reference to an identified Annex to this Contract. The Annex or any continuation sheets to a description here should be signed or initialled by or on behalf of each Party.
- [4] Delete as appropriate.
- [5] State the identifying numbers of the Contract Drawings or identify the schedule of drawings or other document listing them.

together with this Agreement, the Conditions and, if applicable, a Schedule of Rates as referred to in the Fourth Recital (collectively 'the Contract Documents') are annexed to this Agreement^[6];

Fourth

the Contractor has supplied the Employer with a copy of the priced ~~Contract Specification or~~ Work Schedules ~~or with a Schedule of Rates~~^[4];

Fifth

for the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004, the status of the Employer is, as at the Base Date, that stated in the Contract Particulars;

Sixth

for the purposes of the Construction (Design and Management) Regulations 2015 (the 'CDM Regulations') the status of the project that comprises or includes the Works is stated in the Contract Particulars;

Seventh

~~where so stated in the Contract Particulars Contract is not supplemented by a Framework Agreement; this Contract is supplemented by the Framework Agreement identified in those particulars;~~

Eighth

whether any of Supplemental Provisions 1 to 3 apply is stated in the Contract Particulars;

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

Articles

Now it is hereby agreed as follows

Article 1 Contractor's obligations

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

Article 2 Contract Sum

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

~~_____~~ sixty eight thousand two hundred thirty seven pounds and fifty five pence (£
~~_____~~ 68237.55) ('the Contract Sum')

or such other sum as becomes payable under this Contract.

Article 3 Collaborative working

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.

Article 4 Architect/Contract Administrator

For the purposes of this Contract the Architect/Contract Administrator^[7] is

~~_____~~ Orbit Group Limited

of

~~_____~~ Binley Business Park, Garden Court, Coventry CV3 2SU

or, if it ceases to be the Architect/Contract Administrator, such other person as the Employer nominates (such nomination to be made within 14 days of the cessation). No replacement appointee as Architect and/or Contract Administrator shall be entitled to disregard or overrule any certificate, opinion, decision, approval or instruction given by any predecessor in that post, save to the extent that that predecessor if still in the post would then have had power under this Contract to do so.

Article 5 CDM Regulations – Principal Designer and Principal Contractor

For the purposes of the CDM Regulations:

the Principal Designer is ~~the Architect/Contract Administrator~~

~~(or)~~^[8] ~~_____~~ Colours Decorating Limited

[7] Unless the person appointed by or under Article 4 is entitled to use the title 'Architect' under the Architects Act 1997, the term 'Architect' shall so long as that person holds that post be deemed deleted throughout this Contract. Any appointee as Contract Administrator should be suitably experienced for the role. Irrespective of experience or qualifications, the Employer should not at any time appoint itself to the role without the Contractor's prior agreement.

[8] ~~Insert the name of the Principal Designer if the Architect/Contract Administrator is not to fulfil the role and that of the Principal Contractor if it is to be a person other than the Contractor.~~

of

~~[]Office 7 15-20 Gresley Road, St Leonards On Sea, East Sussex, United Kingdom, TN38 9PL~~

or such replacement as the Employer at any time appoints to fulfil that role;

~~the Principal Contractor is the Contractor~~

~~(or)^[9] []~~

of

~~[]~~

~~the Principal Contractor is the Contractor~~ or such replacement as the Employer at any time appoints to fulfil that role.

Article 6 Building Regulations – Principal Designer and Principal Contractor

For the purposes of the Building Regulations (where applicable):

the Principal Designer is ~~the Architect/Contract Administrator~~

~~(or)^[9] []Colours Decorating Limited~~

of

~~[]Office 7 15-20 Gresley Road, St Leonards On Sea, East Sussex, United Kingdom, TN38 9PL~~

or such replacement as the Employer at any time appoints to fulfil that role;

~~the Principal Contractor is the Contractor~~

~~(or)^[9] []~~

of

~~[]~~

~~the Principal Contractor is the Contractor~~ or such replacement as the Employer at any time appoints to fulfil that role.

Article 7 Adjudication

If any dispute or difference arises under this Contract either Party may refer it to adjudication in accordance with clause 7.3.^[9]

Article 8 Arbitration

Where Article 8 applies^[10], then, subject to Article 7 and the exceptions set out below, any dispute or difference between the Parties of any kind whatsoever arising out of or in connection with this

~~Under the CDM Regulations, regardless of whether or not a project is notifiable, and (where applicable) Part 2A of the Building Regulations there is a requirement to appoint a principal designer and a principal contractor in all cases where there is more than one contractor, or if it is reasonably foreseeable that more than one contractor will be working on a project at any time. For these purposes, the term 'contractor' is broadly defined by the regulations which treat the Contractor's sub-contractors as separate contractors. As to these statutory appointments generally, see the Guidance Notes.~~

[9] ~~+++Now footnote [8]+++~~ As to adjudication in cases where the Employer is a residential occupier within the meaning of section 106 of the Housing Grants, Construction and Regeneration Act 1996, see the Guidance Notes.

[10] ~~+++Now footnote [9]+++~~ If it is intended, subject to the right of adjudication and exceptions stated in Article 8, that disputes or differences should be determined by arbitration and not by legal proceedings, the Contract Particulars **must** state that the arbitration provisions of Article 8 and Schedule 1 apply and the words "do not apply" **must** be deleted. If the Parties wish any dispute or difference to be determined by the courts of another jurisdiction the appropriate amendment should be made to Article 9 (see also clause 1.8).

Contract shall be referred to arbitration in accordance with Schedule 1 and the JCT 2024 edition of the [Construction Industry Model Arbitration Rules \(CIMAR\)](#)^[11]. The exceptions to this Article 8 are:

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

Article 9 Legal proceedings^[10]

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

[11] **+++Now footnote [10]+++** See the Guidance Notes.

Contract Particulars

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

Fifth Recital and the JCT Fluctuations Option (paragraphs 1.1, 1.2, 1.5, 1.6, 2.1 and 2.2)

Base Date

[]

Fifth Recital and clause 4.2

Construction Industry Scheme (CIS)

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

Sixth Recital

CDM Regulations^[12]

the project
* is notifiable/is not notifiable

Seventh Recital

~~Framework Agreement (if applicable)
(State date, title and parties.)~~

[]

Eighth Recital and Schedule 2

Supplemental Provisions^[13]

(Where neither entry against one of Supplemental Provisions 1 to 3 below is deleted, that Supplemental Provision applies.)

Supplemental Provision 1: Health and safety
* ~~applies/does not apply~~

* applies

Supplemental Provision 2: Cost savings and value improvements
* ~~applies/does not apply~~

* applies

Supplemental Provision 3: Performance Indicators and monitoring
* ~~applies/does not apply~~

[12] **+++Now footnote [11]+++** Under the CDM Regulations a project is notifiable if the construction work on a construction site is scheduled either to last longer than 30 working days and have more than 20 workers working simultaneously at any point in the project or to exceed 500 person days.

[13] **+++Now footnote [12]+++** Supplemental Provision 4 (Transparency) applies only where the Employer is a Local or Public Authority or other body to which the Freedom of Information Act 2000 applies; Supplemental Provision 5 (The Public Contracts Regulations 2015) applies only where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations.

* does not apply

Article 8

Arbitration

(If neither entry is deleted, Article 8 and Schedule 1 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must be stated that Article 8 and Schedule 1 apply.)^[14]

Article 8 and Schedule 1 (Arbitration)

* ~~apply/do not apply~~

* apply

1.6.2

Addresses for service of notices by the Parties

(If a Party's address is not stated, it shall, subject to clause 1.6.2, be that shown at the commencement of the Agreement.)

Employer

[] Binley Business Park, Garden Court, Coventry CV3 2SU

Contractor

[] Office 7 15-20 Gresley Road, St Leonards On Sea, East Sussex, United Kingdom, TN38 9PL

The respective email addresses for the Parties are

Employer's email

[] Joseph.Makowski@orbit.org.uk

Contractor's email

[] sean@colours-ltd.com

or, subject to clause 1.6.2, such other email address as each Party may notify to the other from time to time

2.3

Works commencement date

[] 16th February 2026

Date for Completion

[] 30th March 2026

or such later date for completion as is fixed under clause 2.8

2.9

Liquidated damages

at the rate of

£ [] 500 per [] Week^[15]

[14] **+++Now footnote [13]+++** On factors to be taken into account by the Parties in considering whether disputes are to be determined by arbitration or by legal proceedings, see the Guidance Notes. See also footnote [10] **+++ now footnote [9] +++**.

[15] **+++Now footnote [14]+++** Insert 'day', 'week' or other period.

2.11

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

[] 12 months^[16]
from the date of practical completion

4.3

Interim payments – Interim Valuation Dates^[17]
(Unless otherwise stated, the first Interim Valuation Date is one month after the Works commencement date specified in these Particulars (against the reference to clause 2.3) and thereafter at monthly intervals.)

The first Interim Valuation Date is

[] one month
and thereafter at intervals of

[] one month

4.4

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

[] 95 per cent^[16]

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

[] 97.5 per cent^[16]

4.4 and 4.9

Fluctuations provision^[18]
(Unless another provision or entry is selected, the JCT Fluctuations Option applies. References in this Contract to the JCT Fluctuations Option (or any provision as set out in such Option) are references to the JCT 2024 edition of that Option.)

- * ~~JCT Fluctuations Option (Contribution, levy and tax changes) applies~~
- * no fluctuations provision applies
- * ~~the following fluctuations provision applies~~

[]

~~Percentage addition for the JCT Fluctuations Option (paragraph 13) (if applicable)~~

[] per cent

4.9.1

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

-
- [16] **+++Now footnote [15]+++** An insertion is needed here only if the default position is not to apply. If no retention is required, insert '100' in the percentage entries for clause 4.4.
- [17] **+++Now footnote [16]+++** The first Interim Valuation Date should not be more than one month after the Works commencement date and the intervals between Interim Valuation Dates should not be more than one month.
- [18] **+++Now footnote [17]+++** Unless the fluctuations provision is to be the JCT Fluctuations Option, delete all but one of the asterisked choices. The printed text of the JCT Fluctuations Option is no longer included in JCT contract documents but continues to be available on the JCT website www.jctltd.co.uk. If an alternative fluctuation is to be used, the document(s) in which it is contained should be identified here.

[]one months^[16]
from the date of practical completion

5.3

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

£[]5,000,000
for any one occurrence or series of occurrences arising out of one event

5.4, 5.5 and 5.6

Insurance of the Works etc. – alternative provisions^[19]

- * Clause 5.4 (*Works insurance by Contractor in Joint Names*) applies
- * ~~Clause 5.5 (*Works and existing structures insurance by Employer in Joint Names*) applies~~
- * ~~Clause 5.6 (*Works and existing structures insurance by other means*) applies~~

5.4 and 5.5

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

[]N/A per cent

5.6

~~Insurance arrangements – details of the required policy or policies
are set out in the following document(s)~~

[]

6.2.3.2

Service of notices by email
(If neither entry is deleted or an email address for each Party is not specified, clause 6.2.3.2 shall not apply.)

- Clause 6.2.3.2
- * ~~applies/does not apply~~
- * ~~applies~~

Employer's email

[]Joseph.Makowski@orbit.org.uk

Contractor's email

[]sean@colours-ltd.com

7.1

Notification and negotiation of disputes

The respective nominees of the Parties are

[19] **+++Now footnote [18]+++** As to choice of applicable insurance provisions, see the Guidance Notes. Where there are existing structures, it is vital that any prospective Employer – in particular any Employer which is a tenant or a domestic homeowner – which is not familiar with clause 5.5 and the possible solutions under clause 5.6, or an appropriate member of the Employer's professional team, should consult the Employer's insurance advisers prior to the tender stage. Any Employer which is a tenant should also consult its insuring landlord prior to that stage.

Employer's nominee

~~[]~~ Joseph Makowski

Contractor's nominee

~~[]~~ Sean Edmunds

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

7.3

Adjudication^[20]

The Adjudicator is ~~[]~~

Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established) the nominating body is

(Delete all but one of the asterisked choices. If the body is to be other than one of those listed, insert the name here.)

(If a body has not been selected from those listed below or another body chosen and inserted, the nominating body shall be one of the bodies listed below selected by the Party requiring the reference to adjudication.)

- * ~~Royal Institute of British Architects~~
- * The Royal Institution of Chartered Surveyors
- * ~~constructionadjudicators.com^[21]~~
- * ~~Chartered Institute of Arbitrators~~

* ~~[]~~

Schedule 1 (paragraph 2.1)

Arbitration^[22]: appointor of Arbitrator (and of any replacement) – the appointor is

(Delete all but one of the asterisked choices. If the body is to be other than one of those listed, insert the name here.)

(If no body is selected from those listed below or another body chosen and inserted, the appointor shall be the President or a Vice-President of the body listed below selected by the Party serving the first notice of arbitration under paragraph 2 of Schedule 1. For any subsequently served notice of arbitration from any Party under paragraph 2 of Schedule 1, the appointor shall be the President or a Vice-President of the same body that was selected for the first notice of arbitration.)

President or a Vice-President:

- * ~~Royal Institute of British Architects~~
- * The Royal Institution of Chartered Surveyors
- * ~~Chartered Institute of Arbitrators~~

* ~~[]~~

[20] **+++Now footnote [19]+++** 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.

~~[21] — constructionadjudicators.com is a trading name of Contractors Legal Grp Ltd.~~

[22] **+++Now footnote [20]+++** This only applies where the Contract Particulars state (against the reference to Article 8) that Article 8 and Schedule 1 (*Arbitration*) apply.

Attestation

Note on Execution

This Agreement should be executed by both the Employer and the Contractor either under hand or as a deed. As to the main factor relevant to that choice, see the Guidance Notes.

Execution under hand

If this Agreement is to be executed under hand, use the form set out on the following page. Each Party or its authorised representative should sign where indicated in the presence of a witness who should then sign and set out their 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 its behalf, the appropriate form(s) may be inserted in the vacant space opposite and/or below.

Electronic execution

In 2019, the Law Commission published a report on "Electronic execution of documents" to assist in clarifying the legal status of electronic signatures. It reached the general conclusion that: "An electronic signature is capable in law of being used to validly execute a document (including a deed) provided that (i) the person signing the document intends to authenticate the document and (ii) any formalities relating to execution of that document are satisfied."^[23] The practice of electronic execution has been growing in recent years and JCT understands that this is now commonplace. E-signature platforms are understood to be widely available, but JCT does not endorse any particular software company.

[23] **+++Now footnote [21]+++** See Statement of Law paragraph (1) at page 2 of the report. The full text of the report is available at www.lawcom.gov.uk/project/electronic-execution-of-documents.

Execution under hand

As witness

the hands of the Parties
or their duly authorised representatives

Signed by or on behalf of
the Employer

in the presence of:

witness' signature

witness's name

witness's address

Signed by or on behalf of
the Contractor

in the presence of:

witness' signature

witness's name

witness's address

Notes on Execution as a Deed

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

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

Execution as a Deed

Executed as a Deed by the Employer

namely ¹ [_____]Orbit Group Ltd

~~(A) acting by a Director and the Company Secretary/two Directors of the company~~²⁻³

(Print name of signatory)

Signature _____ Director

and

(Print name of signatory)

Signature _____ Company Secretary/Director

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

in the presence of

Signature _____ Director

Signature _____ Company Secretary/Director

[Common seal of company]

~~(C) by attested signature of a single Director of the company~~²⁻⁵

Signature _____ Director

in the presence of

Witness' signature _____ (Print name) _____

Witness's address _____

~~(D) by attested signature of the individual~~⁶

Signature _____

in the presence of

Witness' signature _____ (Print name) _____

Witness's address _____

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

Execution as a Deed

Executed as a Deed by the Contractor

namely ¹ [] Colours Decorating Limited

~~(A) acting by a Director and the Company Secretary/two Directors of the company~~²⁻³

(Print name of signatory)

Signature _____ *Director*

and

(Print name of signatory)

Signature _____ *Company Secretary/Director*

~~(B) by affixing hereto the common seal of the company/other body corporate~~²⁻⁴

in the presence of

Signature _____ *Director*

Signature _____ *Company Secretary/Director*

[Common seal of company]

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

Signature _____ *Director*

in the presence of

Witness' signature _____ *(Print name)* _____

Witness's address _____

~~(D) by attested signature of the individual~~⁶

Signature

in the presence of

Witness' signature _____ *(Print name)* _____

Witness's address _____

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

Conditions

Section 1 Definitions and Interpretation

1.1 Definitions

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

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

All Risks Insurance^[24]: insurance which provides cover against any physical loss or damage to work executed and Site Materials and against the reasonable cost of the removal and disposal of debris and of any shoring and propping of the Works which results from such physical loss or damage but excluding the cost necessary to repair, replace or rectify:

- (a) property which is defective due to:
 - (i) wear and tear,
 - (ii) obsolescence, or
 - (iii) deterioration, rust or mildew;
- (b) any work executed or any Site Materials lost or damaged as a result of its own defect in design, plan, specification, material or workmanship or any other work executed which is lost or damaged in consequence thereof where such work relied for its support or stability on such work which was defective^[25];
- (c) loss or damage caused by or arising from:
 - (i) any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation, commandeering, nationalisation or requisition or loss or destruction of or damage to any property by or under the order of any government *de jure* or *de facto* or public, municipal or local authority,
 - (ii) disappearance or shortage if such disappearance or shortage is only revealed when an inventory is made or is not traceable to an identifiable event, or
 - (iii) an Excepted Risk.

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

Base Date: the date stated as such date in the **Contract Particulars** (against the **Fifth Recital** and the JCT Fluctuations Option).

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

[25] **+++Now footnote [23]+++** In any policy for All Risks Insurance taken out under clause 5.4 or 5.5.2, cover should not be reduced by any exclusion that goes beyond the terms of paragraph (b) in this definition. For example, an exclusion in terms that 'This Policy excludes all loss of or damage to the property insured due to defective design, plan, specification, materials or workmanship' would not be in accordance with the terms of those insurance clauses or of that definition. Wider All Risks cover than that specified may be available, though it is not standard.

Building Regulations: the Building Regulations 2010.

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

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

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

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

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

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

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

Contractor's Designed Portion: see the **Second Recital**.

Contractor's Persons: the Contractor's employees and agents, all other persons employed or engaged on or in connection with the Works or any part of them and any other person properly on the site in connection therewith, excluding the Architect/Contract Administrator, the Employer, Employer's Persons and any Statutory Provider.

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

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

Excepted Risks: ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

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

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

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

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

Parties: the Employer and the Contractor together.

Party: either the Employer or the Contractor.

PC Regulations: the Public Contracts Regulations 2015.

Principal Contractor: the Contractor or other contractor named in **Article 5** or **Article 6** or any successor appointed by the Employer.

Principal Designer: the Architect/Contract Administrator or other person named in **Article 5** or **Article 6** or any successor appointed by the Employer.

Provisional Sum: includes a sum provided for work that the Employer may or may not decide to have carried out, or which cannot be accurately specified in the Contract Documents.

Public Holiday: Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.^[26]

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

Rectification Period: the period stated as such period in the **Contract Particulars** (against the

[26] **+++Now footnote [24]+++** Amend as necessary if different Public Holidays are applicable.

reference to **clause 2.11**).

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

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

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

Statutory Provider: any person executing work solely in pursuance of its statutory obligations, including any persons employed, engaged or authorised by such person upon or in connection with that work.

Statutory Requirements: any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Works or performance of any obligations under this Contract and any regulation or bye-law of any person which has any jurisdiction with regard to the Works or with whose systems the Works are, or are to be, connected.

Termination Payment: a payment to which **clauses 6.7.5, 6.11.4** and **6.12** refer.

VAT: Value Added Tax.

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

1.2 Agreement etc. to be read as a whole

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

1.3 Headings, references to persons, legislation etc.

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

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

1.4 Reckoning periods of days

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

1.5 Contracts (Rights of Third Parties) Act 1999

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

1.6 Notices and other communications

- 1.6.1 Each notice, instruction or other communication referred to in the Agreement or these Conditions shall be in writing.
- 1.6.2 Unless otherwise stated in these Conditions, any notice or other communication under this

Contract may be given to or served on the recipient by any effective means and shall be duly given or served if:

- 1.6.2.1 delivered by hand or sent by pre-paid post to the recipient's address stated in the Contract Particulars against clause 1.6.2, or to such other address as the recipient may from time to time notify to the sender, or if no such address is then current, the recipient's last known principal business address or (where a body corporate) its registered or principal office; or
- 1.6.2.2 sent by email to the recipient's email address stated in the Contract Particulars against clause 1.6.2, or to such other email address as the recipient may from time to time notify to the sender.

1.7 Consents and approvals

- 1.7.1 Where consent or approval of either Party or the Architect/Contract Administrator is expressly required under these Conditions and is requested, then, except as provided in clause 1.7.2, such consent or approval shall not be unreasonably delayed or withheld.
- 1.7.2 In the following cases the giving of consent or approval shall be at the sole discretion of the Party from which it is sought and clause 1.7.1 shall not apply, namely the Employer's consent under clause 2.11 and either Party's consent under clause 3.1.

1.8 Applicable law

This Contract shall be governed by and construed in accordance with the law of England.^[27]

[27] **+++Now footnote [25]+++** Where the Parties do not wish the law applicable to this Contract to be the law of England appropriate amendments should be made.

Section 2 Carrying out the Works

2.1 Contractor's obligations

- 2.1.1 The Contractor shall carry out and complete the Works in a proper and workmanlike manner and in compliance with the Contract Documents, the Construction Phase Plan and Statutory Requirements, and shall give all notices required by the Statutory Requirements.
- 2.1.2 The Contractor is encouraged to suggest economically viable amendments to the Works which, if instructed as a variation under clause 3.6.1, may result in an improvement in environmental performance and sustainability in the carrying out of the Works or of the completed Works and a reduction in environmental impact, provided that no such instruction shall extend the Contractor's obligations in relation to design under this Contract.
- 2.1.3 In relation to the Contractor's Designed Portion, the Contractor:
- 2.1.3.1 using reasonable skill and care, shall complete the design for the Contractor's Designed Portion, including, so far as not described or stated in the Employer's Requirements, the selection of any specifications for the kinds and standards of the materials, goods and workmanship to be used in the CDP Works;
 - 2.1.3.2 to the extent permitted by the Statutory Requirements, shall have no greater duty, obligation or liability than to use reasonable skill and care as provided in clause 2.1.3.1 in respect of such design and under no circumstances shall the Contractor be subject to any duty, obligation or liability which requires that any such design shall be fit for its purpose;
 - 2.1.3.3 shall comply with regulations 8 to 10 of the CDM Regulations and (where applicable) regulations 11F, 11J(2), 11J(4) and 11K of the Building Regulations and with the Architect/Contract Administrator's directions for the integration of the design of the Contractor's Designed Portion with the design of the Works as a whole, subject to the provisions of clause 3.4.2;
 - 2.1.3.4 shall as and when necessary without charge provide the Architect/Contract Administrator with copies of such drawings or details, specifications of materials, goods and workmanship, and (if requested) related calculations and information, as are reasonably necessary to explain the Contractor's Designed Portion;
 - 2.1.3.5 shall not be responsible for the contents of the Employer's Requirements or for verifying the adequacy of any design contained within them. If an inadequacy is found in any design in the Employer's Requirements, then, subject to clause 2.6, the Employer's Requirements shall be altered or modified by instructions under clause 3.6.1.

Drawings and other documents to be supplied by the Contractor shall be supplied by such means and in such format, if any, as are specified in the Employer's Requirements.^[28] In the absence of specific requirements they shall be supplied in the form of not less than two copies and, unless otherwise stated in the Employer's Requirements, the Contractor shall allow not less than 7 days from the date of their receipt for the Architect/Contract Administrator's comments on each drawing or other document before commencing the work to which they relate.

2.2 Materials, goods and workmanship

- 2.2.1 The Contractor shall provide to the Employer all information that the Employer reasonably requests regarding the environmental impact of the supply and use of materials and goods which the Contractor selects.
- 2.2.2 Insofar as the quality of materials or standards of workmanship are stated to be a matter for the Architect/Contract Administrator's approval, such quality and standards shall be to the

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

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

- 2.2.3 The Contractor shall take all reasonable steps to encourage Contractor's Persons to be registered cardholders under the [Construction Skills Certification Scheme](#) (CSCS) or qualified under an equivalent recognised qualification scheme.

2.3 Commencement and completion

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

2.4 Architect/Contract Administrator's duties

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

2.5 Correction of inconsistencies

- 2.5.1 Any inconsistency in or between the Contract Drawings, the Contract Specification, the Work Schedules and the Employer's Requirements shall be corrected and any such correction which results in an addition, omission or other change shall be treated as a variation under clause 3.6.1.

- 2.5.2 Any inconsistency in or between documents prepared by the Contractor for the CDP Works shall be corrected by the Contractor at its own expense after the Architect/Contract Administrator has approved the manner in which the Contractor proposes to deal with the inconsistency.

2.6 Divergences from Statutory Requirements

- 2.6.1 If the Contractor becomes aware of any divergence between the Statutory Requirements and the Contract Documents or between the Statutory Requirements and any instruction from the Architect/Contract Administrator, it shall immediately notify the latter, specifying the divergence.

- 2.6.2 Provided the Contractor is not in breach of clause 2.6.1, the Contractor shall not be liable under this Contract if the Works (other than the CDP Works) do not comply with the Statutory Requirements to the extent that the non-compliance results from the Contractor having carried out work in accordance with the Contract Documents or the Architect/Contract Administrator's instructions.

2.7 Fees or charges legally demandable

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

2.8 Extension of time

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

2.9 Damages for non-completion

- 2.9.1 If the Works are not completed by the Date for Completion as stated in the Contract Particulars or as later fixed under clause 2.8, the Employer may require the Contractor to pay or allow to the Employer liquidated damages at the rate stated in the Contract Particulars between such Date for Completion and the date of practical completion.

- 2.9.2 Subject to clause 2.9.3, the Employer may deduct the liquidated damages from any sum due to the Contractor under this Contract (provided a notice of that deduction has been given under clause 4.6.4 or (if applicable) 6.12.3 or 6.12.5) or recover those damages from the Contractor as a debt.
- 2.9.3 If the Employer intends to deduct any such damages from any sum due to the Contractor under this Contract or thereafter recover such damages as a debt, it shall additionally notify the Contractor of that intention not later than the due date for the final payment under clause 4.9.1 or (if applicable) the Termination Payment under clause 6.7.4 or 6.11.3.
- 2.9.4 If the Contractor's employment is terminated under this Contract:
- 2.9.4.1 where the date of termination occurs prior to the date of practical completion, the provisions of clauses 2.9.1 to 2.9.3 shall apply in respect of the period between the Date for Completion as stated in the Contract Particulars or as later fixed under clause 2.8 and the date of termination, and the reference to the date of practical completion in clause 2.9.1 shall be deemed to be a reference to the date of termination;
- 2.9.4.2 in respect of the period after the date of termination, subject to clause 2.9.4.1, the Employer shall not be empowered to require the payment of or to deduct liquidated damages under clause 2.9 but the provisions of this clause 2.9.4.2 shall be without prejudice to and not in substitution of any other rights and remedies of the Employer.

2.10 Practical completion

The Architect/Contract Administrator shall certify the date when in its opinion the Works have reached practical completion and the Contractor has complied sufficiently with clauses 2.1.3.4 and 3.9 in respect of the supply of documents and information.

2.11 Defects

If any defects, shrinkages or other faults in the Works appear within the Rectification Period due to materials, goods or workmanship not in accordance with this Contract or any failure of the Contractor to comply with its obligations in respect of the CDP Works, the Architect/Contract Administrator shall not later than 14 days after the expiry of the Rectification Period notify the Contractor and the Contractor shall make good such defects, shrinkages or other faults entirely at its own cost unless the Architect/Contract Administrator with the Employer's consent instructs otherwise. If the Architect/Contract Administrator instructs otherwise, an appropriate deduction may be made from the Contract Sum.

2.12 Certificate of making good

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

Section 3 Control of the Works

3.1 Assignment

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

3.2 Person-in-charge

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

3.3 Sub-contracting

3.3.1 The Contractor shall not without the Architect/Contract Administrator's consent sub-contract the whole or any part of the Works or of any design work for the Contractor's Designed Portion. In no case shall any such consent or any sub-contracting in any way affect the Contractor's obligations under any other provision of this Contract.

3.3.2 Where considered appropriate, the Contractor shall engage the sub-contractor using the JCT Minor Works Sub-Contract with sub-contractor's design or the JCT Short Form of Sub-Contract.^[29] It shall be a condition of any sub-contract that:

3.3.2.1 the sub-contractor's employment under the sub-contract shall terminate immediately upon the termination (for any reason) of the Contractor's employment under this Contract;

3.3.2.2 (without limiting either party's statutory and/or regulatory duties) each party to the sub-contract shall in relation to the Works and the site comply with applicable CDM Regulations and as applicable Part 2A of the Building Regulations^[30];

3.3.2.3 if by a final date for payment under the sub-contract the Contractor fails to pay the sub-contractor any amount that should properly have been paid, the Contractor shall, in addition to that amount, pay simple interest on it at the Interest Rate for the period from the final date for payment until such payment is made, such payment of interest to be on and subject to terms equivalent to those of clause 4.7 of these Conditions.

3.4 Architect/Contract Administrator's instructions

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

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

3.5 Non-compliance with instructions

If the Contractor unreasonably delays or withholds its consent to an instruction referred to in clause 3.4.2 or fails to comply within 7 days after receipt of a notice from the Architect/Contract Administrator requiring compliance with any other instruction, the Employer may employ and pay other persons to execute work of any kind that may be necessary to give effect to that instruction. The Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and an appropriate deduction may be made from the Contract Sum.

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

[30] +++Now footnote [28]+++ See footnote [31] +++ now footnote [29] +++ to clause 3.9 below.

3.6 Variations

- 3.6.1 The Architect/Contract Administrator may without invalidating this Contract issue instructions requiring an addition to, omission from, or other change in the Works or the order or manner in which they are to be carried out (a 'variation'), including instructions effecting changes in the Employer's Requirements that necessitate an alteration or modification of the design of the CDP Works.
- 3.6.2 The Architect/Contract Administrator and the Contractor shall endeavour to agree a price prior to the Contractor carrying out the instruction.
- 3.6.3 Failing agreement under clause 3.6.2, any instructions for a variation and any matters that are to be treated as a variation shall be valued by the Architect/Contract Administrator on a fair and reasonable basis using any relevant prices in the priced Contract Specification/Work Schedules/Schedule of Rates, and the valuation shall include any direct loss and/or expense incurred by the Contractor due to the regular progress of the Works being affected by compliance with the instruction.

3.7 Provisional Sums

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

3.8 Exclusion from the Works

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

3.9 CDM Regulations and Part 2A of the Building Regulations

Without limiting either Party's statutory and regulatory duties and responsibilities, each Party undertakes to the other that in relation to the Works and site it will duly comply with applicable CDM Regulations and as applicable Part 2A of the Building Regulations^[31], and in particular but without limitation:

- 3.9.1 the Employer shall ensure that the Principal Designer carries out its duties and, where the Contractor is not the Principal Contractor, shall ensure that the Principal Contractor carries out its duties under those regulations;
- 3.9.2 the Contractor in addition to any obligations under clause 2.1.3.3 shall comply with:^[32]
- 3.9.2.1 regulations 8 and 15 of the CDM Regulations and, where it is the Principal Contractor for the purposes of the CDM Regulations, with regulations 12 to 14 of those regulations; and
- 3.9.2.2 regulations 11F, 11J and 11L of the Building Regulations and, where it is the Principal Contractor for the purposes of the Building Regulations, with regulation 11N of those regulations;
- 3.9.3 if the Employer appoints a replacement for any Principal Designer or Principal Contractor, the Employer shall immediately upon that appointment notify the Contractor with details of the new appointee.

[31] **+++Now footnote [29]+++** Part 2A of the Building Regulations, introduced by the Building Regulations etc. (Amendment) (England) Regulations 2023 pursuant to the Building Safety Act 2022, sets out a framework of safety duties and competence requirements for those persons involved in the procurement, design and undertaking of building work to which building regulations apply (including higher-risk building work for which additional duties apply).
If any project involves higher-risk building work, see the Guidance Notes.

[32] **+++Now footnote [30]+++** Under the CDM Regulations and the Building Regulations, where the Employer is a domestic client (as defined in regulation 2(1) in both sets of regulations), the Principal Contractor may also be responsible for carrying out certain of the client's duties.

Section 4 Payment

4.1 VAT

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

4.2 Construction Industry Scheme (CIS)

If the Employer is or at any time up to the payment of the final certificate becomes a 'contractor' for the purposes of the CIS^[33], its obligation to make any payment under this Contract is subject to the provisions of the CIS.

4.3 Interim payments – dates and certificates

4.3.1 During the period up to the due date for the final payment fixed under clause 4.9.1, the due dates for interim payments to the Contractor shall in each case be the date 7 days after the relevant Interim Valuation Date.

4.3.2 The Architect/Contract Administrator shall not later than 5 days after each due date issue an interim certificate, stating the sum that it considers to be or have been due to the Contractor at the due date, calculated in accordance with clause 4.4, and the basis on which that sum has been calculated, including the amount of each adjustment.

4.3.3 Subject to clause 4.6.3, the final date for payment of each interim payment shall be 14 days from its due date.

4.4 Interim payments – calculation of sums due

The amount of each interim payment to be certified under clause 4.3.2 shall be the applicable percentage, as stated in the Contract Particulars, of the total value of:

4.4.1 work properly executed, adjusted where relevant for any amounts ascertained or agreed under clause 3.6, 3.7 or 4.8; and

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

in both cases calculated as at the Interim Valuation Date and adjusted for any fluctuations provision that is stated by the Contract Particulars to apply, less the total of sums stated as due to the Contractor in previous interim certificates, any sums paid in respect of any payment notice given by the Contractor after the issue of the latest interim certificate and, if applicable, any deduction under clause 2.11 or 3.5.

4.5 Contractor's applications and payment notices

4.5.1 In relation to any interim payment the Contractor may not later than its Interim Valuation Date or, in the case of the final payment, may at any time prior to issue of the final certificate make an application to the Architect/Contract Administrator, stating the sum that the Contractor considers to be due to it at the relevant due date, as fixed in accordance with clause 4.3 or 4.9, and the basis on which that sum has been calculated.

4.5.2 If a certificate is not issued in accordance with clause 4.3 or 4.9, then:

4.5.2.1 where the Contractor has made an application for that payment in accordance with clause 4.5.1, that application is for the purposes of these Conditions a payment notice; or

4.5.2.2 where the Contractor has not made such an application, it may at any time after the 5 day period referred to in clause 4.3.2 or 4.9.2 give a payment notice to the Architect/Contract Administrator, stating the sum that the Contractor considers to

[33] **+++Now footnote [31]+++** See the Contract Particulars (Fifth Recital and clause 4.2).

have become due to it under clause 4.4 or 4.9 at the relevant due date and the basis on which that sum has been calculated.

4.6 Payments – amount and notices

- 4.6.1 Subject to any notice given by the paying Party under clause 4.6.4, the paying Party shall pay the sum stated as due in the relevant certificate on or before the final date for payment under clause 4.3 or 4.9.
- 4.6.2 If that certificate is not issued in accordance with clause 4.3 or 4.9 but a Contractor's payment notice has been or is then given, the Employer shall, subject to any notice subsequently given by it under clause 4.6.4, pay the Contractor the sum stated as due in the Contractor's payment notice.
- 4.6.3 Where the Contractor gives a payment notice under clause 4.5.2.2, the final date for payment of the sum specified in it shall for all purposes be regarded as postponed by the same number of days as the number of days after expiry of the 5 day period referred to in clause 4.5.2.2 that the Contractor's payment notice is given.
- 4.6.4 Where:
- 4.6.4.1 the Employer intends to pay less than the sum stated as due from it in a certificate or, where applicable, the Contractor's payment notice; or
- 4.6.4.2 if the final certificate shows a balance due to the Employer, the Contractor intends to pay less than the sum stated as due,
- the Party by which the payment is stated to be payable shall not later than 5 days before the final date for payment give the other Party notice of that intention (a 'pay less notice'), stating the sum (if any) that it considers to be due to the other Party at the date the pay less notice is given and the basis on which that sum has been calculated. Where a pay less notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated in it as due.
- 4.6.5 A pay less notice to be given by the Employer under clause 4.6.4 may be given on its behalf by the Architect/Contract Administrator or by any other person which the Employer notifies the Contractor as being authorised to do so.
- 4.6.6 In relation to the requirements for the issue of certificates and the giving of notices under section 4, it is immaterial that the amount then considered to be due may be zero.

4.7 Failure to pay amount due

- 4.7.1 If either Party fails to pay a sum, or any part of it, due to the other Party under these Conditions by the final date for payment, it shall, in addition to any unpaid amount that should properly have been paid, pay the other Party simple interest on that amount at the Interest Rate for the period from the final date for payment until payment is made.
- 4.7.2 Any such unpaid amount and any interest under clause 4.7.1 shall be recoverable as a debt. Acceptance of a payment of interest shall not in any circumstances be construed as a waiver either of the recipient's right to proper payment of the principal amount due or of the Contractor's rights to suspend performance under clause 4.8 or terminate its employment under section 6.

4.8 Contractor's right of suspension

- 4.8.1 If the Employer fails to pay a sum payable to the Contractor in accordance with clause 4.6 (together with any VAT properly chargeable in respect of that payment) by the final date for payment and the failure continues for 7 days after the Contractor has given notice to the Employer, with a copy to the Architect/Contract Administrator, of its intention to suspend performance of its obligations under this Contract and the grounds for such suspension, the Contractor, without affecting its other rights and remedies, may suspend performance of any or all of those obligations until payment is made in full.
- 4.8.2 Where the Contractor exercises its right of suspension under clause 4.8.1, it shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by it as a result of exercising the right.
- 4.8.3 Applications in respect of any such costs and expenses shall be made to the

Architect/Contract Administrator and the Contractor shall with its application or on request submit such details of them as are reasonably necessary for ascertaining the amount in question. When ascertained or agreed, the amount shall be included in the next interim certificate.

4.9 Final certificate and final payment

4.9.1 Following practical completion the Contractor shall within the period stated in the Contract Particulars supply to the Architect/Contract Administrator all documentation reasonably required for computation of the final payment. The due date for the final payment shall be 28 days after either the date of receipt of the documentation or, if later, the date specified in the certificate under clause 2.12.

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

4.9.2.1 the Contract Sum, as adjusted for the amounts referred to in clause 4.4.1, any fluctuations provision that applies and any deductions made under clause 2.11 or 3.5;

4.9.2.2 the sum of amounts stated as due in interim certificates plus any amount paid in respect of any Contractor's payment notice in accordance with clause 4.6 that is not reflected in a subsequent certificate,

and (without affecting the rights of the Contractor in respect of any interim payment not paid in full by the Employer by its final date for payment) the final payment shall be the difference (if any) between the two sums, which shall be shown in the certificate as a balance due to the Contractor from the Employer or vice versa. The certificate shall state the basis on which that amount has been calculated, including the amount of each adjustment.

4.9.3 Subject to clause 4.6.3, the final date for payment of the final payment shall be 14 days from its due date.

4.10 Fixed price and fluctuations provisions

Subject to clauses 3.6, 3.7 and 4.8 and any fluctuations provision that is stated by the Contract Particulars (for clauses 4.3 and 4.9) to apply, no account shall be taken in any payment to the Contractor under this Contract of any change in the cost to the Contractor of the labour, materials, plant and other resources employed in carrying out the Works.

Section 5 Injury, Damage and Insurance

5.1 Contractor's liability – personal injury or death

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

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

Subject to clauses 5.2.1 to 5.2.3, the Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal (other than loss, injury or damage to the Works and/or Site Materials) in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the Works and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor or any Contractor's Person. In respect of existing structures and their contents:

- 5.2.1 where clause 5.5 applies, the Contractor's liability and indemnity under this clause 5.2 also excludes any loss or damage to those existing structures or to any of their contents that are required to be insured under clause 5.5.1 that is caused by any of the risks or perils required or agreed to be insured against under clause 5.5;
- 5.2.2 the exclusion in clause 5.2.1 shall apply notwithstanding that the loss or damage is or may be due in whole or in part to the negligence, breach of statutory duty, omission or default of the Contractor or any Contractor's Person;
- 5.2.3 where clause 5.6 applies, the Contractor's liability and indemnity under this clause 5.2 shall, in respect of loss, injury or damage to those existing structures and their contents due to the causes specified in clause 5.2, be subject to any limitations and exclusions specified in the insurance arrangements under clause 5.6 identified in the Contract Particulars.

5.3 Contractor's insurance of its liability

Without limiting or affecting its indemnities to the Employer under clauses 5.1 and 5.2, the Contractor shall effect and maintain insurance in respect of claims arising out of the liabilities referred to in those clauses which:

- 5.3.1 in respect of claims for personal injury to or the death of any employee of the Contractor arising out of and in the course of such person's employment, shall comply with all relevant legislation; and
- 5.3.2 for all other claims to which clause 5.3 applies^[34], shall indemnify the Employer in like manner to the Contractor, but only to the extent that the Contractor may be liable to indemnify the Employer under the terms of this Contract and shall for any one occurrence or series of occurrences arising out of one event be in a sum not less than that stated in the Contract Particulars for clause 5.3.

5.4 Joint Names Insurance of the Works by Contractor^{[35][36]}

If the Contract Particulars state that clause 5.4 applies, the Contractor shall effect and maintain with insurers approved by the Employer a Joint Names Policy for All Risks Insurance for the full reinstatement value of the Works (plus the percentage, if any, stated in the Contract Particulars to

[34] **+++Now footnote [32]+++** It should be noted that the cover granted under Public Liability policies taken out pursuant to clause 5.3 may not be co-extensive with the indemnity given to the Employer in clauses 5.1 and 5.2: for example, each claim may be subject to an excess and cover may not be available in respect of loss or damage due to gradual pollution.

[35] **+++Now footnote [33]+++** Where the Contractor has in force an All Risks Policy which insures the Works, this Policy may be used to provide the insurance required by clause 5.4 provided the Policy recognises the Employer as a composite insured in respect of the Works.

[36] **+++Now footnote [34]+++** As to choice of applicable insurance provisions, see the Guidance Notes.

cover professional fees) and shall maintain such Joint Names Policy up to and including the date of issue of the practical completion certificate or, if earlier, the date of termination of the Contractor's employment.

5.5 Joint Names Insurance of the Works and existing structures by Employer^[36]

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

- 5.5.1 a Joint Names Policy in respect of the existing structures together with the contents of them owned by it or for which it is responsible, for the full cost of reinstatement, repair or replacement of loss or damage due to any of the Specified Perils;
- 5.5.2 a Joint Names Policy for All Risks Insurance for the full reinstatement value of the Works (plus the percentage, if any, stated in the Contract Particulars to cover professional fees)

and shall maintain such Joint Names Policies up to and including the date of issue of the practical completion certificate or, if earlier, the date of termination of the Contractor's employment.

5.6 Insurance of the Works and existing structures by other means^[36]

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

5.7 Evidence of insurance

Where a Party is required by this Contract to effect and maintain an insurance policy or cover under any of clauses 5.3, 5.4, 5.5 and 5.6, or is responsible for ensuring that it is effected and maintained, that Party shall within 7 days of a request of the other Party supply such documentary evidence as the other Party may reasonably require that the policy or cover has been effected and remains in force.

5.8 Loss or damage – insurance claims and reinstatement

- 5.8.1 If during the carrying out of the Works any loss or damage affecting any executed work or Site Materials is occasioned by any of the risks covered by the Works Insurance Policy or an Excepted Risk or there is any loss of or damage of any kind to any existing structure or its contents, the Contractor shall forthwith notify the Architect/Contract Administrator and the Employer.
- 5.8.2 Subject to clauses 5.8.5.1 and 5.8.6, the occurrence of such loss or damage to executed work or Site Materials shall be disregarded in calculating any amounts payable to the Contractor under this Contract.
- 5.8.3 The Contractor, for itself and its sub-contractors, shall authorise the insurers to pay to the Employer all monies from the Works Insurance Policy, and from any policies covering existing structures or their contents that are effected by the Employer.
- 5.8.4 Where loss or damage affecting executed work or Site Materials is occasioned by any risk covered by the Works Insurance Policy, the Contractor, after any inspection required by the insurers under that policy, shall and with due diligence restore the damaged work, replace or repair any lost or damaged Site Materials, remove and dispose of any debris (collectively 'reinstatement work') and proceed with the carrying out and completion of the Works.
- 5.8.5 Where clause 5.4 applies or where clause 5.6 applies and the Contractor is responsible for effecting the Works Insurance Policy:
 - 5.8.5.1 the Employer shall pay all monies from such insurance to the Contractor by instalments under separate reinstatement work certificates issued by the Architect/Contract Administrator at the same dates as those for interim certificates under clause 4.3 but without deduction of retention and less only the amounts referred to in clause 5.8.5.2;
 - 5.8.5.2 the Employer may retain from those monies any amounts properly incurred by the Employer and notified by it to insurers in respect of professional fees up to the aggregate amount of the percentage cover for those fees or (if less) the amount paid by insurers in respect of those fees;
 - 5.8.5.3 in respect of reinstatement work, the Contractor shall not be entitled to any

payment other than amounts received under the Works Insurance Policy and for the purposes of clause 2.8, but not otherwise under these Conditions, such work shall be treated as a variation under clause 3.6.

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

5.9 Loss or damage to existing structures – right of termination

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

- 5.9.1 unless within 7 days of receiving the notice (or such longer period as may be agreed) the Party to which it is given invokes a dispute resolution procedure of this Contract to determine whether the termination is just and equitable, it shall be deemed to be so;
- 5.9.2 upon the giving of that notice or, where a dispute resolution procedure is invoked within that period, upon any final upholding of the notice, the provisions of clause 6.11 shall apply.

Section 6 Termination

6.1 Meaning of insolvency

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

- 6.1.1 the making of an administration, bankruptcy or winding-up order against it, appointment of an administrative receiver, receiver or manager of its property, its passing of a resolution for voluntary winding-up without declaration of solvency or any other event referred to in section 113, sub-sections (2) to (5), of the Housing Grants, Construction and Regeneration Act 1996;
- 6.1.2 otherwise entering administration within the meaning of Schedule B1 to the Insolvency Act 1986;
- 6.1.3 entering into an arrangement, compromise or composition in satisfaction of its debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction);
- 6.1.4 (in the case of a partnership) each partner being the subject of an individual arrangement or any other event or proceedings referred to in this clause 6.1;
- 6.1.5 (in the case of a company) the coming into force of a moratorium pursuant to Part A1 of the Insolvency Act 1986 with respect to it; or
- 6.1.6 (in the case of a company) the making of an order sanctioning a compromise or arrangement pursuant to Part 26A of the Companies Act 2006 with respect to it.

6.2 Notices under section 6

- 6.2.1 Notice of termination of the Contractor's employment shall not be given unreasonably or vexatiously.
- 6.2.2 Such termination shall take effect on receipt of the relevant notice.
- 6.2.3 Each notice referred to in this section, except for the notices referred to in clause 6.12, shall:
 - 6.2.3.1 be delivered by hand or sent by Signed For 1st class or Special Delivery Guaranteed post (or any method of posting as has replaced either method and is then current) and, where sent by post in that manner, shall be deemed to have been received on the second Business Day after the date of posting; or
 - 6.2.3.2 (where clause 6.2.3.2 is stated in the Contract Particulars to apply) be sent by email to the recipient's email address stated in the Contract Particulars against clause 6.2.3.2, or to such other email address as the recipient may from time to time notify to the sender (provided that such notification states that it is a notice of change under this clause 6.2.3.2), and shall be deemed to have been received on the next Business Day after the day on which it was sent.

6.3 Other rights, reinstatement

- 6.3.1 The provisions of clauses 6.4 to 6.7 are without prejudice to any other rights and remedies of the Employer. The provisions of clauses 6.8 and 6.9 and (in the case of termination under either of those clauses) the provisions of clause 6.11, are without prejudice to any other rights and remedies of the Contractor.
- 6.3.2 Irrespective of the grounds of termination, the Contractor's employment may at any time be reinstated if and on such terms as the Parties agree.

6.4 Default by Contractor

- 6.4.1 If, before practical completion of the Works, the Contractor:

6.4.1.1 without reasonable cause wholly or substantially suspends the carrying out of the Works or the design of the Contractor's Designed Portion; or

6.4.1.2 fails to proceed regularly and diligently with the Works or the design of the Contractor's Designed Portion; or

6.4.1.3 fails to comply with clause 3.9,

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

6.4.2 If the Contractor continues a specified default for 7 days from receipt of the notice under clause 6.4.1, the Employer may on, or within 10 days from, the expiry of that 7 day period by a further notice to the Contractor terminate the Contractor's employment under this Contract.

6.5 Insolvency of Contractor

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

6.5.2 As from the date the Contractor becomes insolvent, whether or not the Employer has given such notice of termination:

6.5.2.1 clauses 6.7.2 to 6.7.5 shall apply as if such notice had been given;

6.5.2.2 the Contractor's obligations under Article 1 and these Conditions to carry out and complete the Works shall be suspended; and

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

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

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

6.7 Consequences of termination under clauses 6.4 to 6.6

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

6.7.1 the Employer may employ and pay other persons to carry out and complete the Works, or may do so itself, and the Employer and such other persons may enter upon and take possession of the site and the Works and (subject to obtaining any necessary third party consents) may use all temporary buildings, plant, tools, equipment and Site Materials for those purposes;

6.7.2 no further sum shall become due to the Contractor under this Contract other than any amount that may become due to it under clause 6.7.5 and the Employer need not pay any sum that has already become due either:

6.7.2.1 insofar as the Employer has given or gives a notice under clause 4.6.4; or

6.7.2.2 if the Contractor, after the last date upon which such notice could have been given by the Employer in respect of that sum, has become insolvent within the meaning of clause 6.1.1 or 6.1.2;

6.7.3 upon completion of the Works and the making good of defects in them (or of instructions otherwise, as referred to in clause 2.11) ('completion'), the Employer shall forthwith notify the Contractor of the date of completion and such completion shall be deemed for the purposes of this clause 6.7 to have taken place on the date so notified;

6.7.4 the due date for the Termination Payment under clause 6.7.5 shall be 2 months after the

date of completion as referred to in clause 6.7.3;

6.7.5 the amount due on termination shall be calculated in accordance with the following amounts:

6.7.5.1 the amount of expenses properly incurred by the Employer, including those incurred pursuant to clause 6.7.1 and, where applicable, clause 6.5.2.3, and of any direct loss and/or damage caused to the Employer and for which the Contractor is liable, whether arising as a result of the termination or otherwise;

6.7.5.2 the amount of payments made to the Contractor; and

6.7.5.3 the total amount which would have been payable for the Works in accordance with this Contract,

and if the sum of the amounts referred to in clauses 6.7.5.1 and 6.7.5.2 exceeds the amount referred to in clause 6.7.5.3, the difference shall be an amount payable by the Contractor to the Employer or, if that sum is less, by the Employer to the Contractor (the 'Termination Payment').

6.8 Default by Employer

6.8.1 If the Employer:

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

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

6.8.1.3 fails to comply with clause 3.9,

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

6.8.2 If before practical completion of the Works the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for a continuous period of one month or more by reason of:

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

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

(but in either case excluding such instructions as are referred to in clause 6.10.1.2), then, unless in either case that is caused by the negligence or default of the Contractor or any Contractor's Person, the Contractor may give to the Employer a notice specifying the event or events (a 'specified' suspension event or events).

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

6.9 Insolvency of Employer

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

6.9.2 as from the date the Employer becomes insolvent, the Contractor's obligations under Article 1 and these Conditions to carry out and complete the Works shall be suspended.

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

6.10.1 If, before practical completion of the Works, the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for the relevant continuous period of one month or more by reason of one or more of the following events:

6.10.1.1 force majeure;

- 6.10.1.2 Architect/Contract Administrator's instructions under clause 3.6 issued as a result of the negligence or default of any Statutory Provider;
- 6.10.1.3 loss or damage to the Works occasioned by any risk covered by the Works Insurance Policy or by an Excepted Risk;
- 6.10.1.4 civil commotion or the use or threat of terrorism and/or the activities of the relevant authorities in dealing with such event or threat; or
- 6.10.1.5 the exercise by the United Kingdom Government or any of the devolved administrations, or any Local or Public Authority or any equivalent authority governed by public law in any of the devolved administrations of any statutory power (except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or any Contractor's Person) which affects the execution of the Works,

then either Party, subject to clause 6.10.2, may upon the expiry of that relevant period of suspension give notice to the other that, unless the suspension ceases within 7 days after the date of receipt of that notice, it may terminate the Contractor's employment under this Contract. Failing such cessation within that 7 day period, it may then by further notice terminate that employment.

- 6.10.2 The Contractor shall not be entitled to give notice under clause 6.10.1 in respect of the matter referred to in clause 6.10.1.3 where the loss or damage to the Works was caused by the negligence or default of the Contractor or any Contractor's Person.
- 6.10.3 Where this Contract is one to which regulation 73(1) of the PC Regulations applies the Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment under this Contract where the grounds set out in regulation 73(1)(a) of the PC Regulations apply.

6.11 Consequences of termination under clauses 6.8 to 6.10

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

- 6.11.1 no further sums shall become due to the Contractor otherwise than in accordance with this clause 6.11;
- 6.11.2 the Contractor shall not later than 2 months after the date of termination provide the Employer with all documents necessary for calculating the amounts referred to in clause 6.11.4. Not later than 3 months after receipt of those documents, the Employer shall prepare and send to the Contractor an account which shall set out the amounts referred to in clause 6.11.4;
- 6.11.3 the due date for the Termination Payment under clause 6.11.4 shall be the last date for issue of the Employer's account under clause 6.11.2;
- 6.11.4 the amount due on termination from the Employer to the Contractor or (if a negative amount) from the Contractor to the Employer shall be the aggregate of:
 - 6.11.4.1 the total value of work properly executed at the date of termination of the Contractor's employment, ascertained in accordance with these Conditions as if the employment had not been terminated, together with any other amounts due to the Contractor under these Conditions;
 - 6.11.4.2 the cost of materials or goods (including Site Materials) properly ordered for the Works for which the Contractor then has paid or is legally bound to pay;
 - 6.11.4.3 (only where the Contractor's employment is terminated either under clause 6.8 or 6.9, or under clause 6.10.1.3 if the loss or damage to the Works was caused by the negligence or default of the Employer or any Employer's Person) any direct loss and/or damage caused to the Contractor by the termination,

less amounts previously paid to the Contractor under this Contract, but without deduction of any retention (the 'Termination Payment'). Payment by the Employer for any such materials and goods as are referred to in clause 6.11.4.2 shall be subject to those materials and goods thereupon becoming the property of the Employer.

6.12 Termination Payment – final date, notices and amount

- 6.12.1 Subject to clause 6.12.5, the final date for payment of the Termination Payment shall be 14 days from its due date, as fixed in accordance with clause 6.7.4 or 6.11.3.
- 6.12.2 Not later than 5 days after the relevant due date the Employer shall give a termination payment notice to the Contractor, which shall state the sum that it considers to be or have been due at the due date, calculated in accordance with clause 6.7.5 or 6.11.4, and the Termination Payment shall be the difference or amount referred to in clause 6.7.5 or 6.11.4, which shall be shown in the termination payment notice as a balance due to the Contractor from the Employer or vice versa. Such notice shall state the basis on which that amount has been calculated.
- 6.12.3 If the Party by which the Termination Payment is stated to be payable ('the payer') intends to pay less than the stated balance, it shall not later than 5 days before the final date for payment give the other Party a pay less notice which shall state the sum (if any) that it considers to be due to the other Party at the date the pay less notice is given and the basis on which that sum has been calculated and where given by the Employer, the provisions of clause 4.6.5 shall correspondingly apply.
- 6.12.4 Where a pay less notice is given under clause 6.12.3, the payment to be made on or before the final date for payment shall not be less than the amount stated in it as due.
- 6.12.5 If a termination payment notice is not given by the Employer in accordance with clause 6.12.2:
- 6.12.5.1 the Contractor may at any time after the 5 day period referred to in clause 6.12.2 give a termination payment notice to the Employer, stating the sum that the Contractor considers to have become due under clause 6.7.5 or 6.11.4 at the due date and the basis on which that sum has been calculated and, subject to any pay less notice given under clause 6.12.5.3, the Termination Payment shall be the sum stated as due in the Contractor's termination payment notice;
- 6.12.5.2 if the Contractor gives a termination payment notice under clause 6.12.5.1, 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 expiry of the 5 day period referred to in clause 6.12.2 that the Contractor's termination payment notice is given;
- 6.12.5.3 following the Contractor's termination payment notice the Employer may not later than 5 days before the final date for payment give a pay less notice in accordance with clause 6.12.3 and, if it gives such notice, the provisions of clause 6.12.4 shall correspondingly apply.
- 6.12.6 If the payer fails to pay the Termination Payment, or any part of it, by the final date for its payment, the payer shall, in addition to any unpaid amount that should properly have been paid, pay the other Party simple interest on that amount at the Interest Rate for the period from the final date for payment until payment is made. Acceptance of a payment of any such interest shall not in any circumstances be construed as a waiver of any right to proper payment of the principal amount due. Any such unpaid amount and any interest under this clause 6.12.6 shall be recoverable as a debt.
- 6.12.7 In relation to the requirements in this clause 6.12 for the giving of termination payment notices by the Employer, and pay less notices, it is immaterial that the amount then considered to be due may be zero.

Section 7 Settlement of Disputes

7.1 Notification and negotiation of disputes

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

7.2 Mediation

Subject to Article 7, if a dispute or difference arises under this Contract which cannot be resolved by direct negotiations, each Party shall give serious consideration to any request by the other to refer the matter to mediation.

7.3 Adjudication

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

7.4 Arbitration

For the purposes of Article 8, if it applies, the procedures for arbitration are set out in Schedule 1.^[37]

[37] **+++Now footnote [35]+++** Arbitration or legal proceedings are **not** an appeal against the decision of the Adjudicator but are a consideration of the dispute or difference as if no decision had been made by an Adjudicator.

Schedules

Schedule 1 Arbitration

(Clause 7.4)

Conduct of arbitration

- 1 Any arbitration pursuant to Article 8 shall be conducted in accordance with the JCT 2024 edition of the [Construction Industry Model Arbitration Rules \(CIMAR\)](#), provided that if any amendments to that edition of the Rules have been issued by the JCT the Parties may, by a joint notice to the Arbitrator, state that they wish the arbitration to be conducted in accordance with the Rules as so amended. References in this Schedule 1 to a Rule or Rules are references to such Rule(s) as set out in the JCT 2024 edition of [CIMAR](#).

Notice of reference to arbitration

- 2
 - 2.1 Where pursuant to Article 8 either Party requires a dispute or difference to be referred to arbitration, that Party shall serve on the other Party a notice of arbitration to such effect in accordance with Rule 2.1 identifying the dispute and requiring the other Party to agree to the appointment of an arbitrator. The Arbitrator shall be an individual agreed by the Parties or, failing such agreement within 14 days (or any agreed extension of that period) after the notice of arbitration is served, appointed on the application of either Party in accordance with Rule 2.3 by the person selected in accordance with the Contract Particulars.
 - 2.2 Where two or more related arbitral proceedings in respect of the Works fall under separate arbitration agreements, Rules 2.6, 2.7 and 2.8 shall apply.
 - 2.3 After the Arbitrator has been appointed either Party may give a further notice of arbitration to the other Party and to the Arbitrator referring any other dispute which falls under Article 8 to be decided in the arbitral proceedings and Rule 3.3 shall apply.

Powers of Arbitrator

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

Effect of award

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

Appeal – questions of law

- 5 The Parties hereby agree pursuant to section 45(2)(a) and section 69(2)(a) of the Arbitration Act 1996 that either Party may (upon notice to the other Party and to the Arbitrator):
 - 5.1 apply to the courts to determine any question of law arising in the course of the reference, and
 - 5.2 appeal to the courts on any question of law arising out of an award made in an arbitration under this arbitration agreement.

Arbitration Act 1996

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

Schedule 2 Supplemental Provisions

(Eighth Recital)

Supplemental Provisions 1 to 3 apply unless otherwise stated in the Contract Particulars. Supplemental Provision 4 applies where the Employer is a Local or Public Authority or other body of the type mentioned in that provision; Supplemental Provision 5 applies where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations.

Health and safety

1

- 1.1 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.
- 1.2 In addition to the specific health and safety requirements of this Contract, the Contractor undertakes to:
 - 1.2.1 comply with any and all approved codes of practice produced or promulgated by the Health and Safety Executive;
 - 1.2.2 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;
 - 1.2.3 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
 - 1.2.4 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

2

- 2.1 The Contractor is encouraged to propose changes to designs and specifications for the Works and/or to the programme for their execution that may benefit the Employer, whether in the form of a reduction in the cost of the Works or their associated life cycle costs, through practical completion at a date earlier than the date for completion or otherwise.
- 2.2 The Contractor shall provide details of its proposed changes, identifying them as suggested under this Supplemental Provision 2, together with its assessment of the benefit it believes the Employer may obtain, expressed in financial terms, and a quotation.
- 2.3 Where the Employer wishes to implement a change proposed by the Contractor, the Parties shall negotiate with a view to agreeing its value, the financial benefit and any adjustment to the date for completion. Upon agreement, the change and the amount of any adjustment of the Contract Sum shall be confirmed in an Architect/Contract Administrator's instruction, together with the share of the financial benefit to be paid to the Contractor and any adjustment to the date for completion.
- 2.4 Original proposals by the Contractor under this Supplemental Provision 2 may only be instructed in accordance with it, provided always that nothing shall prevent the Employer from utilising other contractors to implement such changes after practical completion of the Works.

Performance Indicators and monitoring

3

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

Transparency

- 4 Where the Employer is a Local or Public Authority or other body to which 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 its 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:
 - 4.1 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;
 - 4.2 the Employer shall promptly inform the Contractor of any request for disclosure that it receives in relation to this Contract.

The Public Contracts Regulations 2015

- 5 Where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations^[38]:
 - 5.1 where regulation 113 of the PC Regulations applies to this Contract, the Contractor shall include in any sub-contract it enters into suitable provisions to impose the requirements of regulation 113(2)(c)(i) and (ii);
 - 5.2 the Contractor shall include in any sub-contract it enters into provisions requiring the sub-contractor:
 - 5.2.1 to supply and notify to the Contractor the information required (as applicable) under regulations 71(3), 71(4) and 71(5) of the PC Regulations; and
 - 5.2.2 to include in any sub-subcontract the sub-contractor in turn enters into provisions to the same effect as required under paragraph 5.2.1 of Supplemental Provision 5;
 - 5.3
 - 5.3.1 the Contractor shall include in any sub-contract it enters into provisions that shall entitle the Contractor to terminate the sub-contractor's employment where there are grounds for excluding the sub-contractor under regulation 57;
 - 5.3.2 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.

[38] **+++Now footnote [36]+++** See the Guidance Notes. Provisions relating to the PC Regulations are also set out in section 6 (Termination) of this Contract. The JCT Minor Works Sub-Contract with sub-contractor's design (MWSub/D) and the JCT Short Form of Sub-Contract (ShortSub) meet the requirements of Supplemental Provision 5.

Guidance Notes

Use of Minor Works Building Contract with contractor's design

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

Outline of the Contract

General

- 10 Defined terms are dealt with in clause 1.1 and there is a short version of JCT's standard interpretation provisions set out in clauses 1.2 to 1.8. In the 2024 edition the section 1 and section 6 provisions relating to the service of notices have been extended to provide for service by email.

Architect/Contract Administrator

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

Role of the Architect/Contract Administrator

- 12 The Architect/Contract Administrator is paid by the Employer, advises the Employer on all matters in connection with the building work and administers the Contract on behalf of the Employer with a view to securing completion of the work in an efficient and economical manner. However, in relation to

decisions in that administrative role that require professional skill and judgment, it should act fairly and independently as between the Employer and the Contractor, in particular when:

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

Instructions

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

Contractor's Designed Portion

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

Price

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

Time-scale for the work

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

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

Payment

- 17 In section 4, payment is to be made under certificates issued by the Architect/Contract Administrator. Interim payments are to be made against interim certificates issued by the Architect/Contract Administrator. The final balance is paid following the issue of the final certificate. The final date for payment of certificates, together with any VAT chargeable to the Employer, is 14 days from the due date for payment. The Construction Act requires interim and final certificates to be issued not later than 5 days after their due date and clauses 4.3 (Interim payments – dates and certificates) and 4.9 (Final certificate and final payment) comply with these requirements.

The provisions relating to the due dates for payment for interim payments are set out in clause 4.3. During the period up to the due date for the final payment, the due dates for interim payments are in each case the date 7 days after the relevant Interim Valuation Date. The first Interim Valuation Date and the intervals that will apply for subsequent Interim Valuation Dates are to be specified in the entry

in the Contract Particulars for clause 4.3. JCT recommends that the first Interim Valuation Date should not be more than one month after the Works commencement date and the intervals between Interim Valuation Dates should not be more than one month. If the Contract Particulars entry is not completed, the default provisions set out in the entry apply.

The amount of each interim payment to be certified as due under clause 4.3 is to be calculated in accordance with clause 4.4. Unless a percentage for payment other than 95 per cent is inserted in the Contract Particulars for clause 4.4, interim certificates for the period up to practical completion will reflect the Employer's entitlement to retain 5 per cent. For the period between practical completion and the final certificate, the Contract envisages that the percentage retained will be halved.

The general provisions governing Contractor's payment applications (and, in default of a payment certificate, their role as a payment notice) which apply with respect to the final payment as well as to interim payments are set out in clause 4.5.

The provisions regarding payment and pay less notices, amounts to be paid and default interest are set out in clauses 4.6 and 4.7 and as the text of each indicates, these clauses apply with respect to the final payment as well as to interim payments. Clause 4.9 provides for issue of the final certificate.

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

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

Suspension

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

Termination

- 19** Either Party may end the Contractor's employment if the other Party is in breach of certain obligations (in the case of the Contractor those mentioned in clauses 6.4 and 6.6; in the case of the Employer those in clause 6.8) or becomes insolvent. There is also a right under clause 6.10.1 for either Party to terminate in the case of prolonged suspension resulting from certain neutral causes and (where applicable) clause 6.10.3 allows for termination by the Employer on the substantial modification ground set out in regulation 73(1)(a) of the PC Regulations.

The section 6 termination accounting and payment provisions have in this 2024 edition been amended to provide for the Construction Act's payment procedures. There is a new defined term, i.e. the 'Termination Payment' and some adjustments to the accounting provisions in clauses 6.7 and 6.11 including the insertion of due date provisions. The provisions regarding the final date for payment of the Termination Payment, payment and pay less notices, amount to be paid and default interest are set out in clause 6.12.

Dealing with disputes

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

As respects specifying the adjudicator nominating body in advance, the relevant entry in the Contract Particulars in this 2024 edition of the Contract has been adjusted to allow the Parties to specify a nominating body of their own choosing as an alternative to selecting a body from those listed. The bodies listed will be familiar to JCT contract users. Such bodies are required to provide feedback to JCT regarding their adjudication services on an ongoing basis. If a Party is unsure about the suitability

of a proposed alternative (non-listed) body JCT suggests seeking appropriate professional advice.

The Parties may also agree to mediate a dispute.

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

The JCT 2024 edition of the [Construction Industry Model Arbitration Rules \(CIMAR\)](#), which includes the JCT Supplementary and Advisory Procedures, will govern any arbitration that is commenced. It is recommended that anyone considering instituting arbitration proceedings should obtain a copy of the rules and, as with litigation, should take competent professional advice before taking steps to institute proceedings.

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

Rights and remedies generally

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

Supplemental Provisions

- 22** Schedule 2 includes optional Supplemental Provisions which are for use where appropriate. The previous supplemental provisions for collaborative working, sustainability (the wording of which has been adjusted slightly in this edition), and notification and negotiation of disputes have been moved into the Agreement or main text of the Conditions and are now no longer optional, a change that is in common with other JCT contract forms and is part of JCT's response to the government's Construction Playbook document. The three remaining Supplemental Provisions (1 to 3) are those relating to health and safety, cost savings and performance monitoring and their applicability will need to be considered. The choice as to which of these provisions apply is made in the Contract Particulars and if no choice is made in relation to a provision, it will apply (these provisions are generally intended to be disapplied only where there is a Framework Agreement or other contract documentation that covers the same ground).

Schedule 2 also contains Supplemental Provision 4 which relates to the Freedom of Information Act 2000 ('FOIA'); it will only apply where the Employer is a Local or Public Authority or other body to which the FOIA applies. Supplemental Provision 5 contains provisions relevant to the PC Regulations and this will only apply where the Employer is a Local or Public Authority and the Contract is subject to those regulations. For guidance on aspects of the PC Regulations relevant to JCT contracts, please go to www.jctltd.co.uk.

Terms used

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

Base Date

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

CDM Regulations

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

Part 2A of the Building Regulations

- 26 Part 2A of the Building Regulations 2010 was introduced by the Building Regulations etc. (Amendment) (England) Regulations 2023 pursuant to the Building Safety Act 2022. Part 2A sets out a framework of safety duties for those persons ('dutyholders') who commission, design and undertake building work to which building regulations apply, with a limited exclusion where the work consists only of minor work of a prescribed type. Part 2A includes obligations to appoint a Principal Designer and Principal Contractor in respect of works to which the regulations apply. Dutyholders are required to ensure that they have the necessary competence to carry out design and building work and that arrangements and systems are in place to plan, manage and monitor compliance with the regulations. Additional duties apply to higher-risk building work. For information, please go to www.jctltd.co.uk.

Principal Designer and Principal Contractor

- 27 The respective persons named in the Agreement or subsequently appointed as such, as required by the CDM Regulations and Part 2A of the Building Regulations. With a view to minimising health and safety risks, the CDM Regulations require the Employer to appoint a Principal Designer to control the pre-construction phase where there is more than one contractor, or it is reasonably foreseeable that more than one contractor will be working on the project at any time. One of the contractors must also be appointed as Principal Contractor in those circumstances. (For these purposes the term 'contractor' includes sub-contractors.) The Building Regulations provide that instead of appointing a separate principal designer and principal contractor, the client may certify that the CDM principal designer and the CDM principal contractor should be treated as appointed in these roles for the purposes of the Building Regulations (Part 2A, regulation 11D(2)). Professional advice should be sought as to whether this is appropriate in any given project.

CDM Health and safety file

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

Date for Completion

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

Date of practical completion

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

Rectification Period

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

Insurance in Joint Names

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

Clause 5.5 is for use where there are existing structures and the Employer is able to cover the works on a Joint Names, All Risks basis and, in addition to its own cover for existing structures, is able to extend at least Specified Perils cover to the Contractor in respect of the existing structures.

However, existing structures cover for the Contractor is not always readily available to Employers at

reasonable cost, in particular where the Employer is a domestic homeowner or where it is only a tenant and structures cover is effected by the freeholder or an intermediate lessor, and clause 5.6 is designed for cases in these latter categories.

The freeholder Employer may cover the Works in Joint Names and continue with its own cover under its household or existing structures policy, with the Contractor covering its liability for any damage to existing structures under the Public Liability cover required under clause 5.3.2 or an appropriate extension of it.

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

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

Liquidated damages

- 33** The rate per day/week/month stated in the Contract Particulars by the Employer, to compensate it for the Contractor's failure to finish the work on time. The prudent Employer will be alert to the legal principles and rules governing the enforceability of liquidated damages provisions and will approach calculation of the rate with these in mind. It is suggested that the Employer records an explanation of the rate and why the rate represents (i) a genuine pre-estimate of the loss that it is likely to suffer or (ii) a reasonable and proportionate protection of its legitimate commercial interest(s) in timely completion, which it can use to respond to any challenge.

It is for the Employer to decide whether to deduct any liquidated damages that it might be entitled to from any amount certified as due to the Contractor; such deduction is not taken into account by the Architect/Contract Administrator in the calculation of any certificate and the appropriate notice must be given by the Employer under clauses 2.9 and 4.6.4 or (if applicable) 6.12.3 or 6.12.5.

In the 2024 edition there is a new provision (clause 2.9.4) designed to clarify the position in relation to liquidated damages where the Contractor's employment is terminated under the Contract during a period of Contractor culpable delay which essentially confirms the approach taken in recent case law.

Provisional Sum

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

Variation

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

MWD User Checklist

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

Care has been taken in preparing these Guidance Notes but they should not be treated as a definitive legal

interpretation or commentary. Users are reminded that the effect in law of the provisions of the Minor Works Building Contract with contractor's design 2024 Edition is, in the event of a dispute as to that effect, a matter for decision in adjudication, arbitration or litigation.



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SWEET & MAXWELL





Orbit Group Limited's Schedule of Amendments for JCT Minor Works Building Contract (2024 edition)

Trowers & Hamlins LLP
55 Princess Street
Manchester
M2 4EW
t +44 (0)161 838 2000
f +44 (0)161 838 2001
www.trowers.com

— **trowers.com**

Agreement

Recitals

- First The Employer wishes to have the works carried out as per Recital 1 (the **Works**) under the direction of the Architect/Contract Administrator referred to in Article 4 and in accordance with the conditions (comprising the clauses set out in sections 1 to 7 together with and including Schedules 1 and 2) annexed to the JCT Minor Works Building Contract (2024 edition) subject to the amendments and insertions set out in Appendix 1 to this Agreement (together called the **Conditions**).
- Second The Employer has had a Specification (the **Contract Specification**) prepared showing or describing or otherwise stating his requirements for the work to be carried out, which for identification have been signed or initialled by or on behalf of each Party and those documents together with the Conditions collectively (the **Contract Documents**) are annexed to this Agreement.
- Third The Contractor has supplied the Employer with a copy of the priced Contract Specification and/or the Contractor's Proposals (the **Pricing Document**) which for identification have been signed or initialled by or on behalf of each Party and those documents together with the Conditions (collectively the **Contract Documents**) are annexed to this Agreement.
- Fourth For the purposes of the Construction Industry Scheme (**CIS**) under the Finance Act 2004, the status of the Employer is, as at the Base Date, that stated in the Contract Particulars.
- Fifth For the purposes of the Construction (Design & Management) Regulations 2015 (the **CDM Regulations**) the status of the project that comprises or includes the Works is stated in the Contract Particulars.
- Sixth Where so stated in the Contract Particulars, this Contract is supplemented by the Framework Agreement identified in those particulars.
- Seventh Whether any of Supplemental Provisions 1-3 apply is stated in the Contract Particulars.

Articles

- Article 1 Contractor's obligations**
- The Contractor shall carry out and complete the Works in accordance with the Contract Documents.
- Article 2 Contract sum**
- The Employer will pay the Contractor at the times in the manner specified in the Conditions the VAT exclusive sum set out in Article 2 (the Contract Sum) or such other sum as becomes payable under this Contract.
- Article 3 Collaborative Working**

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.

Article 4 Architect/Contract Administrator

For the purpose of this Contract the Architect/Contract Administrator is listed under Article 4 of the agreement or if it ceases to be the Architect/Contract Administrator, such other person as the Employer nominates (such nomination to be made within 14 (fourteen) days of the cessation). No replacement appointee as Architect/Contract Administrator shall be entitled to disregard or overrule any certificate, opinion, decision, approval or instruction given by any predecessor in that post, save to the extent that that predecessor if still in the post would then have had the power under this Contract to do so (and the phrase "Architect/Contract Administrator" shall be construed as referring to the Architect/Contract Administrator or any such replacements).

Article 5 CDM Regulations – Principal Designer and Principal Contractor

For the purposes of the CDM Regulations:

- 1 the Principal Designer is listed under Article 5 or such replacement as the Employer at any time appoints to fulfil that role; and
- 2 The Principal Contractor is the Contractor or such replacement as the Employer at any time appoints to fulfil that role.

Article 6 Building Regulations – Principal Designer and Principal Contractor

For the purposes of the Building Regulations (where applicable)

- 1 the Principal Designer is listed under Article 5 or such replacement as the Employer at any time appoints to fulfil that role; and
- 2 the Principal Contractor is the Contractor or such replacement as the Employer at any time appoints to fulfil that role.

Article 7 Adjudication

If any dispute or difference arises under this Contract either Party may refer it to adjudication in accordance with clause 7.3.

Article 8 Legal proceedings

Subject to Article 7 the English courts shall have exclusive jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.

Article 9 Contractor warranty

The Contractor shall, whenever required to do so by the Employer, execute and deliver to the Employer within 14 (fourteen) days of a request to do so a deed or deeds of warranty in favour of any Funder and/or Purchaser and/or Tenant in the terms of the warranty contained in Appendix 2 to this Agreement

Article 10 Bond and parent company guarantee

Within fourteen (14) days from the date of this Contract the Contractor shall submit to the Employer:

- 1 a performance bond issued in favour of the Employer by a bank or insurance company acceptable to the Employer duly registered and trading in the United Kingdom and executed as a deed in the form set out in Appendix 3 to this Agreement in an amount equivalent to ten percent (10%) of the Contract Sum; and
- 2 (if the Contractor is a subsidiary of another company) a parent company guarantee in the form set out in Appendix 4 to this Agreement executed as deed by the Contractor's ultimate holding company or (in the Employer's sole discretion) from such other company within the Contractor's group as the Employer may accept.

Article 11 Policies and Procedures

The Contractor acknowledges that it has received, read and understood the Employer's policies as listed below and agrees to perform his obligations under this Contract in such a manner and at such times that no act, omission or default of the Contract shall breach or put the Employer in breach of such policies:

- Asbestos Policy
- Control of Substances Hazardous to Health Policy
- Fire Safety Policy
- Health & Safety Policy
- Personal Protective Equipment Policy
- Personal Safety Policy
- Risk Assessment Policy
- Working at Height Policy

Article 12 Hot Works Permits

Prior to commencing any works under this Contract the Contractor shall produce for inspection adequate documentation to evidence that it has all of the necessary Hot Work Permits required for the carrying out of the Works.

Article 13 Protection of Information

The Contractor shall comply with the obligations set out in Appendix 8.

This Agreement has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it

Appendix 1 – Amendments and insertions

Clause 1.1

Delete the definition of **Agreement**, **Conditions** and **VAT**.

Insert:

"Accountable Person: the individual or organisation performing the functions of the Accountable Person as defined in the Building Safety Legislation.¹

Agreement: the Agreement to which these Conditions are annexed including its Recitals, Articles, and Contract Particulars and appendices 1 to 10².

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

Anti-slavery Policy: the Employer's anti-slavery policy copies of which have been provided to the Contractor as may be amended from time to time and notified to the Contractor.

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

Best Environmental Practice: best practice generally followed by contractors skilled and experienced in the remediation and redevelopment of contaminated sites and shall be deemed to include (as a minimum) compliance with all Environmental Laws.

Bribery Act: the Bribery Act 2010.

BSA: the Building Safety Act 2022.

Building Control Applications: in respect of the planning, design, construction and completion of the Works, the applications to be made and approvals to be received by the Employer acting in its role as the Accountable Person³ to and from the Building Safety Regulator and/or building control which are required by the Building Safety Legislation and which are necessary for the carrying out and completion of the Works in accordance with the Building Safety Legislation.

Building Liability Order: a building liability order as defined in section 130 of the BSA.

Building Safety Legislation: the BSA and all associated legislation and secondary legislation that implements and/or supplements it (including, for the avoidance of doubt, the Building Act 1984 and the Building Regulations 2010), together with any guidance, regulations, codes of practice or directions issued by a government department, the Building Safety Regulator and/or the Health and Safety Executive relating to such legislation.

¹ Include this if the Works to be carried out and completed involve Higher-Risk Buildings being buildings over 7 storeys or is at least 18 metres high.

² Amend this to reflect the number of appendices that are being used in the final version.

³ Orbit may not be the Accountable Person under the Building Safety Act, but may still require the Contractor to comply with any Building Control application process being led by third parties.

Building Safety Regulator: the regulatory body established pursuant to Part 2 of the BSA who carries out regulatory functions under the Building Safety Legislation.

Competency Requirements: that the Contractor, any sub-consultants, any sub-contractors and any suppliers (including the individuals employed or appointed by them to carry out any works or services in relation to the Works) have the skills, knowledge, experience, behaviours and capabilities required to properly and competently perform the functions of a Dutyholder in relation to the Works in accordance with Part 2A of the Building Regulations, together with any further competency standards published from time to time by any authorised body, including without limitation, the British Standards Institution.

Conditions: the conditions as defined in the First Recital to the Agreement.

Corrupt Activity: extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money-laundering or any similar activity including, without limitation, any activity, practice or conduct which would or could constitute an offence under sections 1, 2 or 6 Bribery Act and/or would constitute a UK or foreign tax evasion offence or UK or foreign tax evasion facilitation offence under sections 45 and 46 Criminal Finances Act whether in connection with the Works or otherwise.

Criminal Finances Act: the Criminal Finances Act 2017.

Documents: all drawings, plans, models, specifications, schedules, reports, calculations and other works (including without limitation any such items retained on or in any computer software or other electronic medium) which have been or will be prepared by or on behalf of the Contractor in the course of the carrying out of the Works whether in existence or to be made or produced and including all amendments and additions to them.

Dutyholder: the function of a dutyholder as prescribed under Part 2A of the Building Regulations.

Environment: all and any of the following media being water, air or land (wherever situated) as well as any eco-systems; organisms, including (without limitation) humans, and their property, including natural and man-made structures.

Environmental Laws: all or any applicable law including common law, statute, civil code, statutory guidance or by-law in each case which has as its purpose or effect the protection of the Environment.

Funder: a person (whether acting for itself 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 or re-finance for the carrying out of the Works or any part of the Works or for the acquisition of the site.

Gateways Regulations: the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023.⁴

Golden Thread Documents: has the meaning ascribed in Appendix 9.⁵

⁴ Include this if the Works to be carried out and completed involve Higher-Risk Buildings being buildings over 7 storeys or is at least 18 metres high.

⁵ Include this if the Works to be carried out and completed involve Higher-Risk Buildings being buildings over 7 storeys or is at least 18 metres high.

Higher-Risk Building: has the meaning set out in section 65 Building Safety Act 2022.⁶

HMRC: means HM Revenue & Customs.

Human Trafficking Statement: a statement made in accordance with section 54 of the Modern Slavery Act 2015.

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

Moral Rights: moral rights under Chapter IV Part 1 Copyright Designs and Patents Act 1988.

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

PA23: the Procurement Act 2023 and any re-enactments and amendments.

Purchaser: a person having or acquiring a freehold interest in the Works or any part of them, and includes a purchaser for a capital consideration of a leasehold interest.

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.

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

Tenant: a person having or acquiring a leasehold interest in the Works or any part of them, other than a Purchaser.

VAT: means value added tax chargeable under the Value Added Tax Act 1994 and any similar or replacement tax."

Clause 1.2

Delete clause 1.2 and insert:

"1.2.1 The Agreement and these Conditions are to be read as a whole. In the event of any inconsistency occurring between Appendix 1 to the Agreement, the Agreement, the Contract Particulars, the clauses set out in sections 1 to 7 of the printed JCT Minor Works Contract 2024 and the schedules thereto, the Contract Specification and the Pricing Document the contents of the document appearing earlier in the preceding order shall prevail over any document appearing later in the order.

1.2.2 This Contract represents the entire agreement between the Employer and the Contractor and supersedes any previous agreement or understanding between them in relation to the Works (including, but not limited to any letter of intent or pre-construction services agreement). In entering into this Contract, the Contractor does not rely upon any antecedent or collateral representation or promise made by or on behalf of the Employer, and (in the absence of fraud) the Contractor shall not have any claim, right or remedy (including any

⁶ Include this if the Works to be carried out and completed involve Higher-Risk Buildings being buildings over 7 storeys or is at least 18 metres high.

claim for rescission or damages for innocent or negligent misrepresentation) arising out of any such antecedent or collateral representation or promise."

Clause 1.5

Delete clause 1.5 and insert:

"Other than such rights as take effect pursuant to clause 1.12, nothing in this Contract confers or purports to confer any rights on any person pursuant to the Contracts (Rights of Third Parties) Act 1999."

Clause 1.7.2

In line 3 after "and", delete "either Party's consent under"

Clause 1.8

Delete clause 1.8 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 1.9

Insert a new clause 1.9:

"All references to arbitration and fluctuations in this Contract shall be deemed to be deleted."

Clause 1.10

Insert a new clause 1.10:

"Where Article 3 refers to 'Contract Administrator' the expression 'Architect' shall be deemed to have been deleted throughout this Contract. Where Article 3 refers to 'Architect' the expression 'Contract Administrator' shall be deemed to have been deleted throughout this Contract."

Clause 1.11

Insert a new clause 1.11:

"Liability period

Save in respect of any indemnity provision set out herein, the Parties agree that:

1.11.1 notwithstanding either the manner in which the Parties have entered into this Contract and/or the Limitation Act 1980, any action, claim and/or proceedings arising out of or in connection with this Contract may be commenced up to 12 (twelve) years from the date of practical completion of the Works or, if earlier, termination of the Contractor's employment under this Contract; and,

1.11.2 any adjudicator's decision under clause 7.3 shall be finally binding on them unless either Party has referred that dispute for final determination by legal proceedings, or has

commenced any action or proceedings to recover any overpayment to which the decision has led, before that date."

Clause 1.12

Insert a new clause 1.12:

"Building Liability Orders

1.12.1 To the extent that the High Court issues a Building Liability Order against any associate of the Employer (as defined in section 131 of the BSA) the Contractor shall indemnify such associate in respect of any loss, expense, claim or damage incurred by such associate to the extent such loss, expense, claim or damage is caused by a breach by the Contractor of its obligations pursuant to this Contract.

1.12.2 The Parties agree that any associate of the Employer as defined in clause 1.12.1 shall be entitled to enforce for its benefit the provisions of clause 1.12.1 pursuant to the Contracts (Rights of Third Parties) Act 1999."

Clause 2.1.1

In line 1 after "workmanlike manner" insert "using good quality and suitable materials".

In line 3, after the first reference to "Statutory Requirements", insert "(including, to the extent relevant, the requirements of clause 2.1.9 and Appendix 6)".

Clause 2.1.5

In line 1, delete "encourage" and insert "procure".

Clause 2.1.6

Insert a new clause 2.1.6:

"The Contractor shall not use or permit to be used in the Works any materials which by their nature or application contravene any UK Designated Standards or which contravene the recommendations set out in the publication entitled "Good Practice in the Selection of Construction Materials" published by the BPF/BCO current at the date of this Contract."

Clause 2.1.7

Insert a new clause 2.1.7:

"The Contractor shall carry out and complete the Works in accordance with Best Environmental Practice and Environmental Laws."

Clause 2.1.8

Insert a new clause 2.1.8:

"In performing its obligations under this Contract, the Contractor shall and shall ensure that each of his sub-contractors shall comply with the Anti-slavery Policy."

Clause 2.1.9

Insert a new clause 2.1.9:

"2.1.9 Without prejudice to the generality of clause 2.1 and insofar as relevant to the Works, the Contractor shall observe and comply with:

2.1.9.1 the provisions of the Building Safety Legislation; and

2.1.9.2 the provisions of Appendix 6."

Clause 2.1.11

Insert a new clause 2.1.11:

"2.1.11.1 The Contractor shall at all times prevent any public or private nuisance (including, without limitation, any such nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on the public highway) or other interference with the rights of any adjoining or neighbouring landowner, tenant or occupier or any statutory undertaker arising out of or in the course of or caused by the carrying out of the Works save only where such nuisance or interference is the consequence of an 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 or any sub-contractor or supplier) and could not have been avoided by the Contractor using all reasonable and practical means. For the avoidance of doubt, the Employer may issue to the Contractor such instructions as he considers necessary if any injunction is granted or Court order is made in consequence of any such nuisance or interference, but (save as aforesaid) no such instruction shall be construed as a Variation.

2.1.11.2 Without prejudice to the Contractor's obligations under clause 2.1.11.1, the Contractor shall ensure that there is no trespass on or over any adjoining or neighbouring property arising out of or in the course of or caused by the carrying out of the Works. If the carrying out of the Works or of any obligation pursuant to this contract is likely to necessitate any interference with the rights of adjoining or neighbouring owners or occupiers, which for the avoidance of doubt shall include party wall matters, then the Contractor shall, at no cost to the Employer, obtain the prior written agreement of such owners and/or occupiers thereto, and such agreement shall be subject to the approval of the Contractor before execution. The Contractor shall comply in every respect with any conditions contained in any such agreement."

Clause 2.1.12

Insert a new clause 2.1.12:

"2.1.12.1 The Contractor shall obtain and maintain all necessary hot works permits required for the carrying out of the Works under this Contract and shall perform his obligations in accordance with such permits.

2.1.12.2 The Contractor shall immediately inform the Employer if his hot works permits are breached in any way and shall provide the Employer with copies of all permits required during the Works.

Clause 2.2

In line 1, delete "may" and insert "shall".

At the end of the clause insert "For the avoidance of doubt the Contractor shall not have exclusive possession of the Site during the Works."

Clause 2.2.1

Insert a new clause 2.2.1:

"2.2.1A The Contractor shall use all reasonable endeavours not to interfere with or impede the progress of any works being carried out by the Employer and/or any person authorised or licensed by the Employer to carry out works and shall observe all reasonable requirements of the same in relation to the carrying out of such works.

2.2.1B The Employer and/or any person authorised or licensed by the Employer to carry out works shall discuss any access requirements and the extent and location of such works referred to in clause 2.2.1A with the Contractor and the Contractor shall advise the Employer and/or its Contractors of the information it shall require in order to carry out of the Works.

2.2.1C The Contractor undertakes and agrees to co-operate fully with the Employer and/or any person authorised or licensed by the Employer and if directed by the Employer, with each independent contractor with regard to the programming of access for such works as are referred to in this clause 2.2.1A the coordination of the same with regard to the carrying out of the Works and the shared use (if necessary) of facilities."

Clause 2.7

Delete clause 2.7 and insert:

"2.7 If it becomes apparent that the Works will not be completed by the Date for Completion stated in the Contract Particulars (or any later date fixed in accordance with the provisions of this clause 2.7) for reasons beyond the control of the Contractor, including:

2.7.1 compliance with any variation agreed with the Employer in accordance with clause 3.6; and/or

2.7.2 any proper instruction of the Architect/Contract Administrator the issue of which is not due to a default of the Contractor; and/or

then the Contractor shall forthwith notify the Architect/Contract Administrator who shall make, and notify to the Contractor, such extension of time for completion of the Works as may be reasonable **provided always** that the Contractor shall use its best endeavours at all times to minimise any delay.

For the avoidance of doubt, the Contractor shall not be entitled to any extension of time under this clause for reasons which are within the control of the Contractor, including any default of the Contractor, of any Contractor's Person or any of their respective suppliers of goods or materials for the Works or where delays are caused by any impediment, prevention or default whether by act or omission by the Contractor or any person for whom the Contractor is responsible."

Clause 2.8.1

In line 1, after "not completed by" insert "the date of termination of the Contractor's employment under this Contract, or by". At the end of line 4 after "practical completion" add ", or the date of termination of the Contractor's employment under this Contract (whichever is the earlier)".

Clause 2.8.2

In line 3, delete "or recover those damages from the Contractor as a debt." and insert "and may recoup any liquidated damages not so deducted from the Contractor as a debt."

Clause 2.9

At the end of the clause insert:

"For the avoidance of doubt the Architect/Contract Administrator shall be entitled to certify practical completion of the Works notwithstanding the existence of snagging items which for the purposes of this clause 2.9 shall mean any items of a minor nature which do not affect the health and/or safety of any person using the completed Works and/or the site of the completed Works, the beneficial use of the completed Works and/or the beneficial occupation of the site of the completed Works, which items it is normal to include in a list of snagging items."

Clause 2.10

In line 4, after "shall" insert "without unreasonable or unnecessary delay"

In line 4, after "cost" insert "and at no cost to the Employer"

At the end of the clause insert:

"provided that in the case of urgency the Architect/Contract Administrator may instruct the Contractor to make good any such matter within such period as the circumstances require."

Clause 2.10.1

Insert a new clause 2.10.1:

"2.10.1 Any defects, shrinkages or other faults which appear within the Rectification Period of the Works or any Section thereof to be made good within the specified time periods (Priority Coding Periods). A Priority Coding Period shall run from the moment when a defect is notified to the Contractor. Specified Categories of Defects and Priority Coding Periods for response shall be as scheduled in the Specification. If no such Period is stated it shall be twenty-eight (28) days.

- 2.10.2 Procedure for the rectification of Specified Categories of Defects as classified by the Employer under clause 2.10.1 shall be as follows:
- 2.10.2.1 at Practical Completion of the Works or Section thereof the Contractor shall provide the Employer with one contact telephone number staffed during office hours by a competent person, who shall be empowered to receive and act upon instructions issued by the Employer's Customer Service Centre. Outside these hours the contractor must provide a staffed 24 hour emergency service to receive and act upon instructions issued by the Customer Service Centre;
- 2.10.2.2 if the defect falls within the definition stated in clause 2.10, the Employer shall direct the Contractor, specifying the nature of the defect and the appropriate Priority Coding period. The Employer shall also issue a works order which shall constitute an instruction to the Contractor in accordance with clause 2.10.1;
- 2.10.2.3 any defects reported by the occupier direct to the Contractor shall not constitute an instruction to the Contractor in accordance with clause 3.4 unless and until confirmed by the Employer in a works order. The Contractor accepts such direct reports at his own discretion and risk;
- 2.10.2.4 should the Contractor not be contactable or fail to remedy the defect within the Priority Coding period, the Employer may employ and pay other persons to execute any work whatsoever which may be necessary to give effect to the Employer's Instruction and all costs incurred may be deducted from any monies due or to become due to the Contractor under this Contract or may be recovered from the Contractor by the Employer as a debt;
- 2.10.2.5 If the Contractor shall fail to complete any work within the Priority Coding period and is unable to demonstrate reasonable grounds for this, then the Employer shall be entitled to make deductions as follows:
- Emergency/Urgent – £10.00 deduction for failure to complete, plus a further £2.00 deduction per day for every day the repair remains outstanding.
 - Non Urgent – 5% deduction of final invoice value for failure to complete within the specified time period with a further 5% deduction for each subsequent period of five (5) days.
- 2.10.2.6 If the Contractor is of the opinion that work(s) specified in a works order is not due to failure of the Contractor to comply with his obligations under this Contract or to frost occurring before Practical Completion of the Works or the relevant Section thereof, the Contractor shall inform the Contract Administrator by email within 24 hours of the issue of the works order.
- 2.10.2.7 Should the Contractor carry out works to rectify a defect which subsequently proves not to be due to failure of the Contractor to comply with his obligations under this Contract or to frost occurring before Practical Completion of the Works or the relevant Section thereof then the Employer shall refund the Contractor's reasonable costs. In this event an invoice shall be submitted to the Contract Administrator within twenty-one (21) days of the issue of the Employer's Instruction."

Clause 2.12

Insert a new clause 2.12:

- "2.12.1 The Contractor hereby grants to the Employer an irrevocable, royalty-free, non-exclusive licence to use copy and reproduce the Documents for any purpose whatsoever connected with the Works **provided always** that the Contractor shall not be liable for any such use by the Employer for any purpose other than that for which the same were prepared and provided by the Contractor.
- 2.12.2 The licence referred to in clause 2.12.1 carries the right to grant sub-licences, shall be transferable to third parties and shall subsist notwithstanding the termination (for any reason) of the Contractor's employment under this Contract.
- 2.12.3 The Contractor waives absolutely all Moral Rights the Contractor may have in the Documents and/or the Works and where it is not the author shall procure a waiver from the author of any Moral Rights the author may have in respect of the Documents."

Clause 2.13

Insert a new clause 2.13:

- "2.13.1 The Contractor shall be deemed to have inspected and examined the Site and its surroundings and to have satisfied itself before the date of this Contract or commencing the Works (whichever is the earlier) as to the nature of the ground, the sub-surface conditions and sub-soil, the form and nature of the Site, the extent, nature and difficulty of the work and materials necessary for the completion of the Works, the means of communication with and restrictions of access to the Site, the accommodation it may require, and in general to have obtained for itself all necessary information as to risks, contingencies and all other circumstances influencing or affecting the Works. The Contractor shall not be entitled to any extension of time or to any additional payment on the grounds of any misunderstanding or misinterpretation of any such matter, nor shall the Contractor be released from any of the risks it accepts or obligations it undertakes by it under this Contract on the ground that it did not or could not have foreseen any matter which might affect or have affected the execution of the Works.
- 2.13.2 The Employer gives no warranty or representation as to:
- 2.13.2.1 the condition of the Site or any adjoining property or any services in or under the Site; or
 - 2.13.2.2 the accuracy or sufficiency of any surveys, tests or investigations and/or any soils or survey data contained in any document made available to the Contractor by the Employer or on the Employer's behalf or any recommendations or conclusions made or reached in any such document."

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 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 3.3

Insert new clauses 3.3.3 and 3.3.4 as follows:

- "3.3.3 Where this Contract is one to which section 73 of the PA23 applies the Contractor shall include in any sub-contract it enters into suitable provisions to impose the requirements of section 73(1) of the PA23.
- 3.3.4 Where this Contract is one to which the PA23 applies the Contractor shall include in any sub-contract it enters into suitable provisions requiring the sub-contractor to provide any information reasonably required by the Employer to enable it to fulfil its obligations under the PA23."

Clause 3.6.2

Delete clause 3.6.2 and insert:

"The change to the Contract Sum pursuant to any instruction issued pursuant to clause 3.6.1 shall be agreed as far as possible by reference to the Pricing Document. In the absence of such agreement the Parties shall agree a price prior to such work being carried out. For the avoidance of doubt delay in agreeing the change to the Contract Sum pursuant to an instruction shall not remove or in any way reduce the Contractor's obligations under clause 2.2."

Clause 3.7

In line 1 delete "shall" and insert "may"

Clause 3.9.1

Delete clause 3.9.1 and insert:

"the Contractor agrees to act as the principal contractor and to perform all of the duties and functions required to be performed by the principal contractor under the CDM Regulations and Part 2A of the Building Regulations;"

Re-number clause 3.9.3 as clause 3.9.9 and insert the following new clauses before it:

- 3.9.3 the Contractor warrants that it is competent to fulfil the duties of the Principal Contractor [and Principal Designer if applicable] under the CDM Regulations and the Building Regulations in relation to the Works and has allocated or (as the case may be) will allocate adequate resources to enable it to comply with the provisions of this clause;

- 3.9.4 the Contractor warrants that the Contractor's Persons are competent and shall remain competent to perform all duties and functions required to be performed by them under the CDM Regulations and the Building Regulations;
- 3.9.5 as and when requested to do so by the Employer, the Contractor shall give the Employer a written record of the steps taken under regulation 11E(2) of the Building Regulations when appointing each of the Contractor's Persons;
- 3.9.6 where the Contractor is and while it remains the Principal Designer:
 - 3.9.6.1 for the CDM Regulations, it shall perform all of the duties and functions required to be performed thereunder and shall, without charge, prepare and deliver to the Employer, the health and safety file; and
 - 3.9.6.2 for the purposes of the Building Regulations, it shall perform all the duties and functions required to be performed thereunder and shall comply with regulations 11F, 11G, 11I, 11J, 11K and 11M of the Building Regulations.
- 3.9.7 whether or not the Contractor is the Principal Designer for the purposes of the CDM Regulations, but is the Principal Contractor for the purposes of the CDM Regulations and the CDM Regulations Principal Designer's appointment concludes before practical completion of the Works, the Contractor shall review, update and revise the health and safety file in accordance with regulations 12(8) to (10) of the CDM Regulations, at no cost to the Employer, which shall not entitle the Contractor to an extension of time;
- 3.9.8 whether or not the Contractor is the Principal Contractor, compliance by the Contractor with its duties, including following any directions given under regulation 15(3) of the CDM Regulations and Part 2A of the Building Regulations shall be at no cost to the Employer and shall not entitle the Contractor to an extension of time; and".

Clause 4.1

Delete clause 4.1 and insert:

- "4.1.1 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 notwithstanding any other provision of this Agreement.
- 4.1.2 Subject to clause 4.1.8, 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:
 - 4.1.2.1 the time for payment or provision of the consideration; and
 - 4.1.2.2 the receipt by the recipient of the supply of a VAT invoice in respect of that VAT.
- 4.1.3 The Parties acknowledge that the Employer has not confirmed in writing whether the requirements specified in article 8(1)(b) of the Order are satisfied in respect of any Supply.

- 4.1.4 The Parties consider that the Reverse Charge will apply to the Supplies so that it is for the Employer, on the Contractor's behalf, to account for and pay VAT on the Supplies and not for the Contractor.
- 4.1.5 During such time as the Reverse Charge applies to the Supplies and no later than five (5) Business Days before any payment by the Employer for the Supplies, the Contractor will provide to the Employer an invoice (which is not a VAT invoice and which will not include any demand for any amount in respect of VAT) showing all the information normally required to be shown on a VAT invoice in respect of the payment in question, including without prejudice to the generality of the foregoing, the amount of VAT due on the payment (subject to the Reverse Charge) and a breakdown of values by VAT rate. The Contractor will also annotate such invoice as follows: "Reverse charge: VAT Act 1994 Section 55A applies".
- 4.1.6 The Contractor shall promptly provide any information reasonably requested by the Employer to assist the Employer in complying with its obligations under the Reverse Charge or in providing any information requested of the Employer by HMRC.
- 4.1.7 If the requirements in article (8)(2)(a) and (b) of the Order are met in relation to any Supply, the Employer and the Contractor, pursuant to article 8(2)(c) of the Order, agree to treat the Supplies as not being excepted supplies (within the meaning of articles 3(2) and 8 of the Order).
- 4.1.8 Notwithstanding clause 4.1.2, where the Employer has operated the Reverse Charge on Supplies but HMRC confirms in writing to the Employer that the Reverse Charge does not apply in respect of those Supplies and that, notwithstanding that the Employer has operated the Reverse Charge, the Contractor has to account for VAT in respect of those Supplies then, subject to receipt by the Employer of a valid VAT invoice from the Contractor, the Employer will pay the VAT due on those Supplies to the Contractor within five (5) Business Days after the later of:
- 4.1.8.1 obtaining any net repayment or credit from HMRC arising from the incorrect operation of the Reverse Charge after correcting both:
 - (a) the output tax overpaid to HMRC by the Employer (for which the Employer would obtain a repayment or credit); and
 - (b) the input tax overpaid to the Employer by HMRC (which the Employer would owe to HMRC); and
 - 4.1.8.2 obtaining repayment or credit from HMRC in respect of the VAT due on the relevant Supplies to the Contractor,
- and the Employer undertakes to claim such repayment or credit from HMRC without unreasonable delay after receiving confirmation from HMRC or a valid VAT invoice from the Contractor, each as mentioned above."

Clause 4.3.3

In the last line, delete "14" and insert "30".

Clause 4.4.1

In line 1, after "work properly executed", insert "and incorporated into the Works".

Clause 4.9.3

In line 1, delete "14" and insert "30".

Clause 5.1

In line 3, after "Works", insert "or the performance of the Contractor's obligations under clause 2.10".

Clause 5.2

In line 5, after "Works", insert "or the performance of the Contractor's obligations under clause 2.10".

Clause 5.2A

Insert a new clause 5.2A:

"The Contractor shall be liable for, and shall indemnify the Employer against, all liabilities, costs, expenses (including legal expenses on an indemnity basis), damages, losses, actions and claims for breach of statutory duty which may arise out of, or in consequence of, the performance or non-performance by the Contractor of its obligations under this Contract, except to the extent the same is due to any act or neglect of the Employer, any Employer's Persons or any Statutory Undertaker."

Clause 5.10

Insert a new clause 5.10:

"The Contractor shall obtain all warranties available from the manufacturers and suppliers of all goods and equipment forming part of the Works whether or not expressly indicated in the Contract Specification and shall ensure that the same are issued in favour of the Employer and handed over to the Employer as a condition precedent to practical completion of the Works."

Clause 6.1.3

Delete "entering into an arrangement, compromise or composition in satisfaction of its debts" and insert:

"commencing negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or making a proposal for or entering into any compromise or arrangements with any of its creditors".

Clause 6.4.1.3

Delete the comma at the end of the clause and insert ";or"

Clause 6.4.1.4

Insert a new clause 6.4.1.4:

"commits any other breach of this Contract having or which may have consequences sufficiently serious to justify determination of the Contractor's employment,".

Clause 6.5.2

In lines 1 – 2, delete "As from the date the Contractor becomes insolvent, whether or not the Employer has given such notice of termination:" and insert "With effect from the date of service of notice under clause 6.5.1:".

Clause 6.5.2.1

Delete "6.7.4 shall apply as if such notice had been given" and insert "6.7.6 shall apply".

Clause 6.5.2.2

In line 2, delete "suspended" and insert "terminated".

Clause 6.5.3

Insert a new clause 6.5.3:

"Ownership in all existing Documents and other physical embodiments of designs relating to the Works shall transfer from the Contractor to the Employer immediately prior the Contractor becoming insolvent."

Clause 6.6

Delete clause 6.6 and insert:

"6.6.1 The Contractor undertakes to the Employer that:

- 6.6.1.1 it has not and its current and former directors, officers and employees have not and shall not engage in any Corrupt Activity;
- 6.6.1.2 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 or sections 45(1) or 46(1) Criminal Finances Act;
- 6.6.1.3 it has and shall maintain and implement procedures to ensure compliance with clauses 6.6.1.1 and 6.6.1.2 and (in the case of section 7 Bribery Act) adequate procedures and (in the case of sections 45 and 46 Criminal Finances Act) reasonable 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 or sections 45(1) or 46(1) Criminal Finances Act and it shall comply with the Employer's Anti-corruption Policy;
- 6.6.1.4 it shall include undertakings similar to those contained in this clause 6.6.1 in any contract it may enter into with sub-contractors and/or suppliers;
- 6.6.1.5 from time to time, at the reasonable request of the Employer, it shall confirm in writing that it has complied with its undertakings under clauses 6.6.1.1 to 6.6.1.4 inclusive and shall provide any information reasonably requested by the Employer in support of such compliance.

- 6.6.2 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 6.6.1 by the Contractor or any breach of provisions equivalent to clause 6.6.1 in any contract with a sub-contractor and/or supplier.
- 6.6.3 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:
- 6.6.3.1 in the event of breach of clauses 6.6.1.1 to 6.6.1.4 inclusive; and/or
 - 6.6.3.2 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 or sections 45(1) or 46(1) Criminal Finances Act; and/or
 - 6.6.3.3 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; and/or
 - 6.6.3.4 where section 78 of PA23 applies to this Contract, the circumstances set out in section 78(2)(a) PA23 apply."

Clause 6.6A

Insert a new clause 6.6A:

- "6.6A.1 Where section 78 of PA23 applies to this Contract, the Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment under this Contract where any of the grounds set out in:
- 6.6A.1.1 section 78(2)(b) of PA23 apply or
 - 6.6A.1.2 section 78(2)(c) of PA23 apply provided that, before exercising its right to terminate the Contractor's employment pursuant to this clause 6.6A.1, the Employer shall give the Contractor reasonable opportunity to cease sub-contracting to the excluded or excludable sub-contractor, and if necessary, find an alternative sub-contractor to which to sub-contract the relevant sub-contract works, and if the Contractor does so to the Employer's reasonable satisfaction the ground for termination pursuant to this clause 6.6A.1.2 shall no longer be applicable.
- 6.6A.2 The Contractor shall include in any sub-contract (and shall require inclusion in any sub-sub-contract) provisions to enable the Contractor to terminate the sub-contractors' employment where clause 6.6A.1.2 applies.
- 6.6A.3 The Contractor shall notify the Employer immediately upon becoming aware at any time prior to practical completion that it is an 'excluded supplier' or an 'excludable supplier' each within the meaning given to such term in section 57 of PA23."

Clause 6.7

In line 1, delete "6.6" and insert "6.6.3 or 2.1.9 or 6.6A".

Clause 6.7.5

At the end of clause 6.7.5 before "." insert:

"provided that:

- 6.7.5.1 if the Employer elects not to procure the completion of the Works, then the amount to be allowed under clause 6.7.5.3 shall be the portion of the Contract Sum payable for the elements of the Works carried out and any Site Materials provided by the Contractor; and
- 6.7.5.2 if the Employer procures the completion of the outstanding Works for less than the Employer would have had to pay the Contractor to complete the outstanding Works then for the purposes of this clause 6.7.5 the Employer shall be deemed to have paid the same amount to procure the completion of the Works under clause 6.7.1 as the Employer would have had to pay the Contractor to complete the outstanding Works under this Contract."

Clause 6.7.6

Insert a new clause 6.7.6:

"Notwithstanding that the validity of such termination may be disputed by the Contractor, the Contractor shall vacate the site and shall immediately deliver to the Employer possession of the site and of the Works."

Clause 6.7.7

Insert a new clause 6.7.7:

"The Contractor shall deliver to the Employer copies of all plans, drawings, documents, schedules, specifications and the like relating to the Works in its possession and/or control within seven (7) days."

Clause 6.9.1

In line 1, after "notice to the Employer", insert "or the Employer may by notice to the Contractor".

Clause 6.9.2

In line 2, before "." insert, "and an extension of time for completion shall be given under clause 2.7 equal to the period of suspension"

Clause 6.10.3

Delete clause 6.10.3 and insert:

"Where this Contract is one to which section 78 of the PA23 applies the Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment under this Contract where any of the grounds set out in:

- (a) section 78(2)(b) of the PA2023 apply or
- (b) section 78(2)(c) of the PA2023 apply provided that before exercising its right to terminate the Contractor's employment pursuant to this clause 6.10.3(b) the Employer shall give the Contractor reasonable opportunity to cease sub-contracting to the excluded or excludable

sub-contractor, and if necessary, find an alternative sub-contractor to which to sub-contract the relevant sub-contract works, and if the Contractor does so to the Employer's reasonable satisfaction the ground for termination pursuant to this clause 6.10.3(b) shall no longer be applicable."

Clause 7.1

Renumber the clause as 7.1.2.

In line 1, delete "avoidance or" and insert "avoiding potential disputes and/or differences and the".

In line 3, insert a new second sentence after "dispute or difference": "Such notice shall include proposals for avoiding or mitigating such matter.

Insert, above clause 7.1.2, a new clause 7.1.1:

Each Party shall each notify the other as soon as it becomes 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."

Clause 7.4

Delete clause 7.4 and insert "Not used."

Insert as a new Section 8

"Section 8 Compliance with Modern Slavery Legislation

8.1 The Contractor undertakes to the Employer that:

8.1.1 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;

8.1.2 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;

8.1.3 it has and shall maintain and implement:

8.1.3.1 procedures to ensure compliance with the Modern Slavery Legislation; and

8.1.3.2 adequate procedures designed to prevent conduct that would give rise to an offence under the Modern Slavery Legislation;

8.1.4 it shall include undertakings similar to those contained in clauses 8.1 and 8.2 in any contract it may enter into with sub-consultants and/or sub-contractors and provisions similar to those contained in clauses 8.3 and 8.4;

- 8.1.5 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 8.1 and will provide any information reasonably requested by the Employer in support of such compliance.
- 8.2 The Contractor shall maintain adequate records to assist in verifying its compliance with the provisions of this clause 8 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 clause 8. The Contractor shall give all necessary assistance to the conduct of such audits.
- 8.3 Audit access by any third party representative of the Employer in accordance with clause 8.2 shall be subject to such representative agreeing to be bound by any confidentiality obligations equivalent to those set out in this Contract in respect of the information obtained provided that all information obtained may be disclosed to the Employer.
- 8.4 In the event of breach of clauses 8.1.1, 8.1.2 or 8.1.3 by the Contractor and/or breach by any sub-consultant or sub-contractor of equivalent clauses required under clause 8.1.4 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:
- 8.4.1 this Contract and the provisions of clause 6.7 shall apply; and
- 8.4.2 (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.
- 8.5 The Contractor further undertakes to the Employer that:
- 8.5.1 If required by law to do so, it shall, for each and every financial year of the Contractor, comply with its obligations under section 54 of the Modern Slavery Act by publishing a Human Trafficking Statement;
- 8.5.2 It shall include an undertaking similar to that contained in this clause 8.5 in any contract it may enter into with sub-consultants, sub-contractors and/or suppliers.
- 8.6 In the event of breach of clause 8.1.4, 8.1.5, 8.2 and/or 8.5, the Parties agree that the Employer may by notice in writing to the Contractor require that such breaches will be rectified within seven (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:
- 8.6.1 this Contract and the provisions of clause 6.7 shall apply; and
- 8.6.2 (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.

8.7 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:

8.7.1 any breach of clauses 8.1, 8.2, or 8.5 by the Contractor;

8.7.2 any breach of provisions equivalent to clauses 8.1, 8.2 or 8.5 in any contract with a sub-consultant or sub-contractor; or

8.7.3 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 8.1.4."

Schedule 1

Delete Schedule 1 and insert "Not used."

Schedule 2

Paragraph 2.1

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

Paragraph 2.2

In line 3, before "." insert "together with such information as the Employer may reasonably request".

Paragraph 2.3

Delete paragraph 2.3 and insert:

"2.3.1 The Employer shall consider any proposed changes submitted pursuant to paragraph 2.2 and if the Employer wishes to accept any proposal made, it shall seek to agree it with the Contractor within [five (5)] Business Days of receipt of the same. Upon agreement with the Contractor, the Employer shall issue an instruction (which for the avoidance of doubt, shall not be treated as a variation) confirming the change, the amount of any adjustment of the Contract Sum and any adjustment to the Completion Date.

2.3.2 If a proposal is not accepted, a fair and reasonable amount shall be added to the Contract Sum in respect of the cost of its preparation, provided that it has been prepared on a fair and reasonable basis.

2.3.3 The Incentive(s) set out in the Contract Particulars shall apply to any instruction issued pursuant to paragraph 2.3.1."

Paragraph 3

Delete paragraph 3.1 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."

In line 2 of paragraph 3.2 delete "performance indicators" and insert "KPIs".

In line 1 of paragraph 3.3 delete "performance indicators" and insert "KPIs".

Note: Definition of KPIs to be drafted and included in the definitions section.

Appendix 2 – Warranties

Not used

Appendix 3 – Bond

Not used

Appendix 4 – Parent Company Guarantee

Not used

Appendix 5 – Contract Specification

Attached as a separate Appendix

Appendix 6 – (referred to in clause 2.1.9)

1 Competency Requirements

- 1.1 The Contractor warrants to the Employer that it meets and shall continue to meet for the duration of the Works the Competency Requirements.
- 1.2 The Contractor has completed and returned to the Employer an assessment questionnaire to confirm that Contractor has sufficient skills, knowledge, experience and organisational capability to carry out its duties under the Competency Requirements. The Contractor further warrants that the assessment questionnaire is an accurate and complete representation of its skills, knowledge and experience and organisational capability to properly and competently perform the functions of a Dutyholder in relation to the Works.
- 1.3 The Employer confirms that it understands its obligations in respect of the Competency Requirements and has provided information to the other Dutyholders.
- 1.4 The Contractor shall include in each appointment of a sub-consultant and in each sub-contract of a sub-contractor a warranty equivalent to that set out in paragraph 1.1 of this Appendix 6.
- 1.5 The Employer may at any point during the term of this Agreement require the Contractor to provide details and evidence of the professional qualifications of any persons employed on or appointed to carry out works or services in relation to the Works to ensure that the Contractor and any such persons comply with and continue to meet the Competency Requirements, and the Contractor agrees to provide all reasonable assistance to the Employer or its authorised inspectors as may be required from time to time to ensure compliance with this paragraph 1.5.
- 1.6 If the Employer considers that any individual employed or appointed by the Contractor or any sub-consultant or sub-contractor does not meet the Competency Requirements then the Contractor shall at the Employer's direction replace or procure the replacement of such individual within a reasonable period.

2 Provision of assistance and compliance

- 2.1 Each Party undertakes to the other that it shall fulfil its respective responsibilities under the Building Safety Legislation including without limitation its responsibilities as Dutyholder, including without limitation the preparation of any construction control plan, fire emergency plans or building insurance certificate applications.
- 2.2 The Contractor shall (and shall procure that any sub-consultant, sub-contractor or supplier shall) at no cost to the Employer comply and cooperate with and provide all reasonable assistance to the Building Safety Regulator; building control; the Ministry of Housing, Communities & Local Government; and the Employer in respect of any matters falling within the scope of this Appendix 6, the Building Safety Legislation, or the Contractor's and any sub-consultant's or sub-contractor's functions as Dutyholders.
- 2.3 The Contractor shall at no cost to the Employer provide all reasonable assistance and supply such information and documentation to the Employer in a timely manner (and in any event to ensure compliance with any timescales required under the Building Safety Legislation) following any written request submitted by the Employer as is reasonably

required in relation to the Works in order to satisfy the requirements of the Building Safety Legislation and/or the Building Safety Regulator.

3 Provision of information

In addition to its obligations under paragraph 2.1 of this Appendix 6, the Contractor shall (and shall procure that each sub-consultant, sub-contractor and supplier shall) share and supply (at no cost to the Employer) in a digital format reasonably accessible to the Employer (and for the avoidance of doubt, in such a format that complies with any requirements set out in the Employer's Requirements) in a timely manner (and in any event to ensure compliance with any timescales required under the Building Safety Legislation) all information and documents (including without limitation any notices, certificates, plans, drawings, specifications, orders, consents, demands, and documents relating to any Building Control Applications, construction control plans, and fire emergency plans) required by or in connection with the Building Safety Legislation.

4 Termination

In the event that the Contractor is at any time in material breach of any of its obligations set out in this Appendix 6 and the Contractor fails to remedy such breach within ten (10) Business Days from the date of notice from the Employer specifying the relevant breach, the Employer may terminate the Contractor's employment under this Contract by further notice to the Contractor with immediate effect and the provisions of clause 6.7 shall apply.

Appendix 7 – Pricing Document

Attached as a separate Appendix.

Appendix 8 – Data Protection

1 Data Protection

1.1 For the purposes of this Schedule the following definitions apply

Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

Data Subject Access Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

DPA 2018: Data Protection Act 2018

GDPR: the General Data Protection Regulation (*Regulation (EU) 2016/679*)

LED: Law Enforcement Directive (*Directive (EU) 2016/680*)

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

Sub-processor: any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement

1.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Employer is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Annex A of this Appendix by the Employer and may not be determined by the Contractor.

1.3 The Contractor shall notify the Employer immediately if it considers that any of the Employer's instructions infringe the Data Protection Legislation.

1.4 The Contractor shall provide all reasonable assistance to the Employer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Employer, include:

- 1.4.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 1.4.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 1.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 1.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.5 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- 1.5.1 process that Personal Data only in accordance with Annex A of this Appendix, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Employer before processing the Personal Data unless prohibited by Law;
 - 1.5.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Employer as appropriate to protect against a Data Loss Event having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
 - 1.5.3 ensure that:
 - (a) the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Annex A of this Appendix);
 - (b) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - i are aware of and comply with the Contractor's duties under this clause;
 - ii are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - iii are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Employer or as otherwise permitted by this Agreement; and
 - iv have undergone adequate training in the use, care, protection and handling of Personal Data; and

- 1.5.4 not transfer Personal Data outside of the EU unless the prior written consent of the Employer has been obtained and the following conditions are fulfilled:
- (a) the Employer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Employer;
 - (b) the Data Subject has enforceable rights and effective legal remedies;
 - (c) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Employer in meeting its obligations); and
 - (d) the Contractor complies with any reasonable instructions notified to it in advance by the Employer with respect to the processing of the Personal Data;
- 1.5.5 at the written direction of the Employer, delete or return Personal Data (and any copies of it) to the Employer on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.
- 1.6 Subject to clause 1.7, the Contractor shall notify the Employer immediately if it:
- 1.6.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 1.6.2 receives a request to rectify, block or erase any Personal Data;
 - 1.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 1.6.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 1.6.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 1.6.6 becomes aware of a Data Loss Event.
- 1.7 The Contractor's obligation to notify under clause 1.6 shall include the provision of further information to the Employer in phases, as details become available.
- 1.8 Taking into account the nature of the processing, the Contractor shall provide the Employer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.6 (and insofar as possible within the timescales reasonably required by the Employer) including by promptly providing:
- 1.8.1 the Employer with full details and copies of the complaint, communication or request;

- 1.8.2 such assistance as is reasonably requested by the Employer to enable the Employer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 1.8.3 the Employer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 1.8.4 assistance as requested by the Employer following any Data Loss Event;
 - 1.8.5 assistance as requested by the Employer with respect to any request from the Information Commissioner's Office, or any consultation by the Employer with the Information Commissioner's Office.
- 1.9 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- 1.9.1 the Employer determines that the processing is not occasional;
 - 1.9.2 the Employer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 1.9.3 the Employer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.10 The Contractor shall allow for audits of its Data Processing activity by the Employer or the Employer's designated auditor.
- 1.11 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 1.12 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- 1.12.1 notify the Employer in writing of the intended Sub-processor and processing;
 - 1.12.2 obtain the written consent of the Employer;
 - 1.12.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause such that they apply to the Sub-processor; and
 - 1.12.4 provide the Employer with such information regarding the Sub-processor as the Employer may reasonably require.
- 1.13 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 1.14 The Employer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

- 1.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Employer may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 2 Commercially Confidential Information
- 2.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this contract, each Party shall:
- 2.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and
- 2.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- 2.2 Clause 2.1 shall not apply to the extent that:
- 2.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations (EIR) pursuant to clause 3 (Freedom of Information);
- 2.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- 2.2.3 such information was obtained from a third party without obligation of confidentiality;
- 2.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this contract; or
- 2.2.5 it is independently developed without access to the other party's confidential Information.
- 2.3 The Contractor may only disclose the Employer's confidential information to the staff who are directly involved in the provision of the services and who need to know the information, and shall ensure that such staff are aware of and shall comply with these obligations as to confidentiality.
- 2.4 The Contractor shall not, and shall procure that the Staff do not, use any of the Employer's confidential information received otherwise than for the purposes of this Agreement.
- 2.5 At the written request of the Employer, the Contractor shall procure that those members of the staff identified in the Employer's notice signs a non-disclosure agreement (NDA) prior to commencing any work in accordance with this Agreement.
- 2.6 Nothing in this Agreement shall prevent the Employer from disclosing the Contractor's Confidential Information:
- 2.6.1 for the purpose of the examination and certification of the Employer's accounts;
or

2.6.2 for the purpose of any procedural or other audit required by the Employer's internal regulations or by any Regulatory Body to whom the Employer is subject

provided that nothing in this clause 2.6 shall permit the Employer to disclose any of Contractor's software and/or related technical documentation.

2.7 The Employer shall use all reasonable endeavours to ensure that any employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause 2.6 is made aware of the Employer's obligations of confidentiality.

2.8 Nothing in this clause 2 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights (IPR).

3 Freedom of Information

3.1 The Contractor acknowledges that although the Employer is not at the date of signature of the contract subject to the requirements of the FOIA and the Environmental Information Regulations it shall assist and cooperate with the Employer to enable the Employer to comply with any Information disclosure obligations.

3.2 The Contractor shall and procure that any sub-contractors shall transfer to the Employer all Requests for Information (RFI) that it receives as soon as practicable and in any event within Three (3) working days of receiving a Request for Information (RFI);

3.2.1 provide the Employer with a copy of all Information in its possession, or power in the form that the Employer requires within (5) five working days (or such other period as the Employer may specify) of the Employer's request; and

3.2.2 provide all necessary assistance as reasonably requested by the Employer to enable the Employer to respond to the Request for Information (RFI) within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

3.3 The Employer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations provided that nothing in this clause 3.3 shall permit the Employer to disclose any of Contractor's software and/or related technical documentation.

3.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Employer.

3.5 The Contractor acknowledges that (notwithstanding the provisions of Clause 3) the Employer may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the services (but not the Contractor's software and/or related technical documentation) in certain circumstances:

- 3.5.1 without consulting the Contractor; or
- 3.5.2 following consultation with the Contractor and having taken their views into account;

provided always that where 3.5.1 applies the Employer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

- 3.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Employer to inspect such records as requested from time to time.
- 3.7 The Contractor acknowledges that the commercially sensitive Information listed in the commercially sensitive information Schedule is of indicative value only and that the Employer may be obliged to disclose it in accordance with this clause 3.

4 Publicity, Media and Official Enquiries

- 4.1 Without prejudice to the Employer's obligations under the FOIA, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.
- 4.2 Both Parties shall take reasonable steps to ensure that their servants, employees, agents, sub-contractors, suppliers, professional advisors and contractors comply with clause 4.1.

5 Intellectual Property Rights

- 5.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "**IP Materials**");

- 5.1.1 furnished to or made available to the Contractor by or on behalf of the Employer shall remain the property of the Employer; and
- 5.1.2 prepared specifically and exclusively by or for the contractor on behalf of the Employer for use, or intended use, in relation to the performance by the Contractor of its obligations under the contract shall belong to the Contractor but Employer shall have the right to use the same for the duration of and subject to the terms of this Contract;

and the Contractor shall not, and shall ensure that the staff shall not, (except when necessary for the performance of the contract) without prior approval, use or disclose any Intellectual Property Rights in the IP Materials owned by Employer.

- 5.2 All intellectual property rights in the Software and/or Services (including any modifications, alterations or adaptations thereto whether by Contractor, Employer or any third party) are and shall remain the sole property of Contractor (or its licensors).
- 5.3 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and subject to the Employer complying with its obligations under this clause 5 and also subject to the Employer mitigating its loss to the fullest extent possible, the Contractor shall, during and after the contract period, indemnify and indemnified and

hold the Employer harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Employer may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:

5.3.1 items or materials based upon designs supplied by the Employer; or

5.3.2 the use of data supplied by the Employer which is not required to be verified by the Contractor under any provision of the Contract.

Contractor's total liability hereunder for infringement of Intellectual Property Rights shall not exceed £3,000,000.

5.4 The Employer shall notify the Contractor in writing of any claim or demand brought against the Employer for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.

5.5 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the contractor, provided always that the Contractor:

5.5.1 shall consult the Employer on all substantive issues which arise during the conduct of such litigation and negotiations;

5.5.2 shall take due and proper account of the interests of the Employer; and

5.5.3 shall not settle or compromise any claim without the Employer's prior written consent (not to be unreasonably withheld or delayed).

5.6 The Employer shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or brought against the Employer pursuant to clause 5.6(a) or (b).

5.7 The Employer shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Employer or the Contractor in connection with the performance of its obligations under the Contract.

5.8 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Employer and, at its own expense and subject to the consent of the Employer (not to be unreasonably withheld or delayed), use its best endeavours to:

5.8.1 modify any or all of the services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; or

5.8.2 procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Employer,

and in the event that the Contractor is unable to comply with clauses 5.7(a) or (b) within 20 working days of receipt of the Contractor's notification the Employer may terminate the contract with immediate effect by notice in writing.

6 Audit

The Contractor shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Employer, and all payments made by the Employer. The Contractor shall on request afford the Employer or the Employer's representatives such access to those records as may be requested by the Employer in connection with the Contract.

Annex A

- 1 The Contractor shall comply with any further written instructions with respect to processing by the Employer.
- 2 Any such further instructions shall be incorporated into this Schedule.

<i>Description</i>	<i>Details</i>
<i>Subject matter of the processing</i>	<i>Customer details to enable the making of appointments and to gain access to Customers' dwellings to undertake the Services and works covered by this Contract.</i>
<i>Duration of the processing</i>	<i>For the Contract Period.</i>
<i>Nature and purposes of the processing</i>	<i>Recording and storage of information relating to the Client's customers.</i>
<i>Type of Personal Data</i>	<i>Customer names, addresses, telephone numbers, email addresses, and potentially sensitive data with regards to the disclosure of circumstances surrounding a customer's health or behaviour which requires the client to make the Consultant aware not to visit alone to ensure their safety and/ or where special arrangements or due consideration needs to be made to meet a specific customer's needs.</i>
<i>Categories of Data Subject</i>	<i>The Client's Customers.</i>
<i>Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data</i>	<i>The Contractor shall destroy all data immediately upon expiry or termination of the Contract, unless otherwise expressly requested to keep by the Client; and the Client shall destroy all data immediately upon expiry or termination of the Contract or such other period as so required to meet its legal obligations.</i>

[Any supplementary provisions please insert here]

Appendix 9 – [Golden Thread Documents]⁷

Not used

⁷ Include this if the Works to be carried out and completed involve Higher-Risk Buildings being buildings over 7 storeys or is at least 18 metres high.

Appendix 10 – [Checklist of documents to be submitted by the Contractor as part of the application for the Building Safety Regulator completion certificate]⁸

Not used

⁸ Include this if the Works to be carried out and completed involve Higher-Risk Buildings being buildings over 7 storeys or is at least 18 metres high.

63 Deepdene Gardens, Hastings, TN35 5TB					
Schedule of Works					
Spec Item	Description of Works	Qty	Unit	Rate	Cost
Summary of Works					
3.01	The specification is to be read in conjunction with all relevant drawings as stated below, together with all information contained within all sections and appendices to this specification	1	Item		
3.02	These works comprise of the garden reinstatement works to the property known as: 63 Deepdene Gardens, Hastings TN35 5TB	1	Item		
3.03	A summary of the garden reinstatement works are as follows: <ul style="list-style-type: none"> > Erection of temporary scaffold access ramp to side of the building > Removal of existing trees and vegetation and dispose > Removal of all existing timber structures to include decking, sleeper retaining wall including fixtures fittings etc. > Rebuild of existing brick retaining wall, finished within concrete copings > Landscaping works to reinstate original sloped gradient, finished with topsoil and seed. > Construction of new rock filled gabion retaining wall > Construction of new brickwork steps > Installation of new timber fencing 	1	Item		
General					
3.04	The works are to be carried out within the confines of the site.	1	Item		
3.05	All ambiguities and anomalies within the specification are to be brought to attention within the Contractors quotation.	1	Item		
3.06	The Contractor is deemed to have visited site to ascertain the nature of the works, take all necessary site dimensions etc required to price the Schedule of Works/Specification, as no claims on the grounds of insufficient knowledge in this respect will be entertained. The Contractor is to take all dimensions from site.	1	Item		
3.07	All items deemed to include carting away and disposal of debris.	1	Item		
3.08	All items are deemed to include protection and or making good to disturbed and adjacent surfaces whether specifically mentioned or not. Make good all damage caused by the work and remove all temporary markings and protective coverings.	1	Item		
3.09	No alterations, qualifications, erasures, omissions or additions are to be made to the text of this Specification/Tender document unless instructed otherwise.	1	Item		
3.10	The Contractor should report immediately to the Project Manager / Contract Administrator any suspected asbestos containing materials. The materials should not be disturbed before a method for safe removal and/or encapsulation can be agreed.	1	Item		
3.11	The Contractor is to include within their price for providing all plant, tools, equipment and for erecting all scaffold, platforms, gangways, guardrails, ladders, etc, that may be necessary to the execution of the work and upon completion for clearing away all such plant, etc, and leaving the premises clean to the satisfaction of the PM/CA	1	Item		
Programming					
3.12	Works to be undertaken 3 weeks after written appointment and subject to all necessary CDM Requirements.	1	Item		
3.13	Duration of the works are to be no longer than 6 weeks unless additional instructions are issued by the PM/CA which will increase the works duration or delays outside the Contractors control occur. In such circumstance, the Contractor must give notice of the delay, reasons and propose revised completion date.	1	Item		
3.14	Details of the start and finish dates will be detailed in the written works order. Please provide your proposed start and finish dates for consideration.	1	Item	Start Date	Completion Date
3.15	Update the PM/CA weekly on progress.	1	Item		

Access and Egress					
3.16	The Contractor is to note that works are only to be carried out between the hours of 8.00am and 5.00pm Monday to Saturday, unless otherwise agreed with the Client. No Sunday or Bank Holiday working allowed, unless otherwise agreed with the Client.	1	Item		
3.17	NB: No noisy working is to be carried out prior to 9.00am or after 5pm.				
3.18	The surrounding public pavements, roads, emergency vehicle routes etc must always remain clean and unobstructed throughout the works.	1	Item		
3.19	The Contractor are to make their own arrangements with regards to parking for the duration of the project using the public highway.	1	Item		
Statutory Requirements					
3.20	Where necessary the Contractor is responsible for notifying all statutory authorities at the required stage notification periods, and obtaining all licenses as required throughout the contract period to enable all works detailed within this tender/specification document to be completed.	1	Item		
3.21	The Contractor is expected to undertake all works in accordance with prevailing Building Regulations current at the time of Tender.	1	Item		
3.22	The Contractor is to ensure that all materials, workmanship etc comply with all current relevant British Regulations and Standards, Codes of Practice, Building Control and Statutory Requirements.	1	Item		
3.23	Nothing contained in this Specification/Schedule of Works is intended to invalidate any British Standard or Agrément Certificate, and the Contractor shall draw the Contract Administrator's attention to any discrepancies. Unless otherwise agreed with the Contract Administrator or Project Manager. British Standards and Agrément Certificates shall prevail.	1	Item		
Payment Provisions					
3.24	One single payment will be made on completion of the works, unless agreed in writing by the Contract Administrator / Project Manager.	1	Item		
Schedule of Condition					
3.25	Prior to the works commencing the Contractor shall prepare a full photographic record of all areas relating to the proposed works including all internal and external areas.	1	Item		
3.26	Any damage caused to any part of adjacent existing structures, roads etc on the part of the Contractor or his Sub-Contractors shall be made good at no additional cost to the Client.	1	Item		
CDM Regulations					
3.27	The Contractor is required to undertake the role of Principal Contractor for the works under the CDM 2015 Regulations.	1	Item		
3.28	Following formal acceptance of tender, the successful Contractor is to provide a Construction Phase Plan in accordance with the Construction (Design and Management) Regulations 2015. Works will not be permitted to commence on site until the plan has been deemed acceptable by the Principal Designer/Client.	1	Item		
2.29	Before Payment the Contractor is to provide all relevant certificates, guarantees, technical and specification documents, instruction manuals etc to the Principal Designer/Client as required for the Health and Safety File.	1	Item		
Reporting of Accidents and Dangerous Occurrences					
3.30	The Contractor shall make adequate arrangements for reporting accidents and dangerous occurrences as required by The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013, and any amendments, modifications or substitution of/for those Regulations.	1	Item		

Site Set-up and Requirements						
3.31	Contractor is to supply and maintain site welfare, materials/equipment storage and site office facilities as necessary to complete the works, in accordance with all relevant Health and Safety regulations. Locations to be agreed with the Client before works commence. Include for removal and for making good all surfaces disturbed, damaged or stained. Allow for all providing temporary power and water connections as required to complete the works.	1	Item	£ 197.00	£ 197.00	
3.32	If there is insufficient space on site, allow here for all necessary arrangements and licences to located temporary accommodation on highway/public areas.	1	Item			
3.33	The Contractor may use their local office for site welfare provided there is a reasonable travel distance.	1	Item			
Materials						
3.34	All materials specified should be used. The Client should be notified of any alterations for approval. Written approval and confirmation of any alterations should be received from the Contract Administrator / Project Manager before they are ordered or installed.	1	Item			
3.35	The Contractor shall comply with manufacturers and supplier's recommendations and specifications in all respects.	1	Item			
3.36	Where necessary only suitably experienced specialist Sub-Contractors and operatives are to carry out operations and installations if deemed necessary by specialist manufacturers and suppliers.	1	Item			
Protection						
3.37	Provide all necessary temporary protection to surroundings and belongings, fixtures and fittings.	1	Item	£ 195.00	£ 195.00	
Scaffolding / Working Platforms						
3.38	No claims will be entertained for the Contractor's failure to allow for sufficient access, nor for any scaffold access that may need to be re-erected for the purposes of the Contract Administrator's / Project Manager's inspections.	1	Item			
3.39	Any access scaffolding, platforms, towers and ramps shall be provided as described within this Schedule of Works and the following general items. The Contractor is responsible for obtaining all necessary scaffold and skip licences from the Local Authority and paying all associated fees and charges arising therefrom.	1	Item			
3.40	Supply, erect, maintain, adapt as necessary throughout the works, and strike upon completion of the works adequate access and protection scaffold to facilitate the works to the rear garden.	1	Item			
3.41	The scaffold shall incorporate suitable kick boards, debris netting, guard rails and high visibility marking / lighting to pedestrian areas;	1	Item			
3.42	Allow for the provision of suitable access to the scaffold that shall be removed at the end of each working day and reinstated at the commencement of each working day.	1	Item			
3.43	Supply, maintain, and clear from site upon completion all necessary lifting and access equipment to facilitate the works;	1	Item			
3.44	Upon removal, ensure that all damage caused by fixings, bearings etc is made good;	1	Item			
Enabling Works						
Access - Contractor's Design Portion						
NB: Please note that this item below is for a temporary access scaffold to be fully designed by the contractor						
3.45	The contractor is to design, supply, erect and maintain a temporary ramped scaffold access to the side of building (as located on drawing E14260-02) for the duration of the works to allow for the removal and delivery of plant and materials to the rear garden, following the removal of the existing timber fence and decking.	1	Item	£ 3,080.00	£ 3,080.00	
Vegetation						

3.47	The contractor is to remove trees and vegetation confined within the garden, alongside the boundary line, up to the existing chain link boundary fence adjoining the neighbouring gardens of No's 61 and 65. Note that this is for the mixed hedging and tree line consisting of Leylandii trees, as shown on drawing E14260-02 within the Appendices.	1	Item	£ 1,170.00	£ 1,170.00	
	NB: The contractor is to leave in-situ the existing shrubs within the garden, as located on drawing E14260-02 within the Appendices.					
3.48	The contractor is to ensure that every care is taken avoid any damage to the immediate surroundings during felling. This should be done by cutting down to an appropriate height and using rope/section felline where necessary.	1	Item			
3.49	The contractor is to grub out all existing tree stumps including all surface roots and dispose from site.	1	Item	£ 1,890.50	£ 890.50	
	Decking					
3.50	Allow to carefully remove all the existing timber decking structure within the rear garden. This is to include all decking boards, joists, bearers, fixtures and fittings etc. and suitably dispose from site all waste material.	1	Item	£ 905.13	£ 905.13	
3.50.1	Install new decking - timber	1	Prov.Sum	£ 810.00	£ 810.00	
3.50.2	Install new decking - option for composite decking (Not Carried Fwd)	1	Prov.Sum	£ 1,100.00		
	Retaining Walls & Fencing					
3.51	The contractor is to grub out, remove and dispose of all existing vertical and horizontal timber sleeper walls.	1	Item	£ 890.51	£ 890.51	
3.52	Allow to carefully remove the existing timber fence, as located on drawing E14260-02 to allow for preparation of temporary ramp scaffold access to the rear garden.	1	Item	£ 292.50	£ 292.50	
3.53	The contractor is to carefully remove the existing low-level timber picket fence on top of the brick retaining wall including all timber posts, fixtures and fittings and dispose from site.	1	Item	£ 146.25	£ 146.25	
	Steps					
3.54	Assumed existing steps to remain	1	Item	£ 299.00	£ -	
	General					
3.55	The contractor is to allow a cost here for general removal of any unsafe protrusions of nails, screws, hanging basket brackets etc. leaving the existing boundary close boarded fencing free of any additions.	1	Item	£ 146.25	£ 146.25	
	Garden Reinstatement Works					
	Landscaping					
3.56	Following the enabling works, the contractor is to reinstate the existing graded slope to approx. 19 degrees to match in with adjoining gardens.	1	Item	£ 3,171.00	£ 3,171.00	Only concern is how we retain the soil on neighbouring properties - this will need to be reviewed on site as we carry out the works. Potential requirement to replace fences with concrete gravel board installed. Currently quoted below for chainlink.
3.57	In accordance with drawing E14260-01, the contractor is to cut and fill level using excavated material and make up levels with imported clean, compacted soil with source verification certificate. New levels to match those strictly included within the drawing mentioned above.	1	Item			
3.58	Upon completion, the contractor is to finish the rear garden with 150mm of topsoil, allow to thoroughly sow grass seed into raked topsoil, recover, compact then water.	1	Item	£ 2,445.00	£ 2,445.00	
	Gabion Retaining Wall					
3.59	In accordance with drawing E14260-01, the contractor is to form a sub base consisting of 100mm thick compacted DOT type 1.	1	Item	£ 422.50	£ 422.50	
3.60	In accordance with drawing E14260-01, the contractor is to supply and install 600 x 600 x 750mm (75x75mm, 4.5mm thick) wire baskets filled with with stone type having not less than 80% of the mesh opening size. New gabion wall to be set at 3 degrees to vertical.	1	Item	£ 8,377.87	£ 8,377.87	
3.61	Allow to supply and install <i>Teram T1000 Geotextile</i> or similar fabric between wall and soil. The contractor is to allow to backfill against membrane, finish with 150mm top soil and seed.	1	Item	£ 195.00	£ 195.00	

Steps						
3.62	The contractor is to form new 100mm thick lean mix concrete base foundation, ready for new steps.	1	Item	£ 552.50	£ -	Assumed existing steps to remain
3.63	In accordance with drawing E14260-01, the contractor is to construct new steps in solid clay brickwork set in 1:1:6 mortar finished with precast concrete tread to 150mm rise and 225mm going.	1	Item	£ 1,352.00	£ -	Assumed existing steps to remain
Brick Retaining Wall						
3.64	The contractor is to allow the cost to reduce the height of 3.5 Lm of existing brickwork retaining wall to 600mm and finish with precast concrete coping	3.5	Lm	£ 257.21		Not required
Fencing						
NB: Upon clearance of the existing mixture of Leylandii trees and shrubs, the existing chain link fence is to be inspected. An allowance has been made below for chain link fence replacement.						
3.65	Provisional Item: The contractor is to allow a cost here for the removal, supply and install of 18Lm of 1.2m high chain link fencing including metal posts, fixtures, fittings etc.	18	Lm	£ 156.69	£ 2,820.42	
3.66	Provisional Sum: The contractor is to allow a Provisional Sum for any timber repairs to existing defective areas of the timber closeboarded fencing to be retained.	1	PS	£ 250.00	£ 250.00	
3.67	Allow to supply and install 2.5Lm of new 1.2m high pressure treated timber round top picket fence, securely fixed to 2no concrete posts (See Item No. 3.53). Fence to be located behind existing brick retaining wall with the new total ground to fence height to be 1.2m. Posts to be set in 300 x 300mm x 600mm deep post holes and haunched with concrete mix.	2.5	Lm	£ 202.80	£ 507.00	
3.68	The contractor is to ensure the immediate areas are adequately protected prior to the redecoration works below.	1	Item			
3.69	The contractor is to thoroughly wash down, apply a suitable timber fungicidal wash, then apply 2no coats of a suitable oil-based timber preservative treatment, Ronseal or similar, to 15Lm of 1.8m high closeboarded fencing and posts.	15	Lm	£ 57.50	£ 862.50	
3.70	Allow to supply and install 3Lm of new 1.8m high pressure treated closeboarded timber fence, securely fixed to 2no timber posts. Posts to be mechanically fixed to ground.	3	Lm	£ 505.70	£ 1,517.10	
Patio Hardstanding						
3.71	The contractor is to thoroughly clear any debris and thoroughly wash down the existing paving patio area leaving clean.	1	Item	£ 292.50	£ 292.50	
3.72	The contractor is to ensure the existing paving joints are free of any weeds or vegetation.	1	Item	£ 146.25	£ 146.25	
3.73	The contractor is to make good and fill any small holes made within the existing paving slabs using a mortar mix.	1	Item	£ 334.10	£ 334.10	
3.74	To all paving joints, the contractor is to cut out any defective existing mortar joints and rejoin using a sand and cement mix of 4:1.	1	Item	£ 185.00	£ 185.00	
On Completion						
3.75	The contractor is to thoroughly clean and apply a biocidal fungal wash to all areas of the existing brickwork retaining walls ensuring free from any algae, lichen or mould build up.	1	Item	£ 146.25	£ 146.25	
3.76	Thoroughly clean down all surfaces affected by the works.	1	Item	£ 130.00	£ 130.00	
3.77	Ensure the entire site is clear of debris, containers, skips, scaffolding and the property is left in a clean and tidy condition.	1	Item	£ 65.00	£ 65.00	
Contingency Sum						
NB: Include for the following Defined Contingency Sum to be expended as directed by the Contract Administrator / Project Manager:						
3.78	Employer's contingency sum	1	Item	£ 3,500.00	£ 3,500.00	
				Sec 4 Total	£ 34,090.63	