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SBC/XQ 2016
Standard Building Contract
Without Quantities 2016

2016
STANDARD BUILDING CONTRACT

Standard Building Contract Without Quantities (SBC/XQ)

Appropriate:

- for larger works designed and/or detailed by or on behalf of the Employer, where detailed contract provisions are necessary and the Employer is to provide the Contractor with drawings; and with either a specification or work schedules to define adequately the scope and quality of the work and where the degree of complexity is not such as to require bills of quantities; and
- where an Architect/Contract Administrator and Quantity Surveyor are to administer the conditions.

Can be used:

- where the Contractor is to design discrete part(s) of the works (Contractor's Designed Portion);
- where the works are to be carried out in sections;
- by both private and local authority employers;
- where provisions are required to cover named specialists.

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For details of 2016 Edition changes, see the Standard Building Contract Guide (SBC/G) and the Tracked Change Document.

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Agreement

This Agreement

is made the 5 September 20 25

Between

The Employer

John Innes Centre

Place of incorporation: England and Wales

(Company No. 00511709)^[1]

whose registered office is at Norwich Research Park, Colney, Norwich, NR4 7UH

And

The Contractor

MJS PROJECTS (MARCH) LTD

Place of incorporation: England and Wales

(Company No. 08579427)^[1]

whose registered office is at MJS House, 425 Wisbech Road, Westry, March, Cambridgeshire, PE15 0BA

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

Recitals

Whereas

First

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

an upgraded internal southern access road and below ground infrastructure work including new and relocated communications and electricity cabling, upgraded mains water infrastructure, new surface water drainage and new district heating pipework to enable site wide development proposals

at

John Innes Centre, Norwich Research Park, Colney Lane, Norwich NR4 7UH ('the Works') and has had drawings and either a specification or work schedules prepared which show and describe the work to be done;

Second

the drawings are numbered in (A) 05 Contract Drawings and Specifications" folder within folder (ii) Employers Requirements and (B) JGD District Heating" and "MJS mark-ups" folders in folder 09 Contractors Proposals within folder (iv) Contractors Proposals annexed to this Contract ('the Contract Drawings') and have for identification been signed or initialled by or on behalf of each Party^[3];

Third

in accordance with whichever of the following options and documents is stated in the Contract Particulars to apply, the Contractor either:

- (A) has priced the Specification or Work Schedules ('the Priced Document'), the total of such pricing being the Contract Sum stated in Article 2 ('Pricing Option A'); or
- (B) has stated the sum he will require for carrying out the Works shown on the Contract Drawings and described in the Specification, that sum being the Contract Sum stated in Article 2, and has supplied to the Employer a Contract Sum Analysis or a Schedule of Rates on which that sum is based ('the Priced Document') ('Pricing Option B');

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

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

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;

[2] State nature and location of intended works.

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

Fifth

the Employer has provided the Contractor with a schedule ('the Information Release Schedule') which states the information the Architect/Contract Administrator will release and the time of that release^[4];

Sixth

the division of the Works into Sections is shown in the Specification/Work Schedules and/or the Contract Drawings or in such other documents as are identified in the Contract Particulars^[5];

Seventh

the Contract is not supplemented by a Framework Agreement;

Eighth

whether any of Supplemental Provisions 1 to 6 and 9 apply is stated in the Contract Particulars;

The Ninth to Twelfth Recitals apply only where there is a Contractor's Designed Portion

Ninth

the Works include the design and construction of^[6] district heating pipework system, reinforcement to retaining walls and temporary works ('the Contractor's Designed Portion');

Tenth

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

Eleventh

in response to the Employer's Requirements the Contractor has supplied to the Employer:

- documents showing and describing the Contractor's proposals for the design and construction of the Contractor's Designed Portion ('the Contractor's Proposals'); and
- an analysis of the portion of the Contract Sum relating to the Contractor's Designed Portion ('the CDP Analysis');

Twelfth

Please see
Schedule of
Amendments

the Employer has examined the Contractor's Proposals and, subject to the Conditions, is satisfied that they appear to meet the Employer's Requirements.^[7] The Employer's Requirements, the Contractor's Proposals and the CDP Analysis have each for identification been signed or initialled by or on behalf of each Party and particulars of each are given in the Contract Particulars;

[4] Delete the Fifth Recital if an Information Release Schedule is not provided.

[5] Delete the Sixth Recital if the Works are not divided into Sections.

[6] State nature of work in the Contractor's Designed Portion, or delete these four Recitals if not applicable. If the space here is insufficient a separate list should be prepared, signed or initialled by or on behalf of each Party and identified here, either as a specified Annex to this Contract or by its reference number, date or other identifier.

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

Articles

Now it is hereby agreed as follows

Article 1	Contractor's obligations
	The Contractor shall carry out and complete the Works in accordance with the Contract Documents.
Article 2	Contract Sum
	The Employer shall pay the Contractor at the times and in the manner specified in the Conditions the VAT-exclusive sum of (‘the Contract Sum’) or such other sum as becomes payable under this Contract.
Article 3	Architect/Contract Administrator
Please see Schedule of Amendments	For the purposes of this Contract the Architect/Contract Administrator is Turner & Townsend Project Management Limited (company number: 02165592) of WeWork, 50-60 Station Road, Cambridge CB21 2JD or, if he ceases to be the Architect/Contract Administrator, such other person as the Employer nominates in accordance with clause 3.5 of the Conditions.
Article 4	Quantity Surveyor
	For the purposes of this Contract the Quantity Surveyor is AECOM Limited (company number 01846493) of Cavell House, Stannard Place, St Crispins Road, Norwich, NR3 1YE or, if he ceases to be the Quantity Surveyor, such other person as the Employer nominates in accordance with clause 3.5 of the Conditions.
Article 5	Principal Designer
Please see Schedule of Amendments	The Principal Designer for the purposes of the CDM Regulations is IM2 Limited (company number 12589988) of Cam & Co Accountancy, 10-12 Love Lane, Pinner, England, HA5 3EF or such replacement as the Employer at any time appoints to fulfil that role.

Article 6	Principal Contractor
Please see Schedule of Amendments	The Principal Contractor for the purposes of the CDM Regulations is the Contractor or such replacement as the Employer at any time appoints to fulfil that role.
Article 7	Adjudication
	If any dispute or difference arises under this Contract, either Party may refer it to adjudication in accordance with clause 9.2. ^[8]
Article 8	Arbitration
	Not applicable
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.

Please see Schedule of Amendments for new Article 10

[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 Standard Building Contract Guide.

[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 Article 8 and clauses 9.3 to 9.8 apply and the words "do not apply" **must** be deleted. If the Parties wish any dispute or difference to be determined by the courts of another jurisdiction the appropriate amendment should be made to Article 9 (see also clause 1.12 and Schedule 5 Part 1 and Part 2).

Contract Particulars

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

Third Recital

The Pricing Option that applies is

* Pricing Option A

The Priced Document is

(where Pricing Option A applies)

* the Work Schedules

Fourth Recital and clause 4.6

Construction Industry Scheme (CIS)

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

Sixth Recital

Description of Sections (if any)

(If not shown or described in the Specification/Work Schedules or Contract Drawings, state the reference numbers and dates or other identifiers of documents in which they are shown.)^[10]

Section 0:

- [REDACTED]
- [REDACTED]
- [REDACTED]
Section 1: [REDACTED]
Section 2: [REDACTED]
Section 3: [REDACTED]
Section 4: [REDACTED]
Section 5: [REDACTED]
Section 6: [REDACTED]
Section 7: [REDACTED]
- [REDACTED]
[REDACTED]

Eighth Recital and Schedule 8

Supplemental Provisions^[11]

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

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

[11] Supplemental Provision 7 (Transparency) applies only where the Employer is a Local or Public Authority or other body to whom the Freedom of Information Act 2000 applies; Supplemental Provision 8 (The Public Contracts Regulations 2015) applies only where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations; Supplemental Provision 9 (Named Specialists) applies only where and to the extent that it is stated to apply.

Supplemental Provision 1: Collaborative working
* applies

Supplemental Provision 2: Health and safety
* applies

Supplemental Provision 3: Cost savings and value improvements
* applies

Supplemental Provision 4: Sustainable development and environmental considerations
* applies

Supplemental Provision 5: Performance Indicators and monitoring
* applies

Supplemental Provision 6: Notification and negotiation of disputes
* applies

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

Employer's nominee

[REDACTED]

Contractor's nominee

[REDACTED]

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

Supplemental Provision 9: Named Specialists

(Unless one of the first two options is selected by deletion of the other entries, Supplemental Provision 9 does not apply.)

* applies in respect of Pre-Named Specialist Work only

Tenth Recital

Employer's Requirements

(State reference numbers and dates or other identifiers of the relevant documents.)^[10]

Folder (ii) of the Employers Requirements

Eleventh Recital

Contractor's Proposals

(State reference numbers and dates or other identifiers of the relevant documents.)^[10]

Folder (iv) of the Contractors Proposals

CDP Analysis

(State reference numbers and dates or other identifiers of the relevant documents.)^[10]

referred to as "JGD District Heating" and "MJS mark-ups" folders in folder 09 Contractors Proposals within folder (iv) of the Contractors Proposals

Article 8

Arbitration

(If neither entry is deleted, Article 8 and clauses 9.3 to 9.8 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must be stated that Article 8 and clauses 9.3 to 9.8 apply.)^[12]

Article 8 and clauses 9.3 to 9.8 (Arbitration)

[12] 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 Standard Building Contract Guide. See also footnote [9].

* do not apply

1.1

Base Date

10 business days prior to tender submission (13 June 2025)

BIM Protocol (where applicable)

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

Not applicable

Sections: Dates for Completion of Sections^[13]

Section Section 0 :
Section Section 1 :
Section Section 2 :
Section Section 3 :
Section Section 4 :
Section Section 5 :
Section Section 6 :
Section Section 7 :



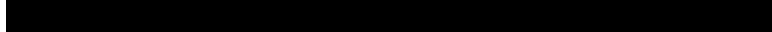
1.7

Addresses for service of notices by the Parties

(If none is stated, the address in each case, subject to clause 1.7.3, shall be that shown at the commencement of the Agreement.)^[14]

Employer

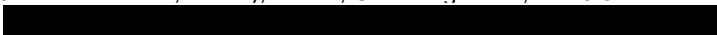
John Innes Centre, Norwich Research Park, Colney Lane, Norwich, NR4 7UH. Email address:



Contractor

MJS House 425 Wisbech Road, Westry, March, Cambridgeshire, PE15 0BA

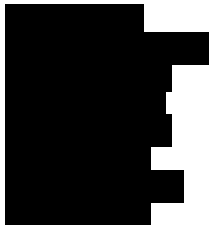
Email address:



2.4

Sections: Dates of Possession of Sections^[13]

Section Section 0 :
Section Section 1 :
Section Section 2 :
Section Section 3 :
Section Section 4 :
Section Section 5 :
Section Section 6 :
Section Section 7 :



2.5

Sections: deferment of possession of Sections

Clause 2.5

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

[14] As to service of notices etc. outside the United Kingdom, see the Standard Building Contract Guide.

* applies

Maximum period of deferment (if less than 6 weeks) is^[13]

Section Section 0 : 6 weeks
Section Section 1 : 6 weeks
Section Section 2 : 6 weeks
Section Section 3 : 6 weeks
Section Section 4 : 6 weeks
Section Section 5 : 6 weeks
Section Section 6 : 6 weeks
Section Section 7 : 6 weeks

2.9.1.2

Master programme

Critical paths
* are required to be shown

2.19.3

Contractor's Designed Portion: limit of Contractor's liability for loss of use etc. (if any)

[REDACTED]

2.32.2

Sections: rate of liquidated damages for each Section^[13]

Section Section 0 : [REDACTED]
Section Section 1 : [REDACTED]
Section Section 2 : [REDACTED]
Section Section 3 : [REDACTED]
Section Section 4 : [REDACTED]
Section Section 5 : [REDACTED]
Section Section 6 : [REDACTED]
Section Section 7 : [REDACTED]

2.37

Sections: Section Sums^[13]

Section Section 0 : [REDACTED]
Section Section 1 : [REDACTED]
Section Section 2 : [REDACTED]
Section Section 3 : [REDACTED]
Section Section 4 : [REDACTED]
Section Section 5 : [REDACTED]
Section Section 6 : [REDACTED]
Section Section 7 : [REDACTED]

2.38

Sections: Rectification Periods^[13]

(If no other period is stated, the period is 6 months.)

Section Section 0 : 12 months
Section Section 1 : 12 months
Section Section 2 : 12 months
Section Section 3 : 12 months
Section Section 4 : 12 months

Section Section 5 : 12 months
 Section Section 6 : 12 months
 Section Section 7 : 12 months
 from the date of practical completion of Section 7

4.3 and 4.14

Fluctuations Provision^[15]

(Unless another option or entry is selected, JCT Fluctuations Option A applies.)

* no Fluctuations Provision applies

4.7

Advance payment

(Not applicable where the Employer is a Local or Public Authority)

Clause 4.7

* does not apply

4.8

Interim payments – Interim Valuation Dates

(If no date is stated, the first Interim Valuation Date is one month after the Date of Possession.)

The first Interim Valuation Date is

One month after the Date of Possession

and thereafter the same date in each month or the nearest Business Day in that month^[16]

4.16.4

Listed Items – uniquely identified

(Delete the entry if no bond is required.)

No bond is required for Listed Items uniquely identified.

4.16.5

Listed Items – not uniquely identified

(Delete the entry if clause 4.16.5 does not apply.)

No bond is required for Listed Items not uniquely identified.

4.18

Contractor's Retention Bond

(Not applicable where the Employer is a Local or Public Authority and, in other cases, not applicable unless stated to apply, with relevant particulars given below)

Clause 4.18

* does not apply

[15] Unless the Fluctuations Provision is to be JCT Fluctuations Option A (set out in Schedule 7), delete all but one of the asterisked choices. JCT Fluctuations Options B and C are no longer included in JCT contract documents but continue to be available on the JCT website www.jctltd.co.uk. If an alternative fluctuation or cost adjustment formula is to be used, the document(s) in which it is contained should be identified here.

[16] The first Interim Valuation Date should not be more than one month after the Date of Possession.

4.19.1

Retention Percentage

(The percentage is 3 per cent unless a different rate is stated; if no retention is required, insert 'Nil' or '0'.)**5.7**

Daywork

The Percentage Additions to each section of the prime cost or, if they apply in respect of labour, the All-Inclusive Rates, are set out in the following document^[10]

Not applicable.

6.4.1

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



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

6.5.1

Insurance – liability of Employer

*(Not required unless it is stated that it may be required and the minimum amount of indemnity is stated)*Insurance
* may be requiredMinimum amount of indemnity for any one occurrence or series of occurrences arising out of one event^[17]**6.7 and Schedule 3**

Works insurance – Insurance Option applicable

Schedule 3:
* Insurance Option A applies

Percentage to cover professional fees

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

Where Insurance Option A applies and cover is to be provided under the Contractor's annual policy (paragraph A.2), the annual renewal date is

(as supplied by the Contractor)**6.10 and Schedule 3**

Terrorism Cover – details of the required cover

(Unless otherwise stated, Pool Re Cover is required.)^[18]

[17] If the indemnity is to be for an aggregate amount and not for any one occurrence or series of occurrences, the entry should be amended to make this clear.

are set out in the following document(s)

Does not apply

6.15

Contractor's Designed Portion (CDP) Professional Indemnity insurance

Level of cover

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

Amount of indemnity required

* relates to claims or series of claims arising out of one event

(If no amount is stated, insurance under clause 6.15 shall not be required.)

and is

[REDACTED]

Cover for pollution and contamination claims

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

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

[REDACTED]

relates to claims or series of claims arising out of one event

Expiry of required period of CDP Professional Indemnity insurance is

(If no period is selected, the expiry date shall be 6 years from the date of practical completion of the Works.)

* 12 years

6.17

The Joint Fire Code

* applies^[19]

If the Joint Fire Code applies, state whether the insurer under Insurance Option A, B or C (paragraph C.2) has specified that the Works are a 'Large Project':

* No^[19]

6.20

Joint Fire Code – amendments/revisions

(The cost shall be borne by the Contractor unless otherwise stated.)

The cost, if any, of compliance with amendment(s) or revision(s) to the Joint Fire Code shall be borne by

* the Contractor

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

[19] Where Insurance Option A applies these entries are made on information supplied by the Contractor.

7.2

Assignment/grant by Employer of rights under clause 7.2
(If neither entry is deleted, clause 7.2 applies.)

Clause 7.2
* applies

Sections: rights under clause 7.2
(If clause 7.2 applies, amend the entry if rights under that clause are to apply to certain Sections only.)

* Rights under clause 7.2 apply to each Section

7.3.1

Performance bond or guarantee from bank or other approved surety^[20]
(If this entry is not completed or the required form is not specified, a performance bond or guarantee is not required.)

* is required

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

Appendix 1 to these Schedule of Amendments

Initial value

[REDACTED]

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

* the date of practical completion of the Works

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

[REDACTED]

7.3.2

Guarantee from the Contractor's parent company

* is not required

7.4

Third Party Rights and Collateral Warranties – details of the requirements for the grant by the Contractor and sub-contractors of P&T Rights, Funder Rights and/or (in the case of sub-contractors) Employer Rights in respect of the Works, either as third party rights or by collateral warranties ('Rights Particulars') are set out in the following document^[21]
(State reference number and date or other identifier of the relevant document.)

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

[21] The relevant Rights Particulars should identify the beneficiaries (by name, class or description) and the sub-contractors who are also required to grant rights, specify whether rights are to be granted at each level as Third Party Rights or by way of Collateral Warranties, state in those cases where the default provision is not to apply which alternative provision is to apply in its place and give any other details required to complete the terms of the rights or warranties that are to be given. A Model Form for the Rights Particulars is included in the Standard Building Contract Guide and is also available on the JCT website www.jctltd.co.uk.
In the case of third party rights the relevant limits and details required for the purposes of the respective parts of Schedule 5 of this Contract and Schedule 6 of the Standard Building Sub-Contracts are the same as those required for the purposes of the Warranty Particulars for the corresponding Collateral Warranty (CWa/P&T, CWa/F, SCWa/P&T, SCWa/F or SCWa/E). Directions may be needed as to mode of execution of sub-contracts and/or collateral warranties by relevant sub-contractors. See also the Standard Building Contract Guide.

Please see the Schedule of Amendments.

8.9.2

Period of suspension

(If none is stated, the period is 2 months.)

2 months

8.11.1.1 to 8.11.1.5

Period of suspension

(If none is stated, the period is 2 months.)

2 months

9.2.1

Adjudication^[22]

The Adjudicator is to be nominated by the Chairman of the TeCSA

Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)^[23]

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

- * Royal Institute of British Architects
- * The Royal Institution of Chartered Surveyors
- * constructionadjudicators.com^[24]
- * Chartered Institute of Arbitrators

[22] 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.

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

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

Attestation

Note on Execution

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

Execution under hand

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

Execution as a Deed

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

Other forms of Attestation

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

Notes on Execution as a Deed

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

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

Execution as a Deed

Executed as a Deed by the Employer

namely ¹ John Innes Centre

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

[Redacted Signature]

(Print name of signatory)

DocuSigned by: [Redacted Signature]

Signature

Director

and

[Redacted Signature]

(Print name of signatory)

Signed by: [Redacted Signature]

Signature

Company Secretary/Director

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 MJS PROJECTS (MARCH) LTD

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

Signed by:
[Redacted Signature]

[Redacted Name]

Director

in the presence of

Signed by:

[Redacted Signature]

Witness' signature [Redacted Name] (Print name) [Redacted Name]

Witness' address [Redacted 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

Definitions

1.1 Definitions

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

Acceleration Quotation: a quotation by the Contractor for an acceleration in the carrying out of the Works or a Section made under paragraph 2 of **Schedule 2**.

Activity Schedule: see the **Third Recital**.

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

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

All Risks Insurance: see **clause 6.8**.

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

Architect/Contract Administrator: the person named in **Article 3** or any successor nominated or otherwise agreed under **clause 3.5**.

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

Base Date: the date stated as such date in the **Contract Particulars** (against the reference to **clause 1.1**)^[25].

BIM Protocol: (where applicable) the document identified as such in the **Contract Particulars** (against the reference to **clause 1.1**).

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

C.1 Replacement Schedule: (where applicable) the insurance schedule and/or other documents identified as such in the **Contract Particulars** (against the reference to **clause 6.7** and **Schedule 3**).

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

CDP Analysis: see the **Eleventh Recital** and the **Contract Particulars**.

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

Certificate of Making Good: see **clause 2.39**.

Completion Date: the Date for Completion of the Works or of a Section as stated in the **Contract Particulars** or such other date as is fixed either under **clause 2.28** or by a Pre-agreed Adjustment.

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

[25] The Base Date is relevant (inter alia) to clause 2.17.2.1 (changes in Statutory Requirements) and the JCT Fluctuations Options and it helps to determine the edition/issue and/or version of documents relevant to this Contract, e.g. the Measurement Rules and definitions of the prime cost of daywork (clause 5.7).

Confirmed Acceptance: the Architect/Contract Administrator's instruction under paragraph 4 of **Schedule 2** confirming the Employer's acceptance of a Variation Quotation or Acceleration Quotation.

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

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

Consultants: see **clause 7.4.3**.

Contract Documents: the Contract Drawings, the Agreement and these Conditions, together with:

(where applicable) the Employer's Requirements, the Contractor's Proposals and the CDP Analysis;

(where applicable) the BIM Protocol;

(where Pricing Option A applies) the Priced Document or (where Pricing Option B applies) the Specification; and

(where JCT Fluctuations Option C applies) the schedule referred to in rule 11b of the JCT Formula Rules.

Contract Drawings: the drawings referred to in the **Second Recital**.

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

Contract Sum: the sum stated in **Article 2**.

Contract Sum Analysis: see the **Third Recital** and the **Contract Particulars**.

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

Contractor's Design Documents: the drawings, details and specifications of materials, goods and workmanship and other related documents and information prepared by or for the Contractor in relation to the Contractor's Designed Portion (including such as are contained in the Contractor's Proposals or referred to in clause 2.9.4), together, where applicable, with any other design documents or information to be provided by him under the BIM Protocol.

Contractor's Designed Portion: see the **Ninth 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 Quantity Surveyor, the Employer, Employer's Persons and any Statutory Undertaker.

Contractor's Proposals: see the **Eleventh Recital** and the **Contract Particulars**.

Date for Completion: the date stated as such date in the **Contract Particulars** (against the reference to **clause 1.1**) in relation to the Works or a Section.

Date of Possession: the date stated as such date in the **Contract Particulars** (against the reference to **clause 2.4**) in relation to the Works or a Section.

Design Submission Procedure: such procedure as is specified by the BIM Protocol or, where that is not applicable, the procedure set out in **Schedule 1**, subject to any modifications of that procedure specified in the Contract Documents.

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

Employer Rights: any rights in favour of the Employer to be granted by sub-contractors in accordance with the Rights Particulars, either by way of third party rights or JCT collateral warranty SCWa/E.

Employer's Persons: all persons employed, engaged or authorised by the Employer, excluding the Contractor, Contractor's Persons, the Architect/Contract Administrator, the Quantity Surveyor and any Statutory Undertaker but including any such third party as is referred to in clause 3.22.2.

Employer's Requirements: see the **Tenth Recital** and the **Contract Particulars**.

Excepted Risks: see **clause 6.8**.

Existing Structures: any and all existing structures within which the Works or part of them are to be executed or to which they are to form an extension, together with any Section for which a Section Completion Certificate has been issued and, as from the Relevant Date, any Relevant Part taken into possession under **clause 2.33**.

Final Certificate: see **clauses 1.9** and **4.26**.

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

Fluctuations Provision: the provision (if any) specified by the **Contract Particulars** (against the reference to **clauses 4.3** and **4.14**).

Funder: the person named or otherwise sufficiently identified as such (whether by class or description) in or by the Rights Particulars and in respect of whom the Employer gives notice under **clause 7.8.1**.

Funder Rights: the rights in favour of the Funder to be granted by the Contractor as third party rights under **Part 2 of Schedule 5** or by JCT collateral warranty CWa/F or those to be granted by sub-contractors in accordance with the Rights Particulars.

Gross Valuation: see **clause 4.14**.

Information Release Schedule: the schedule referred to in the **Fifth Recital**.

Insolvent: see **clause 8.1**.

Insurance Options A, B and C: the provisions relating to insurance of the Works and (where applicable) Existing Structures set out in **Schedule 3**.

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 Certificate: any of the certificates to which **clause 4.9.1** refers.

Interim Valuation Date: each date as specified by the **Contract Particulars** (against the reference to **clause 4.8**).

Joint Fire Code: the Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Renovation, published by Construction Industry Publications Ltd and the Fire Protection Association, current at the Base Date.

Joint Names Policy: see **clause 6.8**.

Listed Items: materials, goods and/or items prefabricated for inclusion in the Works which are listed as such items by the Employer in a list supplied to the Contractor and annexed to the Specification/Work Schedules.

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

Measurement Rules: the RICS New Rules of Measurement – Detailed Measurement for Building Works (NRM2), in the form published at the Base Date, unless otherwise stated in the Contract Documents.

Named Specialist: see **Supplemental Provision 9**, paragraph 9.1.

Named Specialist Work: Pre-Named Specialist Work or Post-Named Specialist Work.

Non-Completion Certificate: see **clause 2.31**.

P&T Rights: the rights in favour of a Purchaser or Tenant to be granted by the Contractor as third party rights under **Part 1 of Schedule 5** or by JCT collateral warranty CWa/P&T or those to be granted by sub-contractors in accordance with the Rights Particulars.

Parties: the Employer and the Contractor together.

Party: either the Employer or the Contractor.

Pay Less Notice: see **clauses 4.11.5 and 4.12.1**.

Payment Application: see **clause 4.10.1**.

Payment Certificate: an Interim Certificate or the Final Certificate.

Payment Notice: see **clause 4.10.2**.

PC Regulations: the Public Contracts Regulations 2015.

Post-Named Specialist Work: see **Supplemental Provision 9**, paragraph 9.1.2.

Practical Completion Certificate: see **clause 2.30**.

Pre-agreed Adjustment: see **clause 2.26.2**.

Pre-Named Specialist Work: see **Supplemental Provision 9**, paragraph 9.1.1.

Priced Document: see the **Third Recital** and the **Contract Particulars**.

Pricing Options A and B: see the **Third Recital** and the **Contract Particulars**.

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

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

Provisional Sum: 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]

Purchaser: any person named or otherwise sufficiently identified as such (whether by class or description) in or by the Rights Particulars to whom the Employer transfers or agrees to transfer his interest in all or part of the Works.

Quantity Surveyor: the person named in **Article 4** or any successor nominated or otherwise agreed under **clause 3.5**.

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

Rectification Period: the period stated as such period in the **Contract Particulars** (against the reference to **clause 2.38**) in relation to the Works or (where applicable) a Section.

Relevant Date: see **clause 2.33**.

Relevant Event: see **clause 2.29**.

Relevant Matter: see **clause 4.22**.

Relevant Omission: see **clause 2.26.3**.

Relevant Part: see **clause 2.33**.

Retention: see **clauses 4.15 and 4.17 to 4.19**.

Retention Bond: see **clause 4.18**.

Retention Percentage: the percentage stated in the **Contract Particulars** (against the reference to **clause 4.19.1**).

Rights Particulars: see **clause 7.4** and the **Contract Particulars** for that clause.

Schedule of Rates: see the **Third Recital** and the **Contract Particulars**.

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

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

Regulations 1998.

Sections: (where applicable) the Sections into which the Works have been divided, as referred to in the **Sixth Recital** and the **Contract Particulars**.

Section Completion Certificate: see **clause 2.30.2**.

Section Sum: see **clause 2.37** and the **Contract Particulars**.

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

Specification: where applicable under Pricing Option A, the specification as priced or, where Pricing Option B applies, the unpriced specification. (See the **Third Recital**.)

Specified Perils: see **clause 6.8**.

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

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

Tenant: any person named or otherwise sufficiently identified as such (whether by class or description) in or by the Rights Particulars to whom the Employer grants or agrees to grant a leasehold interest in all or part of the Works.

Terrorism Cover: see **clause 6.8**.

Valuation: a valuation by the Quantity Surveyor in accordance with the Valuation Rules, pursuant to **clause 5.2**, or in accordance with **clause 5.3.3**, as applicable.

Valuation Rules: see **clauses 5.6 to 5.10**.

Variation: see **clause 5.1**.

Variation Quotation: see **clause 5.3** and paragraph 1 of **Schedule 2**.

VAT: Value Added Tax.

Works: the works briefly described in the **First Recital** (including, where applicable, the CDP Works), as more particularly shown, described or referred to in the Contract Documents, including any changes made to those works in accordance with this Contract.

Works Insurance Policy: the Joint Names Policy or policies covering the Works and Site Materials to be effected and maintained under whichever of Insurance Options A, B or C applies under this Contract.

Work Schedules: where applicable under Pricing Option A, the work schedules as priced.

Interpretation

1.2 Reference to clauses etc.

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

1.3 Agreement etc. to be read as a whole

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

1.4 Headings, references to persons, legislation etc.

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

- 1.4.1 the headings, notes and footnotes are included for convenience only and shall not affect the interpretation of this Contract;
- 1.4.2 the singular includes the plural and vice versa;
- 1.4.3 a gender includes any other gender;
- 1.4.4 a reference to a 'person' includes any individual, firm, partnership, company and any other body corporate;
- 1.4.5 a reference to a statute, statutory instrument or other subordinate legislation ('legislation') is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification, and including corresponding legislation in any other relevant part of the United Kingdom; and
- 1.4.6 references to documents shall, where there is a BIM Protocol or other protocol relating to the supply of documents or information, be deemed to include information in a form or medium conforming to that protocol.

1.5 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.

1.6 Contracts (Rights of Third Parties) Act 1999

Other than such rights of any Purchasers, Tenants and/or Funder as take effect pursuant to clauses 7.7 and/or 7.8, nothing in this Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

1.7 Notices and other communications

- 1.7.1 Any notice or other communication between the Parties, or by or to the Architect/Contract Administrator or Quantity Surveyor, that is expressly referred to in the Agreement or these Conditions (including, without limitation, each application, approval, consent, confirmation, counter-notice, decision, instruction or other notification) shall be in writing.
- 1.7.2 Subject to clause 1.7.4, each such notice or other communication and any documents to be supplied may or (where so required) shall be sent or transmitted by the means (electronic or otherwise) and in such format as the Parties have agreed or may from time to time agree in writing for the purposes of this Contract.^[27]
- 1.7.3 Subject to clauses 1.7.2 and 1.7.4, any notice, communication or document may be given or served by any effective means and shall be duly given or served if delivered by hand or sent by pre-paid post to:
 - 1.7.3.1 the recipient's address stated in the Contract Particulars, or to such other address as the recipient may from time to time notify to the sender; or
 - 1.7.3.2 if no such address is then current, the recipient's last known principal business address or (where a body corporate) its registered or principal office.
- 1.7.4 Any notice expressly required by this Contract to be given in accordance with this clause 1.7.4 shall be delivered by hand or sent by Recorded Signed for or Special Delivery post. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.
- 1.7.5 If in an emergency any communication is made orally with respect to health and safety, risk of damage to property or insurance matters, written confirmation of it shall be sent as soon thereafter as is reasonably practicable.

[27] In cases where there is no BIM Protocol, the Parties should agree a communications protocol on or before entering into the Contract, or as soon thereafter as is practicable, covering e.g. the medium or format to be used for the Design Submission Procedure (Schedule 1) if not stated in the Employer's Requirements or Contractor's Proposals. See the Standard Building Contract Guide.

1.8 Issue of Architect/Contract Administrator's certificates

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

1.9 Effect of Final Certificate

1.9.1 Subject to clause 1.9.2 (and save in respect of fraud), the Final Certificate shall have effect in any proceedings under or arising out of or in connection with this Contract (whether by adjudication, arbitration or legal proceedings) as conclusive evidence that:

1.9.1.1 where and to the extent that any particular quality of any materials or goods or any particular standard of an item of workmanship was expressly described in the Contract Documents, in any instruction issued by the Architect/Contract Administrator under these Conditions or in any drawings or documents issued by him under any of clauses 2.9 to 2.12, to be for his approval, the particular quality or standard was to his reasonable satisfaction, but the Final Certificate shall not be conclusive evidence that they or any other materials, goods or workmanship comply with any other requirement or term of this Contract;

1.9.1.2 necessary effect has been given to all the terms of this Contract which require an adjustment to be made to the Contract Sum save where there has been an erroneous inclusion or exclusion of any work, materials, goods or figure or an arithmetical error in any computation, in which event the Final Certificate shall have effect as conclusive evidence as to all other computations;

1.9.1.3 all and only such extensions of time, if any, as are due under clause 2.28 have been given; and

1.9.1.4 the reimbursement of direct loss and/or expense, if any, due to the Contractor as agreed, ascertained or valued in accordance with these Conditions is in final settlement of all and any claims which the Contractor has or may have arising out of the occurrence of any Relevant Matters, whether such claim be for breach of contract, duty of care, statutory duty or otherwise.

1.9.2 The effects of the Final Certificate specified in clause 1.9.1 shall in relation to the subject matter of any adjudication, arbitration or other proceedings be suspended pending the conclusion of such proceedings, and shall thereafter be subject to the terms of any decision, award or judgment in and any settlement of those proceedings:

1.9.2.1 where those proceedings are commenced before or within 28 days after the date of issue of the Final Certificate; or

1.9.2.2 in the case of an adjudication commenced within the period referred to in clause 1.9.2.1 in which the Adjudicator gives his decision after the date of issue of the Final Certificate, where arbitration or legal proceedings to determine the dispute or difference in question are commenced within 28 days of the date of that decision

but not otherwise.

1.9.3 For the purposes of clause 1.9.2 any proceedings shall be treated as concluded if during any period of 12 months commencing on or after the issue of the Final Certificate neither Party takes a further step in them.

1.10 Effect of certificates other than Final Certificate

Save as stated in clause 1.9 no certificate of the Architect/Contract Administrator shall of itself be conclusive evidence that any works, any materials or goods or any design completed by the Contractor for the Contractor's Designed Portion to which the certificate relates are in accordance with this Contract.

1.11 Consents and approvals

1.11.1 Where consent or approval of either Party or the Architect/Contract Administrator is expressly required under these Conditions and is requested, then, except as provided in clause 1.11.2, such consent or approval shall not be unreasonably delayed or withheld.

1.11.2 In the following cases the giving of consent or approval shall be at the sole discretion of the

Party from whom it is sought and clause 1.11.1 shall not apply, namely the Employer's consent under clause 2.10, 2.38 or 3.18.2 and either Party's consent under clause 7.1.

1.12 Applicable law

This Contract shall be governed by and construed in accordance with the law of England.^[28]

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

Section 2 Carrying out the Works

Contractor's Obligations

2.1 General obligations

The Contractor shall carry out and complete the Works in a proper and workmanlike manner and in compliance with the Contract Documents, the Construction Phase Plan and Statutory Requirements, and shall give all notices required by the Statutory Requirements.

2.2 Contractor's Designed Portion

Where the Works include a Contractor's Designed Portion, the Contractor shall:

- 2.2.1 in accordance with the Contract Documents, complete the design for the Contractor's Designed Portion, including the selection of any specifications for the kinds and standards of the materials, goods and workmanship to be used in the CDP Works, so far as not described or stated in the Employer's Requirements or the Contractor's Proposals;
- 2.2.2 comply with the Architect/Contract Administrator's directions for the integration of the design of the Contractor's Designed Portion with the design of the Works as a whole, subject to the provisions of clause 3.10.3; and
- 2.2.3 in complying with this clause 2.2, comply with regulations 8 to 10 of the CDM Regulations.

2.3 Materials, goods and workmanship

- 2.3.1 All materials and goods for the Works, excluding any CDP Works, shall, so far as procurable, be of the kinds and standards described in the Specification/Work Schedules. Materials and goods for any CDP Works shall, so far as procurable, be of the kinds and standards described in the Employer's Requirements or, if not there specifically described, as described in the Contractor's Proposals or other Contractor's Design Documents. The Contractor shall not substitute any materials or goods so described without the Architect/Contract Administrator's consent which, if given, shall not relieve the Contractor of his other obligations.
- 2.3.2 Workmanship for the Works, excluding any CDP Works, shall be of the standards described in the Specification/Work Schedules. Workmanship for any CDP Works shall be of the standards described in the Employer's Requirements or, if not there specifically described, as described in the Contractor's Proposals.
- 2.3.3 Insofar as the quality of materials or goods or standards of workmanship are stated to be a matter for the Architect/Contract Administrator's approval, such quality and standards shall be to his reasonable satisfaction. To the extent that the quality of materials and goods or standards of workmanship are neither described in the documents referred to in clause 2.3.1 or 2.3.2 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.
- 2.3.4 The Contractor shall at the Architect/Contract Administrator's request provide him with reasonable proof that the materials and goods used comply with this clause 2.3.
- 2.3.5 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.

Possession

2.4 Date of Possession – progress

On the Date of Possession possession of the site or, in the case of a Section, possession of the

relevant part of the site shall be given to the Contractor who shall thereupon begin the construction of the Works or Section and regularly and diligently proceed with and complete the same on or before the relevant Completion Date. For Works insurance purposes the Contractor shall retain possession:

- 2.4.1 of the site and the Works up to and including the date of issue of the Practical Completion Certificate; or
- 2.4.2 of each Section and the relevant part of the site up to and including the date of issue of the Section Completion Certificate for that Section and, in respect of any balance of the site, up to and including the date of issue of the Practical Completion Certificate

and, subject to clause 2.33 and section 8, the Employer shall not be entitled to take possession of any part or parts of the Works or Section until such date.

2.5 Deferment of possession

If the Contract Particulars state that clause 2.5 applies in respect of the Works or a Section, the Employer may defer the giving of possession of the site or relevant part of it for a period not exceeding 6 weeks or lesser period stated in the Contract Particulars, calculated from the relevant Date of Possession.

2.6 Early use by Employer

- 2.6.1 Notwithstanding clause 2.4, the Employer may, with the Contractor's consent, use or occupy the site or the Works or part of them, whether for storage or otherwise, before the date of issue of the Practical Completion Certificate or relevant Section Completion Certificate. Before the Contractor gives his consent to such use or occupation, the Party responsible for the Works Insurance Policy and/or, where there are Existing Structures, for any insurance cover relating to them shall notify the insurers and obtain confirmation that such use or occupation will not prejudice the insurance.
- 2.6.2 Where Insurance Option A applies and/or the Contractor is to cover his own or any other risks in relation to any Existing Structures and any insurers' confirmation is conditional on an additional premium being paid, the Contractor shall notify the Employer of its amount. If the Employer continues to require such use or occupation, any additional premium shall be added to the Contract Sum and the Contractor shall if requested produce the receipt for it to the Employer.

2.7 Work not forming part of the Contract

In regard to any work not forming part of this Contract which the Employer requires to be carried out by the Employer himself or by any Employer's Person:

- 2.7.1 where the Contract Documents provide the information necessary to enable the Contractor to carry out and complete the Works or each relevant Section in accordance with this Contract, the Contractor shall permit the execution of such work;
- 2.7.2 where the Contract Documents do not provide the information referred to in clause 2.7.1, the Employer may with the Contractor's consent arrange for the execution of that work.

Supply of Documents, Setting Out etc.

2.8 Contract Documents

- 2.8.1 The Contract Documents and (where Pricing Option B applies) the Contract Sum Analysis/Schedule of Rates shall remain in the custody of the Employer and shall be available at all reasonable times for inspection by the Contractor.
- 2.8.2 Immediately after the execution of this Contract the Architect/Contract Administrator, without charge to the Contractor, shall (unless previously provided or unless the BIM Protocol or other communications protocol requires otherwise) provide him with:
 - 2.8.2.1 one copy, certified on behalf of the Employer, of the Contract Documents;
 - 2.8.2.2 two further copies of the Contract Drawings; and
 - 2.8.2.3 two unpriced copies of the Specification/Work Schedules.

- 2.8.3 The Contractor shall keep on the site or accessible there to the Architect/Contract Administrator or his representative at all reasonable times copies of the Contract Documents, the Contractor's Design Documents and the further documents and information referred to in clauses 2.9 to 2.12.
- 2.8.4 None of the documents referred to in this clause 2.8 that are provided to the Contractor shall be used by him for any purpose other than this Contract, and (subject only to clause 2.8.5) the Employer, the Architect/Contract Administrator and the Quantity Surveyor shall not divulge or use except for the purposes of this Contract any of the rates or prices in the Priced Document.
- 2.8.5 Where the Employer is a Local or Public Authority or other body of the type mentioned in Supplemental Provision 7, his obligations of confidentiality shall be subject to that Supplemental Provision.

2.9 Construction information and Contractor's master programme

- 2.9.1 As soon as possible after the execution of this Contract, if not previously provided:
 - 2.9.1.1 the Architect/Contract Administrator, without charge to the Contractor, shall provide him with any descriptive schedules or similar documents necessary for use in carrying out the Works (excluding any CDP Works), together with any pre-construction information required to be provided to the Contractor under regulation 4 of the CDM Regulations; and
 - 2.9.1.2 the Contractor shall without charge provide the Architect/Contract Administrator with his master programme for the execution of the Works identifying the critical paths, where so required by the Contract Particulars, and providing any other details specified by the Contract Documents.
- 2.9.2 Within 14 days of any decision by the Architect/Contract Administrator under clause 2.28.1 or of agreement of any Pre-agreed Adjustment, the Contractor shall provide him with an amendment or revision of the master programme that takes account of that decision or agreement, with the details referred to in clause 2.9.1.2.
- 2.9.3 Nothing in the descriptive schedules or similar documents, or in the master programme or any amendment or revision of it, shall however impose any obligation beyond those imposed by the Contract Documents.
- 2.9.4 In relation to any CDP Works, the Contractor, in addition to complying with clause 2.2, shall as and when necessary from time to time and without charge provide the Architect/Contract Administrator with such Contractor's Design Documents as are reasonably necessary to explain or amplify the Contractor's Proposals, including:
 - 2.9.4.1 such related calculations and information as may be requested; and
 - 2.9.4.2 all levels and setting out dimensions which the Contractor prepares or uses for the purposes of carrying out and completing the Contractor's Designed Portion.
- 2.9.5 The Contractor's Design Documents to be provided pursuant to clause 2.9.4 shall be submitted to the Architect/Contract Administrator in accordance with the Design Submission Procedure and the Contractor shall not commence any work to which a document relates before that procedure has been complied with.

2.10 Levels and setting out of the Works

The Architect/Contract Administrator shall determine any levels required for the execution of the Works and, subject to clause 2.9.4.2, shall provide the Contractor by way of accurately dimensioned drawings with such information as shall enable the Contractor to set out the Works. The Contractor shall be responsible for, and shall at no cost to the Employer amend, any errors arising from his own inaccurate setting out. With the Employer's consent, the Architect/Contract Administrator may instruct that such errors shall not be amended and an appropriate deduction may be made from the Contract Sum for those that are not required to be amended.

2.11 Information Release Schedule

Unless prevented by an act or default of the Contractor or any Contractor's Person, the Architect/Contract Administrator shall ensure that the information referred to in the Information Release Schedule is released at the time stated in that schedule. The Employer and the Contractor

may agree to vary any such time, such agreement not to be unreasonably withheld.

2.12 Further drawings, details and instructions

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

Errors, Discrepancies and Divergences

2.13 Preparation of Employer's Requirements

Subject to clause 2.17, the Contractor shall not be responsible for the contents of the Employer's Requirements or for verifying the adequacy of any design contained within them.

2.14 CDP-related documents – errors and inadequacy

- 2.14.1 If an inadequacy is found in any design in the Employer's Requirements and the Contractor under clause 2.13 is not responsible for verifying its adequacy, then, if or to the extent that the inadequacy is not dealt with in the Contractor's Proposals, the Employer's Requirements shall be altered or modified accordingly and, subject to clause 2.17, that alteration or modification shall be treated as a Variation.
- 2.14.2 Any error in description or in quantity in the Contractor's Proposals or the CDP Analysis and any erroneous omission of items from them shall be corrected, but there shall be no addition to the Contract Sum in respect of that correction or in respect of any instruction requiring a Variation of work not comprised in the Contractor's Designed Portion that is necessitated by the error or its correction.

2.15 Notice of discrepancies etc.

If the Contractor becomes aware of any such error, omission or inadequacy as is referred to in clause 2.14 or any other discrepancy or divergence in or between any of the following, namely:

- 2.15.1 the Contract Drawings;
- 2.15.2 the Specification/Work Schedules;
- 2.15.3 any instruction issued by the Architect/Contract Administrator under these Conditions;
- 2.15.4 any drawings or documents issued by the Architect/Contract Administrator under any of clauses 2.9 to 2.12; and
- 2.15.5 (where applicable) the Contractor's Proposals and other Contractor's Design Documents,
- he shall immediately give notice with appropriate details to the Architect/Contract Administrator, who shall issue instructions in that regard.

2.16 Discrepancies in CDP-related documents

- 2.16.1 Where the discrepancy or divergence to be notified under clause 2.15 is within or between the Contractor's Proposals and/or other Contractor's Design Documents, the Contractor shall send with his notice, or as soon thereafter as is reasonably practicable, a statement

setting out his proposed amendments to remove it. On receiving that statement, the Architect/Contract Administrator shall issue instructions and the Contractor shall comply with them but, to the extent that they relate to the removal of that discrepancy or divergence, there shall be no addition to the Contract Sum.

- 2.16.2 Where the discrepancy is within the Employer's Requirements (including any Variation of them) the Contractor's Proposals shall prevail (subject to compliance with Statutory Requirements), without any adjustment of the Contract Sum. Where the Contractor's Proposals do not deal with the discrepancy, the Contractor shall notify the Architect/Contract Administrator of his proposed amendment to deal with it and the Architect/Contract Administrator shall either agree the proposed amendment or decide how the discrepancy is to be dealt with; that agreement or decision shall be notified to the Contractor and treated as a Variation.

2.17 Divergences from Statutory Requirements

- 2.17.1 If the Contractor or Architect/Contract Administrator becomes aware of a divergence between the Statutory Requirements and a document referred to in clause 2.15, he shall immediately give the other notice specifying the divergence and, where it is between the Statutory Requirements and the Employer's Requirements, the Contractor's Proposals or other Contractor's Design Documents, the Contractor shall notify the Architect/Contract Administrator of his proposed amendment for removing it.
- 2.17.2 Within 7 days of becoming aware of such divergence (or, where applicable, within 14 days of receipt of the Contractor's proposed amendment), the Architect/Contract Administrator shall issue instructions in that regard, in relation to which:
- 2.17.2.1 if the divergence is between the Statutory Requirements and the Employer's Requirements or any document referred to in clause 2.15.5, the Contractor shall comply at no cost to the Employer unless after the Base Date there is a change in the Statutory Requirements which necessitates an alteration or modification to the Contractor's Designed Portion, in which event the instruction shall to that extent be treated as a Variation of the Employer's Requirements; and
- 2.17.2.2 in any other case, if and insofar as those instructions require the Works to be varied, they shall be treated as a Variation.
- 2.17.3 Provided the Contractor is not in breach of clause 2.17.1, 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 documents referred to in clauses 2.15.1 to 2.15.4.

2.18 Emergency compliance with Statutory Requirements

- 2.18.1 If in an emergency compliance with the Statutory Requirements necessitates the Contractor supplying materials and/or executing work before receiving instructions under clause 2.17.2, the Contractor shall supply such limited materials and execute such limited work as are reasonably necessary to secure immediate compliance.
- 2.18.2 The Contractor shall forthwith notify the Architect/Contract Administrator of the emergency and the steps that he is taking under clause 2.18.1.
- 2.18.3 Where the emergency arises from a divergence between the Statutory Requirements and any of the documents referred to in clauses 2.15.1 to 2.15.4, then, provided that the Contractor has complied with clause 2.18.2, the execution and supply of work and materials under clause 2.18.1 shall be treated as a Variation.

CDP Design Work

2.19 Design liabilities and limitation

Where there is a Contractor's Designed Portion:

- 2.19.1 insofar as its design is comprised in the Contractor's Proposals and in what he is to complete in accordance with the Employer's Requirements and these Conditions (including any further design that he is required to carry out as a result of a Variation), the Contractor shall in respect of any inadequacy in such design have the same liability to the Employer,

whether under statute or otherwise, as would an architect or other appropriate professional designer who holds himself out as competent to take on work for such design and who, acting independently under a separate contract with the Employer, has supplied such design for or in connection with works to be carried out and completed by a building contractor who is not the supplier of the design;

- 2.19.2 where and to the extent that this Contract involves the Contractor in taking on work for or in connection with the provision of a dwelling or dwellings, the clause 2.19.1 reference to the Contractor's liability includes liability under the Defective Premises Act 1972;
- 2.19.3 where or to the extent that this Contract does not involve the Contractor in taking on work for or in connection with the provision of a dwelling or dwellings to which that Act applies, the Contractor's liability for loss of use, loss of profit or other consequential loss arising in respect of the liability of the Contractor referred to in clause 2.19.1 shall be limited to the amount, if any, stated in the Contract Particulars; but such a limitation shall not apply to or be affected by any liability for liquidated damages under clause 2.32.

2.20 Errors and failures – other consequences

No extension of time shall be given, and clauses 4.20 and 8.9.2 shall not have effect, insofar as the cause of the progress of the Works being delayed, affected or suspended is:

- 2.20.1 an error, divergence, omission or discrepancy in the Contractor's Proposals or other Contractor's Design Documents, or a failure of the Contractor, in completing those documents, to comply with clause 2.2.3; or
- 2.20.2 a failure by the Contractor to provide in due time any necessary Contractor's Design Documents or information either:
- 2.20.2.1 as required by clause 2.9.5; or
- 2.20.2.2 in response to a request from the Architect/Contract Administrator that specifies the documents or information and date by which it is reasonably necessary for him to receive them, having regard to the progress of the Works (or, where practical completion of the Works or Section is likely to be achieved before the relevant Completion Date, having regard to that Completion Date).

Fees, Royalties and Patent Rights

2.21 Fees or charges legally demandable

The Contractor shall pay all fees or charges (including any rates or taxes) legally demandable under any Statutory Requirement and indemnify the Employer against any liability resulting from any failure to do so. Where such fees or charges are stated by way of a Provisional Sum in the Specification/Work Schedules they shall be dealt with in accordance with clauses 4.3.4 and 4.3.5 and in any other case the amount of any such fees or charges (including any rates or taxes other than VAT) shall be added to the Contract Sum unless they:

- 2.21.1 are stated in the Specification/Work Schedules to be included in the Contract Sum; or
- 2.21.2 relate solely to the Contractor's Designed Portion (in which case they shall be deemed to be included in the Contract Sum).

2.22 Patent rights and royalties – Contractor's indemnity

Where the carrying out of the Works as described by or referred to in the Specification/Work Schedules or the Employer's Requirements or any Variation Quotation of which there is Confirmed Acceptance involves the supply or use of any patented article, process or other invention, all royalties or other sums payable in respect of such supply and use shall be deemed to have been included in the Contract Sum or, where appropriate, the quoted adjustment to that sum, and the Contractor shall indemnify the Employer from and against all claims and proceedings which may be brought or made against the Employer, and all damages, costs and expense to which he may be put, by reason of the Contractor infringing or being held to have infringed any patent rights in relation to any such articles, processes or inventions.

2.23 Patent rights – Instructions

- 2.23.1 Where in order to comply with the Architect/Contract Administrator's instructions, other than

in relation to a Variation Quotation of which there is Confirmed Acceptance, it is necessary for the Contractor in carrying out the Works to supply and/or use any patented article, process or other invention, the Contractor shall not be liable in respect of any infringement or alleged infringement of any patent rights relating to it and all royalties, damages or other sums which the Contractor may be liable to pay to the persons entitled to such rights shall be added to the Contract Sum.

- 2.23.2 If prior to the instructions being carried out the Architect/Contract Administrator or the Contractor is or becomes aware that such supply or use may infringe any patent rights, he shall promptly notify and consult the other and the instructions shall not take effect unless confirmed by the Architect/Contract Administrator.

Unfixed Materials and Goods – property, risk etc.

2.24 Materials and goods – on site

Site Materials shall not be removed from storage on or adjacent to the Works except for use on the Works without the Architect/Contract Administrator's consent. Where their value has in accordance with clauses 4.9 and 4.14 been included in any Interim Certificate under which the amount properly due to the Contractor has been paid by the Employer, they shall upon such payment become the Employer's property, but, subject to Insurance Option B or C (if applicable), the Contractor shall remain responsible for loss or damage to them.

2.25 Materials and goods – off site

Where the value of any Listed Items has in accordance with clause 4.16 been included in any Interim Certificate under which the amount properly due to the Contractor has been paid by the Employer, those items shall become the Employer's property and thereafter the Contractor shall not, except for use upon the Works, remove or cause or permit them to be moved or removed from the premises where they are. The Contractor shall be responsible for any loss of or damage to them and for the cost of their storage, handling and insurance until they are delivered to and placed on or adjacent to the Works. As from such delivery the provisions of clause 2.24 (except the words "Where their value" to "Employer's property, but,") shall apply to such items.

Adjustment of Completion Date

2.26 Related definitions and interpretation

In clauses 2.27 to 2.29 and, so far as relevant, in the other clauses of these Conditions:

- 2.26.1 any reference to delay or extension of time includes any further delay or further extension of time;
- 2.26.2 'Pre-agreed Adjustment' means the fixing of a revised Completion Date for the Works or a Section by the Confirmed Acceptance of a Variation Quotation or an Acceleration Quotation;
- 2.26.3 'Relevant Omission' means the omission of any work or obligation through an instruction for a Variation under clause 3.14.

2.27 Notice by Contractor of delay to progress

- 2.27.1 If and whenever it becomes reasonably apparent that the progress of the Works or any Section is being or is likely to be delayed the Contractor shall forthwith give notice to the Architect/Contract Administrator of the material circumstances, including the cause or causes of the delay, and shall identify in the notice any event which in his opinion is a Relevant Event.
- 2.27.2 In respect of each event identified in the notice the Contractor shall, if practicable in such notice or otherwise in writing as soon as possible thereafter, give particulars of its expected effects, including an estimate of any expected delay in the completion of the Works or any Section beyond the relevant Completion Date.
- 2.27.3 The Contractor shall forthwith notify the Architect/Contract Administrator of any material change in the estimated delay or in any other particulars and supply such further information as the Architect/Contract Administrator may at any time reasonably require.

2.28 Fixing Completion Date

- 2.28.1 If, in the Architect/Contract Administrator's opinion, on receiving a notice and particulars under clause 2.27:
- 2.28.1.1 any of the events which are stated to be a cause of delay is a Relevant Event; and
- 2.28.1.2 completion of the Works or of any Section is likely to be delayed thereby beyond the relevant Completion Date,
- then, save where these Conditions expressly provide otherwise, the Architect/Contract Administrator shall give an extension of time by fixing such later date as the Completion Date for the Works or Section as he then estimates to be fair and reasonable.
- 2.28.2 Whether or not an extension is given, the Architect/Contract Administrator shall notify the Contractor of his decision in respect of any notice under clause 2.27 as soon as is reasonably practicable and in any event within 12 weeks of receipt of the required particulars. Where the period from receipt to the Completion Date is less than 12 weeks, he shall endeavour to do so prior to the Completion Date.
- 2.28.3 The Architect/Contract Administrator shall in his decision state:
- 2.28.3.1 the extension of time that he has attributed to each Relevant Event; and
- 2.28.3.2 (in the case of a decision under clause 2.28.4 or 2.28.5) the reduction in time that he has attributed to each Relevant Omission.
- 2.28.4 After the first fixing of a later Completion Date in respect of the Works or a Section, either under clause 2.28.1 or by a Pre-agreed Adjustment, but subject to clauses 2.28.6.3 and 2.28.6.4, the Architect/Contract Administrator may by notice to the Contractor, giving the details referred to in clause 2.28.3, fix a Completion Date for the Works or that Section earlier than that previously so fixed if in his opinion the fixing of such earlier Completion Date is fair and reasonable, having regard to any Relevant Omissions for which instructions have been issued after the last occasion on which a new Completion Date was fixed for the Works or for that Section.
- 2.28.5 After the Completion Date for the Works or for a Section, if this occurs before the date of practical completion, the Architect/Contract Administrator may, and not later than the expiry of 12 weeks after the date of practical completion shall, by notice to the Contractor, giving the details referred to in clause 2.28.3:
- 2.28.5.1 fix a Completion Date for the Works or for the Section later than that previously fixed if in his opinion that is fair and reasonable having regard to any Relevant Events, whether on reviewing a previous decision or otherwise and whether or not the Relevant Event has been specifically notified by the Contractor under clause 2.27.1; or
- 2.28.5.2 subject to clauses 2.28.6.3 and 2.28.6.4, fix a Completion Date earlier than that previously fixed if in his opinion that is fair and reasonable having regard to any instructions for Relevant Omissions issued after the last occasion on which a new Completion Date was fixed for the Works or Section; or
- 2.28.5.3 confirm the Completion Date previously fixed.
- 2.28.6 Provided always that:
- 2.28.6.1 the Contractor shall constantly use his best endeavours to prevent delay in the progress of the Works or any Section, however caused, and to prevent the completion of the Works or Section being delayed or further delayed beyond the relevant Completion Date;
- 2.28.6.2 in the event of any delay the Contractor shall do all that may reasonably be required to the satisfaction of the Architect/Contract Administrator to proceed with the Works or Section;
- 2.28.6.3 no decision of the Architect/Contract Administrator under clause 2.28.4 or 2.28.5.2 shall fix a Completion Date for the Works or any Section earlier than the relevant Date for Completion; and

- 2.28.6.4 no decision under clause 2.28.4 or 2.28.5.2 shall alter the length of any Pre-agreed Adjustment except in the case of a Variation Quotation where the relevant Variation is itself the subject of a Relevant Omission.

2.29 Relevant Events

The following are the Relevant Events referred to in clauses 2.27 and 2.28:

- 2.29.1 Variations and any other matters or instructions which under these Conditions are to be treated as, or as requiring, a Variation;
- 2.29.2 Architect/Contract Administrator's instructions:
 - 2.29.2.1 under any of clauses 2.15, 3.15, 3.16 or 5.3.2;
 - 2.29.2.2 for the opening up for inspection or testing of any work, materials or goods under clause 3.17 or 3.18.4 (including making good), unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract; or
 - 2.29.2.3 in respect of any notification of reasonable objections under Supplemental Provision 9, paragraph 9.4;
- 2.29.3 deferment of the giving of possession of the site or any Section under clause 2.5;
- 2.29.4 compliance with clause 3.22.1 or with Architect/Contract Administrator's instructions under clause 3.22.2;
- 2.29.5 suspension by the Contractor under clause 4.13 of the performance of any or all of his obligations under this Contract;
- 2.29.6 any impediment, prevention or default, whether by act or omission, by the Employer, the Architect/Contract Administrator, the Quantity Surveyor or any Employer's Person, except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or any Contractor's Person;
- 2.29.7 the carrying out by a Statutory Undertaker of work in pursuance of its statutory obligations in relation to the Works, or the failure to carry out such work;
- 2.29.8 exceptionally adverse weather conditions;
- 2.29.9 loss or damage occasioned by any Specified Peril;
- 2.29.10 civil commotion or the use or threat of terrorism and/or the activities of the relevant authorities in dealing with such event or threat;
- 2.29.11 strike, lock-out or local combination of workmen affecting any trade employed upon the Works or engaged in the preparation, manufacture or transportation of any of the goods or materials required for them or any persons engaged in design work for the Contractor's Designed Portion;
- 2.29.12 the exercise after the Base Date by the United Kingdom Government or any Local or Public Authority of any statutory power that is not occasioned by a default of the Contractor or any Contractor's Person but which directly affects the execution of the Works;
- 2.29.13 a Named Specialist being or becoming Insolvent;
- 2.29.14 force majeure.

Practical Completion, Lateness and Liquidated Damages

2.30 Practical completion and certificates

When in the Architect/Contract Administrator's opinion practical completion of the Works or a Section is achieved and the Contractor has complied sufficiently with clauses 2.40 and 3.23 in respect of the supply of documents and information, then:

- 2.30.1 in the case of the Works, the Architect/Contract Administrator shall forthwith issue a certificate to that effect ('the Practical Completion Certificate');

2.30.2 in the case of a Section, he shall forthwith issue a certificate of practical completion of that Section (a 'Section Completion Certificate');

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

2.31 Non-Completion Certificates

If the Contractor fails to complete the Works or a Section by the relevant Completion Date, the Architect/Contract Administrator shall issue a certificate to that effect (a 'Non-Completion Certificate'). If a new Completion Date is fixed after the issue of such a certificate, such fixing shall cancel that certificate and the Architect/Contract Administrator shall where necessary issue a further certificate.

2.32 Payment or allowance of liquidated damages

2.32.1 Provided:

2.32.1.1 the Architect/Contract Administrator has issued a Non-Completion Certificate for the Works or a Section; and

2.32.1.2 the Employer has notified the Contractor before the date of the Final Certificate that he may require payment of, or may withhold or deduct, liquidated damages,

the Employer may, not later than 5 days before the final date for payment of the amount payable under clause 4.26, give notice to the Contractor in the terms set out in clause 2.32.2.

2.32.2 A notice from the Employer under clause 2.32.1 shall state that for the period between the Completion Date and the date of practical completion of the Works or that Section:

2.32.2.1 he requires the Contractor to pay liquidated damages at the rate stated in the Contract Particulars, or lesser rate stated in the notice, in which event the Employer may recover the same as a debt; and/or

2.32.2.2 that he will withhold or deduct liquidated damages at the rate stated in the Contract Particulars, or at such lesser stated rate, from sums due to the Contractor.^[29]

2.32.3 If the Architect/Contract Administrator fixes a later Completion Date for the Works or a Section or such later Completion Date is stated in a Confirmed Acceptance, the Employer shall pay or repay to the Contractor any amounts recovered, allowed or paid under clause 2.32 for the period up to that later Completion Date.

2.32.4 If the Employer in relation to the Works or a Section has notified the Contractor in accordance with clause 2.32.1.2 that he may require payment of, or may withhold or deduct, liquidated damages, then, unless the Employer states otherwise in writing, clause 2.32.1.2 shall remain satisfied in relation to the Works or Section, notwithstanding the cancellation of the relevant Non-Completion Certificate and issue of any further Non-Completion Certificate.

Partial Possession by Employer

2.33 Contractor's consent

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

[29] In addition to the notice under clause 2.32.2, the Employer, if he intends to withhold or deduct all or any of the liquidated damages payable, must give the appropriate Pay Less Notice under clause 4.11.5.

2.34 Practical completion date

For the purposes of clauses 2.38 and 4.19.2, practical completion of the Relevant Part shall be deemed to have occurred, and the Rectification Period in respect of the Relevant Part shall be deemed to have commenced, on the Relevant Date.

2.35 Defects etc. – Relevant Part

When in the Architect/Contract Administrator's opinion any defects, shrinkages or other faults in the Relevant Part which he has required to be made good under clause 2.38 have been made good, he shall issue a certificate to that effect.

2.36 Insurance – Relevant Part

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

2.37 Liquidated damages – Relevant Part

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

Defects**2.38 Schedules of defects and instructions**

If any defects, shrinkages or other faults in the Works or a Section appear within the relevant Rectification Period due to materials, goods or workmanship not in accordance with this Contract or any failure of the Contractor to comply with his obligations in respect of the Contractor's Designed Portion:

- 2.38.1 such defects, shrinkages and other faults shall be specified by the Architect/Contract Administrator in a schedule of defects which he shall deliver to the Contractor as an instruction not later than 14 days after the expiry of that Rectification Period; and
- 2.38.2 prior to issue of that schedule, the Architect/Contract Administrator may whenever he considers it necessary issue instructions requiring any such defect, shrinkage or other fault to be made good, provided no instructions under this clause 2.38.2 shall be issued after delivery of that schedule or more than 14 days after the expiry of the relevant Rectification Period.

Within a reasonable time after receipt of such schedule or instructions, the defects, shrinkages and other faults shall at no cost to the Employer be made good by the Contractor unless the Architect/Contract Administrator with the Employer's consent instructs otherwise. If he so instructs otherwise, an appropriate deduction may be made from the Contract Sum in respect of the defects, shrinkages or other faults not made good.

2.39 Certificate of Making Good

When in the Architect/Contract Administrator's opinion the defects, shrinkages or other faults in the Works or a Section which under clause 2.38 he has required to be made good have been made good, he shall issue a certificate to that effect (a 'Certificate of Making Good'), and completion of that making good shall for the purposes of this Contract be deemed to have taken place on the date stated in that certificate.

Contractor's Design Documents**2.40 As-built Drawings**

Where there is a Contractor's Designed Portion, the Contractor, in addition to his obligations under the CDM Regulations in relation to information for the health and safety file, shall, before practical completion of the Works or relevant Section and without further charge to the Employer, supply for retention and use by the Employer such Contractor's Design Documents and related information as is specified in the Contract Documents or as the Employer may reasonably require that show or

describe the Contractor's Designed Portion as built or relate to the maintenance and operation of it or its installations.

2.41 Copyright and use

- 2.41.1 Subject to any rights in any designs, drawings and other documents supplied to the Contractor for the purposes of this Contract by or on behalf of the Employer or the Architect/Contract Administrator, all rights including (without limitation) copyright in all Contractor's Design Documents shall remain vested in the Contractor.
- 2.41.2 Subject to all sums due and payable under this Contract to the Contractor having been paid, the Employer shall have an irrevocable, royalty-free, non-exclusive licence to copy and use the Contractor's Design Documents and to reproduce the designs and content of them for any purpose relating to the Works including, without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Works. That licence shall enable the Employer to copy and use the Contractor's Design Documents for an extension of the Works but shall not include any right or licence to reproduce the designs contained in them for any such extension.
- 2.41.3 The licence shall be assignable to any owner from time to time of the Works or any part of them and may be sub-licensed to any owner or tenant of the Works or part of them and to any person engaged for the purposes permitted by clause 2.41.2.
- 2.41.4 The Contractor shall not be liable for any use by the Employer of any of the Contractor's Design Documents for any purpose other than that for which they were prepared.

Section 3 Control of the Works

Access and Representatives

3.1 Access for Architect/Contract Administrator

The Architect/Contract Administrator and any person authorised by him shall at all reasonable times have access to the Works and to the workshops or other premises of the Contractor where work is being prepared for this Contract. When work is to be prepared in workshops or other premises of a sub-contractor the Contractor shall by a term in the sub-contract secure so far as possible a similar right of access to those workshops or premises for the Architect/Contract Administrator and any person authorised by him and take any steps reasonably necessary to make that right effective. Access under this clause 3.1 may be subject to such reasonable restrictions as are necessary to protect proprietary rights.

3.2 Site Manager

The Contractor shall prior to the commencement of work on site appoint a full-time Site Manager, approved by the Employer, to act as the Contractor's representative there, in charge of the Works. The Contractor shall ensure that the appointee, or a competent deputy, is on site at all material times and, if the appointee ceases to hold the post, shall promptly appoint a replacement approved by the Employer. Any instructions issued to the Site Manager or his deputy shall be treated as issued to the Contractor.

3.3 Employer's representative

The Employer may appoint an individual to act as his representative by giving notice to the Contractor that from the date stated the individual identified in the notice will exercise all the functions ascribed to the Employer in these Conditions, subject to any exceptions stated in the notice. The Employer may by notice to the Contractor terminate any such appointment and/or appoint a replacement.^[30]

3.4 Clerk of works

The Employer shall be entitled to appoint a clerk of works whose duty shall solely be to act as inspector on behalf of the Employer under the Architect/Contract Administrator's directions and the Contractor shall afford every reasonable facility for the performance of that duty. Any direction given by the clerk of works shall be of no effect unless it relates to a matter on which these Conditions expressly empower the Architect/Contract Administrator to issue instructions and unless the latter confirms it by an instruction within 2 Business Days of the direction being given.

3.5 Replacement of Architect/Contract Administrator or Quantity Surveyor

3.5.1 If the Architect/Contract Administrator or Quantity Surveyor (or any person exercising the Quantity Surveyor's functions) at any time ceases to hold that post, the Employer shall as soon as reasonably practicable, and in any event within 21 days of the cessation, nominate a replacement and notify the Contractor. Except where the Employer is a Local or Public Authority and the nominated replacement is an official of it, the Contractor may within 7 days of the notice give a counter-notice objecting to that nomination; if the Contractor's objections are accepted by the Employer or considered sufficient by a person appointed under the dispute resolution procedures of this Contract, the Employer shall withdraw the nomination and nominate an acceptable replacement.

3.5.2 No replacement Architect/Contract Administrator appointed for this Contract shall be entitled to disregard or overrule any certificate, opinion, decision, consent, approval or instruction given or expressed by any predecessor in that post, save to the extent that that predecessor if still in the post would then have had power under this Contract to do so.

[30] To avoid confusion between the roles of the Architect/Contract Administrator and the Quantity Surveyor on the one hand and that of the Employer's representative on the other, neither the Architect/Contract Administrator nor the Quantity Surveyor should be appointed as the Employer's representative.

3.6 Contractor's responsibility

Irrespective of the Architect/Contract Administrator's obligations to the Employer and any appointment of a clerk of works, the Contractor shall remain wholly responsible for carrying out and completing the Works in all respects in accordance with these Conditions. That responsibility shall not be affected by the Architect/Contract Administrator or clerk of works at any time inspecting the Works, any workshop or other premises or any work in preparation there, by the inclusion of the value of any work, materials or goods in a Payment Certificate, subject to clause 1.9, or by the issue of any other certificate under this Contract.

Sub-Contracting**3.7 Consent to sub-contracting**

3.7.1 Save for any sub-contract entered into in accordance with clause 3.8 or Supplemental Provision 9, where it applies:

3.7.1.1 the Contractor shall not without the Architect/Contract Administrator's consent sub-contract the whole or any part of the Works;

3.7.1.2 where there is a Contractor's Designed Portion, the Contractor shall not without the Employer's consent sub-contract that design or any part of it.

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.

3.7.2 The provisions of this clause 3.7 and of clauses 3.8 and 3.9 shall not apply to the execution of part of the Works by a Statutory Undertaker, who shall not in that capacity be a sub-contractor within the terms of this Contract.

3.8 List in Specification/Work Schedules

Where the Specification/Work Schedules provide that particular work described therein for pricing by the Contractor is to be carried out by one of the persons identified in a list in or annexed to that document, the selection of his sub-contractor from that list shall be made by the Contractor at his sole discretion. In relation to the list, the following provisions shall apply:

3.8.1 the list shall comprise not less than three persons; the Employer (or the Architect/Contract Administrator on his behalf) and the Contractor may each with the other's consent add persons to the list at any time prior to execution of the sub-contract for the work;^[31]

3.8.2 if at any time prior to execution of the sub-contract there are less than three persons listed who are able and willing to carry out the work, then, unless there is agreement to add to the list so that it comprises three or more such persons, the work shall be carried out by the Contractor who may with consent under clause 3.7 sub-contract to any sub-contractor.

3.9 Conditions of sub-contracting

Where considered appropriate, the Contractor shall engage the sub-contractor using the relevant version of the JCT Standard Building Sub-Contract. It shall be a condition of any sub-contract that^[32]:

3.9.1 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;

3.9.2 the sub-contract shall provide:

3.9.2.1 that, except for use on the Works, no Site Materials delivered to the Works by or for the sub-contractor shall be removed without the Contractor's written consent (such consent not to be unreasonably delayed or withheld) and (in addition to any provision for earlier vesting in the Contractor of title to any Listed Items for the purposes of clause 4.16.2.1 of these Conditions) that:

3.9.2.1.1 where, in accordance with clauses 4.9 and 4.14 of these Conditions,

[31] Any such addition should be confirmed in writing.

[32] The JCT Standard Building Sub-Contracts (SBCSub and SBCSub/D) meet the requirements of clause 3.9 and also those of paragraphs A.3 and B.4 respectively of JCT Fluctuations Options A and B.

the value of any Site Materials has been included in any Interim Certificate under which the amount properly due to the Contractor has been paid to him, they shall upon such payment become, and the sub-contractor shall not deny that they have become, the Employer's property;

- 3.9.2.1.2 if the Contractor pays the sub-contractor for any Site Materials before their value is included in an Interim Certificate, they shall upon such payment become the Contractor's property;
- 3.9.2.2 that the sub-contractor shall give access to workshops or other premises in accordance with clause 3.1 of these Conditions;
- 3.9.2.3 that each party to the sub-contract shall in relation to the Works and the site comply with applicable CDM Regulations;
- 3.9.2.4 in terms equivalent to those of clause 4.11.6 of these Conditions, that if by a final date for payment under the sub-contract the Contractor fails to pay the sub-contractor any amount that should properly have been paid, the Contractor shall, in addition to that amount, pay simple interest on it at the Interest Rate for the period from the final date for payment until such payment is made;
- 3.9.2.5 that where the Rights Particulars provide for the grant of third party rights from and/or for the execution and delivery of collateral warranties by the sub-contractor:
 - 3.9.2.5.1 the sub-contract and, where applicable, those collateral warranties shall if those particulars require be executed as deeds;
 - 3.9.2.5.2 any third party rights required shall vest on receipt of notice from the Contractor to that effect and any collateral warranty required shall be executed and delivered by the sub-contractor within 14 days of receipt of the Contractor's notice requiring execution;
 - 3.9.2.5.3 the terms of and those governing such third party rights or collateral warranties shall in each case be consistent with those of clauses 2.26 and 2.27 and Schedule 6 of the JCT Standard Building Sub-Contract Conditions;
- 3.9.3 where documents or information and/or the grant of licences are or may be required from the sub-contractor for the BIM Protocol, where applicable, and/or for the purposes of clauses 2.40 and 3.23 of these Conditions, the sub-contract shall also provide for the supply and grant to and by the sub-contractor of all information and licences reasonably necessary for that purpose.

The Contractor shall not give such consent as is referred to in clause 3.9.2.1 without the Architect/Contract Administrator's prior consent under clause 2.24 of these Conditions.

Architect/Contract Administrator's Instructions

3.10 Compliance with instructions

The Contractor shall forthwith comply with all instructions issued to him by the Architect/Contract Administrator on any matter on which these Conditions expressly empower the Architect/Contract Administrator to issue instructions, save that:

- 3.10.1 where an instruction requires a Variation of the type referred to in clause 5.1.2, the Contractor need not comply to the extent that he notifies a reasonable objection to it to the Architect/Contract Administrator;
- 3.10.2 where an instruction for a Variation is given which under clause 5.3.1 requires the Contractor to provide a Variation Quotation, the Variation shall not be carried out until the Architect/Contract Administrator has in relation to it issued either a Confirmed Acceptance or a further instruction under clause 5.3.2;
- 3.10.3 if the Contractor considers that compliance with any direction under clause 2.2.2 or any instruction would adversely affect the efficacy of the design of the Contractor's Designed Portion or his compliance with applicable CDM Regulations and if within 7 days of receipt

of the direction or instruction he gives notice to the Architect/Contract Administrator specifying that adverse effect, the direction or instruction shall not take effect unless and until confirmed by the Architect/Contract Administrator;

- 3.10.4 in the case of a notification by the Contractor under clause 2.23.2, the Contractor need not comply pending confirmation of the instruction;
- 3.10.5 in the case of a notification under Supplemental Provision 9, paragraph 9.4, the Contractor need not comply pending further instructions under that paragraph.

3.11 Non-compliance with instructions

Subject to clause 3.10, if within 7 days after receipt of a notice from the Architect/Contract Administrator requiring compliance with an instruction the Contractor does not comply, the Employer may employ and pay other persons to execute work of any kind that may be necessary to give effect to that instruction. The Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and an appropriate deduction may be made from the Contract Sum.

3.12 Instructions other than in writing

- 3.12.1 Where the Architect/Contract Administrator gives an instruction otherwise than in writing, it shall be of no immediate effect but the Contractor shall confirm its terms in writing to the Architect/Contract Administrator within 7 days, and, if he does not dissent by notice to the Contractor within 7 days from receipt of the Contractor's confirmation, it shall take effect as from the expiry of the latter 7 day period.
- 3.12.2 If prior to or within 7 days from receipt of the Contractor's confirmation the Architect/Contract Administrator confirms the terms of the instruction in writing, it shall take effect from the date and in the terms of the Architect/Contract Administrator's confirmation.
- 3.12.3 If neither the Contractor nor the Architect/Contract Administrator confirms such an instruction in the manner and time stated but the Contractor nevertheless complies with it, the Architect/Contract Administrator may at any time prior to the issue of the Final Certificate confirm it with retrospective effect.

3.13 Provisions empowering instructions

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

3.14 Instructions requiring Variations

- 3.14.1 The Architect/Contract Administrator may issue instructions requiring a Variation.
- 3.14.2 Any instruction of the type referred to in clause 5.1.2 shall be subject to the Contractor's right of reasonable objection set out in clause 3.10.1.
- 3.14.3 In respect of the Contractor's Designed Portion, any instruction requiring a Variation shall be an alteration to or modification of the Employer's Requirements.
- 3.14.4 The Architect/Contract Administrator may sanction in writing any Variation made by the Contractor otherwise than pursuant to an instruction.
- 3.14.5 No Variation required or sanctioned by the Architect/Contract Administrator shall vitiate this Contract.

3.15 Postponement of work

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

3.16 Instructions on Provisional Sums

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

3.17 Inspection – tests

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

3.18 Work not in accordance with the Contract

If any work, materials or goods are not in accordance with this Contract the Architect/Contract Administrator, in addition to his other powers, may:

- 3.18.1 issue instructions in regard to the removal from the site of all or any of such work, materials or goods;
- 3.18.2 after consultation with the Contractor and with the Employer's consent, allow all or any such work, materials or goods to remain, in which event he shall notify the Contractor to that effect but that shall not be construed as a Variation and an appropriate deduction may be made from the Contract Sum;
- 3.18.3 after consultation with the Contractor, issue such Variation instructions as are a reasonably necessary consequence of any instruction under clause 3.18.1 and/or notification under clause 3.18.2 (but to the extent that such instructions are reasonably necessary, no addition shall be made to the Contract Sum and no extension of time shall be given); and/or
- 3.18.4 having due regard to the Code of Practice set out in Schedule 4, issue such instructions under clause 3.17 to open up for inspection or to test as are reasonable in all the circumstances to establish to his reasonable satisfaction the likelihood or extent, as appropriate to the circumstances, of any further similar non-compliance. To the extent that those instructions are reasonable, whatever the results of the opening up, no addition shall be made to the Contract Sum but clauses 2.28 and 2.29.2.2 shall apply unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract.

3.19 Workmanship not in accordance with the Contract

Where there is any failure to comply with clause 2.1 in regard to the carrying out of work in a proper and workmanlike manner or in accordance with the Construction Phase Plan, the Architect/Contract Administrator, in addition to his other powers, may, after consultation with the Contractor, issue such instructions (whether requiring a Variation or otherwise) as are in consequence reasonably necessary. To the extent that such instructions are reasonably necessary, no addition shall be made to the Contract Sum and no extension of time shall be given.

3.20 Executed work

In respect of any materials, goods or workmanship, as comprised in executed work, which under clause 2.3 are to be to his reasonable satisfaction, the Architect/Contract Administrator, if he is dissatisfied, shall give the reasons for such dissatisfaction to the Contractor within a reasonable time from the execution of the unsatisfactory work.

3.21 Exclusion of persons 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.

3.22 Antiquities

- 3.22.1 All fossils, antiquities and other objects of interest or value which may be found on the site or in excavating it during the progress of the Works shall become the Employer's property. Upon discovery of any such object the Contractor shall forthwith:
 - 3.22.1.1 use his best endeavours not to disturb the object and cease work if and insofar as its continuance would endanger the object or prevent or impede its excavation or removal;
 - 3.22.1.2 take all steps necessary to preserve the object in the exact position and

condition in which it was found; and

3.22.1.3 inform the Architect/Contract Administrator or the clerk of works of its discovery and precise location.

3.22.2 The Architect/Contract Administrator shall issue instructions as to action to be taken concerning any object reported under clause 3.22.1, which (without limiting his powers) may require the Contractor to permit the examination, excavation or removal of the object by a third party.

CDM Regulations

3.23 CDM Regulations

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

- 3.23.1 the Employer shall ensure that the Principal Designer carries out his duties and, where the Contractor is not the Principal Contractor, shall ensure that the Principal Contractor carries out his duties under those regulations;
- 3.23.2 whether or not clause 2.2.3 applies, the Contractor shall comply with regulations 8 and 15 and, where he is the Principal Contractor, with regulations 12 to 14;^[33]
- 3.23.3 whether or not the Contractor is the Principal Contractor, compliance by the Contractor with his duties under the regulations, including any such directions as are referred to in regulation 15(3), shall be at no cost to the Employer and shall not entitle the Contractor to an extension of time;
- 3.23.4 if the Employer appoints a replacement for the Principal Designer or Principal Contractor, the Employer shall immediately upon that appointment notify the Contractor with details of the new appointee.

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

Section 4 Payment

Contract Sum and Adjustments

4.1 Work included in Contract Sum

The quality and quantity of the work included in the Contract Sum shall, save insofar as quantities are given in the Specification or Work Schedules, be that set out in the Contract Documents taken together, provided that if there is any inconsistency between work as stated or shown on the Contract Drawings and any description of that work in the Specification or Work Schedules, the Contract Drawings shall prevail. Where quantities are given for any items in the Specification or Work Schedules, the quality and quantity of the work included in the Contract Sum for those items shall be that set out in the Specification or Work Schedules.

4.2 Adjustment only under the Conditions

The Contract Sum shall not be adjusted or altered in any way other than in accordance with the express provisions of these Conditions and, subject to clause 2.14, any error in the computation of the Contract Sum is accepted by the Parties.

4.3 Items included in adjustments

The Contract Sum shall be adjusted by:

- 4.3.1 any amount agreed by the Employer and the Contractor in respect of Variations and other work of the types referred to in clause 5.2, whether by Confirmed Acceptance of a Variation Quotation or otherwise, and the amount of each Valuation;
- 4.3.2 any amount agreed by Confirmed Acceptance of an Acceleration Quotation;
- 4.3.3 (where the Contract Particulars state that a Fluctuations Provision applies) any amounts payable or allowable under that provision;
- 4.3.4 any other amounts referred to in clause 4.14.2 (excluding any loss and/or expense to the extent included under clause 4.3.1 or 4.3.2) and any other deductions referred to in clause 4.14.3;
- 4.3.5 the deduction of all Provisional Sums and the value of any work described as provisional in the Contract Documents; and
- 4.3.6 any other amount which under this Contract is to be added to the Contract Sum or may be deducted from it.

4.4 Taking adjustments into account

Where these Conditions provide that an amount is to be added to, deducted from or dealt with by adjustment of the Contract Sum, then, as soon as the amount is ascertained in whole or in part, the ascertained amount shall be taken into account in the next Interim Certificate.

Taxes

4.5 VAT

- 4.5.1 The Contract Sum is exclusive of VAT and in relation to each payment to the Contractor under this Contract, the Employer shall in addition pay the amount of any VAT properly chargeable in respect of it.
- 4.5.2 If after the Base Date the supply of any goods or services to the Employer becomes exempt from VAT there shall be paid to the Contractor an amount equal to the input tax on the supply to the Contractor of goods and services that contribute to the Works which as a consequence of that exemption the Contractor cannot recover.

4.6 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^[34], his obligation to make any payment under this Contract is subject to the provisions of the CIS.

Payments, Certificates and Notices – general provisions**4.7 Advance payment**

Where the Contract Particulars state that clause 4.7 applies, and an advance payment is to be made, it shall be paid to the Contractor on the date and reimbursed to the Employer on the terms stated in the Contract Particulars, save that, if the Contract Particulars state that an advance payment bond is required, payment shall only be made if the Contractor has provided to the Employer a bond in the terms set out in Part 1 of Schedule 6 from a surety approved by the Employer.^[35]

4.8 Interim payments – due dates

During the period up to the due date for the final payment fixed under clause 4.26.3, the monthly due dates for interim payments by the Employer shall in each case be the date 7 days after the relevant Interim Valuation Date.

4.9 Interim Certificates and valuations

4.9.1 The Architect/Contract Administrator shall not later than 5 days after each due date issue an Interim Certificate, stating:

4.9.1.1 the sum he considers to be or have been due to the Contractor at the due date, calculated in accordance with clauses 4.14 and 4.15; and

4.9.1.2 the basis on which that sum has been calculated.

4.9.2 Interim valuations shall be made by the Quantity Surveyor whenever the Architect/Contract Administrator considers them necessary for ascertaining the sum due in an Interim Certificate.

4.10 Contractor's Payment Applications and Payment Notices

4.10.1 In relation to any interim payment the Contractor may not later than its Interim Valuation Date or, in the case of the final payment, may at any time prior to issue of the Final Certificate make an application to the Quantity Surveyor (a 'Payment Application'), stating the sum that the Contractor considers to be due to him at the relevant due date, as fixed in accordance with clause 4.8 or 4.26.3, and the basis on which that sum has been calculated.

4.10.2 If a Payment Certificate is not issued in accordance with clause 4.9.1 or 4.26.1, then:

4.10.2.1 where the Contractor has made a Payment Application in accordance with clause 4.10.1, that application is for the purposes of these Conditions a Payment Notice; or

4.10.2.2 where the Contractor has not made a Payment Application, he may at any time after the last date for issue of the Payment Certificate give a Payment Notice to the Quantity Surveyor, stating the sum that the Contractor considers to have become due to him under clauses 4.14 and 4.15 or clause 4.26.2 at the relevant due date and the basis on which that sum has been calculated.

4.11 Interim and final payments – final date and amount

4.11.1 Subject to clause 4.11.4, the final date for payment of each interim payment and the final payment shall be 14 days from its due date.

4.11.2 Subject to any Pay Less Notice given by the paying Party under clause 4.11.5, the paying Party shall pay the sum stated as due in the Payment Certificate on or before the final date

[34] See the Contract Particulars (Fourth Recital and clause 4.6).

[35] As to approval of sureties, see the Standard Building Contract Guide.

for payment.

- 4.11.3 If a Payment Certificate is not issued in accordance with clause 4.9.1 or 4.26.1, but a Payment Notice has been or is then given, the Employer shall, subject to any Pay Less Notice under clause 4.11.5, pay the Contractor the sum stated as due in the Payment Notice.
- 4.11.4 Where a Payment Notice is given under clause 4.10.2.2, the final date for payment of the sum specified in it shall for all purposes be regarded as postponed by the same number of days as the number of days after the last date for issue of the Payment Certificate that the Payment Notice is given.
- 4.11.5 Where:
 - 4.11.5.1 the Employer intends to pay less than the sum stated as due from him in a Payment Certificate or Payment Notice; or
 - 4.11.5.2 if the Final Certificate shows a balance due to the Employer, the Contractor intends to pay less than the sum stated as due,the Party by whom the payment is stated to be payable shall not later than 5 days before the final date for payment give the other Party notice of that intention in accordance with clause 4.12.1 (a 'Pay Less Notice'). Where a Pay Less Notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated in it as due.
- 4.11.6 If either Party fails to pay a sum, or any part of it, due to the other Party under these Conditions by its final date for payment, he shall, in addition to any unpaid amount that should properly have been paid, pay the other Party simple interest on that amount at the Interest Rate for the period from the final date for payment until payment is made.
- 4.11.7 Any such unpaid amount and any interest under clause 4.11.6 shall be recoverable as a debt. Acceptance of a payment of interest shall not in any circumstances be construed as a waiver either of the recipient's right to proper payment of the principal amount due or of the Contractor's rights to suspend performance under clause 4.13 or terminate his employment under section 8.

4.12 Pay Less Notices and other general provisions

- 4.12.1 A Pay Less Notice given by either Party shall specify the sum he considers to be due to the other Party at the date the notice is given and the basis on which that sum has been calculated. Such notice:
 - 4.12.1.1 (where it is to be given by the Employer) may be given on his behalf by the Architect/Contract Administrator, Quantity Surveyor or Employer's representative or by any other person who the Employer notifies the Contractor as being authorised to do so but, in the case of a payment for which a Payment Certificate is not issued in due time, may not be given until the Contractor has in respect of the payment given a Payment Notice;
 - 4.12.1.2 (where it is to be given by the Contractor) shall be sent to the Employer, with a copy to the Architect/Contract Administrator.
- 4.12.2 In relation to the requirements for the issue of Payment Certificates and the giving of Pay Less Notices, it is immaterial that the amount then considered to be due may be zero.
- 4.12.3 The Employer's fiduciary interest in the Retention referred to in clause 4.17 shall not prevent him exercising any right under this Contract to withhold or deduct from a sum due to the Contractor, subject to clause 4.11.5, even if that sum includes any Retention due for release under clause 4.19.

4.13 Contractor's right of suspension

- 4.13.1 If the Employer fails to pay a sum payable to the Contractor in accordance with clause 4.11 (together with any VAT properly chargeable in respect of that payment) by the final date for payment and the failure continues for 7 days after the Contractor has given notice to the Employer, with a copy to the Architect/Contract Administrator, of his intention to suspend the performance of his obligations under this Contract and the grounds for such suspension, the Contractor, without affecting his other rights and remedies, may suspend

performance of any or all of those obligations until payment is made in full.

- 4.13.2 Where the Contractor exercises his right of suspension under clause 4.13.1, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of exercising the right.
- 4.13.3 Applications in respect of any such costs and expenses shall be made to the Architect/Contract Administrator and the Contractor shall with his application or on request submit such details of them as are reasonably necessary for ascertaining the amount in question.

Interim Payments – calculation of sums due

4.14 Gross Valuation

The Gross Valuation for each interim payment shall, subject to any agreement between the Parties as to stage payments, be the total of the amounts referred to in clauses 4.14.1 and 4.14.2, less the deductions referred to in clause 4.14.3, each calculated as at the Interim Valuation Date:

- 4.14.1 the total values of the following, which are subject to Retention:
- 4.14.1.1 work properly executed by the Contractor (including work so executed for which a value has been agreed pursuant to clause 5.2.1 or which has been valued under the Valuation Rules and work for which there is a Confirmed Acceptance of a Variation Quotation), but excluding any amounts referred to in clause 4.14.2.4;
 - 4.14.1.2 Site Materials, provided they are adequately protected against weather and other casualties and are not on the Works prematurely; and
 - 4.14.1.3 Listed Items (if any) for which the conditions set out in clause 4.16 are satisfied;
- those values shall be adjusted, where appropriate, in accordance with any applicable Fluctuations Provision or any Acceleration Quotation for which there has been Confirmed Acceptance and, where there is an Activity Schedule, the value of the work in each activity to which it relates shall be a proportion of the price stated for the work in that activity equal to the proportion of the work in that activity that has then been properly executed;
- 4.14.2 the total of the following, which are not subject to Retention:
- 4.14.2.1 any amounts to be included in accordance with clause 4.4 as a result of payments made or costs incurred by the Contractor under clause 2.6.2, 2.21, 2.23, 3.17, 6.5, 6.10.2 or 6.10.3, 6.11.3, 6.12.2 or 6.20;
 - 4.14.2.2 any amounts payable under clause 4.13.2;
 - 4.14.2.3 the amount of any loss and/or expense to which the Contractor is entitled under clause 4.20.1 or 5.3.3 or by a Confirmed Acceptance;
 - 4.14.2.4 where Insurance Option B or C applies or to the extent that the work is under clause 6.13.5.3 to be treated as a Variation, any amounts in respect of reinstatement work under clause 6.13.4; and
 - 4.14.2.5 any amount payable to the Contractor under any applicable Fluctuations Provision, other than by means of an adjustment made under clause 4.14.1;
- 4.14.3 the following deductions:
- 4.14.3.1 any amounts deductible under clause 2.10, 2.38, 3.11, 3.18.2, 6.12.2 or 6.19.2; and
 - 4.14.3.2 any amount allowable by the Contractor under clause 6.10.2 or under any applicable Fluctuations Provision, other than by means of an adjustment made under clause 4.14.1.

4.15 Sums due as interim payments

The sum due as an interim payment shall in each case be the Gross Valuation less the following

deductions:

- 4.15.1 any amount which may be deducted and retained by the Employer under clauses 4.17 to 4.19 ('the Retention');
- 4.15.2 the cumulative total of the amounts of any advance payment that have then become due for reimbursement to the Employer in accordance with the terms stated in the Contract Particulars for clause 4.7;
- 4.15.3 the sums stated as due in previous Interim Certificates; and
- 4.15.4 any sum paid in respect of any Payment Notice given after the issue of the latest Interim Certificate.

Listed Items

4.16 Listed Items

The conditions for inclusion of the value of a Listed Item in the Gross Valuation before its delivery to or adjacent to the Works as referred to in clause 4.14.1.3 are:

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

each item being either set apart or clearly and visibly marked, individually or as a set, by letters, figures or a pre-determined code; and
- 4.16.4 for uniquely identified Listed Items, the Contractor, if it is stated in the Contract Particulars as required, has provided a bond in favour of the Employer from a surety approved by the Employer in the terms set out in Part 2 of Schedule 6^[39] ('the required bond') in the amount specified in the Contract Particulars for this clause 4.16.4; or
- 4.16.5 for Listed Items that are not uniquely identified, the Contractor has provided the required bond in the amount specified in the Contract Particulars for this clause 4.16.5.

Retention

4.17 Rules on treatment of Retention

The Retention which the Employer may deduct and retain as referred to in clause 4.15 shall be subject to the following rules:

- 4.17.1 the Employer's interest in the Retention is fiduciary as trustee for the Contractor (but without obligation to invest);
- 4.17.2 prior to the date for issue of each Interim Certificate the Architect/Contract Administrator shall prepare, or instruct the Quantity Surveyor to prepare, and with that certificate shall issue to the Employer and the Contractor a statement specifying the amount of the Retention deducted (and, where relevant, the amount to be released in accordance with clause 4.19) in arriving at the sum stated as due;
- 4.17.3 except where the Employer is a Local or Public Authority, the Employer, to the extent that

he exercises his right under clause 4.19 and if the Contractor so requests, shall at the date of payment place the Retention in a separate bank account (so designated as to identify the amount as the Retention held by the Employer on trust as provided in clause 4.17.1) and certify to the Architect/Contract Administrator and the Contractor that the amount has been so placed. The Employer shall be entitled to the full beneficial interest in any interest accruing on the separate bank account and under no duty to account for any such interest to the Contractor or any sub-contractor.

4.18 Not applicable

4.19 Retention – amounts and periods

The Retention which may be deducted under Interim Certificates issued prior to issue of the Certificate of Making Good (or last such certificate) and retained by the Employer shall be the following percentages of the total amount (or proportion of that amount) included in the Gross Valuation under clause 4.14.1 for work and (where applicable) Site Materials and Listed Items^[36]:

- 4.19.1 the Retention Percentage may be deducted from the total amount where the Works have not reached practical completion or (where there are Sections) from that proportion of the total amount that relates to uncompleted Sections (in either case excluding from the total amount any proportion of it attributable to a Relevant Part);
- 4.19.2 half the Retention Percentage may be deducted:
 - 4.19.2.1 from the total amount where the Works as a whole have reached practical completion but the Certificate of Making Good has not been issued; or
 - 4.19.2.2 from the proportion of the total amount that relates to each Section that has reached practical completion but for which such a certificate has not been issued or relates to a Relevant Part for which a certificate has not been issued under clause 2.35.

Loss and Expense

4.20 Matters materially affecting regular progress

- 4.20.1 If in the execution of this Contract the Contractor incurs or is likely to incur any direct loss and/or expense as a result of any deferment of giving possession of the site or part of it under clause 2.5 or because regular progress of the Works or any part of them has been or is likely to be materially affected by any Relevant Matter, he shall, subject to clause 4.20.2 and compliance with the provisions of clause 4.21 be entitled to reimbursement of that loss and/or expense.
- 4.20.2 No such entitlement arises where these Conditions provide that there shall be no addition to the Contract Sum or otherwise exclude the operation of this clause 4.20 or to the extent that the Contractor is reimbursed for such loss and/or expense under another provision of these Conditions.

4.21 Notification and ascertainment

- 4.21.1 The Contractor shall notify the Architect/Contract Administrator as soon as the likely effect of a Relevant Matter on regular progress or the likely nature and extent of any loss and/or expense arising from a deferment of possession becomes (or should have become) reasonably apparent to him.
- 4.21.2 That notification shall be accompanied by or, as soon as reasonably practicable, followed by the Contractor's initial assessment of the loss and/or expense incurred and any further amounts likely to be incurred, together with such information as is reasonably necessary to enable the Architect/Contract Administrator or Quantity Surveyor to ascertain the loss and/or expense incurred.
- 4.21.3 The Contractor shall thereafter, in such form and manner as the Architect/Contract Administrator may reasonably require, update that assessment and information at monthly intervals until all information reasonably necessary to allow ascertainment of the total amount of such loss and expense has been supplied.

[36] For the effect of clause 4.19.2, see the Standard Building Contract Guide.

- 4.21.4 Within 28 days of receipt of the initial assessment and information and 14 days of each subsequent update of them the Architect/Contract Administrator or Quantity Surveyor shall notify the Contractor of the ascertained amount of the loss and/or expense incurred, each ascertainment being made by reference to the information supplied by the Contractor and in sufficient detail to enable the Contractor to identify differences between it and the Contractor's assessment.

4.22 Relevant Matters

The following are the Relevant Matters:

- 4.22.1 Variations (excluding those where the amount of loss and/or expense has been agreed by Confirmed Acceptance of a Variation Quotation or Acceleration Quotation but including any other matters or instructions which under these Conditions are to be treated as a Variation);
- 4.22.2 Architect/Contract Administrator's instructions:
- 4.22.2.1 under clause 3.15 or 3.16;
- 4.22.2.2 for the opening up for inspection or testing of any work, materials or goods under clause 3.17 (including making good), unless the cost is provided for in the Contract Sum or unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract;
- 4.22.2.3 in relation to any discrepancy or divergence referred to in clause 2.15;
- 4.22.2.4 in respect of any notification of reasonable objections under Supplemental Provision 9, paragraph 9.4;
- 4.22.2.5 given under Supplemental Provision 9, paragraph 9.6 where a Named Specialist is Insolvent;
- 4.22.3 compliance with clause 3.22.1 or with Architect/Contract Administrator's instructions under clause 3.22.2;
- 4.22.4 any impediment, prevention or default, whether by act or omission, by the Employer, the Architect/Contract Administrator, the Quantity Surveyor or any Employer's Person, except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or any Contractor's Person.

4.23 Amounts ascertained – addition to Contract Sum

Amounts ascertained under clause 4.21 shall be added to the Contract Sum.

4.24 Reservation of Contractor's rights and remedies

The provisions of clauses 4.20 to 4.23 shall not limit or affect any other rights and remedies of the Contractor.

Final Adjustment and Final Payment

4.25 Final adjustment

- 4.25.1 Not later than 6 months after the issue of the Practical Completion Certificate or last Section Completion Certificate, the Contractor shall provide the Architect/Contract Administrator or (if so instructed) the Quantity Surveyor, with all documents necessary for the adjustment of the Contract Sum.
- 4.25.2 Not later than 3 months after receipt of the documents referred to in clause 4.25.1:
- 4.25.2.1 the Architect/Contract Administrator, or, if he so instructs, the Quantity Surveyor, shall ascertain the amount of any loss and/or expense notified by the Contractor under clause 4.21 or 5.3.3 and not previously ascertained;
- 4.25.2.2 the Quantity Surveyor shall prepare a statement showing all adjustments to be made to the Contract Sum under clause 4.3,
- and the Architect/Contract Administrator shall within that 3 month period send to the Contractor copies of that statement and any such ascertainment.

- 4.25.3 If after expiry of the 6 month period referred to in clause 4.25.1 the Contractor has not supplied the necessary documents, the Architect/Contract Administrator may at any time give the Contractor one month's notice requiring their supply. Failing the supply of such documents, any ascertainment of loss and expense not then completed and the statement of adjustments may be completed on the basis of information in the Architect/Contract Administrator's or Quantity Surveyor's possession. Following preparation or completion of those documents, copies of them shall promptly be sent to the Contractor.

4.26 Final Certificate and final payment^[37]

- 4.26.1 The Architect/Contract Administrator shall issue the Final Certificate not later than 2 months after whichever of the following occurs last:
- 4.26.1.1 the end of the Rectification Period in respect of the Works or (where there are Sections) the last such period to expire;
 - 4.26.1.2 the date of issue of the Certificate of Making Good or (where there are Sections) the last such certificate to be issued; or
 - 4.26.1.3 the date on which the Architect/Contract Administrator sends to the Contractor copies of the statement and any ascertainment under clause 4.25.2 or 4.25.3.
- 4.26.2 The Final Certificate shall state:
- 4.26.2.1 the Contract Sum as adjusted in accordance with clause 4.3; and
 - 4.26.2.2 the sum of amounts already stated as due in Interim Certificates plus the amount of any advance payment made under clause 4.7 and (where relevant) any such sum as is referred to in clause 4.15.4
- and (without affecting the rights of the Contractor in respect of any interim payment not paid in full by the Employer by its final date for payment) the final payment shall be the difference (if any) between the two sums, which shall be shown in the Final Certificate as a balance due to the Contractor from the Employer or vice versa. The Final Certificate shall state the basis on which that amount has been calculated.
- 4.26.3 The due date for the final payment shall be the date of issue of the Final Certificate or, if that certificate is not issued within the 2 month period referred to in clause 4.26.1, the last day of that period.

[37] The effect of the Final Certificate is set out in clause 1.9.

Section 5 Variations

General

5.1 Definition of Variations

The term 'Variation' means:

- 5.1.1 the alteration or modification of the design, quality or quantity of the Works including:
 - 5.1.1.1 the addition, omission or substitution of any work;
 - 5.1.1.2 the alteration of the kind or standard of any of the materials or goods to be used in the Works;
 - 5.1.1.3 the removal from the site of any work executed or Site Materials other than work, materials or goods which are not in accordance with this Contract;
- 5.1.2 the imposition by the Employer of any obligations or restrictions in regard to the following matters or any addition to or alteration or omission of any such obligations or restrictions that are so imposed or are imposed by the Specification/Work Schedules or the Employer's Requirements in regard to:
 - 5.1.2.1 access to the site or use of any specific parts of the site;
 - 5.1.2.2 limitations of working space;
 - 5.1.2.3 limitations of working hours; or
 - 5.1.2.4 the execution or completion of the work in any specific order.^[38]

5.2 Valuation of Variations and provisional sum work

- 5.2.1 The value of:
 - 5.2.1.1 all Variations required by Architect/Contract Administrator's instructions or subsequently sanctioned by him in writing;
 - 5.2.1.2 all work which under these Conditions is to be treated as a Variation; and
 - 5.2.1.3 all work executed by the Contractor in accordance with Architect/Contract Administrator's instructions as to the expenditure of Provisional Sums included in the Specification/Work Schedules or in the Employer's Requirements or work included in them that is there described as provisional

shall be such amount as is agreed by the Employer and the Contractor (whether by Confirmed Acceptance of a Variation Quotation or otherwise) or, where not agreed, the amount valued by the Quantity Surveyor (a 'Valuation').
- 5.2.2 Save where clause 5.3.3 applies, each Valuation shall be made in accordance with clauses 5.6 to 5.10 ('the Valuation Rules'), such Valuation insofar as it relates to the Contractor's Designed Portion being in accordance with clause 5.8.

5.3 Variation Quotation

- 5.3.1 If the Architect/Contract Administrator in his instruction for a Variation states that the Contractor is to provide a quotation in accordance with the provisions of Schedule 2 (a 'Variation Quotation'), the Contractor shall subject to receipt of sufficient information provide a quotation in accordance with those provisions, unless within 7 days of his receipt of that instruction (or such longer period as is either stated in the instruction or agreed between them) he notifies the Architect/Contract Administrator that he disagrees with the application

[38] See clauses 3.10.1 and (where applicable) 3.10.3 for the Contractor's right of reasonable objection to Variations.

of the procedure to that instruction.

5.3.2 If the Contractor notifies his disagreement within that period, he shall not be obliged to provide that quotation and the Variation shall not be carried out unless and until the Architect/Contract Administrator gives a further instruction that the Variation is to be carried out and is to be valued by a Valuation.

5.3.3 Where a Variation Quotation has been made for work and a Confirmed Acceptance issued, then, if the Architect/Contract Administrator subsequently issues an instruction requiring a Variation of that work, the Valuation of that Variation shall be made on a fair and reasonable basis having regard to the content of that quotation and that Valuation shall include the direct loss and/or expense, if any, incurred by the Contractor because the regular progress of the Works or of any part of them is materially affected by compliance with the instruction. The Valuation Rules shall apply only to the extent that they are consistent with those requirements.

5.4 Contractor's right to be present at measurement

Where it is necessary to measure work for the purpose of a Valuation the Quantity Surveyor shall give the Contractor an opportunity to be present at the time of such measurement and to take such notes and measurements as the Contractor may require.

5.5 Giving effect to Valuations, agreements etc.

The Contract Sum shall be adjusted for each Confirmed Acceptance or other agreement by the Employer and the Contractor under clause 5.2.1 and for each Valuation.

The Valuation Rules

5.6 Measurable Work

5.6.1 To the extent that a Valuation relates to the execution of additional or substituted work which can properly be valued by measurement and subject to clause 5.8 in the case of CDP Works, such work shall be measured and shall be valued in accordance with the following rules:

5.6.1.1 where the work is of similar character to work included in the Contract Documents the Valuation shall be consistent with the relevant rates, prices or amounts for such work in the Priced Document and shall include a fair allowance for any change in the conditions under which the work is carried out and/or any significant change in the quantity of such work from that included in the Contract Documents;

5.6.1.2 where the work is not of similar character to work set out in the Contract Documents, it shall be valued at fair rates and prices.

5.6.2 To the extent that a Valuation relates to the omission of work set out in the Contract Documents and subject to clause 5.8 in the case of CDP Works, the valuation of the work omitted shall be in accordance with the rates, prices or amounts in the Priced Document.

5.6.3 In any valuation of work under clauses 5.6.1 and 5.6.2, allowance, where appropriate, shall be made for any addition to or reduction of preliminary items of the type referred to in the Measurement Rules.

5.7 Daywork

Where the execution of additional or substituted work cannot be valued in accordance with clause 5.6 or 5.8, as applicable, the Valuation shall comprise:

5.7.1 the prime cost of such work (calculated in accordance with the 'Definition of Prime Cost of Daywork carried out under a Building Contract' issued by The Royal Institution of Chartered Surveyors (RICS) and Construction Industry Publications Ltd as current at the Base Date) together with Percentage Additions to each section of the prime cost at the rates stated in the document identified in the Contract Particulars or, if they apply in respect of labour, at the All-Inclusive Rates stated in such document; or

5.7.2 where the work is within the province of any specialist trade and the RICS and the appropriate body representing the employers in that trade have agreed and issued a

definition of prime cost of daywork^[39], the prime cost of such work calculated in accordance with that definition current at the Base Date, together with Percentage Additions on the prime cost at the rates stated in the document identified in the Contract Particulars or, if they apply in respect of labour, at the All-Inclusive Rates stated in such document.

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

5.8 Contractor's Designed Portion – Valuation

Valuations relating to the Contractor's Designed Portion shall be made under this clause 5.8.

- 5.8.1 Allowance shall be made in such Valuations for the addition or omission of the relevant design work.
- 5.8.2 The valuation of additional or substituted work shall be consistent with the values of work of a similar character set out in the CDP Analysis, making due allowance for any change in the conditions under which work is carried out and/or any significant change in the quantity of the work so set out. Where there is no work of a similar character set out in the CDP Analysis a fair valuation shall be made.
- 5.8.3 The valuation of the omission of work set out in the CDP Analysis shall be in accordance with the values therein for such work.
- 5.8.4 Clauses 5.6.3, 5.7 and 5.9 shall apply so far as is relevant.

5.9 Change of conditions for other work

If as a result of:

- 5.9.1 compliance with any instruction requiring a Variation; or
- 5.9.2 compliance with any instruction as to the expenditure of a Provisional Sum,

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

5.10 Additional provisions

- 5.10.1 To the extent that a Valuation does not relate to the execution of additional or substituted work or the omission of work or to the extent that the valuation of any work or liabilities directly associated with a Variation cannot reasonably be effected in the Valuation by the application of clauses 5.6 to 5.9, a fair valuation shall be made.
- 5.10.2 No allowance shall be made under the Valuation Rules for any effect upon the regular progress of the Works or of any part of them or for any other direct loss and/or expense for which the Contractor would be reimbursed by payment under any other provision in these Conditions.

[39] There are currently three definitions to which clause 5.7.2 refers, namely those agreed between the RICS and the Electrical Contractors Association, the RICS and the Electrical Contractors Association of Scotland and the RICS and the Building and Engineering Services Association.

Section 6 Injury, Damage and Insurance

Personal Injury and Property Damage

6.1 Contractor's liability – personal injury or death

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

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

Subject to clause 6.3, the Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of 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.

6.3 Loss or damage to Existing Structures or their contents

6.3.1 Where paragraph C.1 of Insurance Option C applies, the Contractor's liability and indemnity under clause 6.2 excludes any loss or damage to Existing Structures or to any of their contents required to be insured under that option that is caused by any of the risks or perils required or agreed to be insured against under that option.

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

6.3.3 Where Insurance Option C applies but a C.1 Replacement Schedule applies in lieu of paragraph C.1, the Contractor's liability and indemnity under clause 6.2 shall, in respect of loss, injury or damage to the Existing Structures and their contents due to the causes specified in that clause, be subject only to such limitations or exclusions as are specified in that schedule.

6.3.4 The reference in clause 6.2 to 'property real or personal' does not include the Works, work executed or Site Materials up to and including the date of issue of the Practical Completion Certificate or, if earlier, the date of termination of the Contractor's employment, except that:

6.3.4.1 after the date of issue of a Section Completion Certificate, the Section to which it relates shall no longer be regarded as 'the Works' or 'work executed' for these purposes; and

6.3.4.2 if partial possession is taken under clause 2.33, the Relevant Part shall no longer be so regarded after the Relevant Date.

Insurance against Personal Injury and Property Damage

6.4 Contractor's insurance of his liability

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

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

6.4.1.2 for all other claims to which clause 6.4.1 applies^[40], shall indemnify the Employer in like manner to the Contractor (but only to the extent that the Contractor may be liable to indemnify the Employer under the terms of this Contract) and shall for any one occurrence or series of occurrences arising out of one event be in a sum not less than that stated in the Contract Particulars for clause 6.4.1.^[41]

6.4.2 As to evidence that such insurances have been effected and are being maintained and the consequences of failure to comply, clause 6.12 shall apply.

6.5 Contractor's insurance of liability of Employer

6.5.1 If the Contract Particulars state that insurance under clause 6.5.1 may be required, the Contractor shall if instructed by the Architect/Contract Administrator effect and maintain a policy of insurance in the names of the Employer and the Contractor for the amount of indemnity there stated in respect of any expense, liability, loss, claim or proceedings which the Employer may incur or sustain by reason of injury or damage to any property caused by collapse, subsidence, heave, vibration, weakening or removal of support or lowering of ground water arising out of or in the course of or by reason of the carrying out of the Works, excluding injury or damage:

6.5.1.1 for which the Contractor is liable under clause 6.2; or

6.5.1.2 which is attributable to errors or omissions in the designing of the Works; or

6.5.1.3 which can reasonably be foreseen to be inevitable having regard to the nature of the work to be executed and the manner of its execution; or

6.5.1.4 (if Insurance Option C applies) which it is the responsibility of the Employer to insure under paragraph C.1 of Schedule 3; or

6.5.1.5 to the Works and Site Materials except where the Practical Completion Certificate has been issued or in so far as any Section is the subject of a Section Completion Certificate; or

6.5.1.6 which arises from any consequence of war, invasion, act of foreign enemy, hostilities (whether war is declared or not), civil war, rebellion or revolution, insurrection or military or usurped power; or

6.5.1.7 which is directly or indirectly caused by or contributed to by or arises from the Excepted Risks; or

6.5.1.8 which is directly or indirectly caused by or arises out of pollution or contamination of buildings or other structures or of water or land or the atmosphere happening during the period of insurance, save that this exception shall not apply in respect of pollution or contamination caused by a sudden identifiable, unintended and unexpected incident which takes place in its entirety at a specific moment in time and place during the period of insurance (all pollution or contamination which arises out of one incident being considered for the purpose of this insurance to have occurred at the time such incident takes place); or

6.5.1.9 which results in any costs or expenses being incurred by the Employer or in any other sums being payable by the Employer in respect of damages for breach of contract, except to the extent that such costs or expenses or damages would have attached in the absence of any contract.

6.5.2 Any insurance under clause 6.5.1 shall be placed with insurers approved by the Employer, and the Contractor shall upon its issue deposit the policy with the Architect/Contract Administrator or, if so directed, the Employer.

6.5.3 Amounts expended by the Contractor to effect and maintain that insurance shall on production of receipts be added to the Contract Sum, and clause 6.12 shall apply.

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

[41] The Contractor may, if he wishes, insure for a sum greater than that stated in the Contract Particulars.

6.6 Excepted Risks

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

Insurance of the Works and Existing Structures**6.7 Insurance Options and period**

6.7.1 Insurance Options A, B and C are set out in Schedule 3. The Insurance Option that applies to this Contract is that stated in the Contract Particulars.^[42]

6.7.2 In each case the Party responsible for effecting a Joint Names Policy under the Insurance Option that applies (the 'Works Insurance Policy') shall maintain that policy up to and including the date of issue of the Practical Completion Certificate, or last Section Completion Certificate, or (if earlier) the date of termination of the Contractor's employment, except that the obligation to maintain a Works Insurance Policy:

6.7.2.1 shall not apply in relation to a Section after the date of issue of its Section Completion Certificate; and

6.7.2.2 if partial possession is taken under clause 2.33, shall not as from the Relevant Date apply in relation to the Relevant Part.

6.8 Related definitions

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

All Risks Insurance^[43]: 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^[44];

[42] Insurance Options A and B are for use in the case of new buildings. Insurance Option A is applicable where the Contractor is required to take out a Joint Names Policy for All Risks Insurance of the Works or to include them on that basis within his Annual Construction policy; Insurance Option B is applicable where the Employer has elected to take out that Joint Names Policy.

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

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

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

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

Excepted Risks: the risks comprise:

- (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof (other than such risk insofar, but only insofar, as it is included in the Terrorism Cover from time to time required to be taken out and maintained under this Contract);
- (b) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; and
- (c) any act of terrorism that is not within the Terrorism Cover from time to time required to be taken out and maintained under this Contract.

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

Pool Re Cover: such insurance against loss or damage to work executed and Site Materials caused by or resulting from terrorism as is from time to time generally available from insurers who are members of the Pool Reinsurance Company Limited scheme or of any similar successor scheme.^[45]

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

Terrorism Cover: Pool Re Cover or other insurance against loss or damage to work executed and Site Materials (and/or, for the purposes of clause 6.11.1, to an Existing Structure and/or its contents) caused by or resulting from terrorism.^[45]

6.9 Sub-contractors – Specified Perils cover under Works Insurance Policies

6.9.1 The Contractor, where Insurance Option A applies, and the Employer, where Insurance Option B or C applies, shall ensure that the Works Insurance Policy either:

- 6.9.1.1 provides for recognition of each sub-contractor as an insured under the policy; or
- 6.9.1.2 includes a waiver by the insurers of any right of subrogation which they may have against any such sub-contractor

in respect of loss or damage by the Specified Perils to the Works or relevant Section, work executed and Site Materials and that this recognition or waiver continues up to and including the date of issue of any certificate or other document which states that in relation to the Works, the sub-contractor's works are practically complete or, if earlier, the date of termination of the sub-contractor's employment. Where there are Sections, the recognition or waiver for a sub-contractor in relation to a Section shall cease upon the issue of such

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

[45] As respects Terrorism Cover and the requirements of Insurance Options A, B and C, see footnote [43] and the Standard Building Contract Guide.

certificate or other document for his work in that Section.

- 6.9.2 Clause 6.9.1 applies also in respect of any Works Insurance Policy taken out in default under clause 6.12.2.

6.10 Terrorism Cover – policy extensions and premiums

- 6.10.1 To the extent that the Works Insurance Policy excludes (or would otherwise exclude) loss or damage caused by terrorism, the Contractor, where Insurance Option A applies, or the Employer, where Insurance Option B or C applies, shall unless otherwise agreed effect and maintain, either as an extension to the Works Insurance Policy or as a separate Joint Names Policy, in the same amount and for the same period as the Works Insurance Policy, such Terrorism Cover as is specified in or by the Contract Particulars, subject to clauses 6.10.4 and 6.11.
- 6.10.2 Where Insurance Option A applies and the Contractor is required to take out and maintain Pool Re Cover, the cost of that cover and its renewal shall be deemed to be included in the Contract Sum save that, if at any renewal of the cover there is a variation in the rate on which the premium is based, the Contract Sum shall be adjusted by the net amount of the difference between the premium paid by the Contractor and the premium that would have been paid but for the change in rate.
- 6.10.3 Where Insurance Option A applies and Terrorism Cover other than Pool Re Cover is specified as required, the cost of such other cover and of its renewal shall be added to the Contract Sum.
- 6.10.4 Where Insurance Option A applies and the Employer is a Local or Public Authority, if at any renewal of the Terrorism Cover (of any type) there is an increase in the rate on which the premium is based, he may instruct the Contractor not to renew the Terrorism Cover. If he so instructs, clause 6.13.5.3 shall apply with effect from the renewal date.

6.11 Terrorism Cover – non-availability – Employer's options

- 6.11.1 If the insurers named in any Joint Names Policy notify either Party that, with effect from a specified date (the 'cessation date'), Terrorism Cover will cease and will no longer be available or will only continue to be available with a reduction in the scope or level of such cover, the recipient shall immediately notify the other Party.
- 6.11.2 The Employer, after receipt of such notification but before the cessation date, shall give notice to the Contractor either:
- 6.11.2.1 that, notwithstanding the cessation or reduction in scope or level of Terrorism Cover, the Employer requires that the Works continue to be carried out; or
- 6.11.2.2 that on the date stated in the Employer's notice (which shall be a date after the date of the insurers' notification but no later than the cessation date) the Contractor's employment under this Contract shall terminate.
- 6.11.3 Where Insurance Option A applies and the Employer gives notice under clause 6.11.2.1 requiring continuation of the Works, he may instruct the Contractor to effect and maintain any alternative or additional form of Terrorism Cover then reasonably obtainable by the Contractor; the net additional cost to the Contractor of any such cover and its renewal shall be added to the Contract Sum.
- 6.11.4 If the Employer gives notice of termination under clause 6.11.2.2, then upon and from such termination the provisions of clause 8.12 (excluding clause 8.12.3.5) shall apply.
- 6.11.5 If the Employer does not give notice of termination under clause 6.11.2.2, but work executed and/or Site Materials thereafter suffer physical loss or damage caused by terrorism, clauses 6.13 and 6.14 shall as appropriate apply.

6.12 Evidence of insurance

- 6.12.1 Where a Party is required by this Contract to effect and maintain an insurance policy or cover under any of clauses 6.4, 6.5, 6.7 and 6.10, or is responsible for ensuring that it is effected and maintained, that Party shall at the request of the other Party supply such documentary evidence as the other Party may reasonably require that the policy or cover has been effected and remains in force.

- 6.12.2 If a Party required to provide such documentary evidence fails to provide it within 7 days of a request being made, the other Party may assume that there has been a failure to insure, and may insure against any risk, liability or expense to which he may be exposed as a consequence, but shall not be obliged to do so. If the other Party insures, the defaulting Party shall be liable in the case of insurance under clause 6.4, 6.7 or 6.10 for the costs or, in the case of insurance required under clause 6.5, any additional cost that the other Party incurs in taking out and maintaining that insurance. Any costs payable to the Contractor shall be added to the Contract Sum; any costs payable to the Employer may be deducted from any sums due or to become due to the Contractor or shall be recoverable from the Contractor as a debt.

6.13 Loss or damage – insurance claims and reinstatement

- 6.13.1 If during the carrying out of the Works any loss or damage affecting any executed work or Site Materials is occasioned by any of the risks covered by the Works Insurance Policy or an Excepted Risk or there is any loss of or damage of any kind to any of the Existing Structures or their contents, the Contractor shall forthwith upon it occurring or becoming apparent give notice both to the Architect/Contract Administrator and to the Employer of its nature, location and extent.
- 6.13.2 Subject to clauses 6.13.5.1 and 6.13.6, the occurrence of such loss or damage to executed work or Site Materials shall be disregarded in calculating any amounts payable to the Contractor under this Contract.
- 6.13.3 The Contractor, for himself and for all his sub-contractors recognised as an insured under the Works Insurance Policy, shall authorise the insurers to pay to the Employer all monies from such insurance, and from any policies covering Existing Structures or their contents that are effected by the Employer.
- 6.13.4 Where loss or damage affecting executed work or Site Materials is occasioned by any risk covered by the Works Insurance Policy, and subject to clause 6.14 where relevant, the Contractor shall after any inspection required by the insurers under the Works Insurance Policy and with due diligence restore the damaged work, replace or repair any lost or damaged Site Materials, remove and dispose of any debris (collectively 'reinstatement work') and proceed with the carrying out and completion of the Works.
- 6.13.5 Where Insurance Option A applies:
- 6.13.5.1 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 4.9 but without deduction of Retention and less only the amounts referred to in clause 6.13.5.2;
 - 6.13.5.2 the Employer may retain from those monies any amounts properly incurred by the Employer and notified by him to insurers in respect of professional fees up to the aggregate amount of the percentage cover for those fees or (if less) the amount paid by insurers in respect of those fees;
 - 6.13.5.3 in respect of reinstatement work, the Contractor shall not be entitled to any payment other than amounts received under the Works Insurance Policy except where there has been a cessation of or reduction in Terrorism Cover under clause 6.10.4 or 6.11 and loss or damage is then caused by or results from terrorism, in which case the reinstatement work shall, to the extent that its cost is no longer recoverable under the policy, be treated as a Variation and under clause 4.14.2.4 or 6.13.5.1 included in Interim Certificates. In neither case shall there be any reduction in any amount payable by reason of any act or neglect of the Contractor or of any sub-contractor which may have contributed to the physical loss or damage.
- 6.13.6 Where Insurance Option B or paragraph C.2 of Insurance Option C applies or where loss or damage is caused by an Excepted Risk, reinstatement work shall be treated as a Variation.

6.14 Loss or damage to Existing Structures – right of termination

If there is material loss of or damage to any of the Existing Structures, the Employer shall be under no obligation to reinstate those structures, but either Party may, if it is just and equitable, terminate the Contractor's employment under this Contract by notice given to the other in accordance with clause

1.7.4 within 28 days of the occurrence of that loss or damage. If such notice is given, then:

- 6.14.1 unless within 7 days of receiving the notice (or such longer period as may be agreed) the Party to whom it is given invokes a dispute resolution procedure of this Contract to determine whether the termination is just and equitable, it shall be deemed to be so;
- 6.14.2 upon the giving of that notice or, where a dispute resolution procedure is invoked within that period, upon any final upholding of the notice, the provisions of clause 8.12 (except clause 8.12.3.5) shall apply.

CDP Professional Indemnity Insurance

6.15 Obligation to insure

Where there is a Contractor's Designed Portion, the Contractor shall:

- 6.15.1 forthwith after this Contract has been entered into, take out (unless he has already done so) a Professional Indemnity insurance policy with limits of indemnity of the types and in amounts not less than those stated in the Contract Particulars^[46];
- 6.15.2 thereafter, provided it is available at commercially reasonable rates, maintain such insurance until the expiry of the period stated in the Contract Particulars from the date of practical completion of the Works; and
- 6.15.3 as and when reasonably requested to do so by the Employer or the Architect/Contract Administrator, produce for inspection documentary evidence that such insurance has been effected and/or is being maintained.

6.16 Increased cost and non-availability

If the insurance referred to in clause 6.15 ceases to be available at commercially reasonable rates, the Contractor shall immediately give notice to the Employer so that the Contractor and the Employer can discuss the means of best protecting their respective positions in the absence of such insurance.

Joint Fire Code – compliance

6.17 Application of clauses

Clauses 6.18 to 6.20 apply where the Contract Particulars state that the Joint Fire Code applies.

6.18 Compliance with Joint Fire Code

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

6.19 Breach of Joint Fire Code – Remedial Measures

- 6.19.1 If a breach of the Joint Fire Code occurs and the insurers under the Works Insurance Policy specify by notice to the Employer or the Contractor the remedial measures they require (the 'Remedial Measures'), the Party receiving the notice shall send copies of it to the other and to the Architect/Contract Administrator, and then:
 - 6.19.1.1 subject to clause 6.19.1.2, where the Remedial Measures relate to the obligation of the Contractor to carry out and complete the Works, the Contractor shall ensure that the Remedial Measures are carried out by such date as the insurers specify; and
 - 6.19.1.2 to the extent that the Remedial Measures require a Variation to the Works as described in the Contract Documents or in an Architect/Contract Administrator's instruction, the Architect/Contract Administrator shall issue such instructions as are necessary to enable compliance. If, in an emergency, compliance with the Remedial Measures in whole or in part requires the Contractor to supply materials or execute work before receiving instructions under this clause 6.19.1.2, the Contractor shall supply the materials and execute the work

[46]

reasonably necessary to secure immediate compliance. The Contractor shall forthwith notify the Architect/Contract Administrator of the emergency and of the steps he is taking. Save to the extent they relate to the Contractor's Designed Portion, the work and materials reasonably necessary shall be treated as if executed and supplied under a Variation instruction.

- 6.19.2 If the Contractor, within 7 days of receipt of a notice specifying Remedial Measures not requiring an Architect/Contract Administrator's instruction under clause 6.19.1.2, does not begin to carry out or thereafter fails without reasonable cause regularly and diligently to proceed with the Remedial Measures, then the Employer may employ and pay other persons to carry out those Remedial Measures. The Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and an appropriate deduction shall be made from the Contract Sum.

6.20 Joint Fire Code – amendments/revisions

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

Section 7 Assignment, Performance Bonds and Guarantees, Third Party Rights and Collateral Warranties

Assignment

7.1 General

Subject to clause 7.2, neither the Employer nor the Contractor shall without the consent of the other assign this Contract or any rights thereunder.

7.2 Rights of enforcement

Where clause 7.2 is stated in the Contract Particulars to apply, then, in the event of transfer by the Employer of his freehold or leasehold interest in, or of a grant by the Employer of a leasehold interest in, the whole of the premises comprising the Works or (if the Contract Particulars so state) any Section, the Employer may at any time after practical completion of the Works or of the relevant Section grant or assign to any such transferee or lessee the right to bring proceedings in the name of the Employer (whether by arbitration or litigation, whichever applies under this Contract) to enforce any of the terms of this Contract made for the benefit of the Employer. The assignee shall be estopped from disputing any enforceable agreements reached between the Employer and the Contractor which arise out of and relate to this Contract (whether or not they are or appear to be a derogation from the right assigned) and which are made prior to the date of any grant or assignment.

Performance Bonds and Guarantees

7.3 Performance Bonds and Guarantees

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

7.3.1 a performance bond or guarantee of the Contractor's due performance of the Contract from a bank or other surety approved by the Employer in an amount equal to the percentage of the Contract Sum and for the period stated in the Contract Particulars;

7.3.2 a guarantee by the Contractor's parent company identified in the Contract Particulars;

any such bond or guarantee, unless otherwise agreed by the Employer, being substantially in the form of the document identified by the Contract Particulars.

Clauses 7.7 to 7.11 – Preliminary

7.4 Rights Particulars

The requirements for the grant of P&T Rights and Funder Rights by the Contractor and sub-contractors and any requirement for the grant of Employer Rights by any sub-contractors ('Rights Particulars') are set out in the document(s) identified in the Contract Particulars against the reference to clause 7.4.^[47] As respects those requirements:

7.4.1 such rights are conferred only on persons sufficiently identified (by name, class or description) in the Rights Particulars;

[47] The relevant Rights Particulars should identify the beneficiaries (by name, class or description) and the sub-contractors who are also required to grant rights, specify whether rights are to be granted at each level as Third Party Rights or by way of Collateral Warranties, state in those cases where the default provision is not to apply which alternative provision is to apply in its place and give any other details required to complete the terms of the rights or warranties that are to be given. A Model Form for the Rights Particulars is included in the Standard Building Contract Guide and is also available on the JCT website www.jctltd.co.uk. In the case of third party rights the relevant limits and details required for the purposes of the respective parts of Schedule 5 of this Contract and Schedule 6 of the Standard Building Sub-Contracts are the same as required for the purposes of the Warranty Particulars for the corresponding Collateral Warranty (CWa/P&T, CWa/F, SCWa/P&T, SCWa/F or SCWa/E). Directions may be needed as to mode of execution of sub-contracts and/or collateral warranties by relevant sub-contractors. See also the Standard Building Contract Guide.

- 7.4.2 if in relation to an identified beneficiary the Rights Particulars fail to specify the method by which such rights are to be conferred, the Contractor in relation to rights to be granted by him may elect to do so either as third party rights or by collateral warranty;
- 7.4.3 unless otherwise stated in the Rights Particulars, the term 'the Consultants' shall in all third party rights and/or collateral warranties to be granted mean the Architect/Contract Administrator and the Quantity Surveyor (including any replacements), together with any other consultants providing design services to the Employer in connection with the Works.

7.5 Notices

Each notice to the Contractor referred to in clauses 7.7 to 7.11 shall be given in accordance with clause 1.7.4.

7.6 Execution of Collateral Warranties

Where this Contract is executed as a deed, any collateral warranty to be entered into by the Contractor pursuant to clause 7.9 or 7.10 shall be executed as a deed. Where this Contract is executed under hand, any such warranty may be executed under hand.^[48]

Third Party Rights from Contractor

7.7 Rights for Purchasers and Tenants

- 7.7.1 Where the Rights Particulars state that the Contractor shall confer P&T Rights on a Purchaser or Tenant as third party rights, those rights shall vest in that Purchaser or Tenant on the date of receipt by the Contractor of the Employer's notice to that effect, stating the name of the Purchaser or Tenant and the nature of his interest in the Works.
- 7.7.2 Where P&T Rights have vested in any Purchaser or Tenant, the Employer and the Contractor shall not be entitled without the consent of that Purchaser or Tenant to amend or vary the express provisions of this clause 7.7 or of Part 1 of Schedule 5 (Third Party Rights for Purchasers and Tenants) but, subject thereto, the rights of the Employer and/or the Contractor:
- 7.7.2.1 to terminate the Contractor's employment under this Contract (whether under section 8 or otherwise), or to agree to rescind this Contract;
- 7.7.2.2 to agree to amend or otherwise vary or to waive any terms of this Contract;
- 7.7.2.3 to agree to settle any dispute or other matter arising out of or in connection with this Contract, in each case in or on such terms as they shall in their absolute discretion think fit,
- shall not be subject to the consent of any Purchaser or Tenant.

7.8 Rights for a Funder

- 7.8.1 Where the Rights Particulars state that the Contractor shall confer Funder Rights on a Funder as third party rights, those rights shall vest in the Funder on the date of receipt by the Contractor of the Employer's notice to that effect.
- 7.8.2 Where Funder Rights have been vested in the Funder pursuant to clause 7.8.1:
- 7.8.2.1 no amendment or variation shall be made to the express terms of this clause 7.8, to Part 2 of Schedule 5 (Third Party Rights for a Funder) or to the relevant Rights Particulars without the prior written consent of the Funder; and
- 7.8.2.2 neither the Employer nor the Contractor shall agree to rescind this Contract, and the rights of the Contractor to terminate his employment under this Contract or to treat it as repudiated shall in all respects be subject to the provisions of paragraph 6 of Part 2 of Schedule 5
- but, subject thereto, unless and until the Funder gives notice under paragraph 5 or paragraph 6.4 of Part 2 of Schedule 5, the Contractor shall remain free without the consent of the Funder to agree with the Employer to amend or otherwise vary or to waive any term

[48] See the footnote to clause 7.4 above.

of this Contract and to settle any dispute or other matter arising out of or in connection with this Contract, in each case in such terms as they think fit, without any requirement that the Contractor obtain the consent of the Funder.

Collateral Warranties from Contractor

7.9 Contractor's Warranties – Purchasers and Tenants

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

7.10 Contractor's Warranty – Funder

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

Third Party Rights and Collateral Warranties from Sub-Contractors

7.11 Third Party Rights and Collateral Warranties from Sub-Contractors

Where the Rights Particulars state that a sub-contractor shall confer third party rights on a Purchaser, Tenant or Funder and/or the Employer or execute and deliver a Collateral Warranty in favour of such person:

- 7.11.1 the Contractor shall comply with the Contract Documents as to the obtaining of such rights or warranties including:
 - 7.11.1.1 on receipt of notice from the Employer (or Architect/Contract Administrator on his behalf) identifying in each case the sub-contractor, type of right or warranty and beneficiary, promptly giving notice under clause 2.26.3 or, where appropriate, 2.26.4 of the JCT Standard Building Sub-Contract Conditions or other equivalent sub-contract condition to each sub-contractor identified in the Employer's notice; and
 - 7.11.1.2 in the case of each Collateral Warranty specified in the Employer's notice and within 21 days of receipt of that notice, taking such steps as are required to obtain each warranty, promptly forwarding the executed document to the Employer or as he may direct and, where Collateral Warranty SCWa/F is required, having himself also executed and delivered the document;
- 7.11.2 any amendment to the form of any third party rights or collateral warranty proposed by a sub-contractor shall require approval by both the Contractor and the Employer;
- 7.11.3 in the case of vested third party rights, the Contractor shall not without the consent of each beneficiary in whom those rights have been vested:
 - 7.11.3.1 agree any amendment or variation to the express terms of clause 2.26, clause 2.27 or Schedule 6 (Third Party Rights) of the JCT Standard Building Sub-Contract Conditions or other equivalent conditions of the sub-contract; or
 - 7.11.3.2 where such beneficiary is the Employer or a Funder, agree to rescind the sub-contract.

Section 8 Termination

General

8.1 Meaning of insolvency

For the purposes of these Conditions:

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

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

8.2 Notices under section 8

- 8.2.1 Notice of termination of the Contractor's employment shall not be given unreasonably or vexatiously.
- 8.2.2 Such termination shall take effect on receipt of the relevant notice.
- 8.2.3 Each notice referred to in this section shall be given in accordance with clause 1.7.4.

8.3 Other rights, reinstatement

- 8.3.1 The provisions of clauses 8.4 to 8.7 are without prejudice to any other rights and remedies

of the Employer. The provisions of clauses 8.9 and 8.10, and (in the case of termination under either of those clauses) the provisions of clause 8.12, are without prejudice to any other rights and remedies of the Contractor.

- 8.3.2 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.

Termination by Employer

8.4 Default by Contractor

- 8.4.1 If, before practical completion of the Works, the Contractor:
- 8.4.1.1 without reasonable cause wholly or substantially suspends the carrying out of the Works or the design of the Contractor's Designed Portion; or
 - 8.4.1.2 fails to proceed regularly and diligently with the Works or the design of the Contractor's Designed Portion; or
 - 8.4.1.3 refuses or neglects to comply with a notice or instruction from the Architect/Contract Administrator requiring him to remove any work, materials or goods not in accordance with this Contract and by such refusal or neglect the Works are materially affected; or
 - 8.4.1.4 fails to comply with clause 3.7 or 7.1; or
 - 8.4.1.5 fails to comply with clause 3.23,
- the Architect/Contract Administrator may give to the Contractor a notice specifying the default or defaults (a 'specified' default or defaults).
- 8.4.2 If the Contractor continues a specified default for 14 days from receipt of the notice under clause 8.4.1, the Employer may on, or within 21 days from, the expiry of that 14 day period by a further notice to the Contractor terminate the Contractor's employment under this Contract.
- 8.4.3 If the Employer does not give the further notice referred to in clause 8.4.2 (whether as a result of the ending of any specified default or otherwise) but the Contractor repeats a specified default (whether previously repeated or not), then, upon or within a reasonable time after such repetition, the Employer may by notice to the Contractor terminate that employment.

8.5 Insolvency of Contractor

- 8.5.1 If the Contractor is Insolvent, the Employer may at any time by notice to the Contractor terminate the Contractor's employment under this Contract.
- 8.5.2 The Contractor shall immediately notify the Employer if he makes any proposal, gives notice of any meeting or becomes the subject of any proceedings or appointment relating to any of the matters referred to in clause 8.1.
- 8.5.3 As from the date the Contractor becomes Insolvent, whether or not the Employer has given such notice of termination:
- 8.5.3.1 clauses 8.7.3 to 8.7.5 and (if relevant) clause 8.8 shall apply as if such notice had been given;
 - 8.5.3.2 the Contractor's obligations under Article 1 and these Conditions to carry out and complete the Works and the design of the Contractor's Designed Portion shall be suspended; and
 - 8.5.3.3 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.

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

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

8.7 Consequences of termination under clauses 8.4 to 8.6

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

- 8.7.1 the Employer may employ and pay other persons to carry out and complete the Works and/or (where applicable) the design for the Contractor's Designed Portion and to make good any defects of the kind referred to in clause 2.38, and he and they may enter upon and take possession of the site and the Works and (subject to obtaining any necessary third party consents) may use all temporary buildings, plant, tools, equipment and Site Materials for those purposes;
- 8.7.2 the Contractor shall:
 - 8.7.2.1 when required in writing by the Architect/Contract Administrator to do so (but not before), remove or procure the removal from the Works of any temporary buildings, plant, tools, equipment, goods and materials belonging to the Contractor or Contractor's Persons;
 - 8.7.2.2 (where there is a Contractor's Designed Portion) without charge provide the Employer with copies of all Contractor's Design Documents then prepared, whether or not previously provided;
 - 8.7.2.3 if so required by the Employer (or by the Architect/Contract Administrator on his behalf) within 14 days of the date of termination, assign (so far as assignable and so far as he may lawfully be required to do so) to the Employer, without charge, the benefit of any agreement for the supply of materials or goods and/or for the execution of any work for the purposes of this Contract^[49];
- 8.7.3 no further sum shall become due to the Contractor under this Contract other than any amount that may become due to him under clause 8.7.5 or 8.8.2 and the Employer need not pay any sum that has already become due either:
 - 8.7.3.1 insofar as the Employer has given or gives a Pay Less Notice under clause 4.11.5; or
 - 8.7.3.2 if the Contractor, after the last date upon which such notice could have been given by the Employer in respect of that sum, has become insolvent within the meaning of clauses 8.1.1 to 8.1.3;
- 8.7.4 following the completion of the Works and the making good of defects in them (or of instructions otherwise, as referred to in clause 2.38), an account of the following shall within 3 months thereafter be set out in a certificate issued by the Architect/Contract Administrator or a statement prepared by the Employer:
 - 8.7.4.1 the amount of expenses properly incurred by the Employer, including those incurred pursuant to clause 8.7.1 and, where applicable, clause 8.5.3.3, and of any direct loss and/or damage caused to the Employer and for which the Contractor is liable, whether arising as a result of the termination or otherwise;
 - 8.7.4.2 the amount of payments made to the Contractor; and
 - 8.7.4.3 the total amount which would have been payable for the Works in accordance with this Contract;
- 8.7.5 if the sum of the amounts stated under clauses 8.7.4.1 and 8.7.4.2 exceeds the amount stated under clause 8.7.4.3, the difference shall be a debt payable by the Contractor to the Employer or, if that sum is less, by the Employer to the Contractor.

[49] Clause 8.7.2.3 may not be effectual in cases of Contractor's insolvency.

8.8 Employer's decision not to complete the Works

- 8.8.1 If within the period of 6 months from the date of termination of the Contractor's employment the Employer decides not to have the Works carried out and completed, he shall forthwith notify the Contractor. Within a reasonable time from the date of such notification, or if no notification is given but within that 6 month period the Employer does not commence to make arrangements for such carrying out and completion, then within 2 months of the expiry of that 6 month period, the Employer shall send to the Contractor a statement setting out:
- 8.8.1.1 the total value of work properly executed at the date of termination or date on which the Contractor became Insolvent, ascertained in accordance with these Conditions as if that employment had not been terminated, together with any amounts due to the Contractor under these Conditions not included in such total value; and
 - 8.8.1.2 the aggregate amount of any expenses properly incurred by the Employer and of any direct loss and/or damage caused to the Employer and for which the Contractor is liable, whether arising as a result of the termination or otherwise.
- 8.8.2 After taking into account amounts previously paid to the Contractor under this Contract, if the amount stated under clause 8.8.1.2 exceeds the amount stated under clause 8.8.1.1, the difference shall be a debt payable by the Contractor to the Employer or, if the clause 8.8.1.2 amount is less, by the Employer to the Contractor.

Termination by Contractor**8.9 Default by Employer**

- 8.9.1 If the Employer:
- 8.9.1.1 does not pay by the final date for payment the amount due to the Contractor in accordance with clause 4.11 and/or any VAT properly chargeable on that amount; or
 - 8.9.1.2 interferes with or obstructs the issue of any certificate due under this Contract; or
 - 8.9.1.3 fails to comply with clause 7.1; or
 - 8.9.1.4 fails to comply with clause 3.23,
- the Contractor may give to the Employer a notice specifying the default or defaults (a 'specified' default or defaults).
- 8.9.2 If before practical completion of the Works the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for a continuous period of the length stated in the Contract Particulars by reason of:
- 8.9.2.1 Architect/Contract Administrator's instructions under clause 2.15, 3.14 or 3.15; and/or
 - 8.9.2.2 any impediment, prevention or default, whether by act or omission, by the Employer, the Architect/Contract Administrator, the Quantity Surveyor or any Employer's Person
- (but in either case excluding such instructions as are referred to in clause 8.11.1.2), then, unless in either case that is caused by the negligence or default of the Contractor or any Contractor's Person, the Contractor may give to the Employer a notice specifying the event or events (a 'specified' suspension event or events).
- 8.9.3 If a specified default or a specified suspension event continues for 14 days from the receipt of notice under clause 8.9.1 or 8.9.2, the Contractor may on, or within 21 days from, the expiry of that 14 day period by a further notice to the Employer terminate the Contractor's employment under this Contract.
- 8.9.4 If the Contractor for any reason does not give the further notice referred to in clause 8.9.3, but (whether previously repeated or not):

- 8.9.4.1 the Employer repeats a specified default; or
 - 8.9.4.2 a specified suspension event is repeated for any period, such that the regular progress of the Works is or is likely to be materially affected thereby,
- then, upon or within a reasonable time after such repetition, the Contractor may by notice to the Employer terminate the Contractor's employment under this Contract.

8.10 Insolvency of Employer

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

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

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

- 8.11.1 If, before practical completion of the Works, the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for the relevant continuous period of the length stated in the Contract Particulars by reason of one or more of the following events:
 - 8.11.1.1 force majeure;
 - 8.11.1.2 Architect/Contract Administrator's instructions under clause 2.15, 3.14 or 3.15 issued as a result of the negligence or default of any Statutory Undertaker;
 - 8.11.1.3 loss or damage to the Works occasioned by any risk covered by the Works Insurance Policy or by an Excepted Risk;
 - 8.11.1.4 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
 - 8.11.1.5 the exercise by the United Kingdom Government or any Local or Public Authority of any statutory power that is not occasioned by a default of the Contractor or any Contractor's Person but which directly affects the execution of the Works,

then either Party, subject to clause 8.11.2, may upon the expiry of that relevant period of suspension give notice to the other that, unless the suspension ceases within 7 days after the date of receipt of that notice, he may terminate the Contractor's employment under this Contract. Failing such cessation within that 7 day period, he may then by further notice terminate that employment.
- 8.11.2 The Contractor shall not be entitled to give notice under clause 8.11.1 in respect of the matter referred to in clause 8.11.1.3 where the loss or damage to the Works was caused by the negligence or default of the Contractor or any Contractor's Person.
- 8.11.3 Where this Contract is one to which regulation 73(1) of the PC Regulations applies the Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment under this Contract where the grounds set out in regulation 73(1)(a) or 73(1)(c) of the PC Regulations apply.

Consequences of Termination under clauses 8.9 to 8.11, etc.

8.12 Consequences of Termination under clauses 8.9 to 8.11, etc.

If the Contractor's employment is terminated under any of clauses 8.9 to 8.11 or under clause 6.11.2.2 or 6.14:

- 8.12.1 no further sums shall become due to the Contractor otherwise than in accordance with this clause 8.12;
- 8.12.2 the Contractor shall:
 - 8.12.2.1 with all reasonable dispatch remove or procure the removal from the site of any temporary buildings, plant, tools and equipment belonging to the Contractor and Contractor's Persons and, subject to the provisions of clause 8.12.5, all goods and materials (including Site Materials); and
 - 8.12.2.2 (where there is a Contractor's Designed Portion) without charge provide to the Employer copies of the documents referred to in clause 2.40 then prepared;
- 8.12.3 where the Contractor's employment is terminated under clause 8.9 or 8.10, the Contractor shall as soon as reasonably practicable prepare and submit an account or, where terminated under clause 8.11, 6.11.2.2 or 6.14, the Contractor shall at the Employer's option either prepare and submit that account or, not later than 2 months after the date of termination, provide the Employer with all documents necessary for the Employer to do so, which the Employer shall do with reasonable dispatch (and in any event within 3 months of receipt of such documents). The account shall set out the amounts referred to in clauses 8.12.3.1 to 8.12.3.4 and, if applicable, clause 8.12.3.5, namely:
 - 8.12.3.1 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;
 - 8.12.3.2 any sums ascertained in respect of direct loss and/or expense under clause 4.21 (whether ascertained before or after the date of termination);
 - 8.12.3.3 the reasonable cost of removal under clause 8.12.2;
 - 8.12.3.4 the cost of materials or goods (including Site Materials) properly ordered for the Works for which the Contractor then has paid or is legally bound to pay;
 - 8.12.3.5 any direct loss and/or damage caused to the Contractor by the termination;
- 8.12.4 the account shall include the amount, if any, referred to in clause 8.12.3.5 only where the Contractor's employment is terminated either:
 - 8.12.4.1 under clause 8.9 or 8.10; or
 - 8.12.4.2 under clause 8.11.1.3, if the loss or damage to the Works was caused by the negligence or default of the Employer or any Employer's Person;
- 8.12.5 after taking into account amounts previously paid to the Contractor under this Contract, the Employer shall pay to the Contractor (or vice versa) the amount properly due in respect of the account within 28 days of its submission to the other Party, without deduction of any Retention. Payment by the Employer for any such materials and goods as are referred to in clause 8.12.3.4 shall be subject to those materials and goods thereupon becoming the Employer's property.

Section 9 Settlement of Disputes

Mediation

9.1 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.^[50]

Adjudication

9.2 Adjudication

If a dispute or difference arises under this Contract which either Party wishes to refer to adjudication, the Scheme shall apply, subject to the following:

- 9.2.1 for the purposes of the Scheme the Adjudicator shall be the person (if any) and the nominating body shall be that stated in the Contract Particulars;
- 9.2.2 where the dispute or difference is or includes a dispute or difference relating to clause 3.18.4 and as to whether an instruction issued thereunder is reasonable in all the circumstances:
 - 9.2.2.1 the Adjudicator to decide such dispute or difference shall (where practicable) be an individual with appropriate expertise and experience in the specialist area or discipline relevant to the instruction or issue in dispute;
 - 9.2.2.2 if the Adjudicator does not have the appropriate expertise and experience, the Adjudicator shall appoint an independent expert with such expertise and experience to advise and report in writing on whether or not the instruction under clause 3.18.4 is reasonable in all the circumstances.

Arbitration

- 9.3 Not applicable**
- 9.4 Not applicable**
- 9.5 Not applicable**
- 9.6 Not applicable**
- 9.7 Not applicable**
- 9.8 Not applicable**

[50] See the Standard Building Contract Guide.

Schedules

Schedule 1 Design Submission Procedure

(Clause 2.9.5)

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

- or that compliance with the Architect/Contract Administrator's comment would give rise to a Variation;
- 8.2 where in relation to a comment by the Architect/Contract Administrator the Contractor does not notify him in accordance with paragraph 7, the comment in question shall not be treated as giving rise to a Variation; and
- 8.3 neither compliance with the design submission procedure in this Schedule nor with the Architect/Contract Administrator's comments shall diminish the Contractor's obligations to ensure that the Contractor's Design Documents and CDP Works are in accordance with this Contract.

Schedule 2 Variation and Acceleration Quotation Procedures

(Clause 5.3)

Variation Quotation

1

- 1.1 Any instruction of the Architect/Contract Administrator requesting a Variation Quotation shall provide sufficient information^[51] to enable the Contractor to provide that quotation to the Quantity Surveyor in accordance with paragraph 1.2. If the Contractor reasonably considers that the information provided is not sufficient, then, not later than 7 days from the receipt of the instruction, he shall notify the Architect/Contract Administrator who shall supply the information that he reasonably requires.
- 1.2 The Variation Quotation shall separately comprise:
- 1.2.1 the amount of the adjustment to the Contract Sum, excluding any loss and/or expense referred to in paragraph 1.2.3, but including the effect of the instruction on any other work (supported by all necessary calculations, which shall be made by reference, where relevant, to the rates and prices in the Priced Document) and including also, where appropriate, allowances for any adjustment of preliminary items^[52];
 - 1.2.2 any adjustment to the time required for completion of the Works and/or any Section (including, where relevant, a Completion Date earlier than the Date for Completion given in the Contract Particulars) to the extent that such adjustment is not included in any revision of the Completion Date made by the Architect/Contract Administrator under clause 2.28 or in any other Confirmed Acceptance;
 - 1.2.3 the amount to be paid in respect of any direct loss and/or expense that is not included in any other Confirmed Acceptance or in any ascertainment under clause 4.21 or 5.3.3;
 - 1.2.4 a fair and reasonable amount in respect of the cost of preparing the quotation;
 - 1.2.5 where specifically required by the instruction, indicative statements on:
 - 1.2.5.1 the additional resources (if any) required to carry out the Variation; and
 - 1.2.5.2 the method of carrying out the Variation.
- Each part of the quotation shall contain supporting information that is reasonably sufficient to enable that part to be evaluated by or on behalf of the Employer.
- 1.3 The Variation for which the Contractor has submitted a Variation Quotation shall not be carried out until he receives a Confirmed Acceptance of it under paragraph 4 or an instruction under paragraph 5.1.1.

Acceleration Quotation

2

- 2.1 If the Employer wishes to investigate the possibility of achieving practical completion before the Completion Date for the Works or a Section the Architect/Contract Administrator shall invite proposals from the Contractor in that regard (an 'Acceleration Quotation'). The Contractor on receiving such an invitation shall either:

[51] The information provided to the Contractor should normally be in a similar format to that provided at the tender stage.

[52] If a Fluctuations Provision applies under the Contract and is also to apply in respect of the Variation, that should be stated in the quotation and an appropriate base date should be given for calculation purposes.

- 2.1.1 provide an Acceleration Quotation to the Architect/Contract Administrator accordingly, identifying the time that can be saved, the amount of the adjustment to the Contract Sum (inclusive of such amounts as are referred to in paragraphs 1.2.3 and 1.2.4) and any other conditions attached; or
- 2.1.2 explain why it would be impracticable to achieve practical completion earlier than the Completion Date.
- 2.2 The Employer may on or before receipt of the quotation seek revised proposals.
- 2.3 Without affecting his obligations under clauses 2.1 and 2.4, the Contractor shall be under no obligation to accelerate, or take any steps for that purpose, until he receives a Confirmed Acceptance of his Acceleration Quotation under paragraph 4.

Time for submission and acceptance

3

- 3.1 Unless otherwise agreed, the Variation Quotation or Acceleration Quotation shall be submitted in compliance with the instruction or invitation not later than 21 days from the later of:
 - 3.1.1 the date of receipt of the instruction or invitation; or
 - 3.1.2 the date of receipt by the Contractor of information sufficient to enable him to prepare the quotation.
- 3.2 The quotation shall remain open for acceptance by the Employer for not less than 7 days from its receipt by the Quantity Surveyor or Architect/Contract Administrator.
- 3.3 The Parties may agree to increase or reduce any of the periods referred to in clause 5.3.1 or this Schedule; confirmation of such agreement shall be notified to the Contractor by or on behalf of the Employer.

Acceptance of the quotation

4

- If the Employer wishes to accept a Variation Quotation or Acceleration Quotation, the Architect/Contract Administrator shall on his behalf within the period for acceptance confirm such acceptance by an instruction to the Contractor (a 'Confirmed Acceptance') stating:
- 4.1 the adjustment of the Contract Sum (including any amounts to which paragraphs 1.2.3 and 1.2.4 refer) to be made for complying with the instruction;
 - 4.2 the adjustment to the time required by the Contractor for completion of the Works and/or Section and the resultant revised Completion Date(s) (which, where relevant, may be a date earlier than the Date for Completion); and
 - 4.3 (in the case of an Acceleration Quotation) any such conditions as are referred to in paragraph 2.1.1.

Non-acceptance of the quotation

5

- 5.1 If a Variation Quotation is not accepted by the expiry of the period for acceptance, the Architect/Contract Administrator shall on the expiry of that period either:
 - 5.1.1 instruct that the Variation is to be carried out and is to be valued under the Valuation Rules (*clauses 5.6 to 5.10*); or
 - 5.1.2 instruct that the Variation is not to be carried out.
- 5.2 If a Variation Quotation or Acceleration Quotation 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. Non-acceptance by the Employer of a quotation shall not of itself be evidence that the quotation was not prepared on such a basis.
- 5.3 Unless the Architect/Contract Administrator issues a Confirmed Acceptance, neither the Employer nor the Contractor may use the quotation for any purpose whatsoever.

Schedule 3 Insurance Options

(Clause 6.7)

Insurance Option A

(New Buildings – All Risks Insurance of the Works by the Contractor)^[53]

Contractor to effect and maintain a Joint Names Policy

- A.1** The Contractor shall effect and for the period specified in clause 6.7.2 maintain with insurers approved by the Employer a Joint Names Policy for All Risks Insurance with cover no less than that specified in clause 6.8 for the full reinstatement value of the Works or (where applicable) Sections (plus the percentage, if any, stated in the Contract Particulars to cover professional fees).

Use of Contractor's annual policy – as alternative

- A.2** If and so long as the Contractor independently of this Contract maintains an annual insurance policy which in respect of the Works or Sections:

A.2.1 provides (inter alia) All Risks Insurance with cover and in amounts no less than those specified in paragraph A.1; and

A.2.2 is a Joint Names Policy,

that policy shall satisfy the Contractor's obligations under paragraph A.1. The annual renewal date of the policy, as supplied by the Contractor, is stated in the Contract Particulars.

Loss or damage

- A.3** Where there is loss or damage affecting any executed work and/or Site Materials, the provisions of clause 6.13 shall as relevant apply.

[53] Insurance Options A and B are for use in the case of new buildings. Insurance Option A is applicable where the Contractor is required to take out a Joint Names Policy for All Risks Insurance of the Works or to include them on that basis within his Annual Construction policy; Insurance Option B is applicable where the Employer has elected to take out that Joint Names Policy.

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

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

Insurance Option B

(New Buildings – All Risks Insurance of the Works by the Employer)^[53]

Not applicable

Insurance Option C

(Joint Names Insurance by the Employer of Existing Structures and Works in or Extensions to them)^[54]

Not applicable

[54] **Insurance Option C** is for use where there are Existing Structures. It can be used in its existing printed form by those Employers who are able to effect the Joint Names, Specified Perils cover for the Contractor in respect of the Existing Structures and those contents that are owned by the Employer or for which he is responsible.

However, the Joint Names Policy required by paragraph C.1 or the extension of a subsisting structure and contents policy to being a Joint Names Policy may not be readily available – and that provision is often not now appropriate for – refurbishment projects or alterations by tenant Employers where Existing Structures insurance is the landlord's responsibility.

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

The Contract Particulars for clause 6.7 and Schedule 3 therefore expressly allow the Parties in those circumstances to disapply paragraph C.1 and, by means of a C.1 Replacement Schedule, to include in place of that paragraph provisions that are tailored to their particular requirements.

In JCT's view the preparation of such replacement provisions must be assigned to insurance professionals.

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

Schedule 4 Code of Practice

(Clause 3.18.4)

The purpose of the Code is to assist in the fair and reasonable operation of the requirements of clause 3.18.4.

The Architect/Contract Administrator and the Contractor should endeavour to agree the amount and method of opening up or testing, but in any case, in issuing his instructions pursuant to that clause, the Architect/Contract Administrator is required to consider the following criteria:

- 1 the need in the event of non-compliance to demonstrate at no cost to the Employer either that it is unique and not likely to occur in similar elements of the Works or alternatively, the extent of any similar non-compliance in the Works already constructed or still to be constructed;
- 2 the need to discover whether any non-compliance in a primary structural element is a failure of workmanship and/or materials such that rigorous testing of similar elements must take place; or, where the non-compliance is in a less significant element, whether it is such as is to be statistically expected and can simply be repaired; or whether the non-compliance indicates an inherent weakness such as can only be found by selective testing, the extent of which must depend upon the importance of any detail concerned;
- 3 the significance of the non-compliance, having regard to the nature of the work in which it has occurred;
- 4 the consequence of any similar non-compliance on the safety of the building, its effect on users, adjoining property, the public, and compliance with any Statutory Requirements;
- 5 the level and standard of supervision and control of the Works by the Contractor;
- 6 the relevant records of the Contractor and, where relevant, those of any sub-contractor, whether resulting from the supervision and control referred to in paragraph 5 or otherwise;
- 7 any Codes of Practice or similar advice issued by a responsible body which are applicable to the non-compliant work, materials or goods;
- 8 any failure by the Contractor to carry out, or to secure the carrying out of, any tests specified in the Contract Documents or in an instruction of the Architect/Contract Administrator;
- 9 the reason for the non-compliance, when this has been established;
- 10 any technical advice that the Contractor has obtained in respect of the non-compliant work, materials or goods;
- 11 current recognised testing procedures;
- 12 the practicability of progressive testing in establishing whether any similar non-compliance is reasonably likely;
- 13 if alternative testing methods are available, the time required for and the consequential costs of such alternative testing methods;
- 14 any proposals of the Contractor; and
- 15 any other relevant matters.

Schedule 5 Third Party Rights

(Clauses 7.7 and 7.8)

Part 1: Third Party Rights for Purchasers and Tenants

('P&T Rights')

1

- 1.1 The Contractor warrants as at and with effect from practical completion of the Works (or, where there are Sections, practical completion of the relevant Section) that he has carried out the Works or, as the case may be, that Section, in accordance with this Contract. In the event of any breach of this warranty and subject to paragraphs 1.2, 1.3 and 1.4:
 - 1.1.1 the Contractor shall be liable for the reasonable costs of repair, renewal and/or reinstatement of any part or parts of the Works to the extent that the Purchaser or Tenant incurs such costs and/or the Purchaser or Tenant is or becomes liable either directly or by way of financial contribution for such costs; and
 - 1.1.2 where the Rights Particulars state that paragraph 1.1.2 applies, the Contractor shall in addition to the costs referred to in paragraph 1.1.1 be liable for any other losses incurred by the Purchaser or Tenant up to the maximum liability stated in or by the Rights Particulars.
- 1.2 Where paragraph 1.1.2 does not apply, the Contractor shall not be liable for any losses incurred by the Purchaser or Tenant other than the costs referred to in paragraph 1.1.1.
- 1.3 The Contractor's liability to a Purchaser or Tenant in respect of its P&T Rights shall be limited to the proportion of the Purchaser's or Tenant's losses which it would be just and equitable to require the Contractor to pay having regard to the extent of the Contractor's responsibility for the same, on the assumptions that the Consultant(s):
 - 1.3.1 has or have provided contractual undertakings to or conferred third party rights on the Purchaser or Tenant as regards the performance of his or their services in connection with the Works in accordance with the terms of his or their respective consultancy agreements and that there are no limitations on liability as between the Consultant and the Employer in the consultancy agreement(s); and
 - 1.3.2 has or have paid to the Purchaser or Tenant such proportion of the Purchaser's or Tenant's losses as it would be just and equitable for them to pay having regard to the extent of their responsibility for the Purchaser's or Tenant's losses.
- 1.4 The Contractor shall be entitled in any action or proceedings by the Purchaser or Tenant to rely on any term in this Contract and to raise the equivalent rights in defence of liability as he would have against the Employer under this Contract.
- 1.5 The obligations of the Contractor under or pursuant to this paragraph 1 shall not be released or diminished by the appointment of any person by the Purchaser or Tenant to carry out any independent enquiry into any relevant matter.

2 The Contractor further warrants that unless required by this Contract or unless otherwise authorised in writing by the Employer or by the Architect/Contract Administrator named in or appointed pursuant to this Contract (or, where such authorisation is given orally, confirmed in writing by the Contractor to the Employer and/or the Architect/Contract Administrator), he has not used and will not use materials in the Works other than in accordance with the guidelines contained in the edition of 'Good Practice in Selection of Construction Materials' (British Council for Offices) current at the date of this Contract. In the event of any breach of this warranty the provisions of paragraph 1 shall apply.

3 The Purchaser or Tenant has no authority to issue any direction or instruction to the Contractor in relation to this Contract.

4 Where the Works include a Contractor's Designed Portion, the Purchaser or Tenant, insofar as it is the

purchaser or tenant of any part(s) of the site falling within the Contractor's Designed Portion, and subject to the Contractor having been paid all sums due and payable under this Contract, shall in respect of such parts have rights and licences in relation to the Contractor's Design Documents in the same terms as those conferred on the Employer by clause 2.41, but subject to similar conditions, limitations and exclusions as apply thereunder to the Employer.

- 5 Where the Works include a Contractor's Designed Portion and this Contract requires the Contractor to take out and maintain Professional Indemnity insurance, the Contractor warrants that he has and shall maintain that insurance in the amount, on the terms and for the period referred to in clause 6.15 and its related Contract Particulars^[55]. The Contractor shall immediately give written notice to the Purchaser or Tenant if such insurance ceases to be available at commercially reasonable rates in order that the Contractor and the Purchaser or Tenant can discuss the means of best protecting their respective positions in the absence of such insurance. As and when reasonably requested to do so by the Purchaser or Tenant, the Contractor shall produce for inspection documentary evidence that his Professional Indemnity insurance is being maintained.
- 6 P&T Rights may be assigned without the Contractor's consent by a Purchaser or Tenant, by way of absolute legal assignment, to another person (P1) taking an assignment of the Purchaser's or Tenant's interest in the Works and by P1, by way of absolute legal assignment, to another person (P2) taking an assignment of P1's interest in the Works. In such cases the assignment shall only be effective upon written notice of it being given to the Contractor. No further or other assignment of a Purchaser's or Tenant's rights under this Schedule will be permitted and in particular P2 shall not be entitled to assign these rights.
- 7 Any notice to be given by the Purchaser or Tenant to the Contractor or by the Contractor to the Purchaser or Tenant shall be duly given if delivered by hand or sent by Recorded Signed for or Special Delivery post to the recipient at such address as he may from time to time notify to the sender or (if no such address is then current) his last known principal business address or (where a body corporate) its registered or principal office. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.
- 8 No action or proceedings for any breach of P&T Rights shall be commenced against the Contractor after the expiry of the relevant period from the date of practical completion of the Works. Where there are Sections, no action or proceedings shall be commenced against the Contractor in respect of any Section after the expiry of the relevant period from the date of practical completion of such Section. For the purposes of this paragraph, the relevant period shall be:
 - 8.1 where this Contract is executed under hand, 6 years; and
 - 8.2 where this Contract is executed as a deed, 12 years.
- 9 For the avoidance of doubt, the Contractor shall have no liability to the Purchaser or Tenant under this Schedule for delay in completion of the Works.
- 10 This Schedule shall be governed by and construed in accordance with the law of England and the English courts shall have jurisdiction over any dispute or difference between the Contractor and any Purchaser or Tenant which arises out of or in connection with the P&T Rights of that Purchaser or Tenant.

Part 2: Third Party Rights for a Funder

('Funder Rights')

- 1 The Contractor warrants that he has complied and will continue to comply with this Contract. In the event of any breach of this warranty:
 - 1.1 the Contractor's liability to the Funder for costs under this Schedule shall be limited to the proportion of the Funder's losses which it would be just and equitable to require the Contractor to pay having regard to the extent of the Contractor's responsibility for the same, on the assumptions that the Consultant(s):
 - 1.1.1 has or have provided contractual undertakings to or conferred third party rights on the Funder that he or they has or have and will perform his or their services in connection with the Works in accordance with the terms of his or their respective

[55]

consultancy agreements and that there are no limitations on liability as between the Consultant and the Employer in the consultancy agreement(s); and

- 1.1.2 has or have paid to the Funder such proportion of the Funder's losses as it would be just and equitable for them to pay having regard to the extent of their responsibility for the Funder's losses;
- 1.2 the Contractor shall be entitled in any action or proceedings by the Funder to rely on any term in this Contract and to raise the equivalent rights in defence of liability as he would have against the Employer under this Contract;
- 1.3 the obligations of the Contractor under or pursuant to this paragraph 1 shall not be released or diminished by the appointment of any person by the Funder to carry out any independent enquiry into any relevant matter.
- 2 The Contractor further warrants that unless required by this Contract or unless otherwise authorised in writing by the Employer or by the Architect/Contract Administrator named in or appointed pursuant to this Contract (or, where such authorisation is given orally, confirmed in writing by the Contractor to the Employer and/or the Architect/Contract Administrator), he has not used and will not use materials in the Works other than in accordance with the guidelines contained in the edition of 'Good Practice in Selection of Construction Materials' (British Council for Offices) current at the date of this Contract. In the event of any breach of this warranty the provisions of paragraph 1 shall apply.
- 3 The Funder has no authority to issue any direction or instruction to the Contractor in relation to this Contract unless and until the Funder has given notice under paragraph 5 or 6.4.
- 4 The Funder has no liability to the Contractor in respect of amounts due under this Contract unless and until the Funder has given notice under paragraph 5 or 6.4.
- 5 The Contractor agrees that, in the event of the termination of the Finance Agreement by the Funder, the Contractor shall, if so required by written notice given by the Funder and subject to paragraph 7, accept the instructions of the Funder or its appointee to the exclusion of the Employer in respect of the Works upon the terms and conditions of this Contract. The Employer acknowledges that the Contractor shall be entitled to rely on a notice given to the Contractor by the Funder under this paragraph 5 as conclusive evidence for the purposes of this Contract of the termination of the Finance Agreement by the Funder; and further acknowledges that such acceptance of the instructions of the Funder to the exclusion of the Employer shall not constitute any breach of the Contractor's obligations to the Employer under this Contract.
- 6
 - 6.1 The Contractor shall not exercise any right of termination of his employment under this Contract without having first:
 - 6.1.1 copied to the Funder any notices required by this Contract to be sent to the Architect/Contract Administrator or to the Employer prior to the Contractor being entitled to give notice under this Contract that his employment under this Contract is terminated; and
 - 6.1.2 given to the Funder written notice that he has the right under this Contract forthwith to notify the Employer that his employment under this Contract is terminated.
 - 6.2 The Contractor shall not treat this Contract as having been repudiated by the Employer without having first given to the Funder written notice that he intends so to notify the Employer.
 - 6.3 The Contractor shall not:
 - 6.3.1 issue a notice to the Employer to which paragraph 6.1.2 refers; or
 - 6.3.2 notify the Employer that he is treating this Contract as having been repudiated by the Employer as referred to in paragraph 6.2

before the lapse of 14 days from receipt by the Funder of the notice by the Contractor which the Contractor is required to give under paragraph 6.1.2 or 6.2.
 - 6.4 The Funder may, not later than the expiry of the period referred to in paragraph 6.3, require the Contractor by written notice and subject to paragraph 7 to accept the instructions of the

Funder or its appointee to the exclusion of the Employer in respect of the Works upon the terms and conditions of this Contract. The Employer acknowledges that the Contractor shall be entitled to rely on a notice given to the Contractor by the Funder under this paragraph 6.4 and that acceptance by the Contractor of the instructions of the Funder to the exclusion of the Employer shall not constitute any breach of the Contractor's obligations to the Employer under this Contract. Provided that nothing in this paragraph 6.4 shall relieve the Contractor of any liability he may have to the Employer for any breach by the Contractor of this Contract.

- 7 It shall be a condition of any notice given by the Funder under paragraph 5 or 6.4 that the Funder or its appointee accepts liability for payment of the sums due and payable to the Contractor under this Contract and for performance of the Employer's obligations including payment of any sums outstanding at the date of such notice. Upon the issue of any notice by the Funder under paragraph 5 or 6.4, this Contract shall continue in full force and effect as if no right of termination of the Contractor's employment under this Contract, nor any right of the Contractor to treat this Contract as having been repudiated by the Employer, had arisen and the Contractor shall be liable to the Funder and its appointee under this Contract in lieu of his liability to the Employer. If any notice given by the Funder under paragraph 5 or 6.4 requires the Contractor to accept the instructions of the Funder's appointee, the Funder shall be liable to the Contractor as guarantor for the payment of all sums from time to time due to the Contractor from the Funder's appointee.
- 8 Where the Works include a Contractor's Designed Portion and subject to the Contractor having been paid all sums due and payable under this Contract, the Funder shall have rights and licences in relation to the Contractor's Design Documents in the same terms as those conferred on the Employer by clause 2.41, but subject to similar conditions, limitations and exclusions as apply thereunder to the Employer.
- 9 Where the Works include a Contractor's Designed Portion and this Contract requires the Contractor to take out and maintain Professional Indemnity insurance, the Contractor warrants that he has and shall maintain that insurance in the amount, on the terms and for the period referred to in clause 6.15 and its related Contract Particulars^[56]. The Contractor shall immediately give written notice to the Funder if such insurance ceases to be available at commercially reasonable rates in order that the Contractor and the Funder can discuss the means of best protecting their respective positions in the absence of such insurance. As and when reasonably requested to do so by the Funder or its appointee under paragraph 5 or 6.4, the Contractor shall produce for inspection documentary evidence that his Professional Indemnity insurance is being maintained.
- 10 The rights contained in this Schedule may be assigned without the Contractor's consent by the Funder, by way of absolute legal assignment, to another person (P1) providing finance or re-finance in connection with the carrying out of the Works and by P1, by way of absolute legal assignment, to another person (P2) providing finance or re-finance in connection with the carrying out of the Works. In such cases the assignment shall only be effective upon written notice of it being given to the Contractor. No further or other assignment of Funder Rights will be permitted and in particular P2 shall not be entitled to assign these rights.
- 11 Any notice to be given by the Contractor to the Funder or by the Funder to the Contractor shall be duly given if delivered by hand or sent by Recorded Signed for or Special Delivery post to the recipient at such address as he may from time to time notify to the sender or (if no such address is then current) his last known principal business address or (where a body corporate) its registered or principal office. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.
- 12 No action or proceedings for any breach of the rights contained in this Schedule shall be commenced against the Contractor after the expiry of the relevant period from the date of practical completion of the Works. Where there are Sections, no action or proceedings shall be commenced against the Contractor in respect of any Section after the expiry of the relevant period from the date of practical completion of such Section. For the purposes of this paragraph, the relevant period shall be:
 - 12.1 where this Contract is executed under hand, 6 years; and
 - 12.2 where this Contract is executed as a deed, 12 years.
- 13 Notwithstanding the rights contained in this Schedule, the Contractor shall have no liability to the Funder for delay under this Contract unless and until the Funder serves notice pursuant to paragraph 5 or 6.4. For the avoidance of doubt the Contractor shall not be required to pay damages in respect of the period of delay where the same has been paid to or deducted by the Employer.
- 14

- 14.1 This Schedule shall be governed by and construed in accordance with the law of England and subject to paragraph 14.2 the English courts shall have jurisdiction over any dispute or difference between the Contractor and the Funder which arises out of or in connection with this Schedule.
- 14.2 Following the giving of any notice by the Funder pursuant to paragraph 5 or 6.4, any dispute or difference which shall arise between the Contractor and the Funder (including any appointee or permitted assignee) shall be subject to the provisions of Article 7 and (where they apply) Article 8 and clauses 9.3 to 9.8.

Schedule 6 Forms of Bonds

(Clauses 4.7, 4.16 and 4.18)

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

Part 1: Advance Payment Bond^[56]

Not applicable

[56] Not applicable where the Employer is a Local Authority or other public sector body.

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

Not applicable

Part 3: Retention Bond^[57]

Not applicable

[57] Not applicable where the Employer is a Local Authority or other public sector body.

Schedule 7 JCT Fluctuations Option A

(Clauses 4.3 and 4.14)

(Contribution, levy and tax fluctuations)

Not applicable

Schedule 8 Supplemental Provisions

(Eighth Recital)

Supplemental Provisions 1 to 6 apply unless otherwise stated in the Contract Particulars. Supplemental Provision 7 applies where the Employer is a Local or Public Authority or other body of the type mentioned in that provision; Supplemental Provision 8 applies where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations; Supplemental Provision 9 applies only where so stated in the Contract Particulars.

Collaborative working

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

Health and safety

2

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

Cost savings and value improvements

3

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

from utilising other contractors to implement such changes after practical completion of the Works.

Sustainable development and environmental considerations

4

4.1 The Contractor is encouraged to suggest economically viable amendments to the Works which, if instructed as a Variation, may result in an improvement in environmental performance in the carrying out of the Works or of the completed Works.

4.2 The Contractor shall provide to the Employer all information that he reasonably requests regarding the environmental impact of the supply and use of materials and goods which the Contractor selects.

Performance Indicators and monitoring

5

5.1 The Employer shall monitor and assess the Contractor's performance by reference to any performance indicators stated or identified in the Contract Documents.

5.2 The Contractor shall provide to the Employer all information that he may reasonably require to monitor and assess the Contractor's performance against the targets for those performance indicators.

5.3 Where the Employer considers that a target for any of those performance indicators may not be met, he may inform the Contractor who shall submit his proposals for improving his performance against that target to the Employer.

Notification and negotiation of disputes

6

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

Transparency

7

Where the Employer is a Local or Public Authority or other body to whom the provisions of the Freedom of Information Act 2000 ('FOIA') apply, the Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of this Contract is not confidential. The Employer shall be responsible for determining in his absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding clause 2.8.4 or any other term of this Contract:

7.1 the Contractor hereby consents to the Employer publishing any amendments to the standard form JCT contract in their entirety, including changes to the standard form agreed from time to time, but in each case with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted;

7.2 the Employer shall promptly inform the Contractor of any request for disclosure that he receives in relation to this Contract.

The Public Contracts Regulations 2015

8

Where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations^[58]:

8.1 where regulation 113 of the PC Regulations applies to this Contract, the Contractor shall include in any sub-contract entered into by him suitable provisions to impose the requirements of regulation 113(2)(c)(i) and (ii);

8.2 the Contractor shall include in any sub-contract entered into by him provisions requiring the

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

sub-contractor:

8.2.1 to supply and notify to the Contractor the information required (as applicable) under regulations 71(3), 71(4) and 71(5) of the PC Regulations; and

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

8.3

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

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

Named Specialists

9

9.1 Where Supplemental Provision 9 applies and work forming part of the Works (excluding CDP Works) is to be carried out by a named person (other than a person listed under clause 3.8.1) as the Contractor's sub-contractor (a 'Named Specialist') and either:

9.1.1 that person is named in and the work ('Pre-Named Specialist Work') is identified in the Contract Documents; or

9.1.2 that person is named in and the work ('Post-Named Specialist Work') is identified in an instruction for expenditure of a Provisional Sum and Supplemental Provision 9 is stated also to apply in respect of Post-Named Specialist Work,

the following paragraphs of this provision shall as relevant apply.

9.2 Subject to paragraphs 9.3 and 9.4, the Contractor shall as soon as reasonably practicable enter into a sub-contract with the Named Specialist for the work referred to in paragraph 9.1 (in either case, 'Named Specialist Work') and in a form that complies with clause 3.9.

9.3 If for any reason the Contractor is unable to enter into a sub-contract with the Named Specialist, he shall immediately notify the Architect/Contract Administrator of the grounds and provided that the Contractor has acted reasonably the Architect/Contract Administrator shall within 7 days of receipt of that notification give instructions that:

9.3.1 remove the grounds; or

9.3.2 select another Named Specialist able and willing to carry out the Named Specialist Work; or

9.3.3 direct the Contractor to carry out that work using either his own resources or, at the Contractor's option, a sub-contractor selected by the Contractor and approved by the Architect/Contract Administrator; or

9.3.4 omit the Named Specialist Work from this Contract as a Variation.

9.4 If in the case of instructions

9.4.1 for Post-Named Specialist Work which require use of a Named Specialist who is not named in respect of that work in the Contract Documents; or

9.4.2 for any Named Specialist Work, where the instructions name a replacement for a Named Specialist

the Contractor has reasonable grounds of objection and notifies the Architect/Contract Administrator within 7 days of receipt of the instruction, the Architect/Contract Administrator shall within 7 days of receipt of the Contractor's notification give further instructions in the terms set out in paragraph 9.3.2, 9.3.3 or 9.3.4.

- 9.5 If the Contractor becomes entitled to terminate a Named Specialist's employment under his sub-contract or to give notice of a specified default which, if continued, would be grounds for such termination or is entitled to treat the sub-contract as repudiated, the Contractor:
- 9.5.1 shall promptly, and prior to giving any notice to that effect to the Named Specialist, notify the Architect/Contract Administrator and consult with him and/or, if requested, with the Employer;
- 9.5.2 save where the Named Specialist is or becomes Insolvent, shall not give notice of termination, or notice that he is treating the sub-contract as repudiated, less than 14 days after that notification to the Architect/Contract Administrator; and
- 9.5.3 shall at the time of issue send the Architect/Contract Administrator a copy of each notice that he gives to the Named Specialist.
- 9.6 Where the Contractor terminates a Named Specialist's employment in accordance with the terms of the relevant sub-contract or treats it as repudiated by the Named Specialist, the Architect/Contract Administrator may within 7 days of receipt of his copy of the Contractor's notice to that effect issue instructions in the terms of paragraph 9.3.2, 9.3.3 or 9.3.4, failing which he shall be deemed to have given an instruction in the terms of paragraph 9.3.3.
- 9.7 The Contractor's responsibility for carrying out and completing the Works in all respects in accordance with clause 2.1 shall not be affected in any manner by the naming of any person for any work in the manner referred to in paragraph 9.1 or the exercise by the Architect/Contract Administrator of any of his powers under this Supplemental Provision 9.



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SBC/XQ 2016
Standard Building Contract
Without Quantities 2016

2016
STANDARD BUILDING CONTRACT

Standard Building Contract Without Quantities (SBC/XQ)

Appropriate:

- for larger works designed and/or detailed by or on behalf of the Employer, where detailed contract provisions are necessary and the Employer is to provide the Contractor with drawings; and with either a specification or work schedules to define adequately the scope and quality of the work and where the degree of complexity is not such as to require bills of quantities; and
- where an Architect/Contract Administrator and Quantity Surveyor are to administer the conditions.

Can be used:

- where the Contractor is to design discrete part(s) of the works (Contractor's Designed Portion);
- where the works are to be carried out in sections;
- by both private and local authority employers;
- where provisions are required to cover named specialists.

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Agreement

This Agreement

is made the _____ 20_____

Between

The Employer

John Innes Centre

Place of incorporation: England and Wales

(Company No. 00511709)^[1]

~~of~~ whose registered office is at Norwich Research Park, Colney, Norwich, NR4 7UH

And

The Contractor

MJS PROJECTS (MARCH) LTD

Place of incorporation: England and Wales

(Company No. 08579427)^[1]

~~of~~ whose registered office is at MJS House, 425 Wisbech Road, Westry, March, Cambridgeshire, PE15 0BA

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

Recitals

Whereas

First

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

~~[] an upgraded internal southern access road and below ground infrastructure work including new and relocated communications and electricity cabling, upgraded mains water infrastructure, new surface water drainage and new district heating pipework to enable site wide development proposals~~

at

~~[] John Innes Centre, Norwich Research Park, Colney Lane, Norwich NR4 7UH ('the Works')~~

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

Second

the drawings are numbered/~~listed in []~~ in (A) 05 Contract Drawings and Specifications" ~~folder within folder (ii) Employers Requirements and (B) JGD District Heating" and "MJS mark-ups" folders in folder 09 Contractors Proposals within folder (iv) Contractors Proposals~~ annexed to this Contract ('the Contract Drawings') and have for identification been signed or initialled by or on behalf of each Party^[3];

Third

in accordance with whichever of the following options and documents is stated in the Contract Particulars to apply, the Contractor either:

- (A) has priced the Specification or Work Schedules ('the Priced Document'), the total of such pricing being the Contract Sum stated in Article 2 ('Pricing Option A'); or
- (B) has stated the sum he will require for carrying out the Works shown on the Contract Drawings and described in the Specification, that sum being the Contract Sum stated in Article 2, and has supplied to the Employer a Contract Sum Analysis or a Schedule of Rates on which that sum is based ('the Priced Document') ('Pricing Option B');

~~but a and has provided the Employer with the~~ priced schedule of activities ~~annexed to this Contract ('the Activity Schedule')^[4] is not provided;~~

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

[2] State nature and location of intended works.

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

[4] ~~Delete these lines if a priced Activity Schedule is not provided. In the Activity Schedule, each activity should be priced, so that the sum of those prices equals the Contract Sum excluding Provisional Sums.~~

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

the Employer has provided the Contractor with a schedule ('the Information Release Schedule') which states the information the Architect/Contract Administrator will release and the time of that release^[5];

Sixth

the division of the Works into Sections is shown in the Specification/Work Schedules and/or the Contract Drawings or in such other documents as are identified in the Contract Particulars^[6];

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 6 and 9 apply is stated in the Contract Particulars;

The Ninth to Twelfth Recitals apply only where there is a Contractor's Designed Portion

Ninth

the Works include the design and construction of^[7] district heating pipework system, reinforcement to retaining walls and temporary works [] ('the Contractor's Designed Portion');

Tenth

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

Eleventh

in response to the Employer's Requirements the Contractor has supplied to the Employer:

- documents showing and describing the Contractor's proposals for the design and construction of the Contractor's Designed Portion ('the Contractor's Proposals'); and
- an analysis of the portion of the Contract Sum relating to the Contractor's Designed Portion ('the CDP Analysis');

[5] **+++Now footnote [4]+++** Delete the Fifth Recital if an Information Release Schedule is not provided.

[6] **+++Now footnote [5]+++** Delete the Sixth Recital if the Works are not divided into Sections.

[7] **+++Now footnote [6]+++** State nature of work in the Contractor's Designed Portion, or delete these four Recitals if not applicable. If the space here is insufficient a separate list should be prepared, signed or initialled by or on behalf of each Party and identified here, either as a specified Annex to this Contract or by its reference number, date or other identifier.

Twelfth

the Employer has examined the Contractor's Proposals and, subject to the Conditions, is satisfied that they appear to meet the Employer's Requirements.^[8] The Employer's Requirements, the Contractor's Proposals and the CDP Analysis have each for identification been signed or initialled by or on behalf of each Party and particulars of each are given in the Contract Particulars;

[8] **+++Now footnote [7]+++** Where the Employer has accepted a divergence from his requirements in the proposals submitted by the Contractor, the divergence should be removed by amending the Employer's Requirements before the Contract is executed.

Articles

Now it is hereby agreed as follows

Article 1 Contractor's obligations

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

Article 2 Contract Sum

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

[REDACTED] the Contract Sum') -

or such other sum as becomes payable under this Contract.

Article 3 Architect/Contract Administrator

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

[REDACTED] Turner & Townsend Project Management Limited (company number: 02165592)

of

[REDACTED] WeWork, 50-60 Station Road, Cambridge CB21 2JD

or, if he ceases to be the Architect/Contract Administrator, such other person as the Employer nominates in accordance with clause 3.5 of the Conditions.

Article 4 Quantity Surveyor

For the purposes of this Contract the Quantity Surveyor is ~~the functions of the Quantity Surveyor shall be exercised by^[9]~~

[REDACTED] AECOM Limited (company number 01846493)

of

[REDACTED] Cavell House, Stannard Place, St Crispins Road, Norwich, NR3 1YE

or, if he ceases to be ~~the (or to exercise the functions of) the~~ Quantity Surveyor, such other person as the Employer nominates in accordance with clause 3.5 of the ~~Conditions~~ Conditions.

Article 5 Principal Designer

The Principal Designer for the purposes of the CDM Regulations is ~~the Architect/Contract Administrator~~

(or)^[40] [REDACTED] JM2 Limited (company number 12589988)

[9] ~~Delete as appropriate. If the Architect/Contract Administrator is to exercise the Quantity Surveyor's functions under the Conditions, his name should be inserted in Article 4.~~

of
 Cam & Co Accountancy, 10-12 Love Lane, Pinner, England, HA5 3EF
or such replacement as the Employer at any time appoints to fulfil that role.

Article 6 Principal Contractor

~~The Principal Contractor for the purposes of the CDM Regulations is the Contractor~~
~~(or)^[10]~~
~~of~~

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

Article 7 Adjudication

If any dispute or difference arises under this Contract, either Party may refer it to adjudication in accordance with clause 9.2.^[11]

Article 8 Arbitration

~~Where Article 8 applies^[12], then, subject to Article 7 and the exceptions set out below, any dispute or difference between the Parties of any kind whatsoever arising out of or in connection with this Contract shall be referred to arbitration in accordance with clauses 9.3 to 9.8 and the JCT 2016 edition of the Construction Industry Model Arbitration Rules (CIMAR). The exceptions to this Article 8 are:~~
~~• any disputes or differences arising under or in respect of the Construction Industry Scheme or VAT, to the extent that legislation provides another method of resolving such disputes or differences; and~~
~~• any disputes or differences in connection with the enforcement of any decision of an Adjudicator.~~
Not applicable

Article 9 Legal proceedings^[12]

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.

[10] ~~Insert the name of the Principal Designer in Article 5 if the Architect/Contract Administrator is not to fulfil that role and that of the Principal Contractor in Article 6 if that is to be a person other than the Contractor.~~
~~Under the CDM Regulations 2015, regardless of whether or not a project is notifiable, 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 and treats the Contractor's sub-contractors as separate contractors.~~

[11] **+++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 Standard Building Contract Guide.

[12] **+++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 Article 8 and clauses 9.3 to 9.8 apply and the words "do not apply" **must** be deleted. If the Parties wish any dispute or difference to be determined by the courts of another jurisdiction the appropriate amendment should be made to Article 9 (see also clause 1.12 and Schedule 5 Part 1 and Part 2).

Contract Particulars

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

Third Recital

The Pricing Option that applies is

- * Pricing Option A
- * ~~Pricing Option B~~

The Priced Document is

(where Pricing Option A applies)

- * ~~the Specification~~
- * the Work Schedules

(where Pricing Option B applies)

- * ~~the Contract Sum Analysis~~
- * ~~the Schedule of Rates~~

Fourth Recital and clause 4.6

Construction Industry Scheme (CIS)

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

Sixth Recital

Description of Sections (if any)
(If not shown or described in the Specification/Work Schedules or Contract Drawings, state the reference numbers and dates or other identifiers of documents in which they are shown.)^[13]

Section 0:	
Section 1:	
Section 2:	
Section 3:	
Section 4:	
Section 5:	
Section 6:	
Section 7:	

[13] **+++Now footnote [10]+++** If the relevant document or set of documents takes the form of an Annex to this Contract, it is sufficient to refer to that Annex.

Seventh Recital

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

[]

Eighth Recital and Schedule 8

Supplemental Provisions^[14]
(Where neither entry against one of Supplemental Provisions 1 to 6 below is deleted, that Supplemental Provision applies.)

- Supplemental Provision 1: Collaborative working
~~* applies/does not apply~~
* applies
- Supplemental Provision 2: Health and safety
~~* applies/does not apply~~
* applies
- Supplemental Provision 3: Cost savings and value improvements
~~* applies/does not apply~~
* applies
- Supplemental Provision 4: Sustainable development and environmental considerations
~~* applies/does not apply~~
* applies
- Supplemental Provision 5: Performance Indicators and monitoring
~~* applies/does not apply~~
* applies
- Supplemental Provision 6: Notification and negotiation of disputes
~~* applies/does not apply~~
* applies

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

Employer's nominee

[REDACTED]

Contractor's nominee

[REDACTED]

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

- Supplemental Provision 9: Named Specialists
(Unless one of the first two options is selected by deletion of the other entries, Supplemental Provision 9 does not apply.)
~~* applies in respect of both Pre-Named Specialist Work and Post-Named Specialist Work~~
* applies in respect of Pre-Named Specialist Work only
~~* does not apply~~

[14] **+++Now footnote [11]+++** Supplemental Provision 7 (Transparency) applies only where the Employer is a Local or Public Authority or other body to whom the Freedom of Information Act 2000 applies; Supplemental Provision 8 (The Public Contracts Regulations 2015) applies only where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations; Supplemental Provision 9 (Named Specialists) applies only where and to the extent that it is stated to apply.

Tenth Recital

Employer's Requirements
(State reference numbers and dates or other identifiers of the relevant documents.)^[13]
 Folder (ii) of the Employers Requirements

Eleventh Recital

Contractor's Proposals
(State reference numbers and dates or other identifiers of the relevant documents.)^[13]
 Folder (iv) of the Contractors Proposals

CDP Analysis
(State reference numbers and dates or other identifiers of the relevant documents.)^[13]
 referred to as "JGD District Heating" and "MJS mark-ups" folders in folder 09
Contractors Proposals within folder (iv) of the Contractors Proposals

Article 8

Arbitration
(If neither entry is deleted, Article 8 and clauses 9.3 to 9.8 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must be stated that Article 8 and clauses 9.3 to 9.8 apply.)^[15]

Article 8 and clauses 9.3 to 9.8 (Arbitration)
* ~~apply/do not apply~~
* do not apply

1.1

Base Date
 10 business days prior to tender submission (13 June 2025)

BIM Protocol (where applicable)
(State title, edition, date or other identifiers of the relevant documents.)
 Not applicable

~~Date for Completion of the Works
(where completion by Sections does not apply)~~

Sections: Dates for Completion of Sections^[16]

Section Section 0	<u> </u> : <u> </u>
Section Section 1 :	<u> </u>
Section Section 2 :	<u> </u>
Section Section 3 :	<u> </u>
Section Section 4 :	<u> </u>
Section Section 5 :	<u> </u>
Section Section 6 :	<u> </u>
Section Section 7 :	<u> </u>

[15] **+++Now footnote [12]+++** 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 Standard Building Contract Guide. See also footnote [12] **+++ now footnote [9] +++**.

[16] **+++Now footnote [13]+++** Continue on further sheets if necessary, which should be signed or initialled by or on behalf of each Party and then be annexed to this Contract.

1.7

Addresses for service of notices by the Parties

(If none is stated, the address in each case, subject to clause 1.7.3, shall be that shown at the commencement of the Agreement.)^[17]

Employer

[] John Innes Centre, Norwich Research Park, Colney Lane, Norwich, []

Contractor

[] MJS House 425 Wisbech Road, Westry, March, Cambridgeshire, PE15 []**2.4**~~Date of Possession of the site~~~~(where possession by Sections does not apply)~~[]Sections: Dates of Possession of Sections^[16]Section ~~Section 0~~ [] : []~~Section Section 1~~ : []~~Section Section 2~~ : []~~Section Section 3~~ : []~~Section Section 4~~ : []~~Section Section 5~~ : []~~Section Section 6~~ : []~~Section Section 7~~ : []**2.5**~~Deferment of possession of the site~~~~(where possession by Sections does not apply)~~~~Clause 2.5~~~~* applies/does not apply~~~~Maximum period of deferment (if less than 6 weeks) is~~[]

Sections: deferment of possession of Sections

Clause 2.5

~~* applies/does not apply~~~~* applies~~Maximum period of deferment (if less than 6 weeks) is^[16]Section ~~Section 0~~ [] : [] 6 weeks~~Section Section 1~~ : 6 weeks~~Section Section 2~~ : 6 weeks~~Section Section 3~~ : 6 weeks~~Section Section 4~~ : 6 weeks~~Section Section 5~~ : 6 weeks~~Section Section 6~~ : 6 weeks~~Section Section 7~~ : 6 weeks**[17]** **+++Now footnote [14]+++** As to service of notices etc. outside the United Kingdom, see the Standard Building Contract Guide.

2.9.1.2

Master programme

- Critical paths
- * are~~are not~~ required to be shown

2.19.3

Contractor's Designed Portion: limit of Contractor's liability for loss of use etc. (if any)

2.32.2

~~Liquidated damages~~
~~(where completion by Sections does not apply)~~

at the rate of
£[] per []

Sections: rate of liquidated damages for each Section^[16]

Section Section 0 :	[] : £[] per []	
Section Section 1 :		
Section Section 2 :		
Section Section 3 :		
Section Section 4 :		
Section Section 5 :		
Section Section 6 :		
Section Section 7 :		

2.37

Sections: Section Sums^[16]

Section Section 0 :	[] : £[]	
Section Section 1 :		
Section Section 2 :		
Section Section 3 :		
Section Section 4 :		
Section Section 5 :		
Section Section 6 :		
Section Section 7 :		

2.38

~~Rectification Period~~Sections: Rectification Periods^[16]
~~(where completion by Sections does not apply)~~
~~(If no other period is stated, the period is 6 months.)~~

Section[] Section 0 : 12 months
from the date of practical completion of the Works
~~Sections: Rectification Periods^[16]~~Section Section 1 : 12 months
~~(If no other period is stated, the period is 6 months.)~~Section Section 2 : 12 months
Section Section 3 : 12 months
Section ~~Section 4~~[] : -12 months[] months
Section Section 5 : 12 months
Section Section 6 : 12 months
Section Section 7 : 12 months
from the date of practical completion of each Section

4.3 and 4.14Fluctuations Provision^[18]*(Unless another option or entry is selected, JCT Fluctuations Option A applies.)*

- * ~~JCT Fluctuations Option A applies~~
- * ~~JCT Fluctuations Option B applies~~
- * ~~JCT Fluctuations Option C applies^[19]~~
- * ~~no Fluctuations Provision applies~~
- * ~~the following Fluctuations Provision applies~~

[]

JCT Fluctuations Option A (paragraph A.12) or Option B (paragraph B.13) — percentage addition

[] per cent

JCT Fluctuations Option C (paragraph C.1.2) — Formula Rules

Rule 3: Base Month

[]

Rule 3: Non-Adjustable Element

[] per cent

(Unless Part II is stated to apply, Part I applies.)

Rules 10 and 30(i):

- * ~~Part I/Part II of section 2 of the Formula Rules applies^[20]~~

4.7

Advance payment

(Not applicable where the Employer is a Local or Public Authority)

Clause 4.7

- * ~~applies/does not apply~~

- * ~~does not apply~~

If applicable:

the advance payment will be^[21]

* £[]

* [] per cent of the Contract Sum

and will be paid to the Contractor on

[];

it will be reimbursed to the Employer in the following amount(s) and at the following time(s)

[]

[18] **+++Now footnote [15]+++** Unless the Fluctuations Provision is to be JCT Fluctuations Option A (set out in Schedule 7), delete all but one of the asterisked choices. JCT Fluctuations Options B and C are no longer included in JCT contract documents but continue to be available on the JCT website www.jctltd.co.uk. If an alternative fluctuation or cost adjustment formula is to be used, the document(s) in which it is contained should be identified here.

[19] ~~JCT Fluctuations Option C can only operate if a schedule to which rule 11b of the Formula Rules refers is included in the Contract Documents.~~

[20] ~~The Part to be deleted depends upon which method of formula adjustment (Part I — Work Category Method or Part II — Work Group Method) is applicable.~~

[21] ~~Insert either a monetary amount or a percentage figure, delete the alternative and complete the other required details.~~

~~Advance Payment Bond~~~~(Not applicable where the Employer is a Local or Public Authority)~~~~(Where an advance payment is to be made, an advance payment bond is required unless stated that it is not required.)~~~~An advance payment bond
* is/is not required~~**4.8**

Interim payments – Interim Valuation Dates

(If no date is stated, the first Interim Valuation Date is one month after the Date of Possession.)

The first Interim Valuation Date is

[] One month after the Date of Possessionand thereafter the same date in each month or the nearest Business Day in that month^[22]**4.16.4**

Listed Items – uniquely identified

(Delete the entry if no bond is required.)~~* For uniquely identified Listed Items a bond in respect of payment for such items is required for~~~~£[] No bond is required for Listed Items uniquely identified.~~**4.16.5**

Listed Items – not uniquely identified

(Delete the entry if clause 4.16.5 does not apply.)~~* For Listed Items that are not uniquely identified a bond in respect of payment for such items is required for~~~~£[] No bond is required for Listed Items not uniquely identified.~~**4.18**

Contractor's Retention Bond

(Not applicable where the Employer is a Local or Public Authority and, in other cases, not applicable unless stated to apply, with relevant particulars given below)

Clause 4.18

~~* applies/does not apply~~~~* does not apply~~~~If clause 4.18 applies, the maximum aggregate sum for the purposes of clause 2 of the bond is~~~~£[]~~~~For the purposes of clause 6.3 of the bond, the expiry date shall be~~~~[]~~**4.19.1**

Retention Percentage

(The percentage is 3 per cent unless a different rate is stated; if no retention is required, insert 'Nil' or '0'.)[]

[22] **+++Now footnote [16]+++** The first Interim Valuation Date should not be more than one month after the Date of Possession.

5.7

Daywork

The Percentage Additions to each section of the prime cost or, if they apply in respect of labour, the All-Inclusive Rates, are set out in the following document^[13]

 Not applicable.

6.4.1

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

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

6.5.1

Insurance – liability of Employer

(Not required unless it is stated that it may be required and the minimum amount of indemnity is stated)

Insurance
* may be required ~~is not required~~

Minimum amount of indemnity for any one occurrence or series of occurrences arising out of one event^[23]

£ 

6.7 and Schedule 3

Works insurance – Insurance Option applicable

Schedule 3:
* Insurance Option A applies
~~* Insurance Option B applies~~
~~* Insurance Option C applies~~

Percentage to cover professional fees

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

Where Insurance Option A applies and cover is to be provided under the Contractor's annual policy (paragraph A.2), the annual renewal date is

(as supplied by the Contractor)

~~Where Insurance Option C applies, paragraph C.1^[24]~~

~~*(Unless otherwise stated, paragraph C.1 applies. If it is not to apply, state the reference number and date or other identifier of the replacement document(s).)*~~

[23] **+++Now footnote [17]+++** If the indemnity is to be for an aggregate amount and not for any one occurrence or series of occurrences, the entry should be amended to make this clear.

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

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

* ~~applies~~
 * ~~is replaced by the provisions of the following document(s)~~
 []
 (the 'C.1 Replacement Schedule')

6.10 and Schedule 3

Terrorism Cover – details of the required cover
 (Unless otherwise stated, Pool Re Cover is required.)^[25]

are set out in the following document(s)

[] Does not apply

6.15

Contractor's Designed Portion (CDP) Professional Indemnity insurance

Level of cover

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

Amount of indemnity required

* relates to claims or series of claims arising out of one event
 * ~~is the aggregate amount for any one period of insurance~~

(If no amount is stated, insurance under clause 6.15 shall not be required.)

and is

£ []

Cover for pollution and contamination claims

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

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

£ []

relates to claims or series of claims arising out of one event

* ~~is not required~~

Expiry of required period of CDP Professional Indemnity insurance is

(If no period is selected, the expiry date shall be 6 years from the date of practical completion of the Works.)

* ~~6 years~~

* 12 years

* [] years
 (not exceeding 12 years)

6.17

The Joint Fire Code

* applies/~~does not apply~~^[26]

[25] **+++Now footnote [18]+++** Obtaining Terrorism Cover for the Works, which unless otherwise agreed is necessary in order to comply with the requirements of Insurance Option A, B or C, will involve an additional premium and in certain situations has been difficult to effect. If any difficulty might arise, there should be immediate pre-contract discussion between the Parties and their insurance advisers. See the Standard Building Contract Guide.

[26] **+++Now footnote [19]+++** Where Insurance Option A applies these entries are made on information supplied by the Contractor.

If the Joint Fire Code applies, state whether the insurer under Insurance Option A, B or C (paragraph ~~C-2C.2~~) has specified that the Works are a 'Large Project':

- * ~~Yes/No~~^[26]
- * ~~No~~^[26]

6.20

Joint Fire Code – amendments/revisions
(The cost shall be borne by the Contractor unless otherwise stated.)

- The cost, if any, of compliance with amendment(s) or revision(s) to the Joint Fire Code shall be borne by
- * ~~the Employer/the Contractor~~
 - * ~~the Contractor~~

7.2

Assignment/grant by Employer of rights under clause 7.2
(If neither entry is deleted, clause 7.2 applies.)

- Clause 7.2
- * ~~applies/does not apply~~
 - * ~~applies~~

Sections: rights under clause 7.2
(If clause 7.2 applies, amend the entry if rights under that clause are to apply to certain Sections only.)

- * Rights under clause 7.2 apply to each Section

7.3.1

Performance bond or guarantee from bank or other approved surety^[27]
(If this entry is not completed or the required form is not specified, a performance bond or guarantee is not required.)

- * is required ~~is not required~~

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

Appendix 1 to these Schedule of Amendments

Initial value

[REDACTED]

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

- * the date of practical completion of the Works
- * ~~2 weeks after the date of expiry of the Rectification Period for the Works~~
- * ~~the date for issue of the Certificate of Making Good for the Works~~

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

[REDACTED]

[27] **+++Now footnote [20]+++** If a performance bond is required, the identity of the issuer as well as the operative terms of the bond should be agreed prior to execution of the contract.

7.3.2

Guarantee from the Contractor's parent company

~~* is required/is not required~~

* is not required

Parent company's name and registration number

[]

The required form of the guarantee is set out in

[]

7.4

Third Party Rights and Collateral Warranties – details of the requirements for the grant by the Contractor and sub-contractors of P&T Rights, Funder Rights and/or (in the case of sub-contractors) Employer Rights in respect of the Works, either as third party rights or by collateral warranties ('Rights Particulars') are set out in the following document^[28]
(State reference number and date or other identifier of the relevant document.)

[] Please see the Schedule of Amendments.

8.9.2

Period of suspension

(If none is stated, the period is 2 months.)

[] 2 months

8.11.1.1 to 8.11.1.5

Period of suspension

(If none is stated, the period is 2 months.)

[] 2 months

9.2.1

Adjudication^[29]

The Adjudicator is [] to be nominated by the Chairman of the TeCSA

Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)^[30]

(Where an Adjudicator is not named and a nominating body has not been selected, the nominating body shall be one of the

[28] **+++Now footnote [21]+++** The relevant Rights Particulars should identify the beneficiaries (by name, class or description) and the sub-contractors who are also required to grant rights, specify whether rights are to be granted at each level as Third Party Rights or by way of Collateral Warranties, state in those cases where the default provision is not to apply which alternative provision is to apply in its place and give any other details required to complete the terms of the rights or warranties that are to be given. A Model Form for the Rights Particulars is included in the Standard Building Contract Guide and is also available on the JCT website www.jcttd.co.uk. In the case of third party rights the relevant limits and details required for the purposes of the respective parts of Schedule 5 of this Contract and Schedule 6 of the Standard Building Sub-Contracts are the same as those required for the purposes of the Warranty Particulars for the corresponding Collateral Warranty (CWa/P&T, CWa/F, SCWa/P&T, SCWa/F or SCWa/E). Directions may be needed as to mode of execution of sub-contracts and/or collateral warranties by relevant sub-contractors. See also the Standard Building Contract Guide.

[29] **+++Now footnote [22]+++** 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.

[30] **+++Now footnote [23]+++** Delete all but one of the nominating bodies asterisked.

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^[31]
- * Chartered Institute of Arbitrators

9.4.1

Arbitration^[32]—appointor of Arbitrator (and of any replacement)^[33]

~~(If no appointor is selected, the appointor shall be the President or a Vice-President of the Royal Institute of British Architects.)~~

~~President or a Vice-President:~~

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

[31] **+++Now footnote [24]+++** constructionadjudicators.com is a trading name of Contractors Legal Grp Ltd.

[32]—This only applies where the Contract Particulars state (against the reference to Article 8) that Article 8 and clauses 9.3 to 9.8 (Arbitration) apply.

[33]—Delete all but one of the bodies asterisked.

Attestation

Note on Execution

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

Execution under hand

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

Execution as a Deed

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

Other forms of Attestation

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

Execution under hand

As witness

the hands of the Parties
or their duly authorised representatives

Signed by or on behalf of
the Employer

in the presence of:

witness' signature

witness' name

witness' address

Signed by or on behalf of
the Contractor

in the presence of:

witness' signature

witness' name

witness' address

Notes on Execution as a Deed

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

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

Execution as a Deed

Executed as a Deed by the Employer

namely ¹ [] John Innes Centre

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

(Print name of signatory)

Signature Director

and

(Print name of signatory)

Signature Company Secretary/Director

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

~~in the presence of~~

~~Signature Director~~

~~Signature Company Secretary/Director~~

[Common seal of company]

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

~~Signature Director~~

~~in the presence of~~

~~Witness' signature (Print name)~~

~~Witness' address~~

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

~~Signature~~

~~in the presence of~~

~~Witness' signature (Print name)~~

~~Witness' address~~

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

Conditions

Section 1 Definitions and Interpretation

Definitions

1.1 Definitions

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

Acceleration Quotation: a quotation by the Contractor for an acceleration in the carrying out of the Works or a Section made under paragraph 2 of **Schedule 2**.

Activity Schedule: see the **Third Recital**.

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

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

All Risks Insurance: see **clause 6.8**.

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

Architect/Contract Administrator: the person named in **Article 3** or any successor nominated or otherwise agreed under **clause 3.5**.

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

Base Date: the date stated as such date in the **Contract Particulars** (against the reference to **clause 1.1**)^[34].

BIM Protocol: (where applicable) the document identified as such in the **Contract Particulars** (against the reference to **clause 1.1**).

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

C-1C.1 Replacement Schedule: (where applicable) the insurance schedule and/or other documents identified as such in the **Contract Particulars** (against the reference to **clause 6.7** and **Schedule 3**).

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

CDP Analysis: see the **Eleventh Recital** and the **Contract Particulars**.

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

Certificate of Making Good: see **clause 2.39**.

Completion Date: the Date for Completion of the Works or of a Section as stated in the **Contract Particulars** or such other date as is fixed either under **clause 2.28** or by a Pre-agreed Adjustment.

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

[34] **+++Now footnote [25]+++** The Base Date is relevant (inter alia) to clause 2.17.2.1 (changes in Statutory Requirements) and the JCT Fluctuations Options and it helps to determine the edition/issue and/or version of documents relevant to this Contract, e.g. the Measurement Rules and definitions of the prime cost of daywork (clause 5.7).

Confirmed Acceptance: the Architect/Contract Administrator's instruction under paragraph 4 of **Schedule 2** confirming the Employer's acceptance of a Variation Quotation or Acceleration Quotation.

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

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

Consultants: see **clause 7.4.3**.

Contract Documents: the Contract Drawings, the Agreement and these Conditions, together with:

(where applicable) the Employer's Requirements, the Contractor's Proposals and the CDP Analysis;

(where applicable) the BIM Protocol;

(where Pricing Option A applies) the Priced Document or (where Pricing Option B applies) the Specification; and

(where JCT Fluctuations Option C applies) the schedule referred to in rule 11b of the JCT Formula Rules.

Contract Drawings: the drawings referred to in the **Second Recital**.

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

Contract Sum: the sum stated in **Article 2**.

Contract Sum Analysis: see the **Third Recital** and the **Contract Particulars**.

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

Contractor's Design Documents: the drawings, details and specifications of materials, goods and workmanship and other related documents and information prepared by or for the Contractor in relation to the Contractor's Designed Portion (including such as are contained in the Contractor's Proposals or referred to in clause 2.9.4), together, where applicable, with any other design documents or information to be provided by him under the BIM Protocol.

Contractor's Designed Portion: see the **Ninth 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 Quantity Surveyor, the Employer, Employer's Persons and any Statutory Undertaker.

Contractor's Proposals: see the **Eleventh Recital** and the **Contract Particulars**.

Date for Completion: the date stated as such date in the **Contract Particulars** (against the reference to **clause 1.1**) in relation to the Works or a Section.

Date of Possession: the date stated as such date in the **Contract Particulars** (against the reference to **clause 2.4**) in relation to the Works or a Section.

Design Submission Procedure: such procedure as is specified by the BIM Protocol or, where that is not applicable, the procedure set out in **Schedule 1**, subject to any modifications of that procedure specified in the Contract Documents.

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

Employer Rights: any rights in favour of the Employer to be granted by sub-contractors in accordance with the Rights Particulars, either by way of third party rights or JCT collateral warranty SCWa/E.

Employer's Persons: all persons employed, engaged or authorised by the Employer, excluding the Contractor, Contractor's Persons, the Architect/Contract Administrator, the Quantity Surveyor and any Statutory Undertaker but including any such third party as is referred to in clause 3.22.2.

Employer's Requirements: see the **Tenth Recital** and the **Contract Particulars**.

Excepted Risks: see **clause 6.8**.

Existing Structures: any and all existing structures within which the Works or part of them are to be executed or to which they are to form an extension, together with any Section for which a Section Completion Certificate has been issued and, as from the Relevant Date, any Relevant Part taken into possession under **clause 2.33**.

Final Certificate: see **clauses 1.9** and **4.26**.

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

Fluctuations Provision: the provision (if any) specified by the **Contract Particulars** (against the reference to **clauses 4.3** and **4.14**).

Funder: the person named or otherwise sufficiently identified as such (whether by class or description) in or by the Rights Particulars and in respect of whom the Employer gives notice under **clause 7.8.1**.

Funder Rights: the rights in favour of the Funder to be granted by the Contractor as third party rights under **Part 2 of Schedule 5** or by JCT collateral warranty CWA/F or those to be granted by sub-contractors in accordance with the Rights Particulars.

Gross Valuation: see **clause 4.14**.

Information Release Schedule: the schedule referred to in the **Fifth Recital**.

Insolvent: see **clause 8.1**.

Insurance Options A, B and C: the provisions relating to insurance of the Works and (where applicable) Existing Structures set out in **Schedule 3**.

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 Certificate: any of the certificates to which **clause 4.9.1** refers.

Interim Valuation Date: each date as specified by the **Contract Particulars** (against the reference to **clause 4.8**).

Joint Fire Code: the Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Renovation, published by Construction Industry Publications Ltd and the Fire Protection Association, current at the Base Date.

Joint Names Policy: see **clause 6.8**.

Listed Items: materials, goods and/or items prefabricated for inclusion in the Works which are listed as such items by the Employer in a list supplied to the Contractor and annexed to the Specification/Work Schedules.

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

Measurement Rules: the RICS New Rules of Measurement – Detailed Measurement for Building Works (NRM2), in the form published at the Base Date, unless otherwise stated in the Contract Documents.

Named Specialist: see **Supplemental Provision 9**, paragraph 9.1.

Named Specialist Work: Pre-Named Specialist Work or Post-Named Specialist Work.

Non-Completion Certificate: see **clause 2.31**.

P&T Rights: the rights in favour of a Purchaser or Tenant to be granted by the Contractor as third party rights under **Part 1 of Schedule 5** or by JCT collateral warranty CWA/P&T or those to be granted by sub-contractors in accordance with the Rights Particulars.

Parties: the Employer and the Contractor together.

Party: either the Employer or the Contractor.

Pay Less Notice: see **clauses 4.11.5 and 4.12.1.**

Payment Application: see **clause 4.10.1.**

Payment Certificate: an Interim Certificate or the Final Certificate.

Payment Notice: see **clause 4.10.2.**

PC Regulations: the Public Contracts Regulations 2015.

Post-Named Specialist Work: see **Supplemental Provision 9**, paragraph 9.1.2.

Practical Completion Certificate: see **clause 2.30.**

Pre-agreed Adjustment: see **clause 2.26.2.**

Pre-Named Specialist Work: see **Supplemental Provision 9**, paragraph 9.1.1.

Priced Document: see the **Third Recital** and the **Contract Particulars.**

Pricing Options A and B: see the **Third Recital** and the **Contract Particulars.**

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

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

Provisional Sum: 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.^[35]

Purchaser: any person named or otherwise sufficiently identified as such (whether by class or description) in or by the Rights Particulars to whom the Employer transfers or agrees to transfer his interest in all or part of the Works.

Quantity Surveyor: the person named in **Article 4** or any successor nominated or otherwise agreed under **clause 3.5.**

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

Rectification Period: the period stated as such period in the **Contract Particulars** (against the reference to **clause 2.38**) in relation to the Works or (where applicable) a Section.

Relevant Date: see **clause 2.33.**

Relevant Event: see **clause 2.29.**

Relevant Matter: see **clause 4.22.**

Relevant Omission: see **clause 2.26.3.**

Relevant Part: see **clause 2.33.**

Retention: see **clauses 4.15 and 4.17 to 4.19.**

Retention Bond: see **clause 4.18.**

Retention Percentage: the percentage stated in the **Contract Particulars** (against the reference to **clause 4.19.1**).

Rights Particulars: see **clause 7.4** and the **Contract Particulars** for that clause.

Schedule of Rates: see the **Third Recital** and the **Contract Particulars.**

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

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

Regulations 1998.

Sections: (where applicable) the Sections into which the Works have been divided, as referred to in the **Sixth Recital** and the **Contract Particulars**.

Section Completion Certificate: see **clause 2.30.2**.

Section Sum: see **clause 2.37** and the **Contract Particulars**.

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

Specification: where applicable under Pricing Option A, the specification as priced or, where Pricing Option B applies, the unpriced specification. (See the **Third Recital**.)

Specified Perils: see **clause 6.8**.

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

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

Tenant: any person named or otherwise sufficiently identified as such (whether by class or description) in or by the Rights Particulars to whom the Employer grants or agrees to grant a leasehold interest in all or part of the Works.

Terrorism Cover: see **clause 6.8**.

Valuation: a valuation by the Quantity Surveyor in accordance with the Valuation Rules, pursuant to **clause 5.2**, or in accordance with **clause 5.3.3**, as applicable.

Valuation Rules: see **clauses 5.6 to 5.10**.

Variation: see **clause 5.1**.

Variation Quotation: see **clause 5.3** and paragraph 1 of **Schedule 2**.

VAT: Value Added Tax.

Works: the works briefly described in the **First Recital** (including, where applicable, the CDP Works), as more particularly shown, described or referred to in the Contract Documents, including any changes made to those works in accordance with this Contract.

Works Insurance Policy: the Joint Names Policy or policies covering the Works and Site Materials to be effected and maintained under whichever of Insurance Options A, B or C applies under this Contract.

Work Schedules: where applicable under Pricing Option A, the work schedules as priced.

Interpretation

1.2 Reference to clauses etc.

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

1.3 Agreement etc. to be read as a whole

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

1.4 Headings, references to persons, legislation etc.

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

- 1.4.1 the headings, notes and footnotes are included for convenience only and shall not affect the interpretation of this Contract;
- 1.4.2 the singular includes the plural and vice versa;
- 1.4.3 a gender includes any other gender;
- 1.4.4 a reference to a 'person' includes any individual, firm, partnership, company and any other body corporate;
- 1.4.5 a reference to a statute, statutory instrument or other subordinate legislation ('legislation') is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification, and including corresponding legislation in any other relevant part of the United Kingdom; and
- 1.4.6 references to documents shall, where there is a BIM Protocol or other protocol relating to the supply of documents or information, be deemed to include information in a form or medium conforming to that protocol.

1.5 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.

1.6 Contracts (Rights of Third Parties) Act 1999

Other than such rights of any Purchasers, Tenants and/or Funder as take effect pursuant to clauses 7.7 and/or 7.8, nothing in this Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

1.7 Notices and other communications

- 1.7.1 Any notice or other communication between the Parties, or by or to the Architect/Contract Administrator or Quantity Surveyor, that is expressly referred to in the Agreement or these Conditions (including, without limitation, each application, approval, consent, confirmation, counter-notice, decision, instruction or other notification) shall be in writing.
- 1.7.2 Subject to clause 1.7.4, each such notice or other communication and any documents to be supplied may or (where so required) shall be sent or transmitted by the means (electronic or otherwise) and in such format as the Parties have agreed or may from time to time agree in writing for the purposes of this Contract.^[36]
- 1.7.3 Subject to clauses 1.7.2 and 1.7.4, any notice, communication or document may be given or served by any effective means and shall be duly given or served if delivered by hand or sent by pre-paid post to:
 - 1.7.3.1 the recipient's address stated in the Contract Particulars, or to such other address as the recipient may from time to time notify to the sender; or
 - 1.7.3.2 if no such address is then current, the recipient's last known principal business address or (where a body corporate) its registered or principal office.
- 1.7.4 Any notice expressly required by this Contract to be given in accordance with this clause 1.7.4 shall be delivered by hand or sent by Recorded Signed for or Special Delivery post. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.
- 1.7.5 If in an emergency any communication is made orally with respect to health and safety, risk of damage to property or insurance matters, written confirmation of it shall be sent as soon thereafter as is reasonably practicable.

[36] **+++Now footnote [27]+++** In cases where there is no BIM Protocol, the Parties should agree a communications protocol on or before entering into the Contract, or as soon thereafter as is practicable, covering e.g. the medium or format to be used for the Design Submission Procedure (Schedule 1) if not stated in the Employer's Requirements or Contractor's Proposals. See the Standard Building Contract Guide.

1.8 Issue of Architect/Contract Administrator's certificates

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

1.9 Effect of Final Certificate

1.9.1 Subject to clause 1.9.2 (and save in respect of fraud), the Final Certificate shall have effect in any proceedings under or arising out of or in connection with this Contract (whether by adjudication, arbitration or legal proceedings) as conclusive evidence that:

1.9.1.1 where and to the extent that any particular quality of any materials or goods or any particular standard of an item of workmanship was expressly described in the Contract Documents, in any instruction issued by the Architect/Contract Administrator under these Conditions or in any drawings or documents issued by him under any of clauses 2.9 to 2.12, to be for his approval, the particular quality or standard was to his reasonable satisfaction, but the Final Certificate shall not be conclusive evidence that they or any other materials, goods or workmanship comply with any other requirement or term of this Contract;

1.9.1.2 necessary effect has been given to all the terms of this Contract which require an adjustment to be made to the Contract Sum save where there has been an erroneous inclusion or exclusion of any work, materials, goods or figure or an arithmetical error in any computation, in which event the Final Certificate shall have effect as conclusive evidence as to all other computations;

1.9.1.3 all and only such extensions of time, if any, as are due under clause 2.28 have been given; and

1.9.1.4 the reimbursement of direct loss and/or expense, if any, due to the Contractor as agreed, ascertained or valued in accordance with these Conditions is in final settlement of all and any claims which the Contractor has or may have arising out of the occurrence of any Relevant Matters, whether such claim be for breach of contract, duty of care, statutory duty or otherwise.

1.9.2 The effects of the Final Certificate specified in clause 1.9.1 shall in relation to the subject matter of any adjudication, arbitration or other proceedings be suspended pending the conclusion of such proceedings, and shall thereafter be subject to the terms of any decision, award or judgment in and any settlement of those proceedings:

1.9.2.1 where those proceedings are commenced before or within 28 days after the date of issue of the Final Certificate; or

1.9.2.2 in the case of an adjudication commenced within the period referred to in clause 1.9.2.1 in which the Adjudicator gives his decision after the date of issue of the Final Certificate, where arbitration or legal proceedings to determine the dispute or difference in question are commenced within 28 days of the date of that decision

but not otherwise.

1.9.3 For the purposes of clause 1.9.2 any proceedings shall be treated as concluded if during any period of 12 months commencing on or after the issue of the Final Certificate neither Party takes a further step in them.

1.10 Effect of certificates other than Final Certificate

Save as stated in clause 1.9 no certificate of the Architect/Contract Administrator shall of itself be conclusive evidence that any works, any materials or goods or any design completed by the Contractor for the Contractor's Designed Portion to which the certificate relates are in accordance with this Contract.

1.11 Consents and approvals

1.11.1 Where consent or approval of either Party or the Architect/Contract Administrator is expressly required under these Conditions and is requested, then, except as provided in clause 1.11.2, such consent or approval shall not be unreasonably delayed or withheld.

1.11.2 In the following cases the giving of consent or approval shall be at the sole discretion of the

Party from whom it is sought and clause 1.11.1 shall not apply, namely the Employer's consent under clause 2.10, 2.38 or 3.18.2 and either Party's consent under clause 7.1.

1.12 Applicable law

This Contract shall be governed by and construed in accordance with the law of England.^[37]

[37] +++Now footnote [28]+++ Where the Parties do not wish the law applicable to this Contract to be the law of England appropriate amendments should be made.

Section 2 Carrying out the Works

Contractor's Obligations

2.1 General obligations

The Contractor shall carry out and complete the Works in a proper and workmanlike manner and in compliance with the Contract Documents, the Construction Phase Plan and Statutory Requirements, and shall give all notices required by the Statutory Requirements.

2.2 Contractor's Designed Portion

Where the Works include a Contractor's Designed Portion, the Contractor shall:

- 2.2.1 in accordance with the Contract Documents, complete the design for the Contractor's Designed Portion, including the selection of any specifications for the kinds and standards of the materials, goods and workmanship to be used in the CDP Works, so far as not described or stated in the Employer's Requirements or the Contractor's Proposals;
- 2.2.2 comply with the Architect/Contract Administrator's directions for the integration of the design of the Contractor's Designed Portion with the design of the Works as a whole, subject to the provisions of clause 3.10.3; and
- 2.2.3 in complying with this clause 2.2, comply with regulations 8 to 10 of the CDM Regulations.

2.3 Materials, goods and workmanship

- 2.3.1 All materials and goods for the Works, excluding any CDP Works, shall, so far as procurable, be of the kinds and standards described in the Specification/Work Schedules. Materials and goods for any CDP Works shall, so far as procurable, be of the kinds and standards described in the Employer's Requirements or, if not there specifically described, as described in the Contractor's Proposals or other Contractor's Design Documents. The Contractor shall not substitute any materials or goods so described without the Architect/Contract Administrator's consent which, if given, shall not relieve the Contractor of his other obligations.
- 2.3.2 Workmanship for the Works, excluding any CDP Works, shall be of the standards described in the Specification/Work Schedules. Workmanship for any CDP Works shall be of the standards described in the Employer's Requirements or, if not there specifically described, as described in the Contractor's Proposals.
- 2.3.3 Insofar as the quality of materials or goods or standards of workmanship are stated to be a matter for the Architect/Contract Administrator's approval, such quality and standards shall be to his reasonable satisfaction. To the extent that the quality of materials and goods or standards of workmanship are neither described in the documents referred to in clause 2.3.1 or 2.3.2 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.
- 2.3.4 The Contractor shall at the Architect/Contract Administrator's request provide him with reasonable proof that the materials and goods used comply with this clause 2.3.
- 2.3.5 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.

Possession

2.4 Date of Possession – progress

On the Date of Possession possession of the site or, in the case of a Section, possession of the

relevant part of the site shall be given to the Contractor who shall thereupon begin the construction of the Works or Section and regularly and diligently proceed with and complete the same on or before the relevant Completion Date. For Works insurance purposes the Contractor shall retain possession:

- 2.4.1 of the site and the Works up to and including the date of issue of the Practical Completion Certificate; or
- 2.4.2 of each Section and the relevant part of the site up to and including the date of issue of the Section Completion Certificate for that Section and, in respect of any balance of the site, up to and including the date of issue of the Practical Completion Certificate

and, subject to clause 2.33 and section 8, the Employer shall not be entitled to take possession of any part or parts of the Works or Section until such date.

2.5 Deferment of possession

If the Contract Particulars state that clause 2.5 applies in respect of the Works or a Section, the Employer may defer the giving of possession of the site or relevant part of it for a period not exceeding 6 weeks or lesser period stated in the Contract Particulars, calculated from the relevant Date of Possession.

2.6 Early use by Employer

- 2.6.1 Notwithstanding clause 2.4, the Employer may, with the Contractor's consent, use or occupy the site or the Works or part of them, whether for storage or otherwise, before the date of issue of the Practical Completion Certificate or relevant Section Completion Certificate. Before the Contractor gives his consent to such use or occupation, the Party responsible for the Works Insurance Policy and/or, where there are Existing Structures, for any insurance cover relating to them shall notify the insurers and obtain confirmation that such use or occupation will not prejudice the insurance.
- 2.6.2 Where Insurance Option A applies and/or the Contractor is to cover his own or any other risks in relation to any Existing Structures and any insurers' confirmation is conditional on an additional premium being paid, the Contractor shall notify the Employer of its amount. If the Employer continues to require such use or occupation, any additional premium shall be added to the Contract Sum and the Contractor shall if requested produce the receipt for it to the Employer.

2.7 Work not forming part of the Contract

In regard to any work not forming part of this Contract which the Employer requires to be carried out by the Employer himself or by any Employer's Person:

- 2.7.1 where the Contract Documents provide the information necessary to enable the Contractor to carry out and complete the Works or each relevant Section in accordance with this Contract, the Contractor shall permit the execution of such work;
- 2.7.2 where the Contract Documents do not provide the information referred to in clause 2.7.1, the Employer may with the Contractor's consent arrange for the execution of that work.

Supply of Documents, Setting Out etc.

2.8 Contract Documents

- 2.8.1 The Contract Documents and (where Pricing Option B applies) the Contract Sum Analysis/Schedule of Rates shall remain in the custody of the Employer and shall be available at all reasonable times for inspection by the Contractor.
- 2.8.2 Immediately after the execution of this Contract the Architect/Contract Administrator, without charge to the Contractor, shall (unless previously provided or unless the BIM Protocol or other communications protocol requires otherwise) provide him with:
 - 2.8.2.1 one copy, certified on behalf of the Employer, of the Contract Documents;
 - 2.8.2.2 two further copies of the Contract Drawings; and
 - 2.8.2.3 two unpriced copies of the Specification/Work Schedules.

- 2.8.3 The Contractor shall keep on the site or accessible there to the Architect/Contract Administrator or his representative at all reasonable times copies of the Contract Documents, the Contractor's Design Documents and the further documents and information referred to in clauses 2.9 to 2.12.
- 2.8.4 None of the documents referred to in this clause 2.8 that are provided to the Contractor shall be used by him for any purpose other than this Contract, and (subject only to clause 2.8.5) the Employer, the Architect/Contract Administrator and the Quantity Surveyor shall not divulge or use except for the purposes of this Contract any of the rates or prices in the Priced Document.
- 2.8.5 Where the Employer is a Local or Public Authority or other body of the type mentioned in Supplemental Provision 7, his obligations of confidentiality shall be subject to that Supplemental Provision.

2.9 Construction information and Contractor's master programme

- 2.9.1 As soon as possible after the execution of this Contract, if not previously provided:
 - 2.9.1.1 the Architect/Contract Administrator, without charge to the Contractor, shall provide him with any descriptive schedules or similar documents necessary for use in carrying out the Works (excluding any CDP Works), together with any pre-construction information required to be provided to the Contractor under regulation 4 of the CDM Regulations; and
 - 2.9.1.2 the Contractor shall without charge provide the Architect/Contract Administrator with his master programme for the execution of the Works identifying the critical paths, where so required by the Contract Particulars, and providing any other details specified by the Contract Documents.
- 2.9.2 Within 14 days of any decision by the Architect/Contract Administrator under clause 2.28.1 or of agreement of any Pre-agreed Adjustment, the Contractor shall provide him with an amendment or revision of the master programme that takes account of that decision or agreement, with the details referred to in clause 2.9.1.2.
- 2.9.3 Nothing in the descriptive schedules or similar documents, or in the master programme or any amendment or revision of it, shall however impose any obligation beyond those imposed by the Contract Documents.
- 2.9.4 In relation to any CDP Works, the Contractor, in addition to complying with clause 2.2, shall as and when necessary from time to time and without charge provide the Architect/Contract Administrator with such Contractor's Design Documents as are reasonably necessary to explain or amplify the Contractor's Proposals, including:
 - 2.9.4.1 such related calculations and information as may be requested; and
 - 2.9.4.2 all levels and setting out dimensions which the Contractor prepares or uses for the purposes of carrying out and completing the Contractor's Designed Portion.
- 2.9.5 The Contractor's Design Documents to be provided pursuant to clause 2.9.4 shall be submitted to the Architect/Contract Administrator in accordance with the Design Submission Procedure and the Contractor shall not commence any work to which a document relates before that procedure has been complied with.

2.10 Levels and setting out of the Works

The Architect/Contract Administrator shall determine any levels required for the execution of the Works and, subject to clause 2.9.4.2, shall provide the Contractor by way of accurately dimensioned drawings with such information as shall enable the Contractor to set out the Works. The Contractor shall be responsible for, and shall at no cost to the Employer amend, any errors arising from his own inaccurate setting out. With the Employer's consent, the Architect/Contract Administrator may instruct that such errors shall not be amended and an appropriate deduction may be made from the Contract Sum for those that are not required to be amended.

2.11 Information Release Schedule

Unless prevented by an act or default of the Contractor or any Contractor's Person, the Architect/Contract Administrator shall ensure that the information referred to in the Information Release Schedule is released at the time stated in that schedule. The Employer and the Contractor

may agree to vary any such time, such agreement not to be unreasonably withheld.

2.12 Further drawings, details and instructions

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

Errors, Discrepancies and Divergences

2.13 Preparation of Employer's Requirements

Subject to clause 2.17, the Contractor shall not be responsible for the contents of the Employer's Requirements or for verifying the adequacy of any design contained within them.

2.14 CDP-related documents – errors and inadequacy

- 2.14.1 If an inadequacy is found in any design in the Employer's Requirements and the Contractor under clause 2.13 is not responsible for verifying its adequacy, then, if or to the extent that the inadequacy is not dealt with in the Contractor's Proposals, the Employer's Requirements shall be altered or modified accordingly and, subject to clause 2.17, that alteration or modification shall be treated as a Variation.
- 2.14.2 Any error in description or in quantity in the Contractor's Proposals or the CDP Analysis and any erroneous omission of items from them shall be corrected, but there shall be no addition to the Contract Sum in respect of that correction or in respect of any instruction requiring a Variation of work not comprised in the Contractor's Designed Portion that is necessitated by the error or its correction.

2.15 Notice of discrepancies etc.

If the Contractor becomes aware of any such error, omission or inadequacy as is referred to in clause 2.14 or any other discrepancy or divergence in or between any of the following, namely:

- 2.15.1 the Contract Drawings;
- 2.15.2 the Specification/Work Schedules;
- 2.15.3 any instruction issued by the Architect/Contract Administrator under these Conditions;
- 2.15.4 any drawings or documents issued by the Architect/Contract Administrator under any of clauses 2.9 to 2.12; and
- 2.15.5 (where applicable) the Contractor's Proposals and other Contractor's Design Documents,
- he shall immediately give notice with appropriate details to the Architect/Contract Administrator, who shall issue instructions in that regard.

2.16 Discrepancies in CDP-related documents

- 2.16.1 Where the discrepancy or divergence to be notified under clause 2.15 is within or between the Contractor's Proposals and/or other Contractor's Design Documents, the Contractor shall send with his notice, or as soon thereafter as is reasonably practicable, a statement

setting out his proposed amendments to remove it. On receiving that statement, the Architect/Contract Administrator shall issue instructions and the Contractor shall comply with them but, to the extent that they relate to the removal of that discrepancy or divergence, there shall be no addition to the Contract Sum.

- 2.16.2 Where the discrepancy is within the Employer's Requirements (including any Variation of them) the Contractor's Proposals shall prevail (subject to compliance with Statutory Requirements), without any adjustment of the Contract Sum. Where the Contractor's Proposals do not deal with the discrepancy, the Contractor shall notify the Architect/Contract Administrator of his proposed amendment to deal with it and the Architect/Contract Administrator shall either agree the proposed amendment or decide how the discrepancy is to be dealt with; that agreement or decision shall be notified to the Contractor and treated as a Variation.

2.17 Divergences from Statutory Requirements

- 2.17.1 If the Contractor or Architect/Contract Administrator becomes aware of a divergence between the Statutory Requirements and a document referred to in clause 2.15, he shall immediately give the other notice specifying the divergence and, where it is between the Statutory Requirements and the Employer's Requirements, the Contractor's Proposals or other Contractor's Design Documents, the Contractor shall notify the Architect/Contract Administrator of his proposed amendment for removing it.
- 2.17.2 Within 7 days of becoming aware of such divergence (or, where applicable, within 14 days of receipt of the Contractor's proposed amendment), the Architect/Contract Administrator shall issue instructions in that regard, in relation to which:
- 2.17.2.1 if the divergence is between the Statutory Requirements and the Employer's Requirements or any document referred to in clause 2.15.5, the Contractor shall comply at no cost to the Employer unless after the Base Date there is a change in the Statutory Requirements which necessitates an alteration or modification to the Contractor's Designed Portion, in which event the instruction shall to that extent be treated as a Variation of the Employer's Requirements; and
- 2.17.2.2 in any other case, if and insofar as those instructions require the Works to be varied, they shall be treated as a Variation.
- 2.17.3 Provided the Contractor is not in breach of clause 2.17.1, 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 documents referred to in clauses 2.15.1 to 2.15.4.

2.18 Emergency compliance with Statutory Requirements

- 2.18.1 If in an emergency compliance with the Statutory Requirements necessitates the Contractor supplying materials and/or executing work before receiving instructions under clause 2.17.2, the Contractor shall supply such limited materials and execute such limited work as are reasonably necessary to secure immediate compliance.
- 2.18.2 The Contractor shall forthwith notify the Architect/Contract Administrator of the emergency and the steps that he is taking under clause 2.18.1.
- 2.18.3 Where the emergency arises from a divergence between the Statutory Requirements and any of the documents referred to in clauses 2.15.1 to 2.15.4, then, provided that the Contractor has complied with clause 2.18.2, the execution and supply of work and materials under clause 2.18.1 shall be treated as a Variation.

CDP Design Work

2.19 Design liabilities and limitation

Where there is a Contractor's Designed Portion:

- 2.19.1 insofar as its design is comprised in the Contractor's Proposals and in what he is to complete in accordance with the Employer's Requirements and these Conditions (including any further design that he is required to carry out as a result of a Variation), the Contractor shall in respect of any inadequacy in such design have the same liability to the Employer,

whether under statute or otherwise, as would an architect or other appropriate professional designer who holds himself out as competent to take on work for such design and who, acting independently under a separate contract with the Employer, has supplied such design for or in connection with works to be carried out and completed by a building contractor who is not the supplier of the design;

- 2.19.2 where and to the extent that this Contract involves the Contractor in taking on work for or in connection with the provision of a dwelling or dwellings, the clause 2.19.1 reference to the Contractor's liability includes liability under the Defective Premises Act 1972;
- 2.19.3 where or to the extent that this Contract does not involve the Contractor in taking on work for or in connection with the provision of a dwelling or dwellings to which that Act applies, the Contractor's liability for loss of use, loss of profit or other consequential loss arising in respect of the liability of the Contractor referred to in clause 2.19.1 shall be limited to the amount, if any, stated in the Contract Particulars; but such a limitation shall not apply to or be affected by any liability for liquidated damages under clause 2.32.

2.20 Errors and failures – other consequences

No extension of time shall be given, and clauses 4.20 and 8.9.2 shall not have effect, insofar as the cause of the progress of the Works being delayed, affected or suspended is:

- 2.20.1 an error, divergence, omission or discrepancy in the Contractor's Proposals or other Contractor's Design Documents, or a failure of the Contractor, in completing those documents, to comply with clause 2.2.3; or
- 2.20.2 a failure by the Contractor to provide in due time any necessary Contractor's Design Documents or information either:
- 2.20.2.1 as required by clause 2.9.5; or
- 2.20.2.2 in response to a request from the Architect/Contract Administrator that specifies the documents or information and date by which it is reasonably necessary for him to receive them, having regard to the progress of the Works (or, where practical completion of the Works or Section is likely to be achieved before the relevant Completion Date, having regard to that Completion Date).

Fees, Royalties and Patent Rights

2.21 Fees or charges legally demandable

The Contractor shall pay all fees or charges (including any rates or taxes) legally demandable under any Statutory Requirement and indemnify the Employer against any liability resulting from any failure to do so. Where such fees or charges are stated by way of a Provisional Sum in the Specification/Work Schedules they shall be dealt with in accordance with clauses 4.3.4 and 4.3.5 and in any other case the amount of any such fees or charges (including any rates or taxes other than VAT) shall be added to the Contract Sum unless they:

- 2.21.1 are stated in the Specification/Work Schedules to be included in the Contract Sum; or
- 2.21.2 relate solely to the Contractor's Designed Portion (in which case they shall be deemed to be included in the Contract Sum).

2.22 Patent rights and royalties – Contractor's indemnity

Where the carrying out of the Works as described by or referred to in the Specification/Work Schedules or the Employer's Requirements or any Variation Quotation of which there is Confirmed Acceptance involves the supply or use of any patented article, process or other invention, all royalties or other sums payable in respect of such supply and use shall be deemed to have been included in the Contract Sum or, where appropriate, the quoted adjustment to that sum, and the Contractor shall indemnify the Employer from and against all claims and proceedings which may be brought or made against the Employer, and all damages, costs and expense to which he may be put, by reason of the Contractor infringing or being held to have infringed any patent rights in relation to any such articles, processes or inventions.

2.23 Patent rights – Instructions

- 2.23.1 Where in order to comply with the Architect/Contract Administrator's instructions, other than

in relation to a Variation Quotation of which there is Confirmed Acceptance, it is necessary for the Contractor in carrying out the Works to supply and/or use any patented article, process or other invention, the Contractor shall not be liable in respect of any infringement or alleged infringement of any patent rights relating to it and all royalties, damages or other sums which the Contractor may be liable to pay to the persons entitled to such rights shall be added to the Contract Sum.

- 2.23.2 If prior to the instructions being carried out the Architect/Contract Administrator or the Contractor is or becomes aware that such supply or use may infringe any patent rights, he shall promptly notify and consult the other and the instructions shall not take effect unless confirmed by the Architect/Contract Administrator.

Unfixed Materials and Goods – property, risk etc.

2.24 Materials and goods – on site

Site Materials shall not be removed from storage on or adjacent to the Works except for use on the Works without the Architect/Contract Administrator's consent. Where their value has in accordance with clauses 4.9 and 4.14 been included in any Interim Certificate under which the amount properly due to the Contractor has been paid by the Employer, they shall upon such payment become the Employer's property, but, subject to Insurance Option B or C (if applicable), the Contractor shall remain responsible for loss or damage to them.

2.25 Materials and goods – off site

Where the value of any Listed Items has in accordance with clause 4.16 been included in any Interim Certificate under which the amount properly due to the Contractor has been paid by the Employer, those items shall become the Employer's property and thereafter the Contractor shall not, except for use upon the Works, remove or cause or permit them to be moved or removed from the premises where they are. The Contractor shall be responsible for any loss of or damage to them and for the cost of their storage, handling and insurance until they are delivered to and placed on or adjacent to the Works. As from such delivery the provisions of clause 2.24 (except the words "Where their value" to "Employer's property, but,") shall apply to such items.

Adjustment of Completion Date

2.26 Related definitions and interpretation

In clauses 2.27 to 2.29 and, so far as relevant, in the other clauses of these Conditions:

- 2.26.1 any reference to delay or extension of time includes any further delay or further extension of time;
- 2.26.2 'Pre-agreed Adjustment' means the fixing of a revised Completion Date for the Works or a Section by the Confirmed Acceptance of a Variation Quotation or an Acceleration Quotation;
- 2.26.3 'Relevant Omission' means the omission of any work or obligation through an instruction for a Variation under clause 3.14.

2.27 Notice by Contractor of delay to progress

- 2.27.1 If and whenever it becomes reasonably apparent that the progress of the Works or any Section is being or is likely to be delayed the Contractor shall forthwith give notice to the Architect/Contract Administrator of the material circumstances, including the cause or causes of the delay, and shall identify in the notice any event which in his opinion is a Relevant Event.
- 2.27.2 In respect of each event identified in the notice the Contractor shall, if practicable in such notice or otherwise in writing as soon as possible thereafter, give particulars of its expected effects, including an estimate of any expected delay in the completion of the Works or any Section beyond the relevant Completion Date.
- 2.27.3 The Contractor shall forthwith notify the Architect/Contract Administrator of any material change in the estimated delay or in any other particulars and supply such further information as the Architect/Contract Administrator may at any time reasonably require.

2.28 Fixing Completion Date

- 2.28.1 If, in the Architect/Contract Administrator's opinion, on receiving a notice and particulars under clause 2.27:
- 2.28.1.1 any of the events which are stated to be a cause of delay is a Relevant Event; and
- 2.28.1.2 completion of the Works or of any Section is likely to be delayed thereby beyond the relevant Completion Date,
- then, save where these Conditions expressly provide otherwise, the Architect/Contract Administrator shall give an extension of time by fixing such later date as the Completion Date for the Works or Section as he then estimates to be fair and reasonable.
- 2.28.2 Whether or not an extension is given, the Architect/Contract Administrator shall notify the Contractor of his decision in respect of any notice under clause 2.27 as soon as is reasonably practicable and in any event within 12 weeks of receipt of the required particulars. Where the period from receipt to the Completion Date is less than 12 weeks, he shall endeavour to do so prior to the Completion Date.
- 2.28.3 The Architect/Contract Administrator shall in his decision state:
- 2.28.3.1 the extension of time that he has attributed to each Relevant Event; and
- 2.28.3.2 (in the case of a decision under clause 2.28.4 or 2.28.5) the reduction in time that he has attributed to each Relevant Omission.
- 2.28.4 After the first fixing of a later Completion Date in respect of the Works or a Section, either under clause 2.28.1 or by a Pre-agreed Adjustment, but subject to clauses 2.28.6.3 and 2.28.6.4, the Architect/Contract Administrator may by notice to the Contractor, giving the details referred to in clause 2.28.3, fix a Completion Date for the Works or that Section earlier than that previously so fixed if in his opinion the fixing of such earlier Completion Date is fair and reasonable, having regard to any Relevant Omissions for which instructions have been issued after the last occasion on which a new Completion Date was fixed for the Works or for that Section.
- 2.28.5 After the Completion Date for the Works or for a Section, if this occurs before the date of practical completion, the Architect/Contract Administrator may, and not later than the expiry of 12 weeks after the date of practical completion shall, by notice to the Contractor, giving the details referred to in clause 2.28.3:
- 2.28.5.1 fix a Completion Date for the Works or for the Section later than that previously fixed if in his opinion that is fair and reasonable having regard to any Relevant Events, whether on reviewing a previous decision or otherwise and whether or not the Relevant Event has been specifically notified by the Contractor under clause 2.27.1; or
- 2.28.5.2 subject to clauses 2.28.6.3 and 2.28.6.4, fix a Completion Date earlier than that previously fixed if in his opinion that is fair and reasonable having regard to any instructions for Relevant Omissions issued after the last occasion on which a new Completion Date was fixed for the Works or Section; or
- 2.28.5.3 confirm the Completion Date previously fixed.
- 2.28.6 Provided always that:
- 2.28.6.1 the Contractor shall constantly use his best endeavours to prevent delay in the progress of the Works or any Section, however caused, and to prevent the completion of the Works or Section being delayed or further delayed beyond the relevant Completion Date;
- 2.28.6.2 in the event of any delay the Contractor shall do all that may reasonably be required to the satisfaction of the Architect/Contract Administrator to proceed with the Works or Section;
- 2.28.6.3 no decision of the Architect/Contract Administrator under clause 2.28.4 or 2.28.5.2 shall fix a Completion Date for the Works or any Section earlier than the relevant Date for Completion; and

- 2.28.6.4 no decision under clause 2.28.4 or 2.28.5.2 shall alter the length of any Pre-agreed Adjustment except in the case of a Variation Quotation where the relevant Variation is itself the subject of a Relevant Omission.

2.29 Relevant Events

The following are the Relevant Events referred to in clauses 2.27 and 2.28:

- 2.29.1 Variations and any other matters or instructions which under these Conditions are to be treated as, or as requiring, a Variation;
- 2.29.2 Architect/Contract Administrator's instructions:
 - 2.29.2.1 under any of clauses 2.15, 3.15, 3.16 or 5.3.2;
 - 2.29.2.2 for the opening up for inspection or testing of any work, materials or goods under clause 3.17 or 3.18.4 (including making good), unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract; or
 - 2.29.2.3 in respect of any notification of reasonable objections under Supplemental Provision 9, paragraph 9.4;
- 2.29.3 deferment of the giving of possession of the site or any Section under clause 2.5;
- 2.29.4 compliance with clause 3.22.1 or with Architect/Contract Administrator's instructions under clause 3.22.2;
- 2.29.5 suspension by the Contractor under clause 4.13 of the performance of any or all of his obligations under this Contract;
- 2.29.6 any impediment, prevention or default, whether by act or omission, by the Employer, the Architect/Contract Administrator, the Quantity Surveyor or any Employer's Person, except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or any Contractor's Person;
- 2.29.7 the carrying out by a Statutory Undertaker of work in pursuance of its statutory obligations in relation to the Works, or the failure to carry out such work;
- 2.29.8 exceptionally adverse weather conditions;
- 2.29.9 loss or damage occasioned by any Specified Peril;
- 2.29.10 civil commotion or the use or threat of terrorism and/or the activities of the relevant authorities in dealing with such event or threat;
- 2.29.11 strike, lock-out or local combination of workmen affecting any trade employed upon the Works or engaged in the preparation, manufacture or transportation of any of the goods or materials required for them or any persons engaged in design work for the Contractor's Designed Portion;
- 2.29.12 the exercise after the Base Date by the United Kingdom Government or any Local or Public Authority of any statutory power that is not occasioned by a default of the Contractor or any Contractor's Person but which directly affects the execution of the Works;
- 2.29.13 a Named Specialist being or becoming Insolvent;
- 2.29.14 force majeure.

Practical Completion, Lateness and Liquidated Damages

2.30 Practical completion and certificates

When in the Architect/Contract Administrator's opinion practical completion of the Works or a Section is achieved and the Contractor has complied sufficiently with clauses 2.40 and 3.23 in respect of the supply of documents and information, then:

- 2.30.1 in the case of the Works, the Architect/Contract Administrator shall forthwith issue a certificate to that effect ('the Practical Completion Certificate');

2.30.2 in the case of a Section, he shall forthwith issue a certificate of practical completion of that Section (a 'Section Completion Certificate');

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

2.31 Non-Completion Certificates

If the Contractor fails to complete the Works or a Section by the relevant Completion Date, the Architect/Contract Administrator shall issue a certificate to that effect (a 'Non-Completion Certificate'). If a new Completion Date is fixed after the issue of such a certificate, such fixing shall cancel that certificate and the Architect/Contract Administrator shall where necessary issue a further certificate.

2.32 Payment or allowance of liquidated damages

2.32.1 Provided:

2.32.1.1 the Architect/Contract Administrator has issued a Non-Completion Certificate for the Works or a Section; and

2.32.1.2 the Employer has notified the Contractor before the date of the Final Certificate that he may require payment of, or may withhold or deduct, liquidated damages,

the Employer may, not later than 5 days before the final date for payment of the amount payable under clause 4.26, give notice to the Contractor in the terms set out in clause 2.32.2.

2.32.2 A notice from the Employer under clause 2.32.1 shall state that for the period between the Completion Date and the date of practical completion of the Works or that Section:

2.32.2.1 he requires the Contractor to pay liquidated damages at the rate stated in the Contract Particulars, or lesser rate stated in the notice, in which event the Employer may recover the same as a debt; and/or

2.32.2.2 that he will withhold or deduct liquidated damages at the rate stated in the Contract Particulars, or at such lesser stated rate, from sums due to the Contractor.^[38]

2.32.3 If the Architect/Contract Administrator fixes a later Completion Date for the Works or a Section or such later Completion Date is stated in a Confirmed Acceptance, the Employer shall pay or repay to the Contractor any amounts recovered, allowed or paid under clause 2.32 for the period up to that later Completion Date.

2.32.4 If the Employer in relation to the Works or a Section has notified the Contractor in accordance with clause 2.32.1.2 that he may require payment of, or may withhold or deduct, liquidated damages, then, unless the Employer states otherwise in writing, clause 2.32.1.2 shall remain satisfied in relation to the Works or Section, notwithstanding the cancellation of the relevant Non-Completion Certificate and issue of any further Non-Completion Certificate.

Partial Possession by Employer

2.33 Contractor's consent

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

[38] +++Now footnote [29]+++ In addition to the notice under clause 2.32.2, the Employer, if he intends to withhold or deduct all or any of the liquidated damages payable, must give the appropriate Pay Less Notice under clause 4.11.5.

2.34 Practical completion date

For the purposes of clauses 2.38 and 4.19.2, practical completion of the Relevant Part shall be deemed to have occurred, and the Rectification Period in respect of the Relevant Part shall be deemed to have commenced, on the Relevant Date.

2.35 Defects etc. – Relevant Part

When in the Architect/Contract Administrator's opinion any defects, shrinkages or other faults in the Relevant Part which he has required to be made good under clause 2.38 have been made good, he shall issue a certificate to that effect.

2.36 Insurance – Relevant Part

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

2.37 Liquidated damages – Relevant Part

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

Defects**2.38 Schedules of defects and instructions**

If any defects, shrinkages or other faults in the Works or a Section appear within the relevant Rectification Period due to materials, goods or workmanship not in accordance with this Contract or any failure of the Contractor to comply with his obligations in respect of the Contractor's Designed Portion:

- 2.38.1 such defects, shrinkages and other faults shall be specified by the Architect/Contract Administrator in a schedule of defects which he shall deliver to the Contractor as an instruction not later than 14 days after the expiry of that Rectification Period; and
- 2.38.2 prior to issue of that schedule, the Architect/Contract Administrator may whenever he considers it necessary issue instructions requiring any such defect, shrinkage or other fault to be made good, provided no instructions under this clause 2.38.2 shall be issued after delivery of that schedule or more than 14 days after the expiry of the relevant Rectification Period.

Within a reasonable time after receipt of such schedule or instructions, the defects, shrinkages and other faults shall at no cost to the Employer be made good by the Contractor unless the Architect/Contract Administrator with the Employer's consent instructs otherwise. If he so instructs otherwise, an appropriate deduction may be made from the Contract Sum in respect of the defects, shrinkages or other faults not made good.

2.39 Certificate of Making Good

When in the Architect/Contract Administrator's opinion the defects, shrinkages or other faults in the Works or a Section which under clause 2.38 he has required to be made good have been made good, he shall issue a certificate to that effect (a 'Certificate of Making Good'), and completion of that making good shall for the purposes of this Contract be deemed to have taken place on the date stated in that certificate.

Contractor's Design Documents**2.40 As-built Drawings**

Where there is a Contractor's Designed Portion, the Contractor, in addition to his obligations under the CDM Regulations in relation to information for the health and safety file, shall, before practical completion of the Works or relevant Section and without further charge to the Employer, supply for retention and use by the Employer such Contractor's Design Documents and related information as is specified in the Contract Documents or as the Employer may reasonably require that show or

describe the Contractor's Designed Portion as built or relate to the maintenance and operation of it or its installations.

2.41 Copyright and use

- 2.41.1 Subject to any rights in any designs, drawings and other documents supplied to the Contractor for the purposes of this Contract by or on behalf of the Employer or the Architect/Contract Administrator, all rights including (without limitation) copyright in all Contractor's Design Documents shall remain vested in the Contractor.
- 2.41.2 Subject to all sums due and payable under this Contract to the Contractor having been paid, the Employer shall have an irrevocable, royalty-free, non-exclusive licence to copy and use the Contractor's Design Documents and to reproduce the designs and content of them for any purpose relating to the Works including, without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Works. That licence shall enable the Employer to copy and use the Contractor's Design Documents for an extension of the Works but shall not include any right or licence to reproduce the designs contained in them for any such extension.
- 2.41.3 The licence shall be assignable to any owner from time to time of the Works or any part of them and may be sub-licensed to any owner or tenant of the Works or part of them and to any person engaged for the purposes permitted by clause 2.41.2.
- 2.41.4 The Contractor shall not be liable for any use by the Employer of any of the Contractor's Design Documents for any purpose other than that for which they were prepared.

Section 3 Control of the Works

Access and Representatives

3.1 Access for Architect/Contract Administrator

The Architect/Contract Administrator and any person authorised by him shall at all reasonable times have access to the Works and to the workshops or other premises of the Contractor where work is being prepared for this Contract. When work is to be prepared in workshops or other premises of a sub-contractor the Contractor shall by a term in the sub-contract secure so far as possible a similar right of access to those workshops or premises for the Architect/Contract Administrator and any person authorised by him and take any steps reasonably necessary to make that right effective. Access under this clause 3.1 may be subject to such reasonable restrictions as are necessary to protect proprietary rights.

3.2 Site Manager

The Contractor shall prior to the commencement of work on site appoint a full-time Site Manager, approved by the Employer, to act as the Contractor's representative there, in charge of the Works. The Contractor shall ensure that the appointee, or a competent deputy, is on site at all material times and, if the appointee ceases to hold the post, shall promptly appoint a replacement approved by the Employer. Any instructions issued to the Site Manager or his deputy shall be treated as issued to the Contractor.

3.3 Employer's representative

The Employer may appoint an individual to act as his representative by giving notice to the Contractor that from the date stated the individual identified in the notice will exercise all the functions ascribed to the Employer in these Conditions, subject to any exceptions stated in the notice. The Employer may by notice to the Contractor terminate any such appointment and/or appoint a replacement.^[39]

3.4 Clerk of works

The Employer shall be entitled to appoint a clerk of works whose duty shall solely be to act as inspector on behalf of the Employer under the Architect/Contract Administrator's directions and the Contractor shall afford every reasonable facility for the performance of that duty. Any direction given by the clerk of works shall be of no effect unless it relates to a matter on which these Conditions expressly empower the Architect/Contract Administrator to issue instructions and unless the latter confirms it by an instruction within 2 Business Days of the direction being given.

3.5 Replacement of Architect/Contract Administrator or Quantity Surveyor

3.5.1 If the Architect/Contract Administrator or Quantity Surveyor (or any person exercising the Quantity Surveyor's functions) at any time ceases to hold that post, the Employer shall as soon as reasonably practicable, and in any event within 21 days of the cessation, nominate a replacement and notify the Contractor. Except where the Employer is a Local or Public Authority and the nominated replacement is an official of it, the Contractor may within 7 days of the notice give a counter-notice objecting to that nomination; if the Contractor's objections are accepted by the Employer or considered sufficient by a person appointed under the dispute resolution procedures of this Contract, the Employer shall withdraw the nomination and nominate an acceptable replacement.

3.5.2 No replacement Architect/Contract Administrator appointed for this Contract shall be entitled to disregard or overrule any certificate, opinion, decision, consent, approval or instruction given or expressed by any predecessor in that post, save to the extent that that predecessor if still in the post would then have had power under this Contract to do so.

[39] +++Now footnote [30]+++ To avoid confusion between the roles of the Architect/Contract Administrator and the Quantity Surveyor on the one hand and that of the Employer's representative on the other, neither the Architect/Contract Administrator nor the Quantity Surveyor should be appointed as the Employer's representative.

3.6 Contractor's responsibility

Irrespective of the Architect/Contract Administrator's obligations to the Employer and any appointment of a clerk of works, the Contractor shall remain wholly responsible for carrying out and completing the Works in all respects in accordance with these Conditions. That responsibility shall not be affected by the Architect/Contract Administrator or clerk of works at any time inspecting the Works, any workshop or other premises or any work in preparation there, by the inclusion of the value of any work, materials or goods in a Payment Certificate, subject to clause 1.9, or by the issue of any other certificate under this Contract.

Sub-Contracting**3.7 Consent to sub-contracting**

3.7.1 Save for any sub-contract entered into in accordance with clause 3.8 or Supplemental Provision 9, where it applies:

3.7.1.1 the Contractor shall not without the Architect/Contract Administrator's consent sub-contract the whole or any part of the Works;

3.7.1.2 where there is a Contractor's Designed Portion, the Contractor shall not without the Employer's consent sub-contract that design or any part of it.

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.

3.7.2 The provisions of this clause 3.7 and of clauses 3.8 and 3.9 shall not apply to the execution of part of the Works by a Statutory Undertaker, who shall not in that capacity be a sub-contractor within the terms of this Contract.

3.8 List in Specification/Work Schedules

Where the Specification/Work Schedules provide that particular work described therein for pricing by the Contractor is to be carried out by one of the persons identified in a list in or annexed to that document, the selection of his sub-contractor from that list shall be made by the Contractor at his sole discretion. In relation to the list, the following provisions shall apply:

3.8.1 the list shall comprise not less than three persons; the Employer (or the Architect/Contract Administrator on his behalf) and the Contractor may each with the other's consent add persons to the list at any time prior to execution of the sub-contract for the work;^[40]

3.8.2 if at any time prior to execution of the sub-contract there are less than three persons listed who are able and willing to carry out the work, then, unless there is agreement to add to the list so that it comprises three or more such persons, the work shall be carried out by the Contractor who may with consent under clause 3.7 sub-contract to any sub-contractor.

3.9 Conditions of sub-contracting

Where considered appropriate, the Contractor shall engage the sub-contractor using the relevant version of the JCT Standard Building Sub-Contract. It shall be a condition of any sub-contract that^[41]:

3.9.1 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;

3.9.2 the sub-contract shall provide:

3.9.2.1 that, except for use on the Works, no Site Materials delivered to the Works by or for the sub-contractor shall be removed without the Contractor's written consent (such consent not to be unreasonably delayed or withheld) and (in addition to any provision for earlier vesting in the Contractor of title to any Listed Items for the purposes of clause 4.16.2.1 of these Conditions) that:

3.9.2.1.1 where, in accordance with clauses 4.9 and 4.14 of these Conditions,

[40] +++Now footnote [31]+++ Any such addition should be confirmed in writing.

[41] +++Now footnote [32]+++ The JCT Standard Building Sub-Contracts (SBSub and SBSub/D) meet the requirements of clause 3.9 and also those of paragraphs A.3A.3 and B.4 respectively of JCT Fluctuations Options A and B.

the value of any Site Materials has been included in any Interim Certificate under which the amount properly due to the Contractor has been paid to him, they shall upon such payment become, and the sub-contractor shall not deny that they have become, the Employer's property;

- 3.9.2.1.2 if the Contractor pays the sub-contractor for any Site Materials before their value is included in an Interim Certificate, they shall upon such payment become the Contractor's property;
- 3.9.2.2 that the sub-contractor shall give access to workshops or other premises in accordance with clause 3.1 of these Conditions;
- 3.9.2.3 that each party to the sub-contract shall in relation to the Works and the site comply with applicable CDM Regulations;
- 3.9.2.4 in terms equivalent to those of clause 4.11.6 of these Conditions, that if by a final date for payment under the sub-contract the Contractor fails to pay the sub-contractor any amount that should properly have been paid, the Contractor shall, in addition to that amount, pay simple interest on it at the Interest Rate for the period from the final date for payment until such payment is made;
- 3.9.2.5 that where the Rights Particulars provide for the grant of third party rights from and/or for the execution and delivery of collateral warranties by the sub-contractor:
 - 3.9.2.5.1 the sub-contract and, where applicable, those collateral warranties shall if those particulars require be executed as deeds;
 - 3.9.2.5.2 any third party rights required shall vest on receipt of notice from the Contractor to that effect and any collateral warranty required shall be executed and delivered by the sub-contractor within 14 days of receipt of the Contractor's notice requiring execution;
 - 3.9.2.5.3 the terms of and those governing such third party rights or collateral warranties shall in each case be consistent with those of clauses 2.26 and 2.27 and Schedule 6 of the JCT Standard Building Sub-Contract Conditions;
- 3.9.3 where documents or information and/or the grant of licences are or may be required from the sub-contractor for the BIM Protocol, where applicable, and/or for the purposes of clauses 2.40 and 3.23 of these Conditions, the sub-contract shall also provide for the supply and grant to and by the sub-contractor of all information and licences reasonably necessary for that purpose.

The Contractor shall not give such consent as is referred to in clause 3.9.2.1 without the Architect/Contract Administrator's prior consent under clause 2.24 of these Conditions.

Architect/Contract Administrator's Instructions

3.10 Compliance with instructions

The Contractor shall forthwith comply with all instructions issued to him by the Architect/Contract Administrator on any matter on which these Conditions expressly empower the Architect/Contract Administrator to issue instructions, save that:

- 3.10.1 where an instruction requires a Variation of the type referred to in clause 5.1.2, the Contractor need not comply to the extent that he notifies a reasonable objection to it to the Architect/Contract Administrator;
- 3.10.2 where an instruction for a Variation is given which under clause 5.3.1 requires the Contractor to provide a Variation Quotation, the Variation shall not be carried out until the Architect/Contract Administrator has in relation to it issued either a Confirmed Acceptance or a further instruction under clause 5.3.2;
- 3.10.3 if the Contractor considers that compliance with any direction under clause 2.2.2 or any instruction would adversely affect the efficacy of the design of the Contractor's Designed Portion or his compliance with applicable CDM Regulations and if within 7 days of receipt

of the direction or instruction he gives notice to the Architect/Contract Administrator specifying that adverse effect, the direction or instruction shall not take effect unless and until confirmed by the Architect/Contract Administrator;

3.10.4 in the case of a notification by the Contractor under clause 2.23.2, the Contractor need not comply pending confirmation of the instruction;

3.10.5 in the case of a notification under Supplemental Provision 9, paragraph 9.4, the Contractor need not comply pending further instructions under that paragraph.

3.11 Non-compliance with instructions

Subject to clause 3.10, if within 7 days after receipt of a notice from the Architect/Contract Administrator requiring compliance with an instruction the Contractor does not comply, the Employer may employ and pay other persons to execute work of any kind that may be necessary to give effect to that instruction. The Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and an appropriate deduction may be made from the Contract Sum.

3.12 Instructions other than in writing

3.12.1 Where the Architect/Contract Administrator gives an instruction otherwise than in writing, it shall be of no immediate effect but the Contractor shall confirm its terms in writing to the Architect/Contract Administrator within 7 days, and, if he does not dissent by notice to the Contractor within 7 days from receipt of the Contractor's confirmation, it shall take effect as from the expiry of the latter 7 day period.

3.12.2 If prior to or within 7 days from receipt of the Contractor's confirmation the Architect/Contract Administrator confirms the terms of the instruction in writing, it shall take effect from the date and in the terms of the Architect/Contract Administrator's confirmation.

3.12.3 If neither the Contractor nor the Architect/Contract Administrator confirms such an instruction in the manner and time stated but the Contractor nevertheless complies with it, the Architect/Contract Administrator may at any time prior to the issue of the Final Certificate confirm it with retrospective effect.

3.13 Provisions empowering instructions

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

3.14 Instructions requiring Variations

3.14.1 The Architect/Contract Administrator may issue instructions requiring a Variation.

3.14.2 Any instruction of the type referred to in clause 5.1.2 shall be subject to the Contractor's right of reasonable objection set out in clause 3.10.1.

3.14.3 In respect of the Contractor's Designed Portion, any instruction requiring a Variation shall be an alteration to or modification of the Employer's Requirements.

3.14.4 The Architect/Contract Administrator may sanction in writing any Variation made by the Contractor otherwise than pursuant to an instruction.

3.14.5 No Variation required or sanctioned by the Architect/Contract Administrator shall vitiate this Contract.

3.15 Postponement of work

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

3.16 Instructions on Provisional Sums

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

3.17 Inspection – tests

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

3.18 Work not in accordance with the Contract

If any work, materials or goods are not in accordance with this Contract the Architect/Contract Administrator, in addition to his other powers, may:

- 3.18.1 issue instructions in regard to the removal from the site of all or any of such work, materials or goods;
- 3.18.2 after consultation with the Contractor and with the Employer's consent, allow all or any such work, materials or goods to remain, in which event he shall notify the Contractor to that effect but that shall not be construed as a Variation and an appropriate deduction may be made from the Contract Sum;
- 3.18.3 after consultation with the Contractor, issue such Variation instructions as are a reasonably necessary consequence of any instruction under clause 3.18.1 and/or notification under clause 3.18.2 (but to the extent that such instructions are reasonably necessary, no addition shall be made to the Contract Sum and no extension of time shall be given); and/or
- 3.18.4 having due regard to the Code of Practice set out in Schedule 4, issue such instructions under clause 3.17 to open up for inspection or to test as are reasonable in all the circumstances to establish to his reasonable satisfaction the likelihood or extent, as appropriate to the circumstances, of any further similar non-compliance. To the extent that those instructions are reasonable, whatever the results of the opening up, no addition shall be made to the Contract Sum but clauses 2.28 and 2.29.2.2 shall apply unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract.

3.19 Workmanship not in accordance with the Contract

Where there is any failure to comply with clause 2.1 in regard to the carrying out of work in a proper and workmanlike manner or in accordance with the Construction Phase Plan, the Architect/Contract Administrator, in addition to his other powers, may, after consultation with the Contractor, issue such instructions (whether requiring a Variation or otherwise) as are in consequence reasonably necessary. To the extent that such instructions are reasonably necessary, no addition shall be made to the Contract Sum and no extension of time shall be given.

3.20 Executed work

In respect of any materials, goods or workmanship, as comprised in executed work, which under clause 2.3 are to be to his reasonable satisfaction, the Architect/Contract Administrator, if he is dissatisfied, shall give the reasons for such dissatisfaction to the Contractor within a reasonable time from the execution of the unsatisfactory work.

3.21 Exclusion of persons 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.

3.22 Antiquities

- 3.22.1 All fossils, antiquities and other objects of interest or value which may be found on the site or in excavating it during the progress of the Works shall become the Employer's property. Upon discovery of any such object the Contractor shall forthwith:
 - 3.22.1.1 use his best endeavours not to disturb the object and cease work if and insofar as its continuance would endanger the object or prevent or impede its excavation or removal;
 - 3.22.1.2 take all steps necessary to preserve the object in the exact position and

condition in which it was found; and

3.22.1.3 inform the Architect/Contract Administrator or the clerk of works of its discovery and precise location.

3.22.2 The Architect/Contract Administrator shall issue instructions as to action to be taken concerning any object reported under clause 3.22.1, which (without limiting his powers) may require the Contractor to permit the examination, excavation or removal of the object by a third party.

CDM Regulations

3.23 CDM Regulations

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

- 3.23.1 the Employer shall ensure that the Principal Designer carries out his duties and, where the Contractor is not the Principal Contractor, shall ensure that the Principal Contractor carries out his duties under those regulations;
- 3.23.2 whether or not clause 2.2.3 applies, the Contractor shall comply with regulations 8 and 15 and, where he is the Principal Contractor, with regulations 12 to 14;^[42]
- 3.23.3 whether or not the Contractor is the Principal Contractor, compliance by the Contractor with his duties under the regulations, including any such directions as are referred to in regulation 15(3), shall be at no cost to the Employer and shall not entitle the Contractor to an extension of time;
- 3.23.4 if the Employer appoints a replacement for the Principal Designer or Principal Contractor, the Employer shall immediately upon that appointment notify the Contractor with details of the new appointee.

[42] **+++Now footnote [33]+++** Where the Employer is a domestic client, as defined in regulation 2, the Principal Contractor may also be responsible for carrying out certain of the client's duties under regulations 4, 6 and 8. (As to the CDM Regulations generally, see the Standard Building Contract Guide.)

Section 4 Payment

Contract Sum and Adjustments

4.1 Work included in Contract Sum

The quality and quantity of the work included in the Contract Sum shall, save insofar as quantities are given in the Specification or Work Schedules, be that set out in the Contract Documents taken together, provided that if there is any inconsistency between work as stated or shown on the Contract Drawings and any description of that work in the Specification or Work Schedules, the Contract Drawings shall prevail. Where quantities are given for any items in the Specification or Work Schedules, the quality and quantity of the work included in the Contract Sum for those items shall be that set out in the Specification or Work Schedules.

4.2 Adjustment only under the Conditions

The Contract Sum shall not be adjusted or altered in any way other than in accordance with the express provisions of these Conditions and, subject to clause 2.14, any error in the computation of the Contract Sum is accepted by the Parties.

4.3 Items included in adjustments

The Contract Sum shall be adjusted by:

- 4.3.1 any amount agreed by the Employer and the Contractor in respect of Variations and other work of the types referred to in clause 5.2, whether by Confirmed Acceptance of a Variation Quotation or otherwise, and the amount of each Valuation;
- 4.3.2 any amount agreed by Confirmed Acceptance of an Acceleration Quotation;
- 4.3.3 (where the Contract Particulars state that a Fluctuations Provision applies) any amounts payable or allowable under that provision;
- 4.3.4 any other amounts referred to in clause 4.14.2 (excluding any loss and/or expense to the extent included under clause 4.3.1 or 4.3.2) and any other deductions referred to in clause 4.14.3;
- 4.3.5 the deduction of all Provisional Sums and the value of any work described as provisional in the Contract Documents; and
- 4.3.6 any other amount which under this Contract is to be added to the Contract Sum or may be deducted from it.

4.4 Taking adjustments into account

Where these Conditions provide that an amount is to be added to, deducted from or dealt with by adjustment of the Contract Sum, then, as soon as the amount is ascertained in whole or in part, the ascertained amount shall be taken into account in the next Interim Certificate.

Taxes

4.5 VAT

- 4.5.1 The Contract Sum is exclusive of VAT and in relation to each payment to the Contractor under this Contract, the Employer shall in addition pay the amount of any VAT properly chargeable in respect of it.
- 4.5.2 If after the Base Date the supply of any goods or services to the Employer becomes exempt from VAT there shall be paid to the Contractor an amount equal to the input tax on the supply to the Contractor of goods and services that contribute to the Works which as a consequence of that exemption the Contractor cannot recover.

4.6 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^[43], his obligation to make any payment under this Contract is subject to the provisions of the CIS.

Payments, Certificates and Notices – general provisions**4.7 Advance payment**

Where the Contract Particulars state that clause 4.7 applies, and an advance payment is to be made, it shall be paid to the Contractor on the date and reimbursed to the Employer on the terms stated in the Contract Particulars, save that, if the Contract Particulars state that an advance payment bond is required, payment shall only be made if the Contractor has provided to the Employer a bond in the terms set out in Part 1 of Schedule 6 from a surety approved by the Employer.^[44]

4.8 Interim payments – due dates

During the period up to the due date for the final payment fixed under clause 4.26.3, the monthly due dates for interim payments by the Employer shall in each case be the date 7 days after the relevant Interim Valuation Date.

4.9 Interim Certificates and valuations

4.9.1 The Architect/Contract Administrator shall not later than 5 days after each due date issue an Interim Certificate, stating:

4.9.1.1 the sum he considers to be or have been due to the Contractor at the due date, calculated in accordance with clauses 4.14 and 4.15; and

4.9.1.2 the basis on which that sum has been calculated.

4.9.2 Interim valuations shall be made by the Quantity Surveyor whenever the Architect/Contract Administrator considers them necessary for ascertaining the sum due in an Interim Certificate.

4.10 Contractor's Payment Applications and Payment Notices

4.10.1 In relation to any interim payment the Contractor may not later than its Interim Valuation Date or, in the case of the final payment, may at any time prior to issue of the Final Certificate make an application to the Quantity Surveyor (a 'Payment Application'), stating the sum that the Contractor considers to be due to him at the relevant due date, as fixed in accordance with clause 4.8 or 4.26.3, and the basis on which that sum has been calculated.

4.10.2 If a Payment Certificate is not issued in accordance with clause 4.9.1 or 4.26.1, then:

4.10.2.1 where the Contractor has made a Payment Application in accordance with clause 4.10.1, that application is for the purposes of these Conditions a Payment Notice; or

4.10.2.2 where the Contractor has not made a Payment Application, he may at any time after the last date for issue of the Payment Certificate give a Payment Notice to the Quantity Surveyor, stating the sum that the Contractor considers to have become due to him under clauses 4.14 and 4.15 or clause 4.26.2 at the relevant due date and the basis on which that sum has been calculated.

4.11 Interim and final payments – final date and amount

4.11.1 Subject to clause 4.11.4, the final date for payment of each interim payment and the final payment shall be 14 days from its due date.

4.11.2 Subject to any Pay Less Notice given by the paying Party under clause 4.11.5, the paying Party shall pay the sum stated as due in the Payment Certificate on or before the final date

[43] +++Now footnote [34]+++ See the Contract Particulars (Fourth Recital and clause 4.6).

[44] +++Now footnote [35]+++ As to approval of sureties, see the Standard Building Contract Guide.

for payment.

- 4.11.3 If a Payment Certificate is not issued in accordance with clause 4.9.1 or 4.26.1, but a Payment Notice has been or is then given, the Employer shall, subject to any Pay Less Notice under clause 4.11.5, pay the Contractor the sum stated as due in the Payment Notice.
- 4.11.4 Where a Payment Notice is given under clause 4.10.2.2, the final date for payment of the sum specified in it shall for all purposes be regarded as postponed by the same number of days as the number of days after the last date for issue of the Payment Certificate that the Payment Notice is given.
- 4.11.5 Where:
- 4.11.5.1 the Employer intends to pay less than the sum stated as due from him in a Payment Certificate or Payment Notice; or
- 4.11.5.2 if the Final Certificate shows a balance due to the Employer, the Contractor intends to pay less than the sum stated as due,
- the Party by whom the payment is stated to be payable shall not later than 5 days before the final date for payment give the other Party notice of that intention in accordance with clause 4.12.1 (a 'Pay Less Notice'). Where a Pay Less Notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated in it as due.
- 4.11.6 If either Party fails to pay a sum, or any part of it, due to the other Party under these Conditions by its final date for payment, he shall, in addition to any unpaid amount that should properly have been paid, pay the other Party simple interest on that amount at the Interest Rate for the period from the final date for payment until payment is made.
- 4.11.7 Any such unpaid amount and any interest under clause 4.11.6 shall be recoverable as a debt. Acceptance of a payment of interest shall not in any circumstances be construed as a waiver either of the recipient's right to proper payment of the principal amount due or of the Contractor's rights to suspend performance under clause 4.13 or terminate his employment under section 8.

4.12 Pay Less Notices and other general provisions

- 4.12.1 A Pay Less Notice given by either Party shall specify the sum he considers to be due to the other Party at the date the notice is given and the basis on which that sum has been calculated. Such notice:
- 4.12.1.1 (where it is to be given by the Employer) may be given on his behalf by the Architect/Contract Administrator, Quantity Surveyor or Employer's representative or by any other person who the Employer notifies the Contractor as being authorised to do so but, in the case of a payment for which a Payment Certificate is not issued in due time, may not be given until the Contractor has in respect of the payment given a Payment Notice;
- 4.12.1.2 (where it is to be given by the Contractor) shall be sent to the Employer, with a copy to the Architect/Contract Administrator.
- 4.12.2 In relation to the requirements for the issue of Payment Certificates and the giving of Pay Less Notices, it is immaterial that the amount then considered to be due may be zero.
- 4.12.3 The Employer's fiduciary interest in the Retention referred to in clause 4.17 shall not prevent him exercising any right under this Contract to withhold or deduct from a sum due to the Contractor, subject to clause 4.11.5, even if that sum includes any Retention due for release under clause 4.19.

4.13 Contractor's right of suspension

- 4.13.1 If the Employer fails to pay a sum payable to the Contractor in accordance with clause 4.11 (together with any VAT properly chargeable in respect of that payment) by the final date for payment and the failure continues for 7 days after the Contractor has given notice to the Employer, with a copy to the Architect/Contract Administrator, of his intention to suspend the performance of his obligations under this Contract and the grounds for such suspension, the Contractor, without affecting his other rights and remedies, may suspend

performance of any or all of those obligations until payment is made in full.

- 4.13.2 Where the Contractor exercises his right of suspension under clause 4.13.1, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of exercising the right.
- 4.13.3 Applications in respect of any such costs and expenses shall be made to the Architect/Contract Administrator and the Contractor shall with his application or on request submit such details of them as are reasonably necessary for ascertaining the amount in question.

Interim Payments – calculation of sums due

4.14 Gross Valuation

The Gross Valuation for each interim payment shall, subject to any agreement between the Parties as to stage payments, be the total of the amounts referred to in clauses 4.14.1 and 4.14.2, less the deductions referred to in clause 4.14.3, each calculated as at the Interim Valuation Date:

- 4.14.1 the total values of the following, which are subject to Retention:
- 4.14.1.1 work properly executed by the Contractor (including work so executed for which a value has been agreed pursuant to clause 5.2.1 or which has been valued under the Valuation Rules and work for which there is a Confirmed Acceptance of a Variation Quotation), but excluding any amounts referred to in clause 4.14.2.4;
 - 4.14.1.2 Site Materials, provided they are adequately protected against weather and other casualties and are not on the Works prematurely; and
 - 4.14.1.3 Listed Items (if any) for which the conditions set out in clause 4.16 are satisfied;
- those values shall be adjusted, where appropriate, in accordance with any applicable Fluctuations Provision or any Acceleration Quotation for which there has been Confirmed Acceptance and, where there is an Activity Schedule, the value of the work in each activity to which it relates shall be a proportion of the price stated for the work in that activity equal to the proportion of the work in that activity that has then been properly executed;
- 4.14.2 the total of the following, which are not subject to Retention:
- 4.14.2.1 any amounts to be included in accordance with clause 4.4 as a result of payments made or costs incurred by the Contractor under clause 2.6.2, 2.21, 2.23, 3.17, 6.5, 6.10.2 or 6.10.3, 6.11.3, 6.12.2 or 6.20;
 - 4.14.2.2 any amounts payable under clause 4.13.2;
 - 4.14.2.3 the amount of any loss and/or expense to which the Contractor is entitled under clause 4.20.1 or 5.3.3 or by a Confirmed Acceptance;
 - 4.14.2.4 where Insurance Option B or C applies or to the extent that the work is under clause 6.13.5.3 to be treated as a Variation, any amounts in respect of reinstatement work under clause 6.13.4; and
 - 4.14.2.5 any amount payable to the Contractor under any applicable Fluctuations Provision, other than by means of an adjustment made under clause 4.14.1;
- 4.14.3 the following deductions:
- 4.14.3.1 any amounts deductible under clause 2.10, 2.38, 3.11, 3.18.2, 6.12.2 or 6.19.2; and
 - 4.14.3.2 any amount allowable by the Contractor under clause 6.10.2 or under any applicable Fluctuations Provision, other than by means of an adjustment made under clause 4.14.1.

4.15 Sums due as interim payments

The sum due as an interim payment shall in each case be the Gross Valuation less the following

deductions:

- 4.15.1 any amount which may be deducted and retained by the Employer under clauses 4.17 to 4.19 ('the Retention');
- 4.15.2 the cumulative total of the amounts of any advance payment that have then become due for reimbursement to the Employer in accordance with the terms stated in the Contract Particulars for clause 4.7;
- 4.15.3 the sums stated as due in previous Interim Certificates; and
- 4.15.4 any sum paid in respect of any Payment Notice given after the issue of the latest Interim Certificate.

Listed Items

4.16 Listed Items

The conditions for inclusion of the value of a Listed Item in the Gross Valuation before its delivery to or adjacent to the Works as referred to in clause 4.14.1.3 are:

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

each item being either set apart or clearly and visibly marked, individually or as a set, by letters, figures or a pre-determined code; and
- 4.16.4 for uniquely identified Listed Items, the Contractor, if it is stated in the Contract Particulars as required, has provided a bond in favour of the Employer from a surety approved by the Employer in the terms set out in Part 2 of Schedule 6⁽⁴⁴⁾ ('the required bond') in the amount specified in the Contract Particulars for this clause 4.16.4; or
- 4.16.5 for Listed Items that are not uniquely identified, the Contractor has provided the required bond in the amount specified in the Contract Particulars for this clause 4.16.5.

Retention

4.17 Rules on treatment of Retention

The Retention which the Employer may deduct and retain as referred to in clause 4.15 shall be subject to the following rules:

- 4.17.1 the Employer's interest in the Retention is fiduciary as trustee for the Contractor (but without obligation to invest);
- 4.17.2 prior to the date for issue of each Interim Certificate the Architect/Contract Administrator shall prepare, or instruct the Quantity Surveyor to prepare, and with that certificate shall issue to the Employer and the Contractor a statement specifying the amount of the Retention deducted (and, where relevant, the amount to be released in accordance with clause 4.19) in arriving at the sum stated as due;
- 4.17.3 except where the Employer is a Local or Public Authority, the Employer, to the extent that

he exercises his right under clause 4.19 and if the Contractor so requests, shall at the date of payment place the Retention in a separate bank account (so designated as to identify the amount as the Retention held by the Employer on trust as provided in clause 4.17.1) and certify to the Architect/Contract Administrator and the Contractor that the amount has been so placed. The Employer shall be entitled to the full beneficial interest in any interest accruing on the separate bank account and under no duty to account for any such interest to the Contractor or any sub-contractor.

4.18 **Retention Bond**~~Not applicable~~

~~Where the Contract Particulars state that clause 4.18 applies, then:~~

~~{4.18.1}subject to clauses 4.18.3 and 4.18.4, the provisions of clauses 4.15 and 4.19 permitting the deduction of the Retention shall not apply save that the Architect/Contract Administrator shall prior to the date for issue of each Interim Certificate prepare, or instruct the Quantity Surveyor to prepare, a statement specifying the deduction in respect of the Retention that would have been made had those clauses applied^[45];~~

~~{4.18.2}on or before the Date of Possession the Contractor shall provide to the Employer and thereafter maintain a bond ('the Retention Bond') in favour of the Employer from a surety approved by the Employer ('the Surety')^[44] in the terms set out in Part 3 of Schedule 6, incorporating in clauses 2 (*maximum aggregate sum*) and 6.3 (*expiry date*) of the bond the sum and date stated in the Contract Particulars;~~

~~{4.18.3}if the Contractor fails to provide or maintain the Retention Bond in accordance with clause 4.18.2, the provisions of clauses 4.15 and 4.19 permitting the deduction of the Retention shall apply in respect of Interim Certificates issued after the date of the failure, save that if the Contractor subsequently provides the required bond, any Retention deducted during the period of failure shall become due for release to the Contractor on the next due date thereafter;~~

~~{4.18.4}if at any time the amount of the Retention that would have been deducted had the provisions of clauses 4.15 and 4.19 applied exceeds the aggregate sum stated in the Retention Bond, then either the Contractor shall arrange with the Surety for the aggregate sum to equate to such amount or the amount not covered by the bond may be deducted as Retention; and~~

~~{4.18.5}where the Contractor has provided a performance bond or guarantee of the type referred to in clause 7.3.1, then, in respect of any default for which the Employer is entitled to make a demand under both that performance bond or guarantee and the Retention Bond, the Employer shall first have recourse to the Retention Bond.~~

4.19 **Retention – amounts and periods**

The Retention which may be deducted under Interim Certificates issued prior to issue of the Certificate of Making Good (or last such certificate) and retained by the Employer shall be the following percentages of the total amount (or proportion of that amount) included in the Gross Valuation under clause 4.14.1 for work and (where applicable) Site Materials and Listed Items^[46]:

- 4.19.1 the Retention Percentage may be deducted from the total amount where the Works have not reached practical completion or (where there are Sections) from that proportion of the total amount that relates to uncompleted Sections (in either case excluding from the total amount any proportion of it attributable to a Relevant Part);
- 4.19.2 half the Retention Percentage may be deducted:
 - 4.19.2.1 from the total amount where the Works as a whole have reached practical completion but the Certificate of Making Good has not been issued; or
 - 4.19.2.2 from the proportion of the total amount that relates to each Section that has reached practical completion but for which such a certificate has not been issued or relates to a Relevant Part for which a certificate has not been issued under clause 2.35.

[45]—This saving provision is included in view of the provisions of clauses 4.2 and 4.3 of the form of Retention Bond in Schedule 6.

[46] **+++Now footnote [36]+++** For the effect of clause 4.19.2, see the Standard Building Contract Guide.

Loss and Expense

4.20 Matters materially affecting regular progress

- 4.20.1 If in the execution of this Contract the Contractor incurs or is likely to incur any direct loss and/or expense as a result of any deferment of giving possession of the site or part of it under clause 2.5 or because regular progress of the Works or any part of them has been or is likely to be materially affected by any Relevant Matter, he shall, subject to clause 4.20.2 and compliance with the provisions of clause 4.21 be entitled to reimbursement of that loss and/or expense.
- 4.20.2 No such entitlement arises where these Conditions provide that there shall be no addition to the Contract Sum or otherwise exclude the operation of this clause 4.20 or to the extent that the Contractor is reimbursed for such loss and/or expense under another provision of these Conditions.

4.21 Notification and ascertainment

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

4.22 Relevant Matters

The following are the Relevant Matters:

- 4.22.1 Variations (excluding those where the amount of loss and/or expense has been agreed by Confirmed Acceptance of a Variation Quotation or Acceleration Quotation but including any other matters or instructions which under these Conditions are to be treated as a Variation);
- 4.22.2 Architect/Contract Administrator's instructions:
- 4.22.2.1 under clause 3.15 or 3.16;
 - 4.22.2.2 for the opening up for inspection or testing of any work, materials or goods under clause 3.17 (including making good), unless the cost is provided for in the Contract Sum or unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract;
 - 4.22.2.3 in relation to any discrepancy or divergence referred to in clause 2.15;
 - 4.22.2.4 in respect of any notification of reasonable objections under Supplemental Provision 9, paragraph 9.4;
 - 4.22.2.5 given under Supplemental Provision 9, paragraph 9.6 where a Named Specialist is Insolvent;
- 4.22.3 compliance with clause 3.22.1 or with Architect/Contract Administrator's instructions under clause 3.22.2;

- 4.22.4 any impediment, prevention or default, whether by act or omission, by the Employer, the Architect/Contract Administrator, the Quantity Surveyor or any Employer's Person, except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or any Contractor's Person.

4.23 Amounts ascertained – addition to Contract Sum

Amounts ascertained under clause 4.21 shall be added to the Contract Sum.

4.24 Reservation of Contractor's rights and remedies

The provisions of clauses 4.20 to 4.23 shall not limit or affect any other rights and remedies of the Contractor.

Final Adjustment and Final Payment

4.25 Final adjustment

- 4.25.1 Not later than 6 months after the issue of the Practical Completion Certificate or last Section Completion Certificate, the Contractor shall provide the Architect/Contract Administrator or (if so instructed) the Quantity Surveyor, with all documents necessary for the adjustment of the Contract Sum.

- 4.25.2 Not later than 3 months after receipt of the documents referred to in clause 4.25.1:

- 4.25.2.1 the Architect/Contract Administrator, or, if he so instructs, the Quantity Surveyor, shall ascertain the amount of any loss and/or expense notified by the Contractor under clause 4.21 or 5.3.3 and not previously ascertained;

- 4.25.2.2 the Quantity Surveyor shall prepare a statement showing all adjustments to be made to the Contract Sum under clause 4.3,

and the Architect/Contract Administrator shall within that 3 month period send to the Contractor copies of that statement and any such ascertainment.

- 4.25.3 If after expiry of the 6 month period referred to in clause 4.25.1 the Contractor has not supplied the necessary documents, the Architect/Contract Administrator may at any time give the Contractor one month's notice requiring their supply. Failing the supply of such documents, any ascertainment of loss and expense not then completed and the statement of adjustments may be completed on the basis of information in the Architect/Contract Administrator's or Quantity Surveyor's possession. Following preparation or completion of those documents, copies of them shall promptly be sent to the Contractor.

4.26 Final Certificate and final payment^[47]

- 4.26.1 The Architect/Contract Administrator shall issue the Final Certificate not later than 2 months after whichever of the following occurs last:

- 4.26.1.1 the end of the Rectification Period in respect of the Works or (where there are Sections) the last such period to expire;

- 4.26.1.2 the date of issue of the Certificate of Making Good or (where there are Sections) the last such certificate to be issued; or

- 4.26.1.3 the date on which the Architect/Contract Administrator sends to the Contractor copies of the statement and any ascertainment under clause 4.25.2 or 4.25.3.

- 4.26.2 The Final Certificate shall state:

- 4.26.2.1 the Contract Sum as adjusted in accordance with clause 4.3; and

- 4.26.2.2 the sum of amounts already stated as due in Interim Certificates plus the amount of any advance payment made under clause 4.7 and (where relevant) any such sum as is referred to in clause 4.15.4

and (without affecting the rights of the Contractor in respect of any interim payment not

[47] **+++Now footnote [37]+++** The effect of the Final Certificate is set out in clause 1.9.

paid in full by the Employer by its final date for payment) the final payment shall be the difference (if any) between the two sums, which shall be shown in the Final Certificate as a balance due to the Contractor from the Employer or vice versa. The Final Certificate shall state the basis on which that amount has been calculated.

- 4.26.3 The due date for the final payment shall be the date of issue of the Final Certificate or, if that certificate is not issued within the 2 month period referred to in clause 4.26.1, the last day of that period.

Section 5 Variations

General

5.1 Definition of Variations

The term 'Variation' means:

- 5.1.1 the alteration or modification of the design, quality or quantity of the Works including:
 - 5.1.1.1 the addition, omission or substitution of any work;
 - 5.1.1.2 the alteration of the kind or standard of any of the materials or goods to be used in the Works;
 - 5.1.1.3 the removal from the site of any work executed or Site Materials other than work, materials or goods which are not in accordance with this Contract;
- 5.1.2 the imposition by the Employer of any obligations or restrictions in regard to the following matters or any addition to or alteration or omission of any such obligations or restrictions that are so imposed or are imposed by the Specification/Work Schedules or the Employer's Requirements in regard to:
 - 5.1.2.1 access to the site or use of any specific parts of the site;
 - 5.1.2.2 limitations of working space;
 - 5.1.2.3 limitations of working hours; or
 - 5.1.2.4 the execution or completion of the work in any specific order.^[48]

5.2 Valuation of Variations and provisional sum work

- 5.2.1 The value of:
 - 5.2.1.1 all Variations required by Architect/Contract Administrator's instructions or subsequently sanctioned by him in writing;
 - 5.2.1.2 all work which under these Conditions is to be treated as a Variation; and
 - 5.2.1.3 all work executed by the Contractor in accordance with Architect/Contract Administrator's instructions as to the expenditure of Provisional Sums included in the Specification/Work Schedules or in the Employer's Requirements or work included in them that is there described as provisional

shall be such amount as is agreed by the Employer and the Contractor (whether by Confirmed Acceptance of a Variation Quotation or otherwise) or, where not agreed, the amount valued by the Quantity Surveyor (a 'Valuation').
- 5.2.2 Save where clause 5.3.3 applies, each Valuation shall be made in accordance with clauses 5.6 to 5.10 ('the Valuation Rules'), such Valuation insofar as it relates to the Contractor's Designed Portion being in accordance with clause 5.8.

5.3 Variation Quotation

- 5.3.1 If the Architect/Contract Administrator in his instruction for a Variation states that the Contractor is to provide a quotation in accordance with the provisions of Schedule 2 (a 'Variation Quotation'), the Contractor shall subject to receipt of sufficient information provide a quotation in accordance with those provisions, unless within 7 days of his receipt of that instruction (or such longer period as is either stated in the instruction or agreed between

[48] +++Now footnote [38]+++ See clauses 3.10.1 and (where applicable) 3.10.3 for the Contractor's right of reasonable objection to Variations.

them) he notifies the Architect/Contract Administrator that he disagrees with the application of the procedure to that instruction.

5.3.2 If the Contractor notifies his disagreement within that period, he shall not be obliged to provide that quotation and the Variation shall not be carried out unless and until the Architect/Contract Administrator gives a further instruction that the Variation is to be carried out and is to be valued by a Valuation.

5.3.3 Where a Variation Quotation has been made for work and a Confirmed Acceptance issued, then, if the Architect/Contract Administrator subsequently issues an instruction requiring a Variation of that work, the Valuation of that Variation shall be made on a fair and reasonable basis having regard to the content of that quotation and that Valuation shall include the direct loss and/or expense, if any, incurred by the Contractor because the regular progress of the Works or of any part of them is materially affected by compliance with the instruction. The Valuation Rules shall apply only to the extent that they are consistent with those requirements.

5.4 Contractor's right to be present at measurement

Where it is necessary to measure work for the purpose of a Valuation the Quantity Surveyor shall give the Contractor an opportunity to be present at the time of such measurement and to take such notes and measurements as the Contractor may require.

5.5 Giving effect to Valuations, agreements etc.

The Contract Sum shall be adjusted for each Confirmed Acceptance or other agreement by the Employer and the Contractor under clause 5.2.1 and for each Valuation.

The Valuation Rules

5.6 Measurable Work

5.6.1 To the extent that a Valuation relates to the execution of additional or substituted work which can properly be valued by measurement and subject to clause 5.8 in the case of CDP Works, such work shall be measured and shall be valued in accordance with the following rules:

5.6.1.1 where the work is of similar character to work included in the Contract Documents the Valuation shall be consistent with the relevant rates, prices or amounts for such work in the Priced Document and shall include a fair allowance for any change in the conditions under which the work is carried out and/or any significant change in the quantity of such work from that included in the Contract Documents;

5.6.1.2 where the work is not of similar character to work set out in the Contract Documents, it shall be valued at fair rates and prices.

5.6.2 To the extent that a Valuation relates to the omission of work set out in the Contract Documents and subject to clause 5.8 in the case of CDP Works, the valuation of the work omitted shall be in accordance with the rates, prices or amounts in the Priced Document.

5.6.3 In any valuation of work under clauses 5.6.1 and 5.6.2, allowance, where appropriate, shall be made for any addition to or reduction of preliminary items of the type referred to in the Measurement Rules.

5.7 Daywork

Where the execution of additional or substituted work cannot be valued in accordance with clause 5.6 or 5.8, as applicable, the Valuation shall comprise:

5.7.1 the prime cost of such work (calculated in accordance with the 'Definition of Prime Cost of Daywork carried out under a Building Contract' issued by The Royal Institution of Chartered Surveyors (RICS) and Construction Industry Publications Ltd as current at the Base Date) together with Percentage Additions to each section of the prime cost at the rates stated in the document identified in the Contract Particulars or, if they apply in respect of labour, at the All-Inclusive Rates stated in such document; or

5.7.2 where the work is within the province of any specialist trade and the RICS and the

appropriate body representing the employers in that trade have agreed and issued a definition of prime cost of daywork^[49], the prime cost of such work calculated in accordance with that definition current at the Base Date, together with Percentage Additions on the prime cost at the rates stated in the document identified in the Contract Particulars or, if they apply in respect of labour, at the All-Inclusive Rates stated in such document.

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

5.8 Contractor's Designed Portion – Valuation

Valuations relating to the Contractor's Designed Portion shall be made under this clause 5.8.

- 5.8.1 Allowance shall be made in such Valuations for the addition or omission of the relevant design work.
- 5.8.2 The valuation of additional or substituted work shall be consistent with the values of work of a similar character set out in the CDP Analysis, making due allowance for any change in the conditions under which work is carried out and/or any significant change in the quantity of the work so set out. Where there is no work of a similar character set out in the CDP Analysis a fair valuation shall be made.
- 5.8.3 The valuation of the omission of work set out in the CDP Analysis shall be in accordance with the values therein for such work.
- 5.8.4 Clauses 5.6.3, 5.7 and 5.9 shall apply so far as is relevant.

5.9 Change of conditions for other work

If as a result of:

- 5.9.1 compliance with any instruction requiring a Variation; or
- 5.9.2 compliance with any instruction as to the expenditure of a Provisional Sum,

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

5.10 Additional provisions

- 5.10.1 To the extent that a Valuation does not relate to the execution of additional or substituted work or the omission of work or to the extent that the valuation of any work or liabilities directly associated with a Variation cannot reasonably be effected in the Valuation by the application of clauses 5.6 to 5.9, a fair valuation shall be made.
- 5.10.2 No allowance shall be made under the Valuation Rules for any effect upon the regular progress of the Works or of any part of them or for any other direct loss and/or expense for which the Contractor would be reimbursed by payment under any other provision in these Conditions.

[49] **+++Now footnote [39]+++** There are currently three definitions to which clause 5.7.2 refers, namely those agreed between the RICS and the Electrical Contractors Association, the RICS and the Electrical Contractors Association of Scotland and the RICS and the Building and Engineering Services Association.

Section 6 Injury, Damage and Insurance

Personal Injury and Property Damage

6.1 Contractor's liability – personal injury or death

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

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

Subject to clause 6.3, the Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of 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.

6.3 Loss or damage to Existing Structures or their contents

- 6.3.1 Where paragraph **C.4C.1** of Insurance Option C applies, the Contractor's liability and indemnity under clause 6.2 excludes any loss or damage to Existing Structures or to any of their contents required to be insured under that option that is caused by any of the risks or perils required or agreed to be insured against under that option.
- 6.3.2 The exclusion in clause 6.3.1 shall apply notwithstanding that the loss or damage is or may be due in whole or in part to the negligence, breach of statutory duty, omission or default of the Contractor or any Contractor's Person.
- 6.3.3 Where Insurance Option C applies but a **C.4C.1** Replacement Schedule applies in lieu of paragraph **C.4C.1**, the Contractor's liability and indemnity under clause 6.2 shall, in respect of loss, injury or damage to the Existing Structures and their contents due to the causes specified in that clause, be subject only to such limitations or exclusions as are specified in that schedule.
- 6.3.4 The reference in clause 6.2 to 'property real or personal' does not include the Works, work executed or Site Materials up to and including the date of issue of the Practical Completion Certificate or, if earlier, the date of termination of the Contractor's employment, except that:
 - 6.3.4.1 after the date of issue of a Section Completion Certificate, the Section to which it relates shall no longer be regarded as 'the Works' or 'work executed' for these purposes; and
 - 6.3.4.2 if partial possession is taken under clause 2.33, the Relevant Part shall no longer be so regarded after the Relevant Date.

Insurance against Personal Injury and Property Damage

6.4 Contractor's insurance of his liability

- 6.4.1 Without limiting or affecting his indemnities to the Employer under clauses 6.1 and 6.2, the Contractor shall effect and maintain insurance in respect of claims arising out of the liabilities referred to in those clauses which:
 - 6.4.1.1 in respect of claims for personal injury to or the death of any employee of the Contractor arising out of and in the course of such person's employment, shall comply with all relevant legislation; and

6.4.1.2 for all other claims to which clause 6.4.1 applies^[50], shall indemnify the Employer in like manner to the Contractor (but only to the extent that the Contractor may be liable to indemnify the Employer under the terms of this Contract) and shall for any one occurrence or series of occurrences arising out of one event be in a sum not less than that stated in the Contract Particulars for clause 6.4.1.^[51]

6.4.2 As to evidence that such insurances have been effected and are being maintained and the consequences of failure to comply, clause 6.12 shall apply.

6.5 Contractor's insurance of liability of Employer

6.5.1 If the Contract Particulars state that insurance under clause 6.5.1 may be required, the Contractor shall if instructed by the Architect/Contract Administrator effect and maintain a policy of insurance in the names of the Employer and the Contractor for the amount of indemnity there stated in respect of any expense, liability, loss, claim or proceedings which the Employer may incur or sustain by reason of injury or damage to any property caused by collapse, subsidence, heave, vibration, weakening or removal of support or lowering of ground water arising out of or in the course of or by reason of the carrying out of the Works, excluding injury or damage:

6.5.1.1 for which the Contractor is liable under clause 6.2; or

6.5.1.2 which is attributable to errors or omissions in the designing of the Works; or

6.5.1.3 which can reasonably be foreseen to be inevitable having regard to the nature of the work to be executed and the manner of its execution; or

6.5.1.4 (if Insurance Option C applies) which it is the responsibility of the Employer to insure under paragraph ~~C-1C.1~~ of Schedule 3; or

6.5.1.5 to the Works and Site Materials except where the Practical Completion Certificate has been issued or in so far as any Section is the subject of a Section Completion Certificate; or

6.5.1.6 which arises from any consequence of war, invasion, act of foreign enemy, hostilities (whether war is declared or not), civil war, rebellion or revolution, insurrection or military or usurped power; or

6.5.1.7 which is directly or indirectly caused by or contributed to by or arises from the Excepted Risks; or

6.5.1.8 which is directly or indirectly caused by or arises out of pollution or contamination of buildings or other structures or of water or land or the atmosphere happening during the period of insurance, save that this exception shall not apply in respect of pollution or contamination caused by a sudden identifiable, unintended and unexpected incident which takes place in its entirety at a specific moment in time and place during the period of insurance (all pollution or contamination which arises out of one incident being considered for the purpose of this insurance to have occurred at the time such incident takes place); or

6.5.1.9 which results in any costs or expenses being incurred by the Employer or in any other sums being payable by the Employer in respect of damages for breach of contract, except to the extent that such costs or expenses or damages would have attached in the absence of any contract.

6.5.2 Any insurance under clause 6.5.1 shall be placed with insurers approved by the Employer, and the Contractor shall upon its issue deposit the policy with the Architect/Contract Administrator or, if so directed, the Employer.

6.5.3 Amounts expended by the Contractor to effect and maintain that insurance shall on production of receipts be added to the Contract Sum, and clause 6.12 shall apply.

[50] **+++Now footnote [40]+++** It should be noted that the cover granted under Public Liability policies taken out pursuant to clause 6.4.1 may not be co-extensive with the indemnity given to the Employer in clauses 6.1 and 6.2: for example, each claim may be subject to an excess and cover may not be available in respect of loss or damage due to gradual pollution.

[51] **+++Now footnote [41]+++** The Contractor may, if he wishes, insure for a sum greater than that stated in the Contract Particulars.

6.6 Excepted Risks

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

Insurance of the Works and Existing Structures

6.7 Insurance Options and period

6.7.1 Insurance Options A, B and C are set out in Schedule 3. The Insurance Option that applies to this Contract is that stated in the Contract Particulars.^[52]

6.7.2 In each case the Party responsible for effecting a Joint Names Policy under the Insurance Option that applies (the 'Works Insurance Policy') shall maintain that policy up to and including the date of issue of the Practical Completion Certificate, or last Section Completion Certificate, or (if earlier) the date of termination of the Contractor's employment, except that the obligation to maintain a Works Insurance Policy:

6.7.2.1 shall not apply in relation to a Section after the date of issue of its Section Completion Certificate; and

6.7.2.2 if partial possession is taken under clause 2.33, shall not as from the Relevant Date apply in relation to the Relevant Part.

6.8 Related definitions

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

All Risks Insurance^[53]: 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^[54];

[52] **+++Now footnote [42]+++** Insurance Options A and B are for use in the case of new buildings. **Insurance Option A** is applicable where the Contractor is required to take out a Joint Names Policy for All Risks Insurance of the Works or to include them on that basis within his Annual Construction policy; **Insurance Option B** is applicable where the Employer has elected to take out that Joint Names Policy. **Insurance Option C** is for use in the case of alterations of or extensions to Existing Structures. Under that option, the Employer is required to take out a Joint Names Policy for All Risks Insurance for the Works and also, if paragraph C-4C.1 applies, a Joint Names Policy to insure the Existing Structures and their contents owned by him or for which he is responsible against loss or damage by the Specified Perils. Some Employers (e.g. tenants and some homeowners) may not be able readily to obtain the Joint Names cover required under paragraph C-4C.1. Where that is the case, alternative arrangements through use of a C-4C.1 Replacement Schedule or as otherwise described in the Standard Building Contract Guide will be necessary. **Where there are Existing Structures, it is vital that any prospective Employer who is not familiar with Insurance Option C – in particular any Employer who is a tenant or domestic homeowner – or an appropriate member of the Employer's professional team, should consult specialist insurance advisers prior to the tender stage. Any Employer who is a tenant should also consult his insuring landlord prior to that stage.**

[53] **+++Now footnote [43]+++** The risks and costs that All Risks Insurance is required to cover are defined by exclusions. Policies issued by insurers are not standardised; the way in which insurance for these risks is expressed varies and **in some cases it may not be possible for insurance to be taken out against certain of the risks required to be covered**. In the case of Terrorism Cover, where the extension of cover will involve an additional premium and may in certain situations be difficult to effect, the requirement is now expressly limited to Pool Re Cover or such other cover as is agreed and set out in the Contract Particulars. That extension and any other relevant details of Works insurance also require discussion and agreement between the Parties and their insurance advisers at an early stage, **prior to entering into the Contract**. See the Standard Building Contract Guide.

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

Excepted Risks: the risks comprise:

- (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof (other than such risk insofar, but only insofar, as it is included in the Terrorism Cover from time to time required to be taken out and maintained under this Contract);
- (b) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; and
- (c) any act of terrorism that is not within the Terrorism Cover from time to time required to be taken out and maintained under this Contract.

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

Pool Re Cover: such insurance against loss or damage to work executed and Site Materials caused by or resulting from terrorism as is from time to time generally available from insurers who are members of the Pool Reinsurance Company Limited scheme or of any similar successor scheme.^[55]

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

Terrorism Cover: Pool Re Cover or other insurance against loss or damage to work executed and Site Materials (and/or, for the purposes of clause 6.11.1, to an Existing Structure and/or its contents) caused by or resulting from terrorism.^[55]

6.9 Sub-contractors – Specified Perils cover under Works Insurance Policies

- 6.9.1 The Contractor, where Insurance Option A applies, and the Employer, where Insurance Option B or C applies, shall ensure that the Works Insurance Policy either:
 - 6.9.1.1 provides for recognition of each sub-contractor as an insured under the policy; or
 - 6.9.1.2 includes a waiver by the insurers of any right of subrogation which they may have against any such sub-contractor

in respect of loss or damage by the Specified Perils to the Works or relevant Section, work executed and Site Materials and that this recognition or waiver continues up to and including the date of issue of any certificate or other document which states that in relation to the Works, the sub-contractor's works are practically complete or, if earlier, the date of termination of the sub-contractor's employment. Where there are Sections, the recognition

[54] **+++Now footnote [44]+++** In an All Risks Insurance policy for the Works, cover should not be reduced by any exclusion that goes beyond the terms of paragraph (b) in this definition. For example, an exclusion in terms that 'This Policy excludes all loss of or damage to the property insured due to defective design, plan, specification, materials or workmanship' would not be in accordance with the terms of the relevant Insurance Options or that definition. In relation to design defects, wider All Risks cover than that specified may be available, though it is not standard.

[55] **+++Now footnote [45]+++** As respects Terrorism Cover and the requirements of Insurance Options A, B and C, see footnote [53] **+++ now footnote [43] +++** and the Standard Building Contract Guide.

or waiver for a sub-contractor in relation to a Section shall cease upon the issue of such certificate or other document for his work in that Section.

- 6.9.2 Clause 6.9.1 applies also in respect of any Works Insurance Policy taken out in default under clause 6.12.2.

6.10 Terrorism Cover – policy extensions and premiums

- 6.10.1 To the extent that the Works Insurance Policy excludes (or would otherwise exclude) loss or damage caused by terrorism, the Contractor, where Insurance Option A applies, or the Employer, where Insurance Option B or C applies, shall unless otherwise agreed effect and maintain, either as an extension to the Works Insurance Policy or as a separate Joint Names Policy, in the same amount and for the same period as the Works Insurance Policy, such Terrorism Cover as is specified in or by the Contract Particulars, subject to clauses 6.10.4 and 6.11.
- 6.10.2 Where Insurance Option A applies and the Contractor is required to take out and maintain Pool Re Cover, the cost of that cover and its renewal shall be deemed to be included in the Contract Sum save that, if at any renewal of the cover there is a variation in the rate on which the premium is based, the Contract Sum shall be adjusted by the net amount of the difference between the premium paid by the Contractor and the premium that would have been paid but for the change in rate.
- 6.10.3 Where Insurance Option A applies and Terrorism Cover other than Pool Re Cover is specified as required, the cost of such other cover and of its renewal shall be added to the Contract Sum.
- 6.10.4 Where Insurance Option A applies and the Employer is a Local or Public Authority, if at any renewal of the Terrorism Cover (of any type) there is an increase in the rate on which the premium is based, he may instruct the Contractor not to renew the Terrorism Cover. If he so instructs, clause 6.13.5.3 shall apply with effect from the renewal date.

6.11 Terrorism Cover – non-availability – Employer's options

- 6.11.1 If the insurers named in any Joint Names Policy notify either Party that, with effect from a specified date (the 'cessation date'), Terrorism Cover will cease and will no longer be available or will only continue to be available with a reduction in the scope or level of such cover, the recipient shall immediately notify the other Party.
- 6.11.2 The Employer, after receipt of such notification but before the cessation date, shall give notice to the Contractor either:
- 6.11.2.1 that, notwithstanding the cessation or reduction in scope or level of Terrorism Cover, the Employer requires that the Works continue to be carried out; or
- 6.11.2.2 that on the date stated in the Employer's notice (which shall be a date after the date of the insurers' notification but no later than the cessation date) the Contractor's employment under this Contract shall terminate.
- 6.11.3 Where Insurance Option A applies and the Employer gives notice under clause 6.11.2.1 requiring continuation of the Works, he may instruct the Contractor to effect and maintain any alternative or additional form of Terrorism Cover then reasonably obtainable by the Contractor; the net additional cost to the Contractor of any such cover and its renewal shall be added to the Contract Sum.
- 6.11.4 If the Employer gives notice of termination under clause 6.11.2.2, then upon and from such termination the provisions of clause 8.12 (excluding clause 8.12.3.5) shall apply.
- 6.11.5 If the Employer does not give notice of termination under clause 6.11.2.2, but work executed and/or Site Materials thereafter suffer physical loss or damage caused by terrorism, clauses 6.13 and 6.14 shall as appropriate apply.

6.12 Evidence of insurance

- 6.12.1 Where a Party is required by this Contract to effect and maintain an insurance policy or cover under any of clauses 6.4, 6.5, 6.7 and 6.10, or is responsible for ensuring that it is effected and maintained, that Party shall at the request of the other Party supply such documentary evidence as the other Party may reasonably require that the policy or cover has been effected and remains in force.

- 6.12.2 If a Party required to provide such documentary evidence fails to provide it within 7 days of a request being made, the other Party may assume that there has been a failure to insure, and may insure against any risk, liability or expense to which he may be exposed as a consequence, but shall not be obliged to do so. If the other Party insures, the defaulting Party shall be liable in the case of insurance under clause 6.4, 6.7 or 6.10 for the costs or, in the case of insurance required under clause 6.5, any additional cost that the other Party incurs in taking out and maintaining that insurance. Any costs payable to the Contractor shall be added to the Contract Sum; any costs payable to the Employer may be deducted from any sums due or to become due to the Contractor or shall be recoverable from the Contractor as a debt.

6.13 Loss or damage – insurance claims and reinstatement

- 6.13.1 If during the carrying out of the Works any loss or damage affecting any executed work or Site Materials is occasioned by any of the risks covered by the Works Insurance Policy or an Excepted Risk or there is any loss or damage of any kind to any of the Existing Structures or their contents, the Contractor shall forthwith upon it occurring or becoming apparent give notice both to the Architect/Contract Administrator and to the Employer of its nature, location and extent.
- 6.13.2 Subject to clauses 6.13.5.1 and 6.13.6, the occurrence of such loss or damage to executed work or Site Materials shall be disregarded in calculating any amounts payable to the Contractor under this Contract.
- 6.13.3 The Contractor, for himself and for all his sub-contractors recognised as an insured under the Works Insurance Policy, shall authorise the insurers to pay to the Employer all monies from such insurance, and from any policies covering Existing Structures or their contents that are effected by the Employer.
- 6.13.4 Where loss or damage affecting executed work or Site Materials is occasioned by any risk covered by the Works Insurance Policy, and subject to clause 6.14 where relevant, the Contractor shall after any inspection required by the insurers under the Works Insurance Policy and with due diligence restore the damaged work, replace or repair any lost or damaged Site Materials, remove and dispose of any debris (collectively 'reinstatement work') and proceed with the carrying out and completion of the Works.
- 6.13.5 Where Insurance Option A applies:
- 6.13.5.1 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 4.9 but without deduction of Retention and less only the amounts referred to in clause 6.13.5.2;
- 6.13.5.2 the Employer may retain from those monies any amounts properly incurred by the Employer and notified by him to insurers in respect of professional fees up to the aggregate amount of the percentage cover for those fees or (if less) the amount paid by insurers in respect of those fees;
- 6.13.5.3 in respect of reinstatement work, the Contractor shall not be entitled to any payment other than amounts received under the Works Insurance Policy except where there has been a cessation of or reduction in Terrorism Cover under clause 6.10.4 or 6.11 and loss or damage is then caused by or results from terrorism, in which case the reinstatement work shall, to the extent that its cost is no longer recoverable under the policy, be treated as a Variation and under clause 4.14.2.4 or 6.13.5.1 included in Interim Certificates. In neither case shall there be any reduction in any amount payable by reason of any act or neglect of the Contractor or of any sub-contractor which may have contributed to the physical loss or damage.
- 6.13.6 Where Insurance Option B or paragraph C.2C.2 of Insurance Option C applies or where loss or damage is caused by an Excepted Risk, reinstatement work shall be treated as a Variation.

6.14 Loss or damage to Existing Structures – right of termination

If there is material loss of or damage to any of the Existing Structures, the Employer shall be under no obligation to reinstate those structures, but either Party may, if it is just and equitable, terminate the Contractor's employment under this Contract by notice given to the other in accordance with clause

1.7.4 within 28 days of the occurrence of that loss or damage. If such notice is given, then:

- 6.14.1 unless within 7 days of receiving the notice (or such longer period as may be agreed) the Party to whom it is given invokes a dispute resolution procedure of this Contract to determine whether the termination is just and equitable, it shall be deemed to be so;
- 6.14.2 upon the giving of that notice or, where a dispute resolution procedure is invoked within that period, upon any final upholding of the notice, the provisions of clause 8.12 (except clause 8.12.3.5) shall apply.

CDP Professional Indemnity Insurance

6.15 Obligation to insure

Where there is a Contractor's Designed Portion, the Contractor shall:

- 6.15.1 forthwith after this Contract has been entered into, take out (unless he has already done so) a Professional Indemnity insurance policy with limits of indemnity of the types and in amounts not less than those stated in the Contract Particulars^[56];
- 6.15.2 thereafter, provided it is available at commercially reasonable rates, maintain such insurance until the expiry of the period stated in the Contract Particulars from the date of practical completion of the Works; and
- 6.15.3 as and when reasonably requested to do so by the Employer or the Architect/Contract Administrator, produce for inspection documentary evidence that such insurance has been effected and/or is being maintained.

6.16 Increased cost and non-availability

If the insurance referred to in clause 6.15 ceases to be available at commercially reasonable rates, the Contractor shall immediately give notice to the Employer so that the Contractor and the Employer can discuss the means of best protecting their respective positions in the absence of such insurance.

Joint Fire Code – compliance

6.17 Application of clauses

Clauses 6.18 to 6.20 apply where the Contract Particulars state that the Joint Fire Code applies.

6.18 Compliance with Joint Fire Code

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

6.19 Breach of Joint Fire Code – Remedial Measures

- 6.19.1 If a breach of the Joint Fire Code occurs and the insurers under the Works Insurance Policy specify by notice to the Employer or the Contractor the remedial measures they require (the 'Remedial Measures'), the Party receiving the notice shall send copies of it to the other and to the Architect/Contract Administrator, and then:
 - 6.19.1.1 subject to clause 6.19.1.2, where the Remedial Measures relate to the obligation of the Contractor to carry out and complete the Works, the Contractor shall ensure that the Remedial Measures are carried out by such date as the insurers specify; and
 - 6.19.1.2 to the extent that the Remedial Measures require a Variation to the Works as described in the Contract Documents or in an Architect/Contract Administrator's instruction, the Architect/Contract Administrator shall issue such instructions as are necessary to enable compliance. If, in an emergency, compliance with the Remedial Measures in whole or in part requires the Contractor to supply materials or execute work before receiving instructions under this clause 6.19.1.2, the Contractor shall supply the materials and execute the work

[56] +++Now footnote [46]+++ See the Standard Building Contract Guide.

reasonably necessary to secure immediate compliance. The Contractor shall forthwith notify the Architect/Contract Administrator of the emergency and of the steps he is taking. Save to the extent they relate to the Contractor's Designed Portion, the work and materials reasonably necessary shall be treated as if executed and supplied under a Variation instruction.

- 6.19.2 If the Contractor, within 7 days of receipt of a notice specifying Remedial Measures not requiring an Architect/Contract Administrator's instruction under clause 6.19.1.2, does not begin to carry out or thereafter fails without reasonable cause regularly and diligently to proceed with the Remedial Measures, then the Employer may employ and pay other persons to carry out those Remedial Measures. The Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and an appropriate deduction shall be made from the Contract Sum.

6.20 Joint Fire Code – amendments/revisions

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

Section 7 Assignment, Performance Bonds and Guarantees, Third Party Rights and Collateral Warranties

Assignment

7.1 General

Subject to clause 7.2, neither the Employer nor the Contractor shall without the consent of the other assign this Contract or any rights thereunder.

7.2 Rights of enforcement

Where clause 7.2 is stated in the Contract Particulars to apply, then, in the event of transfer by the Employer of his freehold or leasehold interest in, or of a grant by the Employer of a leasehold interest in, the whole of the premises comprising the Works or (if the Contract Particulars so state) any Section, the Employer may at any time after practical completion of the Works or of the relevant Section grant or assign to any such transferee or lessee the right to bring proceedings in the name of the Employer (whether by arbitration or litigation, whichever applies under this Contract) to enforce any of the terms of this Contract made for the benefit of the Employer. The assignee shall be estopped from disputing any enforceable agreements reached between the Employer and the Contractor which arise out of and relate to this Contract (whether or not they are or appear to be a derogation from the right assigned) and which are made prior to the date of any grant or assignment.

Performance Bonds and Guarantees

7.3 Performance Bonds and Guarantees

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

7.3.1 a performance bond or guarantee of the Contractor's due performance of the Contract from a bank or other surety approved by the Employer in an amount equal to the percentage of the Contract Sum and for the period stated in the Contract Particulars;

7.3.2 a guarantee by the Contractor's parent company identified in the Contract Particulars;

any such bond or guarantee, unless otherwise agreed by the Employer, being substantially in the form of the document identified by the Contract Particulars.

Clauses 7.7 to 7.11 – Preliminary

7.4 Rights Particulars

The requirements for the grant of P&T Rights and Funder Rights by the Contractor and sub-contractors and any requirement for the grant of Employer Rights by any sub-contractors ('Rights Particulars') are set out in the document(s) identified in the Contract Particulars against the reference to clause 7.4.^[57] As respects those requirements:

7.4.1 such rights are conferred only on persons sufficiently identified (by name, class or description) in the Rights Particulars;

[57] **+++Now footnote [47]+++** The relevant Rights Particulars should identify the beneficiaries (by name, class or description) and the sub-contractors who are also required to grant rights, specify whether rights are to be granted at each level as Third Party Rights or by way of Collateral Warranties, state in those cases where the default provision is not to apply which alternative provision is to apply in its place and give any other details required to complete the terms of the rights or warranties that are to be given. A Model Form for the Rights Particulars is included in the Standard Building Contract Guide and is also available on the JCT website www.jcttd.co.uk. In the case of third party rights the relevant limits and details required for the purposes of the respective parts of Schedule 5 of this Contract and Schedule 6 of the Standard Building Sub-Contracts are the same as required for the purposes of the Warranty Particulars for the corresponding Collateral Warranty (CWa/P&T, CWa/F, SCWa/P&T, SCWa/F or SCWa/E). Directions may be needed as to mode of execution of sub-contracts and/or collateral warranties by relevant sub-contractors. See also the Standard Building Contract Guide.

- 7.4.2 if in relation to an identified beneficiary the Rights Particulars fail to specify the method by which such rights are to be conferred, the Contractor in relation to rights to be granted by him may elect to do so either as third party rights or by collateral warranty;
- 7.4.3 unless otherwise stated in the Rights Particulars, the term 'the Consultants' shall in all third party rights and/or collateral warranties to be granted mean the Architect/Contract Administrator and the Quantity Surveyor (including any replacements), together with any other consultants providing design services to the Employer in connection with the Works.

7.5 Notices

Each notice to the Contractor referred to in clauses 7.7 to 7.11 shall be given in accordance with clause 1.7.4.

7.6 Execution of Collateral Warranties

Where this Contract is executed as a deed, any collateral warranty to be entered into by the Contractor pursuant to clause 7.9 or 7.10 shall be executed as a deed. Where this Contract is executed under hand, any such warranty may be executed under hand.^[58]

Third Party Rights from Contractor

7.7 Rights for Purchasers and Tenants

- 7.7.1 Where the Rights Particulars state that the Contractor shall confer P&T Rights on a Purchaser or Tenant as third party rights, those rights shall vest in that Purchaser or Tenant on the date of receipt by the Contractor of the Employer's notice to that effect, stating the name of the Purchaser or Tenant and the nature of his interest in the Works.
- 7.7.2 Where P&T Rights have vested in any Purchaser or Tenant, the Employer and the Contractor shall not be entitled without the consent of that Purchaser or Tenant to amend or vary the express provisions of this clause 7.7 or of Part 1 of Schedule 5 (Third Party Rights for Purchasers and Tenants) but, subject thereto, the rights of the Employer and/or the Contractor:
- 7.7.2.1 to terminate the Contractor's employment under this Contract (whether under section 8 or otherwise), or to agree to rescind this Contract;
- 7.7.2.2 to agree to amend or otherwise vary or to waive any terms of this Contract;
- 7.7.2.3 to agree to settle any dispute or other matter arising out of or in connection with this Contract, in each case in or on such terms as they shall in their absolute discretion think fit,
- shall not be subject to the consent of any Purchaser or Tenant.

7.8 Rights for a Funder

- 7.8.1 Where the Rights Particulars state that the Contractor shall confer Funder Rights on a Funder as third party rights, those rights shall vest in the Funder on the date of receipt by the Contractor of the Employer's notice to that effect.
- 7.8.2 Where Funder Rights have been vested in the Funder pursuant to clause 7.8.1:
- 7.8.2.1 no amendment or variation shall be made to the express terms of this clause 7.8, to Part 2 of Schedule 5 (Third Party Rights for a Funder) or to the relevant Rights Particulars without the prior written consent of the Funder; and
- 7.8.2.2 neither the Employer nor the Contractor shall agree to rescind this Contract, and the rights of the Contractor to terminate his employment under this Contract or to treat it as repudiated shall in all respects be subject to the provisions of paragraph 6 of Part 2 of Schedule 5
- but, subject thereto, unless and until the Funder gives notice under paragraph 5 or paragraph 6.4 of Part 2 of Schedule 5, the Contractor shall remain free without the consent of the Funder to agree with the Employer to amend or otherwise vary or to waive any term

[58] +++Now footnote [48]+++ See the footnote to clause 7.4 above.

of this Contract and to settle any dispute or other matter arising out of or in connection with this Contract, in each case in such terms as they think fit, without any requirement that the Contractor obtain the consent of the Funder.

Collateral Warranties from Contractor

7.9 Contractor's Warranties – Purchasers and Tenants

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

7.10 Contractor's Warranty – Funder

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

Third Party Rights and Collateral Warranties from Sub-Contractors

7.11 Third Party Rights and Collateral Warranties from Sub-Contractors

Where the Rights Particulars state that a sub-contractor shall confer third party rights on a Purchaser, Tenant or Funder and/or the Employer or execute and deliver a Collateral Warranty in favour of such person:

- 7.11.1 the Contractor shall comply with the Contract Documents as to the obtaining of such rights or warranties including:
 - 7.11.1.1 on receipt of notice from the Employer (or Architect/Contract Administrator on his behalf) identifying in each case the sub-contractor, type of right or warranty and beneficiary, promptly giving notice under clause 2.26.3 or, where appropriate, 2.26.4 of the JCT Standard Building Sub-Contract Conditions or other equivalent sub-contract condition to each sub-contractor identified in the Employer's notice; and
 - 7.11.1.2 in the case of each Collateral Warranty specified in the Employer's notice and within 21 days of receipt of that notice, taking such steps as are required to obtain each warranty, promptly forwarding the executed document to the Employer or as he may direct and, where Collateral Warranty SCWa/F is required, having himself also executed and delivered the document;
- 7.11.2 any amendment to the form of any third party rights or collateral warranty proposed by a sub-contractor shall require approval by both the Contractor and the Employer;
- 7.11.3 in the case of vested third party rights, the Contractor shall not without the consent of each beneficiary in whom those rights have been vested:
 - 7.11.3.1 agree any amendment or variation to the express terms of clause 2.26, clause 2.27 or Schedule 6 (Third Party Rights) of the JCT Standard Building Sub-Contract Conditions or other equivalent conditions of the sub-contract; or
 - 7.11.3.2 where such beneficiary is the Employer or a Funder, agree to rescind the sub-contract.

Section 8 Termination

General

8.1 Meaning of insolvency

For the purposes of these Conditions:

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

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

8.2 Notices under section 8

- 8.2.1 Notice of termination of the Contractor's employment shall not be given unreasonably or vexatiously.
- 8.2.2 Such termination shall take effect on receipt of the relevant notice.
- 8.2.3 Each notice referred to in this section shall be given in accordance with clause 1.7.4.

8.3 Other rights, reinstatement

- 8.3.1 The provisions of clauses 8.4 to 8.7 are without prejudice to any other rights and remedies

of the Employer. The provisions of clauses 8.9 and 8.10, and (in the case of termination under either of those clauses) the provisions of clause 8.12, are without prejudice to any other rights and remedies of the Contractor.

- 8.3.2 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.

Termination by Employer

8.4 Default by Contractor

- 8.4.1 If, before practical completion of the Works, the Contractor:
- 8.4.1.1 without reasonable cause wholly or substantially suspends the carrying out of the Works or the design of the Contractor's Designed Portion; or
 - 8.4.1.2 fails to proceed regularly and diligently with the Works or the design of the Contractor's Designed Portion; or
 - 8.4.1.3 refuses or neglects to comply with a notice or instruction from the Architect/Contract Administrator requiring him to remove any work, materials or goods not in accordance with this Contract and by such refusal or neglect the Works are materially affected; or
 - 8.4.1.4 fails to comply with clause 3.7 or 7.1; or
 - 8.4.1.5 fails to comply with clause 3.23,
- the Architect/Contract Administrator may give to the Contractor a notice specifying the default or defaults (a 'specified' default or defaults).
- 8.4.2 If the Contractor continues a specified default for 14 days from receipt of the notice under clause 8.4.1, the Employer may on, or within 21 days from, the expiry of that 14 day period by a further notice to the Contractor terminate the Contractor's employment under this Contract.
- 8.4.3 If the Employer does not give the further notice referred to in clause 8.4.2 (whether as a result of the ending of any specified default or otherwise) but the Contractor repeats a specified default (whether previously repeated or not), then, upon or within a reasonable time after such repetition, the Employer may by notice to the Contractor terminate that employment.

8.5 Insolvency of Contractor

- 8.5.1 If the Contractor is Insolvent, the Employer may at any time by notice to the Contractor terminate the Contractor's employment under this Contract.
- 8.5.2 The Contractor shall immediately notify the Employer if he makes any proposal, gives notice of any meeting or becomes the subject of any proceedings or appointment relating to any of the matters referred to in clause 8.1.
- 8.5.3 As from the date the Contractor becomes Insolvent, whether or not the Employer has given such notice of termination:
- 8.5.3.1 clauses 8.7.3 to 8.7.5 and (if relevant) clause 8.8 shall apply as if such notice had been given;
 - 8.5.3.2 the Contractor's obligations under Article 1 and these Conditions to carry out and complete the Works and the design of the Contractor's Designed Portion shall be suspended; and
 - 8.5.3.3 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.

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

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

8.7 Consequences of termination under clauses 8.4 to 8.6

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

- 8.7.1 the Employer may employ and pay other persons to carry out and complete the Works and/or (where applicable) the design for the Contractor's Designed Portion and to make good any defects of the kind referred to in clause 2.38, and he and they may enter upon and take possession of the site and the Works and (subject to obtaining any necessary third party consents) may use all temporary buildings, plant, tools, equipment and Site Materials for those purposes;
- 8.7.2 the Contractor shall:
 - 8.7.2.1 when required in writing by the Architect/Contract Administrator to do so (but not before), remove or procure the removal from the Works of any temporary buildings, plant, tools, equipment, goods and materials belonging to the Contractor or Contractor's Persons;
 - 8.7.2.2 (where there is a Contractor's Designed Portion) without charge provide the Employer with copies of all Contractor's Design Documents then prepared, whether or not previously provided;
 - 8.7.2.3 if so required by the Employer (or by the Architect/Contract Administrator on his behalf) within 14 days of the date of termination, assign (so far as assignable and so far as he may lawfully be required to do so) to the Employer, without charge, the benefit of any agreement for the supply of materials or goods and/or for the execution of any work for the purposes of this Contract^[59];
- 8.7.3 no further sum shall become due to the Contractor under this Contract other than any amount that may become due to him under clause 8.7.5 or 8.8.2 and the Employer need not pay any sum that has already become due either:
 - 8.7.3.1 insofar as the Employer has given or gives a Pay Less Notice under clause 4.11.5; or
 - 8.7.3.2 if the Contractor, after the last date upon which such notice could have been given by the Employer in respect of that sum, has become insolvent within the meaning of clauses 8.1.1 to 8.1.3;
- 8.7.4 following the completion of the Works and the making good of defects in them (or of instructions otherwise, as referred to in clause 2.38), an account of the following shall within 3 months thereafter be set out in a certificate issued by the Architect/Contract Administrator or a statement prepared by the Employer:
 - 8.7.4.1 the amount of expenses properly incurred by the Employer, including those incurred pursuant to clause 8.7.1 and, where applicable, clause 8.5.3.3, and of any direct loss and/or damage caused to the Employer and for which the Contractor is liable, whether arising as a result of the termination or otherwise;
 - 8.7.4.2 the amount of payments made to the Contractor; and
 - 8.7.4.3 the total amount which would have been payable for the Works in accordance with this Contract;
- 8.7.5 if the sum of the amounts stated under clauses 8.7.4.1 and 8.7.4.2 exceeds the amount stated under clause 8.7.4.3, the difference shall be a debt payable by the Contractor to the Employer or, if that sum is less, by the Employer to the Contractor.

[59] **+++Now footnote [49]+++** Clause 8.7.2.3 may not be effectual in cases of Contractor's insolvency.

8.8 Employer's decision not to complete the Works

- 8.8.1 If within the period of 6 months from the date of termination of the Contractor's employment the Employer decides not to have the Works carried out and completed, he shall forthwith notify the Contractor. Within a reasonable time from the date of such notification, or if no notification is given but within that 6 month period the Employer does not commence to make arrangements for such carrying out and completion, then within 2 months of the expiry of that 6 month period, the Employer shall send to the Contractor a statement setting out:
- 8.8.1.1 the total value of work properly executed at the date of termination or date on which the Contractor became Insolvent, ascertained in accordance with these Conditions as if that employment had not been terminated, together with any amounts due to the Contractor under these Conditions not included in such total value; and
 - 8.8.1.2 the aggregate amount of any expenses properly incurred by the Employer and of any direct loss and/or damage caused to the Employer and for which the Contractor is liable, whether arising as a result of the termination or otherwise.
- 8.8.2 After taking into account amounts previously paid to the Contractor under this Contract, if the amount stated under clause 8.8.1.2 exceeds the amount stated under clause 8.8.1.1, the difference shall be a debt payable by the Contractor to the Employer or, if the clause 8.8.1.2 amount is less, by the Employer to the Contractor.

Termination by Contractor

8.9 Default by Employer

- 8.9.1 If the Employer:
- 8.9.1.1 does not pay by the final date for payment the amount due to the Contractor in accordance with clause 4.11 and/or any VAT properly chargeable on that amount; or
 - 8.9.1.2 interferes with or obstructs the issue of any certificate due under this Contract; or
 - 8.9.1.3 fails to comply with clause 7.1; or
 - 8.9.1.4 fails to comply with clause 3.23,
- the Contractor may give to the Employer a notice specifying the default or defaults (a 'specified' default or defaults).
- 8.9.2 If before practical completion of the Works the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for a continuous period of the length stated in the Contract Particulars by reason of:
- 8.9.2.1 Architect/Contract Administrator's instructions under clause 2.15, 3.14 or 3.15; and/or
 - 8.9.2.2 any impediment, prevention or default, whether by act or omission, by the Employer, the Architect/Contract Administrator, the Quantity Surveyor or any Employer's Person
- (but in either case excluding such instructions as are referred to in clause 8.11.1.2), then, unless in either case that is caused by the negligence or default of the Contractor or any Contractor's Person, the Contractor may give to the Employer a notice specifying the event or events (a 'specified' suspension event or events).
- 8.9.3 If a specified default or a specified suspension event continues for 14 days from the receipt of notice under clause 8.9.1 or 8.9.2, the Contractor may on, or within 21 days from, the expiry of that 14 day period by a further notice to the Employer terminate the Contractor's employment under this Contract.
- 8.9.4 If the Contractor for any reason does not give the further notice referred to in clause 8.9.3, but (whether previously repeated or not):

8.9.4.1 the Employer repeats a specified default; or

8.9.4.2 a specified suspension event is repeated for any period, such that the regular progress of the Works is or is likely to be materially affected thereby,

then, upon or within a reasonable time after such repetition, the Contractor may by notice to the Employer terminate the Contractor's employment under this Contract.

8.10 Insolvency of Employer

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

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

8.10.3 as from the date the Employer becomes Insolvent, the Contractor's obligations under Article 1 and these Conditions to carry out and complete the Works and the design of the Contractor's Designed Portion shall be suspended.

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

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

8.11.1 If, before practical completion of the Works, the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for the relevant continuous period of the length stated in the Contract Particulars by reason of one or more of the following events:

8.11.1.1 force majeure;

8.11.1.2 Architect/Contract Administrator's instructions under clause 2.15, 3.14 or 3.15 issued as a result of the negligence or default of any Statutory Undertaker;

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

8.11.1.4 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

8.11.1.5 the exercise by the United Kingdom Government or any Local or Public Authority of any statutory power that is not occasioned by a default of the Contractor or any Contractor's Person but which directly affects the execution of the Works,

then either Party, subject to clause 8.11.2, may upon the expiry of that relevant period of suspension give notice to the other that, unless the suspension ceases within 7 days after the date of receipt of that notice, he may terminate the Contractor's employment under this Contract. Failing such cessation within that 7 day period, he may then by further notice terminate that employment.

8.11.2 The Contractor shall not be entitled to give notice under clause 8.11.1 in respect of the matter referred to in clause 8.11.1.3 where the loss or damage to the Works was caused by the negligence or default of the Contractor or any Contractor's Person.

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

Consequences of Termination under clauses 8.9 to 8.11, etc.

8.12 Consequences of Termination under clauses 8.9 to 8.11, etc.

If the Contractor's employment is terminated under any of clauses 8.9 to 8.11 or under clause 6.11.2.2 or 6.14:

- 8.12.1 no further sums shall become due to the Contractor otherwise than in accordance with this clause 8.12;
- 8.12.2 the Contractor shall:
 - 8.12.2.1 with all reasonable dispatch remove or procure the removal from the site of any temporary buildings, plant, tools and equipment belonging to the Contractor and Contractor's Persons and, subject to the provisions of clause 8.12.5, all goods and materials (including Site Materials); and
 - 8.12.2.2 (where there is a Contractor's Designed Portion) without charge provide to the Employer copies of the documents referred to in clause 2.40 then prepared;
- 8.12.3 where the Contractor's employment is terminated under clause 8.9 or 8.10, the Contractor shall as soon as reasonably practicable prepare and submit an account or, where terminated under clause 8.11, 6.11.2.2 or 6.14, the Contractor shall at the Employer's option either prepare and submit that account or, not later than 2 months after the date of termination, provide the Employer with all documents necessary for the Employer to do so, which the Employer shall do with reasonable dispatch (and in any event within 3 months of receipt of such documents). The account shall set out the amounts referred to in clauses 8.12.3.1 to 8.12.3.4 and, if applicable, clause 8.12.3.5, namely:
 - 8.12.3.1 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;
 - 8.12.3.2 any sums ascertained in respect of direct loss and/or expense under clause 4.21 (whether ascertained before or after the date of termination);
 - 8.12.3.3 the reasonable cost of removal under clause 8.12.2;
 - 8.12.3.4 the cost of materials or goods (including Site Materials) properly ordered for the Works for which the Contractor then has paid or is legally bound to pay;
 - 8.12.3.5 any direct loss and/or damage caused to the Contractor by the termination;
- 8.12.4 the account shall include the amount, if any, referred to in clause 8.12.3.5 only where the Contractor's employment is terminated either:
 - 8.12.4.1 under clause 8.9 or 8.10; or
 - 8.12.4.2 under clause 8.11.1.3, if the loss or damage to the Works was caused by the negligence or default of the Employer or any Employer's Person;
- 8.12.5 after taking into account amounts previously paid to the Contractor under this Contract, the Employer shall pay to the Contractor (or vice versa) the amount properly due in respect of the account within 28 days of its submission to the other Party, without deduction of any Retention. Payment by the Employer for any such materials and goods as are referred to in clause 8.12.3.4 shall be subject to those materials and goods thereupon becoming the Employer's property.

Section 9 Settlement of Disputes

Mediation

9.1 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.^[60]

Adjudication

9.2 Adjudication

If a dispute or difference arises under this Contract which either Party wishes to refer to adjudication, the Scheme shall apply, subject to the following:

- 9.2.1 for the purposes of the Scheme the Adjudicator shall be the person (if any) and the nominating body shall be that stated in the Contract Particulars;
- 9.2.2 where the dispute or difference is or includes a dispute or difference relating to clause 3.18.4 and as to whether an instruction issued thereunder is reasonable in all the circumstances:
 - 9.2.2.1 the Adjudicator to decide such dispute or difference shall (where practicable) be an individual with appropriate expertise and experience in the specialist area or discipline relevant to the instruction or issue in dispute;
 - 9.2.2.2 if the Adjudicator does not have the appropriate expertise and experience, the Adjudicator shall appoint an independent expert with such expertise and experience to advise and report in writing on whether or not the instruction under clause 3.18.4 is reasonable in all the circumstances.

Arbitration

9.3 ~~Conduct of arbitration~~ **Not applicable**

~~Any arbitration pursuant to Article 8 shall be conducted in accordance with the JCT 2016 edition of the Construction Industry Model Arbitration Rules (CIMAR), provided that if any amendments to that edition of the Rules have been issued by the JCT the Parties may, by a joint notice in writing to the Arbitrator, state that they wish the arbitration to be conducted in accordance with the Rules as so amended. References in clause 9.4 to a Rule or Rules are references to such Rule(s) as set out in the JCT 2016 edition of CIMAR.^[61]~~

9.4 ~~Notice of reference to arbitration~~ **Not applicable**

~~{9.4.1} Where pursuant to Article 8 either Party requires a dispute or difference to be referred to arbitration, that Party shall serve on the other Party a notice of arbitration to such effect in accordance with Rule 2.1 identifying the dispute and requiring the other Party to agree to the appointment of an arbitrator. The Arbitrator shall be an individual agreed by the Parties or, failing such agreement within 14 days (or any agreed extension of that period) after the notice of arbitration is served, appointed on the application of either Party in accordance with Rule 2.3 by the person named in the Contract Particulars.~~

~~{9.4.2} Where two or more related arbitral proceedings in respect of the Works fall under~~

[60] **+++Now footnote [50]+++** See the Standard Building Contract Guide.

[61] ~~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.~~

~~separate arbitration agreements, Rules 2.6, 2.7 and 2.8 shall apply.~~

~~{9.4.3} 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.~~

9.5 Powers of Arbitrator ~~Not applicable~~

~~Subject to the provisions of Article 8 and clause 1.9, the Arbitrator shall, without prejudice to the generality of his powers, have power to rectify this Contract so that it accurately reflects the true agreement made by the Parties, to direct such measurements and/or valuations as may in his opinion be desirable in order to determine the rights of the Parties and to ascertain and award any sum which ought to have been the subject of or included in any certificate and to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice had been given.~~

9.6 Effect of award ~~Not applicable~~

~~Subject to clause 9.7 the award of the Arbitrator shall be final and binding on the Parties.~~

9.7 Appeal – questions of law ~~Not applicable~~

~~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):~~

~~{9.7.1} apply to the courts to determine any question of law arising in the course of the reference; and~~

~~{9.7.2} appeal to the courts on any question of law arising out of an award made in an arbitration under this arbitration agreement.~~

9.8 Arbitration Act 1996 ~~Not applicable~~

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

Schedules

Schedule 1 Design Submission Procedure

(Clause 2.9.5)

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

- or that compliance with the Architect/Contract Administrator's comment would give rise to a Variation;
- 8.2 where in relation to a comment by the Architect/Contract Administrator the Contractor does not notify him in accordance with paragraph 7, the comment in question shall not be treated as giving rise to a Variation; and
- 8.3 neither compliance with the design submission procedure in this Schedule nor with the Architect/Contract Administrator's comments shall diminish the Contractor's obligations to ensure that the Contractor's Design Documents and CDP Works are in accordance with this Contract.

Schedule 2 Variation and Acceleration Quotation Procedures

(Clause 5.3)

Variation Quotation

1

- 1.1 Any instruction of the Architect/Contract Administrator requesting a Variation Quotation shall provide sufficient information^[62] to enable the Contractor to provide that quotation to the Quantity Surveyor in accordance with paragraph 1.2. If the Contractor reasonably considers that the information provided is not sufficient, then, not later than 7 days from the receipt of the instruction, he shall notify the Architect/Contract Administrator who shall supply the information that he reasonably requires.
- 1.2 The Variation Quotation shall separately comprise:
- 1.2.1 the amount of the adjustment to the Contract Sum, excluding any loss and/or expense referred to in paragraph 1.2.3, but including the effect of the instruction on any other work (supported by all necessary calculations, which shall be made by reference, where relevant, to the rates and prices in the Priced Document) and including also, where appropriate, allowances for any adjustment of preliminary items^[63];
 - 1.2.2 any adjustment to the time required for completion of the Works and/or any Section (including, where relevant, a Completion Date earlier than the Date for Completion given in the Contract Particulars) to the extent that such adjustment is not included in any revision of the Completion Date made by the Architect/Contract Administrator under clause 2.28 or in any other Confirmed Acceptance;
 - 1.2.3 the amount to be paid in respect of any direct loss and/or expense that is not included in any other Confirmed Acceptance or in any ascertainment under clause 4.21 or 5.3.3;
 - 1.2.4 a fair and reasonable amount in respect of the cost of preparing the quotation;
 - 1.2.5 where specifically required by the instruction, indicative statements on:
 - 1.2.5.1 the additional resources (if any) required to carry out the Variation; and
 - 1.2.5.2 the method of carrying out the Variation.
- Each part of the quotation shall contain supporting information that is reasonably sufficient to enable that part to be evaluated by or on behalf of the Employer.
- 1.3 The Variation for which the Contractor has submitted a Variation Quotation shall not be carried out until he receives a Confirmed Acceptance of it under paragraph 4 or an instruction under paragraph 5.1.1.

Acceleration Quotation

2

- 2.1 If the Employer wishes to investigate the possibility of achieving practical completion before the Completion Date for the Works or a Section the Architect/Contract Administrator shall invite proposals from the Contractor in that regard (an 'Acceleration Quotation'). The Contractor on receiving such an invitation shall either:

[62] +++Now footnote [51]+++ The information provided to the Contractor should normally be in a similar format to that provided at the tender stage.

[63] +++Now footnote [52]+++ If a Fluctuations Provision applies under the Contract and is also to apply in respect of the Variation, that should be stated in the quotation and an appropriate base date should be given for calculation purposes.

- 2.1.1 provide an Acceleration Quotation to the Architect/Contract Administrator accordingly, identifying the time that can be saved, the amount of the adjustment to the Contract Sum (inclusive of such amounts as are referred to in paragraphs 1.2.3 and 1.2.4) and any other conditions attached; or
- 2.1.2 explain why it would be impracticable to achieve practical completion earlier than the Completion Date.
- 2.2 The Employer may on or before receipt of the quotation seek revised proposals.
- 2.3 Without affecting his obligations under clauses 2.1 and 2.4, the Contractor shall be under no obligation to accelerate, or take any steps for that purpose, until he receives a Confirmed Acceptance of his Acceleration Quotation under paragraph 4.

Time for submission and acceptance

3

- 3.1 Unless otherwise agreed, the Variation Quotation or Acceleration Quotation shall be submitted in compliance with the instruction or invitation not later than 21 days from the later of:
 - 3.1.1 the date of receipt of the instruction or invitation; or
 - 3.1.2 the date of receipt by the Contractor of information sufficient to enable him to prepare the quotation.
- 3.2 The quotation shall remain open for acceptance by the Employer for not less than 7 days from its receipt by the Quantity Surveyor or Architect/Contract Administrator.
- 3.3 The Parties may agree to increase or reduce any of the periods referred to in clause 5.3.1 or this Schedule; confirmation of such agreement shall be notified to the Contractor by or on behalf of the Employer.

Acceptance of the quotation

4

- If the Employer wishes to accept a Variation Quotation or Acceleration Quotation, the Architect/Contract Administrator shall on his behalf within the period for acceptance confirm such acceptance by an instruction to the Contractor (a 'Confirmed Acceptance') stating:
 - 4.1 the adjustment of the Contract Sum (including any amounts to which paragraphs 1.2.3 and 1.2.4 refer) to be made for complying with the instruction;
 - 4.2 the adjustment to the time required by the Contractor for completion of the Works and/or Section and the resultant revised Completion Date(s) (which, where relevant, may be a date earlier than the Date for Completion); and
 - 4.3 (in the case of an Acceleration Quotation) any such conditions as are referred to in paragraph 2.1.1.

Non-acceptance of the quotation

5

- 5.1 If a Variation Quotation is not accepted by the expiry of the period for acceptance, the Architect/Contract Administrator shall on the expiry of that period either:
 - 5.1.1 instruct that the Variation is to be carried out and is to be valued under the Valuation Rules (*clauses 5.6 to 5.10*); or
 - 5.1.2 instruct that the Variation is not to be carried out.
- 5.2 If a Variation Quotation or Acceleration Quotation 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. Non-acceptance by the Employer of a quotation shall not of itself be evidence that the quotation was not prepared on such a basis.
- 5.3 Unless the Architect/Contract Administrator issues a Confirmed Acceptance, neither the Employer nor the Contractor may use the quotation for any purpose whatsoever.

Schedule 3 Insurance Options

(Clause 6.7)

Insurance Option A

(New Buildings – All Risks Insurance of the Works by the Contractor)^[64]

Contractor to effect and maintain a Joint Names Policy

- A.1** The Contractor shall effect and for the period specified in clause 6.7.2 maintain with insurers approved by the Employer a Joint Names Policy for All Risks Insurance with cover no less than that specified in clause 6.8 for the full reinstatement value of the Works or (where applicable) Sections (plus the percentage, if any, stated in the Contract Particulars to cover professional fees).

Use of Contractor's annual policy – as alternative

- A.2** If and so long as the Contractor independently of this Contract maintains an annual insurance policy which in respect of the Works or Sections:

A.2.1 provides (inter alia) All Risks Insurance with cover and in amounts no less than those specified in paragraph A.1; and

A.2.2 is a Joint Names Policy,

that policy shall satisfy the Contractor's obligations under paragraph A.1. The annual renewal date of the policy, as supplied by the Contractor, is stated in the Contract Particulars.

Loss or damage

- A.3** Where there is loss or damage affecting any executed work and/or Site Materials, the provisions of clause 6.13 shall as relevant apply.

[64] **+++Now footnote [53]+++** Insurance Options A and B are for use in the case of new buildings. Insurance Option A is applicable where the Contractor is required to take out a Joint Names Policy for All Risks Insurance of the Works or to include them on that basis within his Annual Construction policy; Insurance Option B is applicable where the Employer has elected to take out that Joint Names Policy. Insurance Option C is for use in the case of alterations of or extensions to Existing Structures. Under that option, the Employer is required to take out a Joint Names Policy for All Risks Insurance for the Works and also, if paragraph C.4C.1 applies, a Joint Names Policy to insure the Existing Structures and their contents owned by him or for which he is responsible against loss or damage by the Specified Perils. Some Employers (e.g. tenants and some homeowners) may not be able readily to obtain the Joint Names cover required under paragraph C.4C.1. Where that is the case, alternative arrangements through use of a C.4C.1 Replacement Schedule or as otherwise described in the Standard Building Contract Guide will be necessary. Where there are Existing Structures, it is vital that any prospective Employer who is not familiar with Insurance Option C – in particular any Employer who is a tenant or domestic homeowner – or an appropriate member of the Employer's professional team, should consult specialist insurance advisers prior to the tender stage. Any Employer who is a tenant should also consult his insuring landlord prior to that stage.

Insurance Option B

(New Buildings – All Risks Insurance of the Works by the Employer)^[64]

Not applicable

Employer to effect and maintain a Joint Names Policy

~~{B.1} The Employer shall effect and for the period specified in clause 6.7.2 maintain a Joint Names Policy for All Risks Insurance with cover no less than that specified in clause 6.8 for the full reinstatement value of the Works or (where applicable) Sections (plus the percentage, if any, stated in the Contract Particulars to cover professional fees).~~

Loss or damage

~~{B.2} Where there is loss or damage affecting any executed work and/or Site Materials, the provisions of clause 6.13 shall as relevant apply.~~

Insurance Option C

(Joint Names Insurance by the Employer of Existing Structures and Works in or Extensions to them)^[65]

Not applicable

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

~~{C.1}The Employer shall unless otherwise stated by the Contract Particulars for clause 6.7 and this Schedule effect and for the period specified in clause 6.7.2 maintain a Joint Names Policy in respect of the Existing Structures together with the contents of them owned by him or for which he is responsible, for the full cost of reinstatement, repair or replacement of loss or damage due to any of the Specified Perils.~~

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

~~{C.2}The Employer shall effect and for the period specified in clause 6.7.2 maintain a Joint Names Policy for All Risks Insurance with cover no less than that specified in clause 6.8 for the full reinstatement value of the Works or (where applicable) Sections (plus the percentage, if any, stated in the Contract Particulars to cover professional fees).~~

~~Loss or damage~~

~~{C.3}If during the carrying out of the Works there is any loss of or damage of any kind to any executed work, Site Materials and/or to any Existing Structures or their contents the provisions of clauses 6.13 and 6.14 shall as relevant apply.~~

[65] **+++Now footnote [54]+++ Insurance Option C** is for use where there are Existing Structures. It can be used in its existing printed form by those Employers who are able to effect the Joint Names, Specified Perils cover for the Contractor in respect of the Existing Structures and those contents that are owned by the Employer or for which he is responsible. However, the Joint Names Policy required by paragraph **C.4C.1** or the extension of a subsisting structure and contents policy to being a Joint Names Policy may not be readily available – and that provision is often not now appropriate for – refurbishment projects or alterations by tenant Employers where Existing Structures insurance is the landlord's responsibility. Joint Names cover may also not be readily available to some domestic owner-occupiers looking to undertake refurbishments or extensions to their property. The Contract Particulars for clause 6.7 and Schedule 3 therefore expressly allow the Parties in those circumstances to disapply paragraph **C.4C.1** and, by means of a **C.4C.1** Replacement Schedule, to include in place of that paragraph provisions that are tailored to their particular requirements. **In JCT's view the preparation of such replacement provisions must be assigned to insurance professionals.** An explanatory summary of the alternative arrangements generally adopted to overcome those difficulties is, however, contained in the Standard Building Contract Guide.

Schedule 4 Code of Practice

(Clause 3.18.4)

The purpose of the Code is to assist in the fair and reasonable operation of the requirements of clause 3.18.4.

The Architect/Contract Administrator and the Contractor should endeavour to agree the amount and method of opening up or testing, but in any case, in issuing his instructions pursuant to that clause, the Architect/Contract Administrator is required to consider the following criteria:

- 1 the need in the event of non-compliance to demonstrate at no cost to the Employer either that it is unique and not likely to occur in similar elements of the Works or alternatively, the extent of any similar non-compliance in the Works already constructed or still to be constructed;
- 2 the need to discover whether any non-compliance in a primary structural element is a failure of workmanship and/or materials such that rigorous testing of similar elements must take place; or, where the non-compliance is in a less significant element, whether it is such as is to be statistically expected and can simply be repaired; or whether the non-compliance indicates an inherent weakness such as can only be found by selective testing, the extent of which must depend upon the importance of any detail concerned;
- 3 the significance of the non-compliance, having regard to the nature of the work in which it has occurred;
- 4 the consequence of any similar non-compliance on the safety of the building, its effect on users, adjoining property, the public, and compliance with any Statutory Requirements;
- 5 the level and standard of supervision and control of the Works by the Contractor;
- 6 the relevant records of the Contractor and, where relevant, those of any sub-contractor, whether resulting from the supervision and control referred to in paragraph 5 or otherwise;
- 7 any Codes of Practice or similar advice issued by a responsible body which are applicable to the non-compliant work, materials or goods;
- 8 any failure by the Contractor to carry out, or to secure the carrying out of, any tests specified in the Contract Documents or in an instruction of the Architect/Contract Administrator;
- 9 the reason for the non-compliance, when this has been established;
- 10 any technical advice that the Contractor has obtained in respect of the non-compliant work, materials or goods;
- 11 current recognised testing procedures;
- 12 the practicability of progressive testing in establishing whether any similar non-compliance is reasonably likely;
- 13 if alternative testing methods are available, the time required for and the consequential costs of such alternative testing methods;
- 14 any proposals of the Contractor; and
- 15 any other relevant matters.

Schedule 5 Third Party Rights

(Clauses 7.7 and 7.8)

Part 1: Third Party Rights for Purchasers and Tenants

('P&T Rights')

1

- 1.1 The Contractor warrants as at and with effect from practical completion of the Works (or, where there are Sections, practical completion of the relevant Section) that he has carried out the Works or, as the case may be, that Section, in accordance with this Contract. In the event of any breach of this warranty and subject to paragraphs 1.2, 1.3 and 1.4:
 - 1.1.1 the Contractor shall be liable for the reasonable costs of repair, renewal and/or reinstatement of any part or parts of the Works to the extent that the Purchaser or Tenant incurs such costs and/or the Purchaser or Tenant is or becomes liable either directly or by way of financial contribution for such costs; and
 - 1.1.2 where the Rights Particulars state that paragraph 1.1.2 applies, the Contractor shall in addition to the costs referred to in paragraph 1.1.1 be liable for any other losses incurred by the Purchaser or Tenant up to the maximum liability stated in or by the Rights Particulars.
- 1.2 Where paragraph 1.1.2 does not apply, the Contractor shall not be liable for any losses incurred by the Purchaser or Tenant other than the costs referred to in paragraph 1.1.1.
- 1.3 The Contractor's liability to a Purchaser or Tenant in respect of its P&T Rights shall be limited to the proportion of the Purchaser's or Tenant's losses which it would be just and equitable to require the Contractor to pay having regard to the extent of the Contractor's responsibility for the same, on the assumptions that the Consultant(s):
 - 1.3.1 has or have provided contractual undertakings to or conferred third party rights on the Purchaser or Tenant as regards the performance of his or their services in connection with the Works in accordance with the terms of his or their respective consultancy agreements and that there are no limitations on liability as between the Consultant and the Employer in the consultancy agreement(s); and
 - 1.3.2 has or have paid to the Purchaser or Tenant such proportion of the Purchaser's or Tenant's losses as it would be just and equitable for them to pay having regard to the extent of their responsibility for the Purchaser's or Tenant's losses.
- 1.4 The Contractor shall be entitled in any action or proceedings by the Purchaser or Tenant to rely on any term in this Contract and to raise the equivalent rights in defence of liability as he would have against the Employer under this Contract.
- 1.5 The obligations of the Contractor under or pursuant to this paragraph 1 shall not be released or diminished by the appointment of any person by the Purchaser or Tenant to carry out any independent enquiry into any relevant matter.

2 The Contractor further warrants that unless required by this Contract or unless otherwise authorised in writing by the Employer or by the Architect/Contract Administrator named in or appointed pursuant to this Contract (or, where such authorisation is given orally, confirmed in writing by the Contractor to the Employer and/or the Architect/Contract Administrator), he has not used and will not use materials in the Works other than in accordance with the guidelines contained in the edition of 'Good Practice in Selection of Construction Materials' (British Council for Offices) current at the date of this Contract. In the event of any breach of this warranty the provisions of paragraph 1 shall apply.

3 The Purchaser or Tenant has no authority to issue any direction or instruction to the Contractor in relation to this Contract.

4 Where the Works include a Contractor's Designed Portion, the Purchaser or Tenant, insofar as it is the

purchaser or tenant of any part(s) of the site falling within the Contractor's Designed Portion, and subject to the Contractor having been paid all sums due and payable under this Contract, shall in respect of such parts have rights and licences in relation to the Contractor's Design Documents in the same terms as those conferred on the Employer by clause 2.41, but subject to similar conditions, limitations and exclusions as apply thereunder to the Employer.

- 5 Where the Works include a Contractor's Designed Portion and this Contract requires the Contractor to take out and maintain Professional Indemnity insurance, the Contractor warrants that he has and shall maintain that insurance in the amount, on the terms and for the period referred to in clause 6.15 and its related Contract Particulars^[66]. The Contractor shall immediately give written notice to the Purchaser or Tenant if such insurance ceases to be available at commercially reasonable rates in order that the Contractor and the Purchaser or Tenant can discuss the means of best protecting their respective positions in the absence of such insurance. As and when reasonably requested to do so by the Purchaser or Tenant, the Contractor shall produce for inspection documentary evidence that his Professional Indemnity insurance is being maintained.
- 6 P&T Rights may be assigned without the Contractor's consent by a Purchaser or Tenant, by way of absolute legal assignment, to another person (P1) taking an assignment of the Purchaser's or Tenant's interest in the Works and by P1, by way of absolute legal assignment, to another person (P2) taking an assignment of P1's interest in the Works. In such cases the assignment shall only be effective upon written notice of it being given to the Contractor. No further or other assignment of a Purchaser's or Tenant's rights under this Schedule will be permitted and in particular P2 shall not be entitled to assign these rights.
- 7 Any notice to be given by the Purchaser or Tenant to the Contractor or by the Contractor to the Purchaser or Tenant shall be duly given if delivered by hand or sent by Recorded Signed for or Special Delivery post to the recipient at such address as he may from time to time notify to the sender or (if no such address is then current) his last known principal business address or (where a body corporate) its registered or principal office. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.
- 8 No action or proceedings for any breach of P&T Rights shall be commenced against the Contractor after the expiry of the relevant period from the date of practical completion of the Works. Where there are Sections, no action or proceedings shall be commenced against the Contractor in respect of any Section after the expiry of the relevant period from the date of practical completion of such Section. For the purposes of this paragraph, the relevant period shall be:
 - 8.1 where this Contract is executed under hand, 6 years; and
 - 8.2 where this Contract is executed as a deed, 12 years.
- 9 For the avoidance of doubt, the Contractor shall have no liability to the Purchaser or Tenant under this Schedule for delay in completion of the Works.
- 10 This Schedule shall be governed by and construed in accordance with the law of England and the English courts shall have jurisdiction over any dispute or difference between the Contractor and any Purchaser or Tenant which arises out of or in connection with the P&T Rights of that Purchaser or Tenant.

Part 2: Third Party Rights for a Funder

('Funder Rights')

- 1 The Contractor warrants that he has complied and will continue to comply with this Contract. In the event of any breach of this warranty:
 - 1.1 the Contractor's liability to the Funder for costs under this Schedule shall be limited to the proportion of the Funder's losses which it would be just and equitable to require the Contractor to pay having regard to the extent of the Contractor's responsibility for the same, on the assumptions that the Consultant(s):
 - 1.1.1 has or have provided contractual undertakings to or conferred third party rights on the Funder that he or they has or have and will perform his or their services in connection with the Works in accordance with the terms of his or their respective

[66] **+++Now footnote [55]+++** For Contractors who do not carry Professional Indemnity insurance, see the Standard Building Contract Guide.

consultancy agreements and that there are no limitations on liability as between the Consultant and the Employer in the consultancy agreement(s); and

- 1.1.2 has or have paid to the Funder such proportion of the Funder's losses as it would be just and equitable for them to pay having regard to the extent of their responsibility for the Funder's losses;
- 1.2 the Contractor shall be entitled in any action or proceedings by the Funder to rely on any term in this Contract and to raise the equivalent rights in defence of liability as he would have against the Employer under this Contract;
- 1.3 the obligations of the Contractor under or pursuant to this paragraph 1 shall not be released or diminished by the appointment of any person by the Funder to carry out any independent enquiry into any relevant matter.
- 2 The Contractor further warrants that unless required by this Contract or unless otherwise authorised in writing by the Employer or by the Architect/Contract Administrator named in or appointed pursuant to this Contract (or, where such authorisation is given orally, confirmed in writing by the Contractor to the Employer and/or the Architect/Contract Administrator), he has not used and will not use materials in the Works other than in accordance with the guidelines contained in the edition of 'Good Practice in Selection of Construction Materials' (British Council for Offices) current at the date of this Contract. In the event of any breach of this warranty the provisions of paragraph 1 shall apply.
- 3 The Funder has no authority to issue any direction or instruction to the Contractor in relation to this Contract unless and until the Funder has given notice under paragraph 5 or 6.4.
- 4 The Funder has no liability to the Contractor in respect of amounts due under this Contract unless and until the Funder has given notice under paragraph 5 or 6.4.
- 5 The Contractor agrees that, in the event of the termination of the Finance Agreement by the Funder, the Contractor shall, if so required by written notice given by the Funder and subject to paragraph 7, accept the instructions of the Funder or its appointee to the exclusion of the Employer in respect of the Works upon the terms and conditions of this Contract. The Employer acknowledges that the Contractor shall be entitled to rely on a notice given to the Contractor by the Funder under this paragraph 5 as conclusive evidence for the purposes of this Contract of the termination of the Finance Agreement by the Funder; and further acknowledges that such acceptance of the instructions of the Funder to the exclusion of the Employer shall not constitute any breach of the Contractor's obligations to the Employer under this Contract.
- 6
 - 6.1 The Contractor shall not exercise any right of termination of his employment under this Contract without having first:
 - 6.1.1 copied to the Funder any notices required by this Contract to be sent to the Architect/Contract Administrator or to the Employer prior to the Contractor being entitled to give notice under this Contract that his employment under this Contract is terminated; and
 - 6.1.2 given to the Funder written notice that he has the right under this Contract forthwith to notify the Employer that his employment under this Contract is terminated.
 - 6.2 The Contractor shall not treat this Contract as having been repudiated by the Employer without having first given to the Funder written notice that he intends so to notify the Employer.
 - 6.3 The Contractor shall not:
 - 6.3.1 issue a notice to the Employer to which paragraph 6.1.2 refers; or
 - 6.3.2 notify the Employer that he is treating this Contract as having been repudiated by the Employer as referred to in paragraph 6.2

before the lapse of 14 days from receipt by the Funder of the notice by the Contractor which the Contractor is required to give under paragraph 6.1.2 or 6.2.
 - 6.4 The Funder may, not later than the expiry of the period referred to in paragraph 6.3, require the Contractor by written notice and subject to paragraph 7 to accept the instructions of the

Funder or its appointee to the exclusion of the Employer in respect of the Works upon the terms and conditions of this Contract. The Employer acknowledges that the Contractor shall be entitled to rely on a notice given to the Contractor by the Funder under this paragraph 6.4 and that acceptance by the Contractor of the instructions of the Funder to the exclusion of the Employer shall not constitute any breach of the Contractor's obligations to the Employer under this Contract. Provided that nothing in this paragraph 6.4 shall relieve the Contractor of any liability he may have to the Employer for any breach by the Contractor of this Contract.

- 7 It shall be a condition of any notice given by the Funder under paragraph 5 or 6.4 that the Funder or its appointee accepts liability for payment of the sums due and payable to the Contractor under this Contract and for performance of the Employer's obligations including payment of any sums outstanding at the date of such notice. Upon the issue of any notice by the Funder under paragraph 5 or 6.4, this Contract shall continue in full force and effect as if no right of termination of the Contractor's employment under this Contract, nor any right of the Contractor to treat this Contract as having been repudiated by the Employer, had arisen and the Contractor shall be liable to the Funder and its appointee under this Contract in lieu of his liability to the Employer. If any notice given by the Funder under paragraph 5 or 6.4 requires the Contractor to accept the instructions of the Funder's appointee, the Funder shall be liable to the Contractor as guarantor for the payment of all sums from time to time due to the Contractor from the Funder's appointee.
- 8 Where the Works include a Contractor's Designed Portion and subject to the Contractor having been paid all sums due and payable under this Contract, the Funder shall have rights and licences in relation to the Contractor's Design Documents in the same terms as those conferred on the Employer by clause 2.41, but subject to similar conditions, limitations and exclusions as apply thereunder to the Employer.
- 9 Where the Works include a Contractor's Designed Portion and this Contract requires the Contractor to take out and maintain Professional Indemnity insurance, the Contractor warrants that he has and shall maintain that insurance in the amount, on the terms and for the period referred to in clause 6.15 and its related Contract Particulars^[66]. The Contractor shall immediately give written notice to the Funder if such insurance ceases to be available at commercially reasonable rates in order that the Contractor and the Funder can discuss the means of best protecting their respective positions in the absence of such insurance. As and when reasonably requested to do so by the Funder or its appointee under paragraph 5 or 6.4, the Contractor shall produce for inspection documentary evidence that his Professional Indemnity insurance is being maintained.
- 10 The rights contained in this Schedule may be assigned without the Contractor's consent by the Funder, by way of absolute legal assignment, to another person (P1) providing finance or re-finance in connection with the carrying out of the Works and by P1, by way of absolute legal assignment, to another person (P2) providing finance or re-finance in connection with the carrying out of the Works. In such cases the assignment shall only be effective upon written notice of it being given to the Contractor. No further or other assignment of Funder Rights will be permitted and in particular P2 shall not be entitled to assign these rights.
- 11 Any notice to be given by the Contractor to the Funder or by the Funder to the Contractor shall be duly given if delivered by hand or sent by Recorded Signed for or Special Delivery post to the recipient at such address as he may from time to time notify to the sender or (if no such address is then current) his last known principal business address or (where a body corporate) its registered or principal office. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.
- 12 No action or proceedings for any breach of the rights contained in this Schedule shall be commenced against the Contractor after the expiry of the relevant period from the date of practical completion of the Works. Where there are Sections, no action or proceedings shall be commenced against the Contractor in respect of any Section after the expiry of the relevant period from the date of practical completion of such Section. For the purposes of this paragraph, the relevant period shall be:
 - 12.1 where this Contract is executed under hand, 6 years; and
 - 12.2 where this Contract is executed as a deed, 12 years.
- 13 Notwithstanding the rights contained in this Schedule, the Contractor shall have no liability to the Funder for delay under this Contract unless and until the Funder serves notice pursuant to paragraph 5 or 6.4. For the avoidance of doubt the Contractor shall not be required to pay damages in respect of the period of delay where the same has been paid to or deducted by the Employer.
- 14

- 14.1 This Schedule shall be governed by and construed in accordance with the law of England and subject to paragraph 14.2 the English courts shall have jurisdiction over any dispute or difference between the Contractor and the Funder which arises out of or in connection with this Schedule.
- 14.2 Following the giving of any notice by the Funder pursuant to paragraph 5 or 6.4, any dispute or difference which shall arise between the Contractor and the Funder (including any appointee or permitted assignee) shall be subject to the provisions of Article 7 and (where they apply) Article 8 and clauses 9.3 to 9.8.

Schedule 6 Forms of Bonds

(Clauses 4.7, 4.16 and 4.18)

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

Part 1: Advance Payment Bond^[67]

~~{1}THE parties to this Bond are:~~

Not applicable

~~whose registered office is at _____~~

~~_____ ('the Surety'), and~~

~~_____~~

~~of _____~~

~~_____ ('the Employer').~~

~~{2}The Employer and _____ ('the Contractor')~~

~~have agreed to enter into a contract ('the Contract') for building works ('the Works') at _____~~

~~_____~~

~~{3}The Employer has agreed to pay the Contractor the sum of [_____] as an advance payment of sums due to the Contractor under the Contract ('the Advance Payment') for reimbursement by the Surety on the following terms:~~

~~{3.1}when the Surety receives a demand from the Employer in accordance with clause 3.2 below the Surety shall repay the Employer the sum demanded up to the amount of the Advance Payment;~~

~~{3.2}the Employer shall in making any demand provide to the Surety a completed notice of demand in the form of the **Schedule** attached hereto which shall be accepted as conclusive evidence for all purposes under this Bond. The signatures on any such demand must be authenticated by the Employer's bankers;~~

~~{3.3}the Surety shall within 5 Business Days after receiving the demand pay to the Employer the sum so demanded. 'Business Day' means the day (other than a Saturday or a Sunday) on which commercial banks are open for business in London.~~

~~{4}Payments due under this Bond shall be made notwithstanding any dispute between the Employer and the Contractor and whether or not the Employer and the Contractor are or might be under any liability one to the other. Payment by the Surety under this Bond shall be deemed a valid payment for all purposes of this Bond and shall discharge the Surety from liability to the extent of such payment.~~

~~{5}The Surety consents and agrees that the following actions by the Employer may be made and done without notice to or consent of the Surety and without in any way affecting changing or releasing the Surety from its obligations under this Bond and the liability of the Surety hereunder shall not in any way be affected hereby. The actions are:~~

[67] **+++Now footnote [56]+++** Not applicable where the Employer is a Local Authority or other public sector body.

~~{5.1}waiver by the Employer of any of the terms, provisions, conditions, obligations and agreements of the Contractor or any failure to make demand upon or take action against the Contractor;~~

~~{5.2}any modification or changes to the Contract; and/or~~

~~{5.3}the granting of any extensions of time to the Contractor without affecting the terms of clause 7.3 below.~~

~~{6}The Surety's maximum aggregate liability under this Bond which shall commence on payment of the Advance Payment by the Employer to the Contractor shall be the amount of [] which sum shall be reduced by the amount of any reimbursement made by the Contractor to the Employer as advised by the Employer in writing to the Surety.~~

~~{7}The obligations of the Surety under this Bond shall cease upon whichever is the earliest of:~~

~~{7.1}the date on which the Advance Payment is reduced to nil as certified in writing to the Surety by the Employer;~~

~~{7.2}the date on which the Advance Payment or any balance thereof is repaid to the Employer by the Contractor (as certified in writing to the Surety by the Employer) or by the Surety; and~~

~~{7.3}[longstop date to be given],~~

~~and any claims hereunder must be received by the Surety in writing on or before such earliest date.~~

~~{8}This Bond is not transferable or assignable without the prior written consent of the Surety. Such written consent will not be unreasonably withheld.~~

~~{9}Notwithstanding any other provisions of this Bond nothing in this Bond confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.~~

~~{10}This Bond shall be governed and construed in accordance with the laws of England and Wales.~~

~~**IN WITNESS** whereof this Deed of Guarantee has been duly executed and delivered on the date below:~~

Signed as a Deed by: _____

as the Attorney and on behalf of the Surety: _____

In the presence of:

witness' signature

witness' name

witness' address

Date: _____

Schedule to Advance Payment Bond

(clause 3.2 of the Bond)

Notice of Demand

Date of Notice: _____

Date of Bond: _____

Employer: _____

Surety: _____

~~The Bond has come into effect.~~

We hereby demand payment of the sum of

£ _____ (amount in words)
which does not exceed the amount of reimbursement for which the Contractor is in default at the date of this notice.

Address for payment: _____

~~This Notice is signed by the following persons who are authorised by the Employer to act for and on his behalf:~~

Signed by _____

Name: _____

Official Position: _____

Signed by _____

Name: _____

Official Position: _____

The above signatures to be authenticated by the Employer's bankers

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

~~{1}THE parties to this Bond are:~~

Not applicable

~~whose registered office is at _____~~

~~_____ ('the Surety'), and~~

~~_____~~

~~of _____~~

~~_____ ('the Employer').~~

~~{2}The Employer and _____ ('the Contractor')~~

~~have agreed to enter into a contract ('the Contract') for building works ('the Works') at _____~~

~~_____~~

~~{3}Subject to the relevant provisions of the Contract as summarised below but with which the Surety shall not at all be concerned:~~

~~{3.1}the Employer has agreed to include the amount stated as due in Interim Certificates (as defined in the Contract) for payment by the Employer the value of those materials or goods or items pre-fabricated for inclusion in the Works listed by the Employer in a list which has been included as part of the Contract ('the Listed Items'), before their delivery to or adjacent to the Works; and~~

~~{3.2}the Contractor has agreed to insure the Listed Items against loss or damage for their full value under a policy of insurance protecting the interests of the Employer and the Contractor during the period commencing with the transfer of the property in the items to the Contractor until they are delivered to or adjacent to the Works; and~~

~~{3.3}this Bond shall exclusively relate to the amount paid to the Contractor in respect of the Listed Items which have not been delivered to or adjacent to the Works.~~

~~{4}The Employer shall in making any demand provide to the Surety a Notice of Demand in the form of the **Schedule** attached hereto which shall be accepted as conclusive evidence for all purposes under this Bond. The signatures on any such demand must be authenticated by the Employer's bankers.~~

~~{5}The Surety shall within 5 Business Days after receiving the demand pay to the Employer the sum so demanded. 'Business Day' means the day (other than a Saturday or a Sunday) on which commercial banks are open for business in London.~~

~~{6}Payments due under this Bond shall be made notwithstanding any dispute between the Employer and the Contractor and whether or not the Employer and the Contractor are or might be under any liability one to the other. Payment by the Surety under this Bond shall be deemed a valid payment for all purposes of this Bond and shall discharge the Surety from liability to the extent of such payment.~~

~~{7}The Surety consents and agrees that the following actions by the Employer may be made and done without notice to or consent of the Surety and without in any way affecting changing or releasing the Surety from its obligations under this Bond and the liability of the Surety hereunder shall not in any way be affected hereby. The actions are:~~

~~{7.1}waiver by the Employer of any of the terms, provisions, conditions, obligations and agreements of the Contractor or any failure to make demand upon or take action against the Contractor;~~

~~{7.2}any modification or changes to the Contract; and/or~~

~~{7.3}the granting of an extension of time to the Contractor without affecting the terms of clause 9.2 below.~~

~~{8}The Surety's maximum aggregate liability under this Bond shall be * .~~

~~{9}The obligations of the Surety under this Bond shall cease upon whichever is the earlier of:~~

~~{9.1}the date on which all the Listed Items have been delivered to or adjacent to the Works as certified in writing to the Surety by the Employer; or~~

~~{9.2}[longstop date to be given];~~

~~and any claims hereunder must be received by the Surety in writing on or before such earlier date.~~

~~{10}The Bond is not transferable or assignable without the prior written consent of the Surety. Such written consent will not be unreasonably withheld.~~

~~{11}Notwithstanding any other provisions of this Bond nothing in this Bond confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.~~

~~{12}This Bond shall be governed and construed in accordance with the laws of England and Wales.~~

~~*The value stated in the Contract which the Employer considers will be sufficient to cover him for maximum payments to the Contractor for the Listed Items that will have been made and not delivered to the site at any one time.~~

~~**IN WITNESS** whereof this Deed of Guarantee has been duly executed and delivered on the date below:~~

Signed as a Deed by: _____

as the Attorney and on behalf of the Surety: _____

In the presence of:

witness' signature

witness' name

witness' address

Date: _____

Schedule to Bond

(clause 4 of the Bond)

Notice of Demand

Date of Notice: _____

Date of Bond: _____

Employer: _____

Surety: _____

We hereby demand payment of the sum of £ _____
being the amount stated as due in respect of Listed Items included in the amount stated as due in an
Interim Certificate(s) for payment which has been duly made to the Contractor by the Employer but
such Listed Items have not been delivered to or adjacent to the Works.

Address for payment: _____

This Notice is signed by the following persons who are authorised by the Employer to act for and on
his behalf:

Signed by _____

Name: _____

Official Position: _____

Signed by _____

Name: _____

Official Position: _____

The above signatures to be authenticated by the Employer's bankers

Part 3: Retention Bond^[68]

BOND dated the _____ day of _____
 20____ Not applicable

issued by _____

of _____

 _____ ('the Surety')

in favour of _____

of _____

 _____ ('the Employer')

{1} By a contract ('the Contract') between the Employer and

of _____

 _____ ('the Contractor')
 the Employer has agreed that he will not exercise his right under the Contract to deduct Retention from amounts included in Interim Certificates provided the Contractor has taken out this Bond in favour of the Employer.

{2} The Surety is hereby bound to the Employer in the maximum aggregate sum of _____

 _____ (figures and words)
 until the Surety is notified by the Employer in writing of the date of issue of the next Interim Certificate after practical completion when the maximum aggregate sum shall be reduced by 50 per cent.

{3} The Employer shall, on a demand which complies with the requirements in clause 4 below, be entitled to receive from the Surety the sum therein demanded.

{4} Any demand by the Employer under clause 3 above shall:

{4.1} be in writing addressed to the Surety at its office at

 refer to this Bond, and with the signature(s) therein authenticated by the Employer's bankers; and

{4.2} state the amount of the Retention that would have been held by the Employer at the date of the demand had Retention been deductible; and

{4.3} state the amount demanded, which shall not exceed the amount stated pursuant to clause 4.2 above, and identify for which one or more of the following such amount is demanded:-

{4.3.1} the costs actually incurred by the Employer by reason of the failure of the Contractor to comply with the instructions of the Architect/Contract Administrator

[68] **+++Now footnote [57]+++** Not applicable where the Employer is a Local Authority or other public sector body.

~~under the Contract; and be accompanied by a statement by the Architect/Contract Administrator which confirms that this failure by the Contractor has occurred;~~

~~{4.3.2}the insurance premiums paid by the Employer pursuant to the Contract because the Contractor has not taken out and/or not maintained any insurance of the building works which he was required under the Contract to take out and/or maintain;~~

~~{4.3.3}liquidated and ascertained damages which under the Contract the Contractor is due to pay or allow to the Employer; and be accompanied by a copy of the certificate of the Architect/Contract Administrator which under the Contract he is required to issue and which certifies that the Contractor has failed to complete the works by the contractual Completion Date;~~

~~{4.3.4}any expenses or any direct loss and/or damage caused to the Employer as a result of the termination of the Contractor's employment by the Employer;~~

~~{4.3.5}any costs, other than the amounts referred to in clauses 4.3.1 to 4.3.4 above, which the Employer has actually incurred and which, under the Contract, he is entitled to deduct from monies otherwise due or to become due to the Contractor; and identify his entitlement;~~

and

~~{4.4}incorporate a certification that the Contractor has been given 14 days' written notice of his liability for the amount demanded hereunder by the Employer and that the Contractor has not discharged that liability; and that a copy of this notice has at the same time been sent to the Surety at its office at~~

~~Such demand as above shall, for the purposes of this Bond but not further or otherwise, be conclusive evidence (and admissible as such) that the amount demanded is properly due and payable to the Employer by the Contractor.~~

~~{5}If the Contract is to be assigned or otherwise transferred with the benefit of this Bond, the Employer shall be entitled to assign or transfer this Bond only with the prior written consent of the Surety, such consent not to be unreasonably delayed or withheld.~~

~~{6}The Surety, in the absence of a prior written demand made, shall be released from its liability under this Bond upon the earliest occurrence of either:~~

~~{6.1}the date of issue under the Contract of the Certificate of Making Good as confirmed by the Employer to the Surety; or~~

~~{6.2}satisfaction of a demand(s) up to the maximum aggregate under the Bond; or~~

~~{6.3}_____ (insert calendar date).-~~

~~{7}Any demand made hereunder must be received by the Surety accompanied by the documents as required by clause 4 above on or before the earliest occurrence as stated above, when this Bond will terminate and become of no further effect whatsoever.~~

~~{8}Notwithstanding any other provisions of this Bond nothing in this Bond confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.~~

~~{9}This Bond shall be governed and construed in accordance with the laws of England and Wales.~~

IN WITNESS ~~whereof this Deed of Guarantee has been duly executed and delivered on the date below:~~

Signed as a Deed by: _____

as the Attorney and on behalf of the Surety: _____

In the presence of:

witness' signature

witness' name

witness' address

Date: _____

Notes^[69]

{1}The terms of this Retention Bond have been agreed with the British Bankers' Association and discussed with the Surety Panel of the Association of British Insurers. The JCT understands that a Bond which embodies the terms of this Part 3 of Schedule 6 is, at the proposed Surety's discretion, available to a Contractor where the Employer has incorporated into a building contract in the JCT Standard Building Contract 2016 Edition, optional clause 4.18.

{2}In clause 2 the figure to be inserted here is the amount stated in the Contract Particulars pursuant to clause 4.18. It is understood that a Surety will, at additional cost to the Contractor, and which may be subject to other terms and conditions of the Surety, provide for a greater sum than that stated in clause 2 of the Bond if, due to variations, and had Retention been applicable, that amount would have increased. The reduction by 50% of the maximum aggregate sum at the date of issue of the next Interim Certificate after practical completion matches a similar reduction had Retention been applicable.

{3}The inclusion in the last paragraph of clause 4 of the words "but not further or otherwise" is to make clear that the Contractor would not be prevented by the terms of clause 4 from alleging, under the Contract, that the Contractor was not in breach on any of the matters stated in clauses 4.3.1 to 4.3.5 of the Bond.

Any demand by the Employer under clause 4 of the Bond must not exceed the costs actually incurred by the Employer and is not to be in excess of the amount stated pursuant to clause 4.2.

{4}The Surety will require an actual expiry date to be stated in clause 6.3 of the Bond or (if earlier) a date that is capable of being ascertained on the face of the Bond. Where this is not possible, alternative terms should be discussed with the Surety.

[69] —These Notes will not appear on the Bond issued by the Surety.

Schedule 7 JCT Fluctuations Option A

(Clauses 4.3 and 4.14)

(Contribution, levy and tax fluctuations)

Not applicable

Deemed calculation of Contract Sum – labour

~~{A.1}The Contract Sum shall be deemed to have been calculated in the manner set out below and shall be subject to adjustment in the events specified hereunder.~~

~~{A.1.1}The Contract Sum is based upon the types and rates of contribution, levy and tax payable by a person in his capacity as an employer and which at the Base Date are payable by the Contractor. A type and a rate so payable are in paragraph A.1.2 referred to as a 'tender type' and a 'tender rate'.~~

~~{A.1.2}If any of the tender rates other than a rate of levy payable by virtue of the Industrial Training Act 1982 is increased or decreased, or if a tender type ceases to be payable, or if a new type of contribution, levy or tax which is payable by a person in his capacity as an employer becomes payable after the Base Date, then in any such case the net amount of the difference between what the Contractor actually pays or will pay in respect of:-~~

~~{A.1.2.1}workpeople engaged upon or in connection with the Works either on or adjacent to the site; and~~

~~{A.1.2.2}workpeople directly employed by the Contractor who are engaged upon the production of materials or goods for use in or in connection with the Works and who operate neither on nor adjacent to the site and to the extent that they are so engaged~~

~~or because of his employment of such workpeople and what he would have paid had the alteration, cessation or new type of contribution, levy or tax not become effective shall, as the case may be, be paid to or allowed by the Contractor.~~

~~{A.1.3}There shall be added to the net amount paid to or allowed by the Contractor under paragraph A.1.2, in respect of each person employed by the Contractor who is engaged upon or in connection with the Works either on or adjacent to the site and who is not within the definition of workpeople in paragraph A.11.3, the same amount as is payable or allowable in respect of a craftsman under paragraph A.1.2 or such proportion of that amount as reflects the time (measured in whole working days) that each such person is so employed.~~

~~{A.1.4}For the purposes of paragraph A.1.3:~~

~~{A.1.4.1}no period of less than 2 whole working days in any week shall be taken into account and periods of less than a whole working day shall not be aggregated to amount to a whole working day;~~

~~{A.1.4.2}"the same amount as is payable or allowable in respect of a craftsman" shall refer to the amount in respect of a craftsman employed by the Contractor (or by any sub-contractor under a sub-contract to which paragraph A.3 refers) under the rules or decisions or agreements of the Construction Industry Joint Council or other wage-fixing body and, where those rules or decisions or agreements provide for more than one rate of wage, emolument or other expense for a craftsman, shall refer to the amount in respect of a craftsman employed as aforesaid to whom the highest rate is applicable; and~~

~~{A.1.4.3}"employed by the Contractor" shall mean an employment to which the Income Tax (Pay As You Earn) Regulations 2003 apply.~~

~~{A.1.5}The Contract Sum is based upon the types and rates of refund of the contributions, levies and taxes payable by a person in his capacity as an employer and upon the types~~

~~and rates of premium receivable by a person in his capacity as an employer being in each case types and rates which at the Base Date are receivable by the Contractor. Such a type and such a rate are in paragraph A.1.6 referred to as a 'tender type' and a 'tender rate'.~~

~~{A.1.6} If any of the tender rates is increased or decreased or if a tender type ceases to be payable or if a new type of refund of any contribution, levy or tax payable by a person in his capacity as an employer becomes receivable or if a new type of premium receivable by a person in his capacity as an employer becomes receivable after the Base Date, then in any such case the net amount of the difference between what the Contractor actually receives or will receive in respect of workpeople as referred to in paragraphs A.1.2.1 and A.1.2.2 or because of his employment of such workpeople and what he would have received had the alteration, cessation or new type of refund or premium not become effective shall, as the case may be, be paid to or allowed by the Contractor.~~

~~{A.1.7} The references in paragraphs A.1.5 and A.1.6 to premiums shall be construed as meaning all payments howsoever they are described which are made under or by virtue of an Act of Parliament to a person in his capacity as an employer and which affect the cost to an employer of having persons in his employment.~~

~~{A.1.8} Where employer's contributions are payable by the Contractor in respect of workpeople as referred to in paragraphs A.1.2.1 and A.1.2.2 whose employment is contracted-out employment within the meaning of the Pension Schemes Act 1993, the Contractor shall for the purpose of recovery or allowance under this paragraph A.1 be deemed to pay employer's contributions as if that employment were not contracted-out employment.~~

~~{A.1.9} The references in paragraph A.1 to contributions, levies and taxes shall be construed as meaning all impositions payable by a person in his capacity as an employer howsoever they are described and whoever the recipient which are imposed under or by virtue of an Act of Parliament and which affect the cost to an employer of having persons in his employment.~~

Deemed calculation of Contract Sum – materials

~~{A.2} The Contract Sum shall be deemed to have been calculated in the manner set out below and shall be subject to adjustment in the events specified hereunder.~~

~~{A.2.1} The Contract Sum is based upon the types and rates of duty, if any, and tax, if any (other than any VAT which is treated, or is capable of being treated, as input tax by the Contractor), by whomsoever payable which at the Base Date are payable on the import, purchase, sale, appropriation, processing, use or disposal of the materials, goods, electricity, fuels, materials taken from the site as waste or any other solid, liquid or gas necessary for the execution of the Works by virtue of any Act of Parliament. A type and a rate so payable are in paragraph A.2.2 referred to as a 'tender type' and a 'tender rate'.~~

~~{A.2.2} If, in relation to any materials or goods or any electricity or fuels or materials taken from the site as waste or any other solid, liquid or gas necessary for the execution of the Works including temporary site installations for those Works, a tender rate is increased or decreased or a tender type ceases to be payable or a new type of duty or tax (other than any VAT which is treated, or is capable of being treated, as input tax by the Contractor) becomes payable on the import, purchase, sale, appropriation, processing, use or disposal of any of the above things after the Base Date, then in any such case the net amount of the difference between what the Contractor actually pays in respect of those materials, goods, electricity, fuels, materials taken from the site as waste or any other solid, liquid or gas and what he would have paid in respect of them had the alteration, cessation or imposition not occurred shall, as the case may be, be paid to or allowed by the Contractor. In this paragraph A.2.2 "a new type of duty or tax" includes an additional duty or tax and a duty or tax imposed in regard to any of the above in respect of which no duty or tax whatever was previously payable (other than any VAT which is treated, or is capable of being treated, as input tax by the Contractor).~~

Sub-contract work – incorporation of provisions to like effect

~~{A.3}~~

~~{A.3.1} If the Contractor sub-contracts any portion of the Works to a sub-contractor he shall incorporate in the sub-contract provisions to the like effect as the provisions of JCT Fluctuations Option A (excluding this paragraph A.3) including the percentage stated in the~~

~~Contract Particulars pursuant to paragraph A.12 which are applicable for the purposes of this Contract.~~

~~{A.3.2} If the price payable under such a sub-contract as referred to in paragraph A.3.1 is increased above or decreased below the price in such sub-contract by reason of the operation of the said incorporated provisions, then the net amount of such increase or decrease shall, as the case may be, be paid to or allowed by the Contractor under this Contract.~~

Notification by Contractor

~~{A.4}~~

~~{A.4.1} The Contractor shall notify the Architect/Contract Administrator of the occurrence of any of the events referred to in such of the following provisions as are applicable for the purposes of this Contract:~~

~~{A.4.1.1} paragraph A.1.2;~~

~~{A.4.1.2} paragraph A.1.6;~~

~~{A.4.1.3} paragraph A.2.2;~~

~~{A.4.1.4} paragraph A.3.2.~~

~~{A.4.2} Any notification required to be given under paragraph A.4.1 shall be given within a reasonable time after the occurrence of the event to which it relates, and notification in that time shall be a condition precedent to any payment being made to the Contractor in respect of the event in question.~~

Agreement — Quantity Surveyor and Contractor

~~{A.5} The Quantity Surveyor and the Contractor may agree what shall be deemed for all the purposes of this Contract to be the net amount payable to or allowable by the Contractor in respect of the occurrence of any event such as is referred to in any of the provisions listed in paragraph A.4.1.~~

Fluctuations added to or deducted from Contract Sum

~~{A.6} Any amount which from time to time becomes payable to or allowable by the Contractor by virtue of paragraphs A.1 and A.2 or paragraph A.3 shall, as the case may be, be added to or deducted from:~~

~~{A.6.1} the Contract Sum; and~~

~~{A.6.2} any amounts payable to the Contractor and which are calculated in accordance with clause 8.12.3.1.~~

~~The addition or deduction to which this paragraph A.6 refers shall be subject to the provisions of paragraphs A.7 to A.9.1.~~

Evidence and computations by Contractor

~~{A.7} As soon as is reasonably practicable the Contractor shall provide such evidence and computations as the Architect/Contract Administrator or the Quantity Surveyor may reasonably require to enable the amount payable to or allowable by the Contractor by virtue of paragraphs A.1 and A.2 or paragraph A.3 to be ascertained; and in the case of amounts payable to or allowable by the Contractor under paragraph A.1.3 (or paragraph A.3 for amounts payable to or allowable under the provisions in the sub-contract to the like effect as paragraphs A.1.3 and A.1.4) — employees other than workpeople — such evidence shall include a certificate signed by or on behalf of the Contractor each week certifying the validity of the evidence reasonably required to ascertain such amounts.~~

No alteration to Contractor's profit

~~{A.8} No addition to or deduction from the Contract Sum made by virtue of paragraph A.6 shall alter in any way the amount of profit of the Contractor included in that Sum.~~

Position where Contractor in default over completion

~~{A.9}~~

~~{A.9.1} Subject to the provisions of paragraph A.9.2 no amount shall be added or deducted~~

~~in the computation of the amount stated as due in an Interim Certificate or in the Final Certificate in respect of amounts otherwise payable to or allowable by the Contractor by virtue of paragraphs A.1 and A.2 or paragraph A.3 if the event (as referred to in the provisions listed in paragraph A.4.1) in respect of which the payment or allowance would be made occurs after the Completion Date.~~

~~{A.9.2} Paragraph A.9.1 shall not be applied unless:~~

~~{A.9.2.1} the printed text of clauses 2.26 to 2.29 is unamended and forms part of the Conditions; and~~

~~{A.9.2.2} the Architect/Contract Administrator has, in respect of every notification by the Contractor under clause 2.28, fixed or confirmed such Completion Date as he considers to be in accordance with that clause.~~

Work etc. to which paragraphs A.1 to A.3 not applicable

~~{A.10} Paragraphs A.1 to A.3 shall not apply in respect of:~~

~~{A.10.1} work for which the Contractor is allowed daywork rates under clause 5.7;~~

~~{A.10.2} changes in the rate of VAT charged on the supply of goods or services by the Contractor to the Employer under this Contract.~~

Definitions for use with JCT Fluctuations Option A

~~{A.11} In JCT Fluctuations Option A:~~

~~{A.11.1} the Base Date means the date stated as such in the Contract Particulars;~~

~~{A.11.2} "materials" and "goods" include timber used in formwork but do not include other consumable stores, plant and machinery;~~

~~{A.11.3} "workpeople" means persons whose rates of wages and other emoluments (including holiday credits) are governed by the rules or decisions or agreements of the Construction Industry Joint Council or some other wage-fixing body for trades associated with the building industry;~~

~~{A.11.4} "wage-fixing body" means a body which lays down recognised terms and conditions of workers;~~

~~{A.11.5} "recognised terms and conditions" means terms and conditions of workers in comparable employment in the trade or industry, or section of trade or industry, in which the employer in question is engaged which have been settled by an agreement or award to which the parties are employers' associations and independent trade unions which represent (generally, or in the district in question, as the case may be) a substantial proportion of the employers and of the workers in the trade, industry or section being workers of the description to which the agreement or award relates.~~

Percentage addition to fluctuation payments or allowances

~~{A.12} There shall be added to the amount paid to or allowed by the Contractor under:-~~

~~{A.12.1} paragraph A.1.2;~~

~~{A.12.2} paragraph A.1.3;~~

~~{A.12.3} paragraph A.1.6;~~

~~{A.12.4} paragraph A.2.2~~

~~the percentage stated in the Contract Particulars.~~

Schedule 8 Supplemental Provisions

(Eighth Recital)

Supplemental Provisions 1 to 6 apply unless otherwise stated in the Contract Particulars. Supplemental Provision 7 applies where the Employer is a Local or Public Authority or other body of the type mentioned in that provision; Supplemental Provision 8 applies where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations; Supplemental Provision 9 applies only where so stated in the Contract Particulars.

Collaborative working

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

Health and safety

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

Cost savings and value improvements

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

from utilising other contractors to implement such changes after practical completion of the Works.

Sustainable development and environmental considerations

4

4.1 The Contractor is encouraged to suggest economically viable amendments to the Works which, if instructed as a Variation, may result in an improvement in environmental performance in the carrying out of the Works or of the completed Works.

4.2 The Contractor shall provide to the Employer all information that he reasonably requests regarding the environmental impact of the supply and use of materials and goods which the Contractor selects.

Performance Indicators and monitoring

5

5.1 The Employer shall monitor and assess the Contractor's performance by reference to any performance indicators stated or identified in the Contract Documents.

5.2 The Contractor shall provide to the Employer all information that he may reasonably require to monitor and assess the Contractor's performance against the targets for those performance indicators.

5.3 Where the Employer considers that a target for any of those performance indicators may not be met, he may inform the Contractor who shall submit his proposals for improving his performance against that target to the Employer.

Notification and negotiation of disputes

6

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

Transparency

7

Where the Employer is a Local or Public Authority or other body to whom the provisions of the Freedom of Information Act 2000 ('FOIA') apply, the Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of this Contract is not confidential. The Employer shall be responsible for determining in his absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding clause 2.8.4 or any other term of this Contract:

7.1 the Contractor hereby consents to the Employer publishing any amendments to the standard form JCT contract in their entirety, including changes to the standard form agreed from time to time, but in each case with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted;

7.2 the Employer shall promptly inform the Contractor of any request for disclosure that he receives in relation to this Contract.

The Public Contracts Regulations 2015

8

Where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations^[70]:

8.1 where regulation 113 of the PC Regulations applies to this Contract, the Contractor shall include in any sub-contract entered into by him suitable provisions to impose the requirements of regulation 113(2)(c)(i) and (ii);

8.2 the Contractor shall include in any sub-contract entered into by him provisions requiring the

[70] **+++Now footnote [58]+++** An explanatory summary of those provisions in the PC Regulations that are reflected in this Contract is contained in the Standard Building Contract Guide. Provisions relating to the PC Regulations are also set out in section 8 (Termination) of this Contract. The JCT Standard Building Sub-Contracts (SBCSub and SBCSub/D) meet the requirements of Supplemental Provision 8.

sub-contractor:

8.2.1 to supply and notify to the Contractor the information required (as applicable) under regulations 71(3), 71(4) and 71(5) of the PC Regulations; and

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

8.3

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

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

Named Specialists

9

9.1 Where Supplemental Provision 9 applies and work forming part of the Works (excluding CDP Works) is to be carried out by a named person (other than a person listed under clause 3.8.1) as the Contractor's sub-contractor (a 'Named Specialist') and either:

9.1.1 that person is named in and the work ('Pre-Named Specialist Work') is identified in the Contract Documents; or

9.1.2 that person is named in and the work ('Post-Named Specialist Work') is identified in an instruction for expenditure of a Provisional Sum and Supplemental Provision 9 is stated also to apply in respect of Post-Named Specialist Work,

the following paragraphs of this provision shall as relevant apply.

9.2 Subject to paragraphs 9.3 and 9.4, the Contractor shall as soon as reasonably practicable enter into a sub-contract with the Named Specialist for the work referred to in paragraph 9.1 (in either case, 'Named Specialist Work') and in a form that complies with clause 3.9.

9.3 If for any reason the Contractor is unable to enter into a sub-contract with the Named Specialist, he shall immediately notify the Architect/Contract Administrator of the grounds and provided that the Contractor has acted reasonably the Architect/Contract Administrator shall within 7 days of receipt of that notification give instructions that:

9.3.1 remove the grounds; or

9.3.2 select another Named Specialist able and willing to carry out the Named Specialist Work; or

9.3.3 direct the Contractor to carry out that work using either his own resources or, at the Contractor's option, a sub-contractor selected by the Contractor and approved by the Architect/Contract Administrator; or

9.3.4 omit the Named Specialist Work from this Contract as a Variation.

9.4 If in the case of instructions

9.4.1 for Post-Named Specialist Work which require use of a Named Specialist who is not named in respect of that work in the Contract Documents; or

9.4.2 for any Named Specialist Work, where the instructions name a replacement for a Named Specialist

the Contractor has reasonable grounds of objection and notifies the Architect/Contract Administrator within 7 days of receipt of the instruction, the Architect/Contract Administrator shall within 7 days of receipt of the Contractor's notification give further instructions in the terms set out in paragraph 9.3.2, 9.3.3 or 9.3.4.

- 9.5 If the Contractor becomes entitled to terminate a Named Specialist's employment under his sub-contract or to give notice of a specified default which, if continued, would be grounds for such termination or is entitled to treat the sub-contract as repudiated, the Contractor:
- 9.5.1 shall promptly, and prior to giving any notice to that effect to the Named Specialist, notify the Architect/Contract Administrator and consult with him and/or, if requested, with the Employer;
- 9.5.2 save where the Named Specialist is or becomes Insolvent, shall not give notice of termination, or notice that he is treating the sub-contract as repudiated, less than 14 days after that notification to the Architect/Contract Administrator; and
- 9.5.3 shall at the time of issue send the Architect/Contract Administrator a copy of each notice that he gives to the Named Specialist.
- 9.6 Where the Contractor terminates a Named Specialist's employment in accordance with the terms of the relevant sub-contract or treats it as repudiated by the Named Specialist, the Architect/Contract Administrator may within 7 days of receipt of his copy of the Contractor's notice to that effect issue instructions in the terms of paragraph 9.3.2, 9.3.3 or 9.3.4, failing which he shall be deemed to have given an instruction in the terms of paragraph 9.3.3.
- 9.7 The Contractor's responsibility for carrying out and completing the Works in all respects in accordance with clause 2.1 shall not be affected in any manner by the naming of any person for any work in the manner referred to in paragraph 9.1 or the exercise by the Architect/Contract Administrator of any of his powers under this Supplemental Provision 9.

SBC/XQ 2016

Standard Building Contract Without Quantities, 2016 Edition

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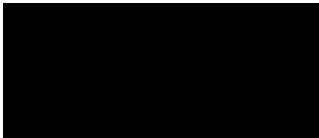
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SWEET & MAXWELL





DATED

5 September 2025

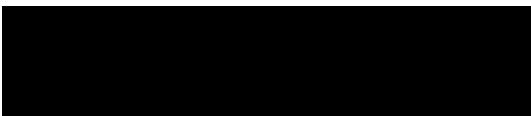
JOHN INNES CENTRE (1)

AND

MJS PROJECTS (MARCH) LTD (2)

**SCHEDULE OF AMENDMENTS
TO THE JCT STANDARD BUILDING
CONTRACT WITHOUT QUANTITIES
2016**

**For the Site Wide Infrastructure Project
(Southern Loop) for the Next
Generation Infrastructure Programme
at John Innes Centre, Norwich**



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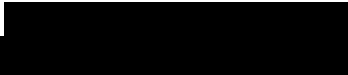
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Amendments to the JCT Standard Building Contract without Quantities 2016

Recitals

- First Recital: After the words “carried out” add “an upgraded internal southern access road and below ground infrastructure work including new and relocated communications and electricity cabling, upgraded mains water infrastructure, new surface water drainage and new district heating pipework to enable site wide development proposals.”
- After the word “at” add “John Innes Centre, Norwich Research Park, Colney Lane, Norwich NR4 7UH”.
- Second Recital: After the words “numbered/listed in” add ““(A) “05 Contract Drawings and Specifications” folder within folder (ii) Employers Requirements and (B) JGD District Heating” and “MJS mark-ups” folders in folder 09 Contractors Proposals within folder (iv) Contractors Proposals”.
- Ninth Recital: After the words “design and construction of” add “district heating pipework system, reinforcement to retaining walls and temporary works”
- Twelfth Recital: Delete this recital and replace with:
 “The Employer has agreed to accept responsibility for the contents of the Employer’s Requirements including any design contained in the Employer’s Requirements. The Contractor is satisfied that the Contractor’s Designed Portion has taken consideration of the Employer’s Requirements. The Contractor warrants that the Contractor’s Designed Portion will meet the Employer’s Requirements, where relevant, in all respects.”

Articles

- Article 1 After the words “The Contractor shall” delete “carry out and complete” and replace with the words “complete the design for the Contractor’s Designed Portion and carry out and complete the construction of”.
- Article 2 After the words “sum of” add 
- Article 3 After the words “Contract Administrator is” add “Turner & Townsend Project Management Limited (company number: 02165592) of WeWork, 50-60 Station Road, Cambridge CB21 2JD”
- After the words “the Conditions” in line 3 add “and shall be the Specified Person, as defined in Section 110A(6) of the Housing Grants, Construction and Regeneration Act 1996 (as amended)”
- Article 4 After the words “the functions of the Quantity Surveyor shall be exercised by” add “AECOM Limited (company number 01846493) of Cavell House, Stannard Place, St

Crispins Road, Norwich, NR3 1YE”

Article 5 After “CDM Regulations” add “and Building Regulations”
After the words “is the Architect/Contract Administrator or” add “IM2 Limited (company number 12589988) of C/O Cam & Co Accountancy, 10-12 Love Lane, Pinner, England, HA5 3EF”

Article 6 After “CDM Regulations” add “and Building Regulations”

Article 10: Add a new Article 10:

“Article 10: Schedule of Amendments

The amendments to the JCT Standard Building Contract Without Quantities 2016, set out in the Schedule of Amendments attached to this Contract, are hereby incorporated into this Contract and the provisions of the Recitals, the Articles, the Contract Particulars, the Conditions and the Schedules shall have effect as so amended by the Schedule of Amendments.”

Contract Particulars

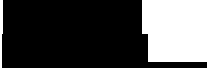
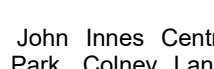
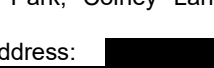
4.8 After “nearest” add “subsequent”

6.15 After “is the aggregate amount for any one period of insurance” add “with not less than two automatic reinstatements in any year during which the policy is current, unless the Contractor confirms to the Employer in writing that it is unable to obtain two automatic reinstatements”

Contract Particulars

Note: An asterisk * indicates text that is to be deleted as appropriate

<i>Clause etc.</i>	<i>Subject</i>	
Third Recital	The Pricing Option that applies is	* Pricing Option A/ * Pricing Option B
	The Priced Document is	
	(where Pricing Option A applies)	* the Specification/ * the Work Schedules
	(where Pricing Option B applies)	* the Contract Sum Analysis/ * the Schedule of Rates
Fourth Recital and clause 4.6	Construction Industry Scheme (CIS)	Employer at the Base Date * is a ‘contractor’ /is not a ‘contractor’ for the purposes of the CIS
Sixth Recital	Description of Sections (if any)	Section 0:

	Named Specialists <i>(unless one of the first two options is selected by deletion of the other entries, Supplemental Provision 9 does not apply)</i>	Supplemental Provision 9 * applies in respect of both Pre-Named Specialist work and Post-Named Specialist Work/ * applies in respect of Pre-Named Specialist work only/ * does not apply
Tenth Recital	Employer's Requirements <i>(State reference numbers and dates or other identifiers of the relevant documents.)</i>	Folder (ii) Employers Requirements
Eleventh Recital	Contractor's Proposals <i>(State reference numbers and dates or other identifiers of the relevant documents.)</i>	Folder (iv) Contractors Proposals
Eleventh Recital	CDP Analysis <i>State reference numbers and dates or other identifiers of the relevant documents.)</i>	"JGD District Heating" and "MJS mark-ups" folders in folder 09 Contractors Proposals within folder (iv) Contractors Proposals
Article 8	Arbitration <i>(If neither entry is deleted, Article 8 and clauses 9.3 to 9.8 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it <u>must</u> be stated that Article 8 and clauses 9.3 to 9.8 apply.)</i>	Article 8 and clauses 9.3 to 9.8 (Arbitration) * apply do not apply
1.1	Base Date	10 business days prior to tender submission (13 June 2025)
1.1	BIM Protocol (where applicable) <i>(State title, edition, date or other identifiers of the relevant documents.)</i>	Not Applicable
1.1	Date for Completion of the Works <i>(where completion by Sections does not apply)</i> Sections: Dates for Completion of Sections	See below for Sections. Section 0:  Section 1:  Section 2:  Section 3:  Section 4:  Section 5:  Section 6:  Section 7: 
1.7	Address for service of notices by the Parties <i>(If none is stated, the address in each case, subject to clause 1.7.3 shall be that shown at the commencement of the Agreement.)</i>	Employer: John Innes Centre, Norwich Research Park, Colney Lane, Norwich, NR4 7UH Email address: 

Contractor: MJS House 425 Wisbech Road, Westry, March, Cambridgeshire, PE15 0BA
Email address: [redacted]

2.4 Date of Possession of the Site
(where possession by Sections does not apply)

See below for Sections.

Sections: Dates of Possession of Sections

Section 0: [redacted]
Section 1: [redacted]
Section 2: [redacted]
Section 3: [redacted]
Section 4: [redacted]
Section 5: [redacted]
Section 6: [redacted]
Section 7: [redacted]

2.5 Deferment of possession of the site
(where possession by Sections does not apply)

Clause 2.5
* applies/~~does not apply~~

Maximum period of deferment (if less than 12 weeks) is

Sections: deferment of possession of Sections

For all Sections: maximum period of deferment is 6 weeks.

2.9.1.2 Master programme

Critical paths
* are/~~are not~~ required to be shown

2.19.4 Contractor's Designed Portion: limit on Contractor's liability for loss of use etc.

[redacted]

2.32.3 Liquidated damages
(where completion by Sections does not apply)

at the rate of
See below for Sections.

Sections: rate of liquidated damages for each section

Section 0: [redacted]
Section 1: [redacted]
Section 2: [redacted]
Section 3: [redacted]
Section 4: [redacted]
Section 5: [redacted]
Section 6: [redacted]
Section 7: [redacted]

2.37 Sections: Section Sums

Section 0 [redacted]
Section 1: [redacted]
Section 2: [redacted]
Section 3: [redacted]
Section 4: [redacted]
Section 5: [redacted]
Section 6: [redacted]

Section 7: [REDACTED]

2.38 Rectification Period
(where completion by Sections does not apply)
(If no other period is stated, the period is 6 months.)

See below for Sections.

Sections: Rectification Periods
(If no other period is stated, the period is 6 months.)

For all Sections, 12 months from the date of practical completion of the Section 7 works.

4.3 and 4.14 Fluctuations Provision

~~* JCT Fluctuations Option A applies/~~
~~* JCT Fluctuations Option B applies/~~
~~* JCT Fluctuations Option C applies/~~
~~* no Fluctuations Provision applies/~~
~~* the following Fluctuations Provision applies~~

JCT Fluctuations Option A (paragraph A.12) or Option B (paragraph B.13) – percentage addition

_____ per cent

JCT Fluctuations Option C (paragraph C.1.2 – Formula Rules

~~Rule 3: Base Month~~

_____20_____

~~Rule 3: Non-Adjustable element~~

_____ per cent

(Unless Part II is stated to apply, Part 1 applies.)

~~Rules 10 and 30(i)~~
~~* Part I/Part II of section 2 of the Formula Rules applies~~

4.7 Advance payment
(Not applicable where the Employer is a Local or Public Authority)

Clause 4.7
~~* applies/~~does not apply

If applicable:
The advance payment will be

£ _____/

_____ per cent of the Contract

Sum and will be paid to the Contractor on _____;

~~it will be reimbursed to the Employer in the following amount(s) and at the following time(s)~~

4.7	Advance Payment Bond <i>((Not applicable where the Employer is a Local or Public Authority) (Where an advance payment is to be made, an advance payment bond is required unless stated that it is not required.)</i>	An advance payment bond * is/is not required
4.8	Interim payments – Interim Valuation Dates <i>(If no date is stated, the first Interim Valuation Date is one month after the Date of Possession.)</i>	The first Interim Valuation Date is and thereafter the same date in each month or the nearest Business Day in that month
4.16.4	Listed Items – uniquely identified <i>(Delete the entry if no bond is required)</i>	* For uniquely identified Listed Items a bond in respect of payment for such items is required for £ _____
4.16.5	Listed Items – not uniquely identified <i>(Delete the entry if clause 4.16.5 does not apply.)</i>	* For Listed Items that are not uniquely identified a bond in respect of payment for such items is required for £ _____
4.18	Contractor’s Retention Bond <i>(Not applicable where the Employer is a Local or Public Authority and, in other cases, not applicable unless stated to apply, with relevant particulars given below)</i>	Clause 4.18 * applies does not apply If clause 4.18 applies, the maximum Aggregate sum for the purposes of Clause 2 of the bond is £ _____ For the purposes of clause 6.3 of the bond, the expiry date shall be _____ _____
4.19.1	Retention Percentage <i>(The percentage is 3 per cent unless a different rate is stated; if no retention is required, insert ‘Nil’ or ‘0’.)</i>	

5.7	Daywork	The Percentage Additions to each section of the prime cost or, if they apply in respect of labour, the All-Inclusive Rates, are set out in the following document Not applicable.
6.4.1	Contractor's Public Liability insurance: injury to persons or property – the required level of cover is not less than	[REDACTED] For any one occurrence or series of Occurrences arising out of one event
6.5.1	Insurance – liability of Employer (Not required unless it is stated that it may be required and the minimum amount of indemnity is stated)	Insurance * may be required/is not required Minimum amount of indemnity for any one occurrence or series of occurrences arising out of one event [REDACTED]
6.7 and Schedule 3	Works insurance – Insurance Option applicable	Schedule 3: * Insurance Option A applies/ * Insurance Option B applies/ * Insurance Option C applies/
	Percentage to cover professional fees (If no other percentage is stated, it shall be 15 per cent.)	[REDACTED]
	Where Insurance Option A applies and cover is to be provided under the Contractor's annual policy (paragraph A.2), the annual renewal date is (as supplied by the Contractor)	[REDACTED]
	Where Insurance Option C applies, paragraph C.1 (Unless otherwise state, paragraph C.1 applies. If it is not to apply, state the reference number and date or other identifier of the replacement document(s).)	* applies/ * is replaced by the provisions of the following document(s) _____ _____ _____ _____ _____ (the 'C.1 Replacement Schedule')
6.10 and Schedule 3	Terrorism Cover – details of the required cover (Unless otherwise stated, Pool Re Cover is required.)	are set out in the following document(s) Does not apply
6.15	Contractor's Designed Portion (CDP) Professional Indemnity insurance Level of cover	Amount of indemnity required * relates to claims or series of claims arising out of one event/

	<i>(If an alternative is not selected the amount shall be aggregate amount for any one period of insurance. A period of insurance for these purposes shall be one year unless otherwise stated.)</i> <i>(If no amount is stated, insurance under clause 6.15 shall not be required.)</i>	* is the aggregate amount for any one period of insurance with not less than two automatic reinstatements in any year during which the policy is current, unless the Contractor confirms to the Employer in writing that it is unable to obtain two automatic reinstatements
		and is
	Cover for pollution and contamination claims <i>(If no amount is stated, such cover shall not be required; unless otherwise stated, the required limit of indemnity is an annual aggregate amount.)</i>	* is required, with a sub-limit of indemnity of
		* is not required
	Expiry of required period of CDP Professional Indemnity insurance is <i>(If no period is selected, the expiry date shall be 6 years from the date of practical completion of the Works.)</i>	* 6 years/ * 12 years/ * _____ years — (not exceeding 12 years)
6.17	Joint Fire Code If the Joint Fire Code applies, state where the insurer under Insurance Option A, B or C (paragraph C.2) has specified that the Works are a 'Large Project':	The Joint Fire Code * applies/does not apply * Yes/No
6.20	Joint Fire Code – amendments/revisions <i>(The cost shall be borne by the contractor unless otherwise stated.)</i>	The cost, if any, of compliance with amendment(s) or revision(s) to the Joint Fire Code shall be borne by * the Employer/the Contractor
7.2	Assignment/grant by Employer of rights under clause 7.2 <i>(If neither entry is deleted, clause 7.2 applies.)</i> Sections: rights under clause 7.2 <i>(If clause 7.2 applies, amend the entry if rights under that clause are to apply to certain Sections only.)</i>	Clause 7.2 * applies/does not apply * Rights under clause 7.2 apply to each Section
7.3.1	Performance bond or guarantee from bank or other approved surety <i>(If this entry is not completed or the required form is not specified, a performance bond or guarantee is not required.)</i> The required form of the bond or guarantee is set out in	* is required/is not required Appendix 1 to these Schedule of Amendments

	Initial value	
	Period of validity – if not specified in the required form, the expiry date of the performance bond or guarantee is to be <i>(If no entry is selected, the date shall be the date of practical completion of the Works.)</i> Reduction in value – if not specified in the required form and if expiring later than the date of practical completion of the Works, the percentage reduction in the initial value on that date is <i>(If no other percentage is stated, it shall be 50 per cent.)</i>	* the date of practical completion of the Works/ * 2 weeks after the date of expiry of the Rectification Period for the Works/ * the date for issue of the Certificate of Making Good for the Works 
7.3.2	Guarantee from the Contractor's parent company Parent company's name and registration number The required form of guarantee is set out in	* is required/is not required Not applicable. Not applicable.
8.9.2	Period of suspension <i>(If none is stated, the period is 2 months.)</i>	2 months
8.11.1.1 8.11.1.5	to Period of suspension <i>(If none is stated, the period is 2 months.)</i>	2 months
9.2.1	Adjudication Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established) <i>(Where an Adjudicator is not named and a nominating body has not been selected, the nominating body shall be one of the bodies listed opposite selected by the Party requiring the reference to adjudication.)</i>	The Adjudicator is to be nominated by the Chairman of the TeCSA * Royal Institute of British Architects * The Royal Institution of Chartered Surveyors * constructionadjudicators.com * Association of Independent Construction Adjudicators * Chartered Institute of Arbitrators
9.4.1	Arbitration - appointor of Arbitrator (and of any replacement) <i>(If no appointor is selected, the appointor shall be the President or a Vice-President of the Royal Institute of British Architects.)</i>	President or a Vice-President * Royal Institute of British Architects * The Royal Institution of Chartered Surveyors * Chartered Institute of Arbitrators Not applicable.

Conditions

Section 1: Definitions and Interpretation

Definitions

1.1 Amend the existing definitions:

CDM Regulations: at the end of this definition after “2015”, add “together with any guidance requirements issued under these by the Health and Safety Executive from time to time”.

Conditions: after “Conditions”, add “(as amended by the Schedule of Amendments)”.

Consultants: delete definition.

Contractor’s Design Documents: before “drawings”, add “activity schedules, algorithms, bills of quantities, brochures, budgets, CAD materials, calculations, data, design details, designs, diagrams, graphs, minutes, models, notes of meetings, photographs, plans, programmes, reports, schedules, sketches, specifications, surveys.” After “documents and information”, add “or other similar materials” and, at the end of this definition, add “whether in hard copy, on computer disk, stored electronically on a computer or in a virtual “cloud”, in any other computer-generated format or magnetic or optical storage medium, and whether in existence or to come into existence”.

Employer: after “Agreement” add “and its successors and permitted assignees”.

Employer Rights: delete definition.

Funder: delete the definition and replace with “any party notified by the Employer to the Contractor as providing finance in connection with or secured (whether by charge, sale and leaseback or otherwise) upon the whole or any part of the Project and/or of the Works and/or of the site.”

Funder Rights: delete definition.

Interest Rate: delete [REDACTED]

P&T Rights: delete definition.

Purchaser: delete the definition and replace with “any party notified by the Employer to the Contractor who purchases or agreed to purchase the whole or any part of the Project and/or of the Works and/or of the site.”

Tenant: delete the definition and replace with “any party notified by the Employer to the Contractor who purchases or agrees to purchase a leasehold interest in the whole or any part of the Project and/or of the Works and/or of the site.”

1.2 Add new definitions:

“Beneficiary: means any Funder, Purchaser, Tenant and any other existing or future person with an interest in the whole or any part of the Project or the whole or any part of the Works and/or of the site.”

“Building Regulations: the Building Regulations 2010.”

“Contract: means the Articles, the Contract Particulars, the Conditions and the Schedules all as amended by the Schedule of Amendments.”

“Contractor’s Programme: the programme provided by the Contractor in accordance with clause 2.4A.1.”

“Deleterious: any material, equipment, substance, building practice or technique which is:

- 1 prohibited by this Contract;
- 2 not in accordance with:
 - (a) any relevant British Standard,
 - (b) any relevant code of practice,
 - (c) best up-to-date building practice
 - (d) any agrément certificate issued by the British Board of Agrément; or
 - (e) the guidance and comment contained in the British Council for Offices’ publication: “Good Practice in the Selection of Construction Materials 2011; or
- 3 generally known within the construction industry to:
 - (a) be deleterious;
 - (b) be harmful to the health or safety of any person;
 - (c) threaten the structural stability, physical integrity or performance of the Project or any part or component of the Project; or
 - (d) reduce the normal life-expectancy of the Project or any part or component of the Project.”

“Force Majeure: means an unpredictable occurrence attributable to the forces of nature which is not within a Party’s reasonable control and which is not confined in its effects wholly or principally to the Project including but not limited to epidemic or pandemic (excluding COVID-19).”

“Key Performance Indicators: means those key performance indicators as contained in Appendix 16 of the Contract Preliminaries within Folder 02 of the Employer’s Requirements.”

“Key Sub-Contractor” means any sub-consultant, sub-contractor or supplier with responsibility for the design of any part of the Works.”

“Other Contractor: any contractor appointed by the Employer to carry out the Other Works or any part of them including but not limited to utility companies.”

“Other Works: the works in connection with the Next Generation Infrastructure Project, including but not limited to Technology Platform 1, West One Glasshouse Extension, B18 Extension, and the NBI Data Centre and Energy Centre, to be carried out by Other Contractors in the surrounding areas to the Site.”

“Planning Permission means the full planning approvals granted by South Norfolk Council on 12 June 2025 with reference 2024/3652 and on 17 July 2025 with reference 2025/0103 or any non-material amendment, variation or replacement of such full planning approvals or

permissions.”

“Practical Completion: means when the Works or the relevant Section (as appropriate) are complete and free from apparent defects save for any minor issues with the Works or the relevant Section the existence, completion or rectification of which, in the opinion of the Architect/Contract Administrator, would not prevent or interfere with the use or enjoyment (or the fitting-out or equipping for use) of the Works or the relevant Section for the intended purpose as indicated in the Employer’s Requirements.”

“Project: means the design and construction of the below ground infrastructure works, upgraded internal southern access road and associated demolition and reinstatement known as ‘SWI – southern loop’.”

“Requisite Consents means building regulation approvals, by-law approvals, and any other permissions (including the Planning Permission), consents, licences and authorisations required from any competent authority, statutory undertaker or person either for the carrying out of the Works or for their intended use.”

“Required Standard means all the reasonable skill, care and diligence, and good up to date practice, to be expected of a fully qualified and competent professional designer experienced in designing, specifying and carrying out work for projects of a similar size, scope, nature, complexity and timescale to the Works”

“Schedule of Amendments: means the document entitled “Schedule of Amendments to the JCT Building Contract Without Quantities 2016” attached to this Contract.”

“Site: the site set out on drawings [REDACTED] Southern Loop Overall Plan in edged red as contained in Appendix 2 of the Contract Preliminaries within Folder 02 of the Employer’s Requirements and the “site” shall be construed accordingly.”

“Site Manager: means the person described in clause 3.2.1.”

“Tender Clarification Schedule: the document set out in Folder (iii) Tender Clarifications.”

“Third Party Agreements: means the documents detailed in Appendix 7,”

“VAT Order: means The Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019.”

Interpretation

Reference to clauses etc.

1.2 After each reference to “Schedule” add “or Appendix”.

Agreement etc. to be read as a whole

1.3 Add at the end of this clause after the full stop “In the event of an inconsistency, discrepancy or ambiguity in or between the Schedule of Amendments and any other Contract Document, the Schedule of Amendments shall take precedence”.

Headings, references to persons, legislation etc.

1.4.5 Delete “and” from the end of this clause.

1.4.6 Delete the full stop and replace with a semi colon.

Add new clauses 1.4.7 to 1.4.9 as follows:

“1.4.7 any words following the terms “including”, “include”, “in particular”, “for example” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;

1.4.8 all references to the words “practical completion” shall be construed as “Practical Completion”; and

1.4.9 all references to the words “force majeure” shall be construed as “Force Majeure”.”

Contracts (Rights of Third Parties) Act 1999

1.6 On line 2 after “Contract” add “, unless stated expressly,” and after “confer” add “on any third party any benefit or”. Add at end of this clause: “but without derogating from clause 7.1”.

Notices and other communications

1.7.2 In the first line change “clause” to “clauses” and before “1.7.4” add “1.7.3 and”.

1.7.3 Delete this clause and replace with:

“Subject to clause 1.7.4 any notice, communication or document given under this Contract shall be given properly if it is delivered by hand or sent electronically to the email address of the recipient or sent by pre-paid post to the recipient’s address stated in the Contract Particulars or to such other address as the recipient may from time to time notify the sender. Such notice, communication or document shall be deemed to have been received on the day of delivery if it is delivered by hand or by email and on the second Business Day after the day of posting if it is sent by pre-paid post.”

Effect of Final Statement

1.9.1.1 Delete this clause and replace with: “number not used”.

Effect of payments other than payment of Final Statement

1.10 Delete “Save as stated in clause 1.9, no” and replace with “No”.

Add a new heading “**Complete Contract**” and add a new clause 1.13:

“1.13 This Contract contains the complete and entire agreement between the Parties relating to the Project and supersedes all other oral and written communications relating to the Project. The Parties shall not be bound by, or be liable for, any inducement, promise, representation, statement or understanding not contained in this Contract.”

Add a new heading “**Severability**” and add a new clause 1.14:

“1.14 If any provision of this Contract is declared to be unenforceable, invalid or illegal

by the decision-maker in any dispute resolution process to which it is subject, that provision shall be severed from this Contract and its unenforceability, invalidity or illegality shall not prejudice or affect the enforceability, validity or legality of the remaining provisions of this Contract.”.

Add a new heading “**Counterparts**” and add a new clause 1.15:

- “1.15 This Contract may be executed in one or more counterparts. Any single counterpart or set of counterparts executed, in either case, by both Parties shall constitute a complete original of this Contract for all purposes.”

Add a new heading “**Costs and expenses**” and add a new clause 1.16:

- “1.16 Each Party shall be responsible for paying its own costs and expenses incurred in the preparation, negotiation, agreement, execution and completion of this Contract.”.

Add a new heading “**Liability Period**” and add new clauses 1.17.1 and 1.17.2

- “1.17.1 Subject to clause 1.17.2 below no action or proceedings shall be commenced by either party under or in connection with this Contract after the expiry of 12 years from the date of practical completion of the Works.

- 1.17.2 Either party may commence an action or proceedings against the other in connection with sections 1 or 2A of the Defective Premises Act 1972 or section 38 of the Building Act 1984 or to claim a contribution in accordance with the Civil Liability (Contribution) Act 1978 in relation to any liability under sections 1 or 2A of the Defective Premises Act 1972 or section 38 of the Building Act 1984, provided that any action or proceedings are brought on or before the expiry of the limitation period for bringing such action or proceedings in accordance with the Limitation Act 1980.”.

Add a new heading “**Execution as a deed**” and add a new clause 1.18:

- “1.18 This Contract is executed as a deed and it was delivered when it was dated.”.

Section 2: Carrying out the Works

Contractor’s Obligations

General obligations

Renumber clause 2.1 as 2.1.1

- 2.1.1 At the end of this Clause after “Requirements” add “and, using the Required Standard, shall advise the Employer of its duties and obligations under them.

Add new clauses 2.1.2 to 2.1.6:

- “2.1 .2 When requested by the Employer to do so, the Contractor shall provide such information as the Employer may reasonably require, in a mutually agreed format, to any other person with whom the Employer enters into an agreement and/or arrangement in connection with the Project.
- .3 The Contractor will not be entitled to any increase in payment in respect of any additional, changed or varied work or system or sequence of

construction to that included in the Employer's Requirements as a consequence, wholly or partly, of a preference of the Contractor (whether or not approved by the Employer), or as a result of any error, failure, omission or default in its execution of the Works.

- .4 The obligations and liabilities of the Contractor under this Contract shall not be diminished, excluded, limited, modified, qualified, reduced, released or in any other way affected by:
 - .1 any acknowledgment, admission, advice, approval, comment, confirmation, consent, direction, enquiry, guideline, indication of satisfaction, inspection or anything similar, given or made by or on behalf of the Employer, Architect/Contract Administrator, or any of their agents, or failure to give or make any of these but excluding any instruction from the Architect and/or the Contract Administrator in accordance with the terms of the Contract; or
 - .2 the Employer or Architect/Contract Administrator including the value of any work, materials or goods in any certificate or statement or any interim or final payment; or
 - .3 the issue of the Practical Completion Certificate or a Section Completion Certificate, or the Certificate of Making Good.
- .5 The failure or delay of the Employer to exercise or enforce any right under this Contract shall not operate as a waiver of that right or preclude the exercise or enforcement of it at any time or times or constitute an election to affirm this Contract.
- .6 The Contractor shall comply with the Key Performance Indicators as set out in the Employer's Requirements."

Contractor's Design Portion

- 2.2.2 Delete "and" from the end of the sub-clause.
- 2.2.3 Delete the full stop at the end of the sub-clause and replace with a semi-colon.
- Add new sub-clauses 2.2.4 to 2.2.5:
- "2.2.4 act in accord with the design development protocol set out in the Employer's Requirements; and
- 2.2.5 ensure the proper integration, co-ordination (where applicable) and compatibility of the various components and elements that comprise the Contractor's Designed Portion, one with another and with the remainder of the Works."

Materials, goods and workmanship

- 2.3.1 Add after the second sentence: "Subject to the foregoing, all materials and goods shall be either new or recycled, appropriate for their use and of satisfactory quality."

On the last line delete "consent" and replace with "specific written consent obtained by the Contractor in accordance with the Design Submission

Procedure.”

At the end of this clause after the word “obligations” add “and, subject to clause 5, such substitution shall not give rise to any addition to the Contract Sum”.

Add a new clause 2.3.6:

“2.3 .6 The Contractor shall not use or permit to be used in the Works anything which is Deleterious”

Add new clause 2.3A:

“2.3A .1 The Contractor shall carry out and complete the Works:

- .1 in accordance with the Third Party Agreements, the Planning Permission and the Requisite Consents;
- .2 in accordance with all relevant British Standards, codes of practice and good building practice; and
- .3 so that when completed, the Contractor’s Designed Portion complies with any performance specification or requirement included in the Employer’s Requirements or reasonably to be inferred from them.”

Possession

Date of Possession – progress

2.4 Delete “On” and replace with “Subject to clause 2.4A on”.

Add a new clause 2.4A:

“2.4A Within a reasonable time prior to the Date of Possession the Contractor shall provide the Employer with a programme for the execution of the Works in such format as the Employer requires.

Early use by Employer

2.6.1 In the first line, delete “with the Contractor’s consent” and replace with “but not so as to deliberately hinder or delay the progress of the Works”. In the second sentence, delete “Before the Contractor gives his consent to such use or occupation”.

Work not forming part of the Contract

2.7 Add the words “Notwithstanding clauses 2.7A.2” before “In regard to any work”.

Add new clause 2.7A:

“2.7A.1 The parties acknowledge that the Employer has appointed Other Contractors to carry out the Other Works on the Site. The Employer shall use all reasonable endeavours to ensure that any Other Contractor collaborates, co-operates and co-ordinates with the Contractor.

- 2.7A.2 The Contractor acknowledges that during the course of the Works it shall be required to co-operate with any Other Contractor and the Contractor shall be required to share access to and from the Site with any Other Contractor. The Contractor acknowledges that any Other Contractor and its sub-contractors (collectively, "the other contractor's team") shall be working in close proximity to the Site at the same time as the Contractor. The Contractor shall collaborate, co-operate and, when necessary, co-ordinate its activities on the Site with the other contractor's team so as to allow each to proceed with its obligations without unnecessary interference, delay or disruption to the other(s) and shall use all reasonable endeavours to not hinder or prevent the other contractors from the performance of their duties under or in connection with the relevant contract. The Contractor shall not be entitled to claim against the Employer for any delay, disruption or additional cost that arises from the failure of the Contractor to collaborate, co-operate and co-ordinate its activities as set out in this clause and the Contractor shall not be entitled to an adjustment of the Contract Sum and/or an extension to the Completion Date."

Supply of Documents, Setting Out etc.

Contract Documents

- 2.8.4 In line 1 delete "None" and replace with "Subject to clause 10.1 to 10.4, none".

Construction information and Contractor's master programme

- 2.9.1.2 After "Contract Particulars," add "setting out such information as the Architect/Contract Administrator may reasonably require. The Contractor's Programme must contain as a minimum:
- .1 the activities in all work packages including work by Statutory Undertakers, and contractors and suppliers directly employed by the Employer and others;
 - .2 the earliest and latest start and finish dates for each activity in each work package including dates when the Contractor plans to complete work to allow the Employer and others to do their work;
 - .3 access dates for each phase or Section of the Works;
 - .4 dates for connection, disconnection and making live of utilities and services;
 - .5 critical path analysis;
 - .6 milestone and key dates;
 - .7 holiday periods (including public bank holidays and Christmas and New Years);
 - .8 dates by which the design work or drawings to be produced by the Contractor or its sub-contractors or suppliers will be submitted to the Employer for acceptance and dates by which acceptance of such design work or drawings will be required by the Contractor, allowing a reasonable time for submission and review, and for the process to be repeated, if necessary, in accordance with the Design Submission

Procedure;

- .9 dates by which samples to be produced by the Contractor will be submitted for approval by the Employer, and dates by which approval of such samples will be required by the Contractor, allowing a reasonable time for submission and review, and for the process to be repeated if necessary;
- .10 procurement periods and delivery dates for the major items of goods, plant and materials;
- .11 dates for which the Works and/or any Section or phase of the Works will be ready for inspection and/or testing by the Employer and/or Architect/Contract Administrator;
- .12 details and dates of any information required from the Employer for the work contained in Provisional Sums (if any);
- .13 any commissioning periods;
- .14 provisions for float, time-risk allowances, quality-control procedures, health and safety requirements (and any other requirements that may be set out by the Contractor);
- .15 a sub-contract package procurement and sub-contract package completion programme; and
- .16 Contractor's Designed Portion design procurement and Contractor's Designed Portion design completion programme."

Delete clause 2.9.4 and replace with:

- "4 In relation to any CDP Works, the Contractor, in addition to complying with clause 2.2 without charge to the Employer, shall submit to the Architect/Contract Administrator upon request, a copy in such format as the Architect/Contract Administrator requires, the Contractor's Design Documents and all other drawings, details, calculations, documents and any other information (including all levels and setting out dimensions which the Contractor prepares or uses for the purposes of carrying out and completing the Contractor's Designed Portion) which is:
 - .1 reasonably necessary from time to time to explain and amplify the Employer's Requirements or the Contractor's Proposals;
 - .2 reasonably necessary to explain, amplify, show or describe the Works or to enable the Contractor to carry out and complete the Works (including the design of the Contractor's Design Portion) or to comply with any instruction issued by the Employer; and/or
 - .3 stated in the Employer's Requirements and/or the Contractor's Proposals to be provided by the Contractor

in a form that enables judgement of either part of or a complete system or element that is part of the Works. No comments made nor the fact

that no comments are made by the Employer or the Architect/Contract Administrator shall be construed as acceptance or approval nor shall the Employer or the Architect/Contract Administrator be responsible for any work done on the basis of them and the Contractor shall remain fully responsible for the adequacy of the design of the Contractor's Design Portion."

Add a new clause 2.9.6:

".6 In addition, the Contractor shall supply the information stated in clause 2.9.4 on the dates shown on the Contractor's Programme."

Add a new clause 2.9A:

"2.9A.1 Whenever the Employer reasonably requests, the Contractor shall update the Contractor's Programme and provide it to the Employer as soon as possible."

Levels and setting out of the Works

2.10 In line 2 delete "2.9.4.2" and replace with "2.9.4"

Add a new heading "**Site Conditions**" and a new clause 2.10A

"2.10A The Contractor shall comply with any restrictions on working hours, vibration levels, acceptable noise levels and other constraints on working space, permitted periods of working or working conditions in relation to the carrying out of the Works, access to and from the site, site management and the conduct of operations on site, that are set out in or reasonably capable of being inferred from the Employer's Requirements. The Employer and the Contractor, acting reasonably, shall agree any such matters which are not set out in, or reasonably capable of being inferred from, the Employer's Requirements and the Contractor shall comply with them."

Discrepancies and Divergences

Preparation of Employer's Requirements

2.13 Delete this clause and replace with: "The Employer accepts responsibility for the contents of the Employer's Requirements including any design contained in the Employer's Requirements and for any error, inaccuracy, omission, ambiguity or discrepancy within the Employer's Requirements. The Contractor undertakes and warrants that the Contractor's Proposals and the Contractor's Designed Portion meet the Employer's Requirements."

Delete the heading "**CDP-related documents - errors and inadequacy**" and replace with "**Employer's Requirements and CDP-related documents – errors and inadequacy**"

2.14.1-2 Delete clauses 2.14.1 and 2.14.2 and replace with:

"2.14.1 If either Party becomes aware of any error, omission or inadequacy in or between any of the Employer's Requirements, the Contractor's Proposals and other Contractor's Design Documents or any discrepancy or divergence between any of those and any other Contract Documents it shall give the other Party written notice of such error, omission, inadequacy, discrepancy or

divergence. The Contractor shall notify the Employer in writing of its proposed amendment to deal with such error, omission, inadequacy, discrepancy or divergence and, subject to compliance with the Statutory Requirements, the Employer shall either accept the proposed amendment or decide how the error, omission, inadequacy, discrepancy or divergence is to be dealt with. The Contractor shall comply with the acceptance or decision by the Employer. In respect of any error, omission, inadequacy, discrepancy or divergence within the Contractor's Proposals and/or the Contractor's Design Documents, and without affecting in any way the responsibility of the Contractor under this Contract, there shall be no addition to the Contract Sum or extension of time under this Contract.

- 2.14.2 The Employer and the Contractor agree that in the event of a discrepancy and / or conflict in or between the Employer's Requirements, the Contractor's Designed Portion and the Tender Clarification Schedule, the Tender Clarification Schedule shall take precedence."

Notice of discrepancies etc.

- 2.15 Delete "such error, omission or inadequacy as is referred to in clause 2.14 or any other". Add "and" at the end of clause 2.15.3. Delete "; and" from clause 2.15.4 and replace with a semi colon. Delete clause 2.15.5.

Delete the heading **Discrepancies in CDP-related documents**

- 2.16.1 Delete this clause.

- 2.16.2 Delete this clause.

Divergences from Statutory Requirements

- 2.17.2.1 Delete "any document referred to in clause 2.15.5" and add "the Contractor's Proposals and other Contractor's Design Documents". In line 4 after "change in Statutory Requirements" add "that was not foreseen by the Contractor before or at the Base Date and could not reasonably have been foreseen by a competent contractor using the Required Standard before or at the Base Date."

CDP Design Work

Design Work – liabilities and limitation

- 2.19 Delete and replace with:

- "2.19.1 The Contractor undertakes and warrants to the Employer that:

- .1 the design and specification of the Contractor's Design Portion and each and every part of the Contractor's Design Portion, whether or not prepared by or on behalf of the Contractor, and whether contained in the Contractor's Proposals or in what the Contractor is to complete under this Section 2 (including any further design or specification which the Contractor is to carry out as a result of a Variation in the Employer's Requirements), has been and will be prepared using the Required Standard; and
- .2 the Contractor's Designed Portion complies or will when completed

comply with the Statutory Requirements.

- 2.19.2 The Employer shall be deemed to have relied exclusively upon the obligations of the Contractor in clause 2.19.1
- 2.19.3 The undertakings and warranties in clause 2.19.1 shall be without prejudice to any warranties implied by common law or statute.
- 2.19.4 Where or to the extent that this Contract does not involve the Contractor in taking on work for or in connection with the provision of a dwelling or dwellings to which the Defective Premises Act 1972 applies, the Contractor's liability for loss of use, loss of profit or other consequential loss arising in respect of the liability to the Contractor referred to in clause 2.19.1 shall be limited to the amount, if any, stated in the Contract Particulars; but such limitation shall not apply to or be affected by any liability for liquidated damages under clause 2.32."

Adjustment of Completion Date

Fixing Completion Date

- 2.28.6.3 Delete "and" at the end.
- 2.28.6.4 Delete the full stop and replace with "; and".
- 2.28.6.5 Add a new clause 2.28.6.5:

"(save where the Relevant Event is as defined in clause 2.29.9 and provided, in that case, that the Contractor has complied fully with any obligation upon the Contractor to maintain insurance against Specified Perils under this Contract) the Contractor shall not be entitled to any extension of time under this Contract on account of any circumstance arising by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons."

Relevant Events

- 2.29 After "clauses 2.27 and 2.28" in line 1 add:

“, but only in so far as such events are not in any way necessitated by, or consequences of, any other delay caused by any breach of contract, breach of statutory duty, act, omission or default of the Contractor or any of the Contractor's Persons”.
- 2.29.2.2 Add at the end of this clause:

“or unless the Employer had reasonable grounds, based on a previous opening up for inspection or testing having revealed that work, materials or goods of a similar nature were not in accordance with this Contract, for suspecting that such work, materials or goods were not in accordance with this Contract and the Contractor has not provided comprehensive evidence to the satisfaction of the Employer to the contrary”.
- 2.29.7 Add at the end of this clause before the semicolon:

"provided that the Contractor has given reasonable notice to the Statutory Undertaker of the dates on which the work the Statutory Undertaker is to undertake is required to commence and be completed and has used all

reasonable endeavours to secure the agreement of the Statutory Undertaker to such dates"

2.29.8 After "conditions" add "the occurrence of which is on average less frequent than once in ten years according to the weather records for the nearest position to the site recorded by the Met Office"

2.29.9 After "loss or damage" add "to the Works". After "Specified Perils" insert "at the site".

2.29.11 Add at the end of this clause before the semicolon:
"provided that such strike, lockout or local combination of workmen is of a national or regional nature, does not affect the site of the Works alone and is not restricted to the employees of the Contractor or any sub-contractor".

Practical Completion, Lateness and Liquidated Damages

Practical completion

2.30.1 Delete "sufficiently" from line 2.

Add a new clause 2.30B:

"2.30B Unless the Employer otherwise agrees in writing and notwithstanding anything to the contrary in this Contract no part of the Works or any Section shall be deemed to have reached practical completion until the final copies of all of the following items have been procured for and provided to the Employer:

- .1 as-built drawings in respect of the Contractor's Design Portion;
- .2 maintenance manuals;
- .3 information required for the Health and Safety File under the CDM Regulations;
- .4 manufacturers' guarantees (where applicable);
- .5 the performance bond under clause 7.3;
- .6 the collateral warranties required and/or referred to in clauses 7.4, 7.6 and 7.7;
- .7 the testing, commissioning or adjustment of any mechanical or electrical services has been properly completed to the reasonable satisfaction of the Architect/Contract Administrator;
- .8 any signed statement from the Contractor as Principal Contractor required for any notice or application under the Building Regulations;
- .9 any other information, including any updated or modified versions required to enable the Employer to comply with its obligations under the Statutory Requirements; and
- .10 any other information as set out in the Employer's Requirements."

Partial Possession by Employer

Defects etc. – Relevant Part

- 2.35 At the end of this clause after “effect” add “, provided that the Employer shall not be required to issue that certificate earlier than the expiry of the Rectification Period for the Relevant Part.”

Defects

Schedule of defects and instructions

- 2.38.2 Delete “prior to issue of that schedule” in line 1. Insert the words “, and in any event within the timescales and in accordance with the process set out in the Employer’s Requirements,” after “necessary” in line 1. In line 3, delete “after delivery of that schedule or”.

- 2.38 Delete the last four lines from “Within a reasonable time” to “not made good.” and add new clause 2.38A:

Add new clause 2.38A:

- “2.38A.1 In cases of urgency and emergency, the Employer may require any matter to be notified under clause 2.38 to be made good within such period of time specified by the Employer as the circumstances require and in any event within the timescales and processes set out in the Employer’s Requirements.

- 2.38A.2 Any such attendance, investigation, making safe or making good shall be at no cost to the Employer. If the Contractor fails to comply with this clause the Employer may attend, investigate, make safe and make good (or procure the attendance, investigation, making safe and making good of) such defects, shrinkages or other faults and any sums reasonably incurred by the Employer may be deducted from the Contract Sum or recovered from the Contractor as a debt.”

Certificate of Completion of Making Good

- 2.39 At the end of this clause, after “certificate” add “, provided that the Employer shall not be required to issue any Certificate of Completion of Making Good earlier than the expiry of the Rectification Period”

Contractor’s’ Design Documents

Add “**and Operation and Maintenance Manuals**” after “**As-built Drawings**”.

- 2.40 In the sixth line after “as built” add “at practical completion of the Works or relevant Section”. At the end of this clause after “installations”, add “to enable the Employer to occupy safely and use efficiently and fully all the parts of the Works or relevant Section”.

Copyright and use

- 2.41 Delete and replace with:

- “2.41
- .1 The copyright in the Contractor’s Design Documents shall remain vested in the Contractor.
 - .2 The Contractor grants to the Employer an irrevocable, non-terminable royalty-free and non-exclusive licence, such licence to remain in full force and effect notwithstanding practical completion of the Works or the termination of the Contractor’s employment under this Contract, to copy and use the Contractor’s Design Documents and to reproduce the designs and contents of them:
 - .1 for any purpose relating to the Project and/or the Employer’s interest in any of them including the advertisement, alteration, building information modelling, completion, construction, demolition, design, development, disposal, fitting-out, funding, letting, maintenance, modification, promotion, reconstruction, refurbishment, reinstatement, repair, sale and use; and
 - .2 in connection with the extension of the Project, the Works and/or the site and/or the Employer’s interest in any of them, but not to reproduce the designs in the Contractor’s Design Documents in any such extension.
 - .3 The Employer may grant sub-licences under the Employer’s licence and both the Employer’s licence and any sub-licences shall be transferable to others.
 - .4 The Contractor unconditionally and irrevocably waives, in respect of the Contractor’s Design Documents and the Project, all moral rights to which the Contractor may now or in the future be entitled under the Copyright, Designs and Patents Act 1988. This waiver is made in favour of the Employer and shall extend to the Employer’s sub-licensees, assignees and successors in title.
 - .5 The Employer may, at any time (whether before or after practical completion of the Works or termination of the Contractor’s employment under this Contract), request a paper and/or electronic copy or copies of any or all of the Contractor’s Design Documents from the Contractor. On the Employer’s payment of the Contractor’s reasonable charges for providing the copy or copies, the Contractor shall provide the copy or copies to the Employer together with any password code or other data required to access, decrypt or reproduce any electronic copy or copies.
 - .6 The Contractor shall not be liable for any use of the Contractor’s Design Documents for any purpose other than the purpose they were prepared and/or provided .”

Section 3: Control of the Works

Access for Architect/Contract Administrator

- 3.1 Re-number this clause as 3.1.1.
- Add new clauses 3.1.2 and 3.1.3:

- “3.1 .2 The Architect/Contract Administrator and any person authorised by him shall have access to attend all regular site meetings.
- .3 The Contractor without charge shall provide all necessary facilities and equipment for the inspection of the Works or any part of them by the Employer and Architect/Contract Administrator, and by any other persons authorised by them, at all times prior to practical completion of the Works or Section, and also for the inspection by such persons of all remedial works carried out under clause 2.38.”

Site Manager

- 3.2 Re-number this clause as 3.2.1.

Add a new clause 3.2.2:

- “3.2 .2 As and when reasonably requested and upon reasonable notice by the Employer and/or the Architect/Contract Administrator, the Site Manager and other Contractor’s Persons shall attend meetings convened by the Employer or the Architect/Contract Administrator in connection with the Works. In addition to preparing and revising the Contractor’s Programme and recording progress as referred to in clause 2.4A, the Contractor shall ensure that the Site Manager maintains an up-to-date daily diary to record sub-contractor and supplier progress, site visits, inspections, testing of goods, materials and workmanship, non-compliance notices and schedules, deliveries of goods and materials, details of all matters which affect the regular progress of the Works and their effect on them and anything else relevant, and to make this diary available for inspection by the Architect/Contract Administrator upon request from time to time.”

Sub-contracting

Consent to sub-contracting

- 3.7.1 Delete from the final sentence the word “such” in line one and the word “other” in line two. Add at the end of the final sentence “The Contractor shall provide to the Architect/Contract Administrator the details of any sub-contractor, to whom the Contractor wants to sub-contract the whole or any part of the design and/or the Works, that the Employer (acting reasonably) requires”.

Add new clauses 3.7.3, 3.7.4 and 3.7.5:

- “3.7 .3 Where the Architect/Contract Administrator has consented to the sub-contracting of the design of all or any part of the Contractor’s Design Portion, the Contractor shall not terminate the employment of or substitute any person retained in respect of such sub-contracting without the prior written consent of the Employer.
- .4 The Contractor shall be fully responsible for the acts and omissions of its sub-contractors as if they were its own acts and omissions.
- .5 The Contractor shall not appoint a sub-contractor if compulsory grounds for excluding the sub-contractor under Regulation 57 of the

Public Contracts Regulations 2015 apply to it.”

Conditions of sub-contracting

- 3.9 Delete “Where considered appropriate, the” and replace with “The”. After “JCT Standard Building Sub-Contract” add “or such other form of contract as agreed with the Employer in advance, to be executed as a deed”.
- 3.9.2.5 Delete and replace with: “number not used.”
- Insert new clause 3.9A
- ”3.9A The Contractor shall appoint all Key Sub-Contractors under sub-contracts executed as deeds and on terms under which, pursuant to the Contracts (Rights of Third Parties) Act 1999, on issue to the Contractor of a notice confirming the identity and interest of any Beneficiary, such Beneficiary shall be entitled to enforce for its benefit any of the provisions set out in Appendix 6. Upon the appointment of any Key Sub-Contractor, the Contractor shall deliver to the Employer a certified copy of the sub-contract with key financial details redacted.”

Architect/Contract Administrator’s Instructions

Compliance with instructions

- 3.10.1 Delete this clause and replace with “number not used”.

Instructions requiring Variations

- 3.14.2 Delete this clause and replace with “number not used.”

Work not in accordance with the Contract

- 3.18.1 After the word “site” add “and/or rectification”.
- 3.18.4 On lines five and six after “Contract Sum”, delete the remainder of the sentence and replace with “, whether under clause 4.20 or otherwise, and the Contractor shall not be entitled to any extension of time under this Contract”.

After CDM Regulations add “and Building Regulations”

- 3.23.4 Replace the full stop at the end of the sentence with a semi colon.
- Add new clauses 3.23.5 – 3.23.6:
- “3.23.5 the Contractor warrants that it is competent, shall allocate sufficient resources to, and shall comply with, its obligations under the CDM Regulations and the Building Regulations including in its role as Principal Contractor, contractor and designer under the CDM Regulations and Building Regulations;
- 3.23.6 Where the Employer appoints the Contractor as Principal Contractor under the CDM Regulations, the Employer appoints the Contractor to carry out and the Contractor shall carry out the same roles under the Building Regulations. The Contractor’s obligations and warranties referring to those roles apply, all other things being equal, to those roles under the Building Regulations as well as

under the CDM Regulations.”

Section 4: Payment

Contract Sum and Adjustments

Adjustment only under the Conditions

4.2 Renumber clause 4.2 as clause 4.2.1 and after this clause add:

“4.2.2 The Contractor is deemed to have made (and shall be regarded as having included in the Contractor’s Proposals) full allowance in the Contractor’s Proposals and Contract Sum Analysis for all matters in connection with the execution and completion of the Contractor’s Designed Portion (including all works which ought reasonably to have been implied therefrom by an experienced and competent contractor having carried out appropriate investigations). No such matters or works in the Employer’s Requirements shall give rise to a Variation or to any entitlement to an extension of time under this Contract or any addition to the Contract Sum.”

Items included in adjustments

4.3.3 Delete this clause and replace with “Number not used”

Taxes

VAT

4.5.1 Delete and replace with:

“The Contract Sum is exclusive of VAT and, in relation to each payment to the Contractor for any supply made under this Contract:

- .1 the Contractor shall within two Business Days following the issue by the Architect/Contract Administrator of a Payment Notice issue to the Employer an appropriate VAT invoice in respect of such supply, indicating whether or not the reverse charge applies to the supply; and
- .2 subject to the Contractor complying with clause 4.5.1.1 and unless the reverse charge applies, the Employer shall in addition pay to the Contractor the amount of any VAT properly chargeable in respect of such supply.”

Add a new clause 4.5.3:

“4.5.3 “Pursuant to paragraph (1A) of Article 8 of the VAT Order, the Employer hereby confirms to the Contractor that the requirements specified in paragraph (1)(b) of Article 8 of the Order are satisfied in respect of any supply of “specified services” by the Contractor to the Employer under this Contract. Accordingly, any such supplies will be “excepted supplies” due to the Employer being an “end user” for the purposes of the Order. The Employer confirms that it will not account for the reverse charge.”

Payments, Certificates and Notices – general provisions

Interim Certificates and valuations

- 4.9.1.1 In line 1 after “have been due” add “(which sum may be zero or a negative amount)”.

Contractor’s Payment Applications and Payment Notices

- 4.10.1 At the end of this clause after “calculated” add “and shall be accompanied by a detailed priced statement of work executed and materials on the site prepared at the date of the Payment Application. The statement shall be annotated in order to refer to, and be subdivided into the same elements and work sections as in, the Contract Sum Analysis. Each Payment Application shall be accompanied by such further information as may be specified in the Employer’s Requirements or which may be required by the terms or conditions of this Contract. The Contractor shall provide such assistance as the Quantity Surveyor or Architect/Contract Administrator (acting reasonably) may require to enable it to evaluate the Payment Application.”

Interim and final payments – final date and amount

- 4.11.1 Delete “14 days” and replace with “21 days”.
- 4.11.2 In line 2 after “stated as due” add “(provided the sum due is not zero or a negative amount)”.
- 4.11.5 At the end of this clause, after “the amount stated in it as due” add “(which sum may be zero or a negative amount)”.

Add a new clause 4.11.8:

- “4.11.8 Notwithstanding clauses 4.9, 4.11.5 and 4.15 and without prejudice to section 8 of this Contract, if the Contractor becomes Insolvent five (5) days or less before the final date for payment, the Employer shall not be required to pay the Contractor the sum, or any part of the sum, due to the Contractor under this clause 4.11.”

Pay Less Notices and other general provisions

- 4.12.1 After “the sum he considers to be due” in the first line add “(which sum may be zero or a negative amount)”.
- 4.12.3 Delete “The Employer’s fiduciary interest in the Retention referred to in clause 4.17 shall not prevent him exercising” and replace with “The Employer is entitled to exercise”.

Contractor’s right of suspension

- 4.13.1 In line five, after “performance of”, add “any or all of” and, in line five, after “suspension,”, add “subject to the Corporate Insolvency and Governance Act 2020,”.
- 4.13.3 In line 2, delete “or on request” and, at the end of this clause, add “The Contractor shall, on request, submit such further details as are reasonably requested by the Quantity Surveyor or Architect/Contract Administrator.”

Interim Payments – calculation of sums due

Gross Valuation

- 4.14.1 In lines 1 and 2 of the last paragraph of clause 4.14.1 delete the words “any applicable Fluctuations Provision or”.
- 4.14.2.3 Add the word “and” at the end of this sub-clause.
- 4.14.2.4 Delete the word “and” at the end of this sub-clause and replace the semi-colon with a full stop.
- 4.14.2.5 Delete this sub-clause.
- 4.14.3.2 Delete the words “or under any applicable Fluctuations Provision, other than by means of an adjustment made under clause 4.14.1”.

Retention

Rules on treatment of Retention

- 4.17.1 Delete this clause and replace with “the Employer shall be under no duty or obligation with regard to the Retention and shall be under no obligation to set aside in a separate account any amount representing the Retention;”.
- 4.17.3 Delete this clause and replace with “the Employer shall be entitled to the full beneficial interest in the Retention (and interest thereon and income arising therefrom) unless and until the Retention is paid to the Contractor pursuant to this Contract.”

Loss and Expense

Matters materially affecting regular progress

- 4.20.1 Delete “clause 4.20.2” in line 4 and replace with “clauses 4.20.2 and 4.20.3”

Add a new clause 4.20.3:
- “4.20.3 Without affecting clause 4.20.2, no such entitlement arises to the extent that:
 - .1 any such loss and/or expense arises by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons (other than any amount that is recoverable by the Employer under a policy of insurance maintained in accordance with Insurance Option B or Insurance Option C, if applicable);
 - .2 any such loss and/or expense results from any delay in the regular progress of the Works where such delay is caused by a Relevant Matter which is concurrent with another delay caused by any negligence, omission, default, breach of contract or breach of statutory duty of the Contractor or Contractor's Persons; and/or
 - .3 the Contractor has not made proper and reasonable efforts to avoid and/or reduce such loss and/or expense.”

Notification and ascertainment

- 4.21.1 After “apparent to him” add “and in any event no later than 12 weeks after the date on which it became apparent or the date on which it should have become apparent to a competent contractor acting reasonably”.
- 4.21.4 In line one, delete “14 days” and replace with “28 days”.
- Delete heading “**Reservation of Contractor’s rights and remedies**” and replace with “**Full compensation**”
- 4.24 Delete and replace with:
 “Reimbursement of the Contractor for loss and/or expense under clauses 4.20 to 4.23 shall be deemed to be full compensation for the Contractor in respect of the matters for which the loss and/or expense is paid and the Employer shall have no further liability to the Contractor in respect of such matters arising under the Contract or generally at law.”

Final Adjustment and Final Payment

Final Certificate and final payment

Add a new clause 4.26.4:

- “4.26.4 Notwithstanding clauses 4.10, 4.11.5, 4.26.1, 4.26.2 and 4.26.3, and without prejudice to clause 8 of this Contract, if the Contractor becomes Insolvent five (5) days or less before the final date for payment, the Employer shall not be required to pay the Contractor the sum, or any part of the sum, due to it under this clause 4.26.”

Add a new heading “**Set-off**” and add a new clause 4.27:

- “4.27 The Employer may set off any bonafide liability of the Contractor to the Employer against any liability of the Employer to the Contractor, whether either liability exists or comes into existence (and such existence is reasonably foreseeable by a competent contractor using the Required Standard before or at the Base Date), is liquidated or unliquidated or arises under this Contract. If the Employer exercises its right under this clause 4.27, this shall not remove, limit or affect any other rights or remedies which the Employer may have either under or in connection with this Contract or any other agreement or in any other way.”

Section 5: Variations

Additional provisions

Add a new clause 5.10.3:

- “5.10.3 The Contractor shall not be entitled to any addition to the Contract Sum or extension of time under this Contract, in so far as any Variation is attributable to any act, omission, default, breach of contract, negligence or breach of statutory duty by the Contractor or any of the Contractor’s Persons.”

Section 6: Injury, Damage and Insurance

Personal Injury and Property Damage

Contractor's liability – personal injury or death

- 6.1 After "caused by the carrying out of the Works" add "or of any other obligation pursuant to Section 2 or Section 3 of the Conditions".

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

- 6.2 Delete from and including "and to the extent" in line four up to the end of this clause, and add ", except to the extent that such loss, injury or damage is caused or contributed to by any act, omission, default, breach of contract or breach of statutory duty of the Employer or of any of the Employer's Persons."

Insurance of the Works and Existing Structures

Related definitions

- 6.8 In the definition of "Joint Names Policy" after "Contractor" add ", Funder and any other one or more third parties specified in writing by the Employer to the Contractor".

CDP Professional Indemnity Insurance

Obligation to insure

Delete the existing clause 6.15 and replace with:

- "6.15 .1 Provided that it is available at reasonable premium rates and on reasonable commercial terms, the Contractor shall take out and maintain with a well-established insurance company or underwriter of good repute based in the United Kingdom professional indemnity insurance that covers all of the Works from the date of this Contract until the date that is 12 years after the date of practical completion of the Works (or if sooner until the twelfth anniversary of the termination of the employment of the Contractor under this Contract) with limits of indemnity of the types and in amounts not less than those stated in the Contract Particulars and on terms that do not require the Contractor to discharge any liability before being entitled to recover from the insurers and that would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights against Insurers) Act 2010.
- .2 Any increased or additional premium required by insurers because of the Contractor's claims record or other acts, omissions, matters or things particular to the Contractor shall be deemed to be within reasonable premium rates.
- .3 Whenever the Employer reasonably requests, the Contractor shall send the Employer evidence that the insurance is being maintained in accordance with this Contract."

Increased cost and non-availability

6.16 Delete this clause and replace with “number not used”.

Section 7: Delete heading and replace with “Assignment, Performance Bond, Collateral Warranties and Third Party Rights”.

Assignment

General

7.1 Delete this clause and replace with:

“7.1 .The Contractor shall not assign or charge this Contract or any interest in or part or share of this Contract, or any right arising under it, without the Employer’s prior written consent”

7.2 Rights of enforcement

Delete this clause and replace with:

“7.2 .1 The Employer may assign the benefit of this Contract:

- .1 on two occasions to any person; and
- .2 without counting as an assignment under clause 7.2.1.1:
 - .1 by way of security to a person who is to provide funding for the Project, the Works and/or the site (including any reassignment on redemption of security); or
 - .2 to and from subsidiary or other associated companies within the same group of companies as the Employer; and
 - .3 on further occasions with the consent of the Contractor which shall not be unreasonably withheld or delayed.
- .2 The Employer shall notify the Contractor of any assignment.
- .3 The Contractor shall not contend that any person to whom the benefit of this Contract is assigned under clause 7.2 may not recover any sum under this Contract because that person is an assignee and not a named party to this Contract.”

Performance Bond and Guarantee

7.3 Delete this clause and replace with:

“7.3 If required by the Employer, on the date the Contractor executes this Contract, it shall deliver to the Employer a performance bond in the form in Appendix 1 executed as a deed by a bank or surety of good repute and approved by the Employer.”

“7.3A If the Contractor fails to comply with clause 7.3, the Employer will be entitled to reduce by 25% the amount due to the Contractor in Interim Payments for Sections 1 to 7 (inclusive) until the Contractor has complied with this clause

7.3.”

Delete the remainder of Section 7 from the heading “**Clauses 7.7 to 7.11 – Preliminary**” to the end of clause 7.11 and replace with new clauses 7.4 to 7.10:

Collateral Warranties from the Contractor

- 7.4 From time to time whether on, before or after the completion of the Works, the Contractor shall execute as deeds and deliver to the Employer, within 14 days of a request from the Employer, warranties in favour of any Beneficiary in the form set out in Appendix 2 with any amendments that the Employer (acting reasonably) may require in favour of those parties.

Third Party Rights from the Contractor

- 7.5 The Contractor agrees that pursuant to the Contracts (Rights of Third Parties) Act 1999, on issue to the Contractor of a notice confirming the identity and interest of any Beneficiary and the Beneficiary’s address and email address, such Beneficiary shall be entitled to enforce for its benefit any of the provisions set out in Appendix 3.

Key Sub-Contractors’ Warranties – Employer

- 7.6 From time to time whether on, before or after the completion of the Works, the Contractor shall procure that any Key Sub-Contractor shall execute as a deed and deliver to the Employer, within 14 days of its appointment, a warranty in favour of the Employer in the form in Appendix 4, with any amendments that the Employer (acting reasonably) may require in favour of the Employer, and with any amendments that the Key Sub-Contractor may require provided that, in the Employer’s opinion, the effect of any such amendments, when considered separately or together, is not to remove, limit or affect adversely the benefit of any warranty to the Employer.

Key Sub-Contractors’ Warranties – Beneficiary

- 7.7 From time to time whether on, before or after the completion of the Works, the Contractor shall procure that any Key Sub-Contractor shall execute as deeds and deliver to the Employer, within 14 days of a request from the Employer, warranties in favour of any Beneficiary in the form in Appendix 5, with any amendments that the Employer (acting reasonably) may require in favour of those parties, and with any amendments that the Key Sub-Contractor may require provided that, in the Employer’s opinion, the effect of any such amendments, when considered separately or together, is not to remove, limit or affect adversely the benefit of any warranty to any Beneficiary.

Third Party Rights from Key Sub-Contractors

- 7.8 On receipt of a notice from the Employer identifying in each case the Key Sub-Contractor and the Beneficiary, the Contractor shall procure that the rights set out in Appendix 6 shall vest in that Beneficiary. The Contractor shall at the same time provide the Employer with a copy of any notice to that effect given to the Key Sub-Contractor.
- 7.9 If the Contractor fails to deliver any collateral warranty in accordance with clauses 7.4, 7.6, or 7.7 and/or fails to procure that rights are vested in a

Beneficiary in accordance with clause 7.8 the Employer shall not be obliged to make any further payment under the Contract until such collateral warranty is delivered to the Employer and/or such rights are so vested."

Section 8: Termination

General

Meaning of insolvency

- 8.1.4.1 Delete "he enters into an arrangement, compromise or composition in satisfaction of its debts" and replace with:
"it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of his creditors"
Delete "or" at the end of this clause
- 8.1.4.2 Delete the full stop and replace with ";or".
- 8.1.4.3 Add a new clause 8.1.4.3:
"8.1.4.3 it applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986."

Notices under section 8

- 8.2.1 Delete clause 8.2.1 and replace with:
"8.2.1.1 Without prejudice to any other rights or remedies which the Employer may possess, whether under this Contract, at law or otherwise, the Employer may at any time by notice in writing to the Contractor terminate the Contractor's employment under this Contract with immediate effect.
- 8.2.1.2 Upon the termination of this Contract under clause 8.2.1.1, subject to any deductions, set-offs or withholdings which the Employer is entitled to make, whether under this Contract, at law or otherwise, the Employer shall pay to the Contractor a fair and reasonable proportion of the Contract Sum. Such proportion shall be commensurate with the goods delivered and the work executed up to the date of the termination, less the amount of any payments made previously in respect of the Contract Sum by the Employer to the Contractor. If the amount of any payment made previously in respect of the Contract Sum exceeds this fair and reasonable proportion, the Contractor shall pay the amount of the excess to the Employer within 30 days of the termination".

Termination by Employer

Default by Contractor

- 8.4.1.1 After the word "Works" add "or any material part of the Works".
- 8.4.1.3 Delete clause 8.4.1.3 and replace with "refuses or neglects to comply with any notice or instruction properly given by the Employer or the Architect/Contract Administrator; or".

8.4.1.4 Delete “or”

8.4.1.5 Replace the comma at the end of this clause with a semi-colon.

Add new clauses 8.4.1.6 to 8.4.1.8:

“8.4.1.6 has committed any price-fixing, collusion or any other form of anti-competitive behaviour with other tenderers, sub-contractors, suppliers or agents, or has used any corrupt practices in relation to the Works;

8.4.1.7 (or any of its directors or others exercising powers of representation, decision-making or control over the Contractor) has breached EU or UK competition laws, to the extent that the Employer considers that either the breach is serious enough to amount to an act of grave misconduct, and/or the breach constitutes a criminal offence; or

8.4.1.8 has breached any of the provisions of clauses 10.8 to 10.11,

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

8.6 At the end of this clause add “For the purpose of this clause 8.6, whether a person is associated with another person shall be determined in accordance with section 8 of the Bribery Act 2010 and a person associated with the Contractor includes any sub-contractor of the Contractor”.

Consequences of termination under clauses 8.4 to 8.6

8.7.4.3 Add at the end of this clause “(including work carried out under clause 8.13)”.

Add a new clause 8.7.6:

“8.7.6 .1 at any time between the date of termination of the Contractor’s employment and the date on which the account is prepared under clause 8.7.4, the Employer may prepare and send to the Contractor an interim forecast of the amount which it reasonably estimates will become due under clause 8.7.4;

.2 the amount shown in the forecast shall be a debt payable by the Contractor to the Employer or by the Employer to the Contractor; and

.3 any sum paid under clause 8.7.6.2 shall be treated as paid on account of the difference referred to in clause 8.7.5.”

Employer’s decision not to complete the Works

8.8.1 Delete “6 months” and replace with “12 months”, and the references to “6 month period” with “12 month period”.

8.8.1.1 Add “(including work carried out under clause 8.13)” between “work” and “properly” in line one.

Termination by Contractor

Default by Employer

- 8.9.1.2 Delete this clause and replace with: “number not used;”.
- 8.9.1.3 Delete this clause and replace with “number not used;”.
- 8.9.4 Delete this clause and replace with “number not used;”.
- Add a new clause 8.9.5:
- “8.9.5 This clause is subject to the Corporate Insolvency and Governance Act 2020.”

Insolvency of Employer

- 8.10.1 At the beginning, delete “If” and replace with “Subject to the Corporate Insolvency and Governance Act 2020 , if”.
- 8.10.3 At the beginning, add “subject to the Corporate Insolvency and Governance Act 2020,”.

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

- 8.11.1 At the beginning, delete “If” and replace with “Subject to the Corporate Insolvency and Governance Act 2020, if”.

Consequences of Termination under clauses 8.9 to 8.11, etc.

- 8.12.3.3 Add at the end of this clause “and clause 8.13”.
- Add a new clause 8.13:
- “8.13 Upon termination or purported termination of the Contractor’s employment under this Contract or if this Contract is terminated, repudiated or discharged, the Contractor shall vacate the site as soon as possible, leaving it in a safe and tidy manner, and deliver possession of the site to the Employer.”

Add a new Section 10: Miscellaneous

“Section 10 Miscellaneous

Confidentiality

- 10.1 Without the prior written approval of the Employer, the Contractor shall not take or permit to be taken any photographs of the Works or the Project for use in any publicity or advertising.
- 10.2 Except as required by law, or as may be reasonably necessary for the execution of the Works in accordance with this Contract, without the prior written approval of the Employer, the Contractor and its employees and agents shall not disclose to any other person any information about the Works or the Project including calculations, drawings, plans, sketches or other materials relating to them, or any information about the Employer or its business, or any

information about any person in whose favour the Contractor is obliged under this Contract to execute or procure a collateral warranty or their businesses, nor shall the Contractor exploit any such information for the benefit of itself or any other person. The Contractor's obligations under this clause 10.2 shall not apply to any information which is already in the public domain or to any information which came to it otherwise than in connection with its involvement in relation to the Works or the Project, except where its entry into the public domain or its coming to the Contractor was as a result of a breach by the Contractor or any other person of any contractual obligation.

10.3 The Contractor shall ensure that similar provisions are included in its contracts with consultants and sub-contractors, and it shall enforce these provisions.

10.4 The Contractor's obligations under this clause 10 shall survive any termination of the Contractor's employment under this Contract.

Nuisance, interference and trespass

10.5 The Contractor shall at all times prevent any nuisance (including noisy work operations) to or other interference with the rights of, any nearby owners, tenants or occupiers or any Statutory Undertaker arising out of the carrying out of the Works or out of any other obligation pursuant to Section 2 or Section 3 of the Conditions. The Contractor shall assist the Employer in defending any action or proceedings in relation thereto. The Contractor shall be responsible for, and shall indemnify the Employer from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the Contractor in performing its obligations under this clause 10.5.

10.6 Without prejudice to clauses 6.1, 6.2 and 10.5 the Contractor shall ensure that there is no trespass by the Contractor or the Contractor's Persons (including the oversailing of a tower crane jib or the erection of a scaffold or hoarding) on or over any nearby property arising out of the Works or out of any other obligation pursuant to Section 2 or Section 3 of the Conditions and shall take all reasonable safety and other measures to prevent damage or injury to any persons including the occupiers of nearby property and members of the public. If carrying out the Works or any other obligation pursuant to Section 2 or Section 3 of the Conditions would otherwise be an act of trespass, the Contractor shall, at no cost to the Employer, obtain the prior written agreement of the owners or occupiers of any nearby property to that act. That agreement shall be subject to the Employer's approval before its completion. The Contractor shall comply with any condition or obligation contained in that agreement, at no cost to the Employer and shall not be entitled to any extension of time as a result of any condition or obligation contained in that agreement.

10.7 Unless expressly stated otherwise in the Employer's Requirements, at no cost to the Employer, the Contractor shall obtain all necessary consents and licences for the carrying out of the Works, including any consents and licences which may be required from any adjoining land owners, tenants or occupiers. Without prejudice to this, the Contractor shall carry out all negotiations with any adjoining land owners, tenants or occupiers and obtain any consents and licences which may be required for the over-sailing of tower crane jibs, and the Contractor shall comply with the terms and conditions of them.

Anti-Slavery and Human Trafficking

- 10.8 In performing its obligations under this Contract, the Contractor shall:
- .1 comply with the applicable anti-slavery and human trafficking laws, statutes, regulations, UK government guidance and codes from time to time in force, including the Modern Slavery Act 2015;
 - .2 comply with any policy of the Employer relating to anti-slavery and human trafficking notified to the Contractor from time to time; and
 - .3 include in its sub-contracts obligations equivalent to those in clauses 10.8 to 10.11.
- 10.9 The Contractor shall implement full and appropriate due diligence procedures for its sub-contractors, to ensure that there is no slavery, human trafficking or forced or coerced labour in its supply chains.
- 10.10 The Contractor shall deliver to the Employer on each anniversary of this Contract:
- .1 written confirmation of its continued compliance with the requirements of clause 10.8 to 10.11; and
 - .2 if requested by the Employer, a report detailing the steps it has taken to ensure that modern slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.
- 10.11 The Contractor shall notify the Employer immediately if it becomes aware of any actual or suspected slavery, human trafficking or forced or coerced labour in a supply chain which has a connection with this Contract, or of any actual or potential breach of any of the requirements of clause 10.8 to 10.11.

Environmental Obligations

- 10.12 In designing and carrying out and completing the Works, the Contractor shall, where practicable in light of the nature of the Works, use its reasonable endeavours to:
- .1 protect the environment including the prevention of atmospheric and other pollution;
 - .2 protect wildlife, wildlife habitats and ecological features of the site;
 - .3 maximise the use of sustainable materials in the Contractor's Design Portion and the Contractor's Proposals and methods of construction and energy efficient tools and equipment;
 - .4 reduce greenhouse gas emissions;
 - .5 minimise the use of water;
 - .6 adopt a site waste management plan which includes zero-to-landfill and a process to minimise waste;
 - .7 utilise local suppliers and sub-contractors;

.8 promote green travel to and from the site;

10.13 The Contractor shall provide monthly written reports to the Employer setting out the steps the Contractor has taken and will take to comply with clause 10.12"

Freedom of Information Act

10.14 In clauses 10.14 to 10.16:

.1 'Environmental Information Regulations' means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;

.2 'FOIA' means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;

.3 'Information' has the meaning given under section 84 of the Freedom of Information Act 2000';

.4 'Information Commissioner' means the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies; and

.5 'Request for Information' has the meaning set out in the FOIA or the Environmental Regulations as relevant (where the meaning set out for the term "request" shall apply).

10.15 In accordance with a reasonable timetable and in any event within 5 Business Days of a request by the Employer, the Contractor must give the Employer full co-operation and information needed so the Employer can:

.1 comply with any FOIA request; and

.2 comply with any Environmental Information Regulations request;

10.16 The Contractor acknowledges that (notwithstanding the confidentiality provisions in the Appointment) the Employer may, acting in accordance with the Department of 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 this Contract or the Project:

1. in certain circumstances without consulting the Contractor; or

2. following consultation with the Contractor and having taken its views into account;

provided always that where this clause applies the Employer, in accordance with any recommendations of the Code, takes reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, draws the disclosure to the Contractor's attention after any such disclosure.

Schedules

Schedule 1: Design Submission Procedure (Clause 2.9.5)

Paragraph 3 - delete and replace with:

"3 If the Architect/Contract Administrator does not respond to a Contractor's Design Document in the time stated in paragraph 2, the Contractor shall re-submit the document to the Architect/Contract Administrator in accordance with paragraph 1 headed "Response Required". If the Employer does not then respond to a Contractor's Design Document within 15 Business Days from the date it receives any re-submitted Contractor's Design Document, it shall be regarded as marked "A".

Re-number paragraph 7 as paragraph 7.2 and add a new paragraph 7.1:

"7.1 At its discretion and at its own risk, the Contractor may proceed with further design and/or construction in the absence of comments or disregarding any comments. The Contractor shall remain responsible for, and shall promptly rectify and/or correct, any defects or other faults in the Works which arise in connection with the Contractor having exercised its discretion under this paragraph 7.1, and it shall not be entitled to any addition to the Contract Sum or any extension of time under this Contract in relation to the rectification and/or correction of any such defects or other faults."

Delete "and" from the end of paragraph 8.2.

Delete the full stop at the end of paragraph 8.3 and add ";and".

Add a new paragraph 8.4:

"8.4 this Schedule 1 is subject to the clauses in sections 1 to 10 of the Conditions of this Contract in particular, but not limited to, clauses 2.4A and 2.9."

Schedule 5: Third Party Rights (Clauses 7A and 7B)

Delete Schedule 5.

Schedule 7: JCT Fluctuations Option A (Clauses 4.3, and 4.14)

Delete Schedule 7.

Appendix 1
Performance Bond

DATED **202[*]**

[GUARANTOR] (1)

and

[CONTRACTOR] (2)

and

[EMPLOYER] (3)

PERFORMANCE BOND
in relation to the [insert Project]

THIS GUARANTEE BOND is made as a deed **BETWEEN** the following parties whose names and registered office addresses are set out in the Schedule to this Bond (the "**Schedule**");

- (1) The "**Contractor**" as principal;
- (2) The "**Guarantor**" as guarantor; and
- (3) The "**Employer**".

BACKGROUND

- (A) By a contract (the "**Contract**") entered into or to be entered into between the Employer and the Contractor particulars of which are set out in the Schedule the Contractor has agreed with the Employer to execute works (the "**Works**") upon and subject to the terms and conditions therein set out.
- (B) The Guarantor has agreed with the Employer at the request of the Contractor to guarantee the performance of the obligations of the Contractor under the Contract upon the terms and conditions of this Guarantee Bond subject to the limitation set out in clause 2.

NOW THIS DEED WITNESSES AS FOLLOWS:

- 1 The Guarantor guarantees to the Employer that in the event of a breach of the Contract by the Contractor (and for the purposes of this Guarantee Bond any determination of the Contractor's employment by the Employer under clause **[insert relevant contract insolvency termination clause(s)]** shall be treated as a breach of contract), the Guarantor shall subject to the provisions of this Guarantee Bond satisfy and discharge the damages sustained by the Employer as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract and taking into account all sums due or to become due to the Contractor.
- 2 The maximum aggregate liability of the Guarantor and the Contractor under this Guarantee Bond shall not exceed the Bond Amount as defined in the Schedule but subject to such limitation and to clause 5 the liability of the Guarantor shall be co-extensive with the liability of the Contractor under the Contract.
- 3 The Guarantor shall not be discharged or released by any alteration of any of the terms, conditions and provisions of the Contract or in the extent or nature of the Works, nor by liquidation, administration, receivership, arrangement by the Contractor with creditors, moratorium or dissolution of the Contractor, nor by any disclaimer of the Contract by a liquidator of the Contractor and no allowance of time by the Employer under or in respect of the Contract or the Works shall in any way release, reduce or affect the liability of the Guarantor under this Guarantee Bond.
- 4 Whether or not this Guarantee Bond shall be returned to the Guarantor the obligations of the Guarantor under this Guarantee Bond shall be released and discharged absolutely upon Expiry (as defined in the Schedule) save in respect of any breach of the Contract which has occurred and in respect of which a claim in writing containing particulars of such breach has been made upon the Guarantor before Expiry.
- 5 The Employer may at any time assign or transfer this Guarantee Bond without the consent of the Guarantor or of the Contractor to any person that has provided, or is to provide, finance in connection with the whole or any part of the Works, or to any person to whom the Employer assigns the benefit of the Contract.

- 6 The Contractor having requested the execution of this Guarantee Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Employer or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Contract.
- 7 The parties to this Guarantee Bond do not intend that any of its terms will be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person not a party to it.
- 8 The Guarantor shall be bound by any decision of any adjudicator under or in connection with the Contract.
- 9 This Guarantee Bond shall be governed by and construed in accordance with the laws of England and only the courts of England shall have jurisdiction hereunder.

Signed as a deed by **[NAME OF CONTRACTOR]** acting by [two members] [a director and its secretary or two directors]: _____

[Member] [Director]

[Member] [Director/Secretary]

Signed as a deed by **[NAME OF GUARANTOR]** acting by [two members] [a director and its secretary or two directors]: _____

[Member] [Director]

[Member] [Director/Secretary]

Signed as a deed by **[NAME OF EMPLOYER]** acting by [two members] [a director and its secretary or two directors]: _____

[Member] [Director]

[Member] [Director/Secretary]

Schedule 1

The Contractor: **[insert contractor]** (company no **[insert number]**) whose registered office address is at **[insert registered office]** and is incorporated in **[insert country]**

The Guarantor: **[insert Guarantor]** (company no **[insert number]**) whose registered office address is at **[insert registered office]** and is incorporated in **[insert country]**

The Employer: **[insert Employer]** (company no **[insert number]**) whose registered office address is at **[insert registered office]** and is incorporated in **[insert country]**

The Contract: A contract dated **[insert date]** between the Employer and the Contractor for the construction of works comprising **[insert work]** at **[insert site]** for the original contract sum of **[insert figure]** and [issued under a framework agreement between the Employer and the Contractor dated **[insert date]**]

The Bond Amount: **[insert amount]**

Expiry: **[insert details of the event agreed between the parties¹] in accordance with the terms and conditions of the Contract which shall be conclusive for the purposes of this Guarantee Bond**

¹ Provide for a period of time from either the date of the issue of any practical completion or notice of making good certificate.

Appendix 2

Deed of Warranty from the Contractor to the Beneficiary

DATED _____

[BENEFICIARY] (1)

and

[NAME OF CONTRACTOR] (2)

[and

[NAME OF EMPLOYER] (3)]

**DEED OF WARRANTY
for [PROJECT DESCRIPTION]**

THIS WARRANTY is made on

BETWEEN:

- (1) **[BENEFICIARY]** [(company number [number])] whose [registered][principal] office is at [address]. Email **[insert email address]** ("**Beneficiary**" which expression shall include its successors in title and assigns); and
- (2) **[NAME OF CONTRACTOR]** [(company number [number])] whose [registered][principal] office is at [address]. Email **[insert email address]** ("**Contractor**"); and
- (3) **[NAME OF EMPLOYER]** [(company number [number])] whose [registered][principal] office is at [address]. Email **[insert email address]** ("**Employer**" which expression shall include its successors in title and assigns).

BACKGROUND:

- (A) [The Beneficiary has entered or shall enter into a contract with **[NAME OF EMPLOYER]** ("**Employer**")][the Employer] ("**Agreement**") for the provision of funding for [DESCRIPTION] ("**Project**").]
- (B) [The Beneficiary has entered or shall enter into a contract with **[NAME OF EMPLOYER]** ("**Employer**")][the Employer] for the [purchase][lease] of the whole or part of [DESCRIPTION] ("**Project**").]
- (C) The Employer has entered or shall enter into a contract or contracts with a consultant or consultants for the performance of the services described in the contract or contracts for the Project.
- (D) The Employer has entered into a contract with the Contractor dated ("**Contract**") for the carrying out of the work described in the Contract ("**Works**") for the Project.
- (E) It is a condition of the Contract that the Contractor gives this Warranty to the Beneficiary.

In consideration of the payment of £1 (a pound) by the Beneficiary to the Contractor (receipt of which the Contractor acknowledges) **IT IS AGREED:**

1 Works

1.1 The Contractor undertakes and warrants to the Beneficiary that:

- 1.1.1 the Contractor has complied and shall comply with the Contractor's obligations under and in connection with the Contract in accordance with it; and
- 1.1.2 the Contractor has used and shall use, in the [design and] construction of the Works, all the reasonable skill, care and diligence and the best up-to-date practice to be expected of a fully qualified and competent architect (or other appropriate professional designer) experienced in [designing and] constructing works for projects of a similar size, scope, nature, complexity and timescale to the Project.

2 Materials and building practices

2.1 The Contractor undertakes and warrants to the Beneficiary that (unless otherwise instructed or authorised by or on behalf of the Beneficiary):

2.1.1 the Contractor has not and shall not specify, select and/or approve for use; and

2.1.2 the Contractor has used and shall use the level of skill, care and diligence referred to in clause 1.1.2 to ensure that there shall not be used in the Project:

any material, substance, building practice or technique which is:

- (a) prohibited by the Contract;
- (b) not in accordance with any relevant British Standard, Eurocode, code of practice, best up-to-date building practice or agrément certificate issued by the British Board of Agrément;
- (c) not in accordance with the guidance and comment contained in the British Council for Offices' publication: "Good Practice in the Selection of Construction Materials 2011"; or
- (d) generally known within the construction industry at the time of specification, selection, approval or use (as the case may be) to:
 - (i) be deleterious;
 - (ii) be harmful to the health or safety of any person;
 - (iii) threaten the structural stability, physical integrity or performance of the Project or any part or component of the Project; or
 - (iv) reduce the normal life-expectancy of the Project or any part or component of the Project.

3 Documents

3.1 For the purposes of this Warranty, "**Documents**" means any and all activity schedules, algorithms, bills of quantities, [BIM Documents (as defined in the Contract),] brochures, budgets, CAD materials, calculations, data, design details, designs, diagrams, drawings, graphs, minutes, models, notes of meetings, photographs, plans, programmes, reports, schedules, sketches, specifications, surveys, details and specifications of materials, goods and workmanship and other similar materials whether in hard copy, on computer disk, stored electronically on a computer or in a virtual "cloud", in any other computer-generated format or on any magnetic or optical storage medium prepared by or on behalf of the Contractor (whether in existence or to be created) in connection with the Works and/or the Project.

3.2 The Contractor grants to the Beneficiary an irrevocable, royalty-free and non-exclusive licence, such licence to remain in full force and effect notwithstanding practical completion of the Works or the termination of the Contractor's engagement under the

Contract, to copy and use the Documents and to reproduce the designs and contents of them for:

- 3.2.1 any purpose relating to the Project and/or the Beneficiary's interest in the Project including, but not limited to, the advertisement, alteration, building information modelling, completion, construction, demolition, design, development, disposal, fitting-out, funding, letting, maintenance, modification, promotion, reconstruction, refurbishment, reinstatement, repair, sale and use of the Project and/or the Beneficiary's interest in the Project; and
- 3.2.2 the extension of the Works or the Project, so that the Beneficiary can interface any extension of the Works or the Project with the existing Works or Project, but the licence shall not include a licence to reproduce the designs in the Documents for any extension of the Works or the Project.
- 3.3 The Beneficiary shall be entitled to grant sub-licences under the Beneficiary's licence and both the Beneficiary's licence and any sub-licences shall be transferable to others.
- 3.4 The Contractor undertakes and warrants that it shall procure that each individual author of the Documents, on or before practical completion of the Works or the Project, signs a waiver in respect of the Documents prepared by the author, unconditionally and irrevocably waiving all moral rights to which the author may now or in the future be entitled under the Copyright, Designs and Patents Act 1988 and all similar legislation in force from time to time anywhere in the world. This waiver shall be made in favour of the Beneficiary and it shall include any sub-licensees and assignees under clause 3.3, any assignees under clause 9, any successors in title to the copyright in the design under the Contract and any successors in title to the Beneficiary's business.
- 3.5 Notwithstanding practical completion of the Works or the termination of the Contractor's engagement under the Contract, the Contractor shall give to the Beneficiary any paper copies and electronic copies of the Documents that the Beneficiary reasonably requests. The Contractor shall give these copies to the Beneficiary within seven days of any request, and the Beneficiary shall pay the Contractor's reasonable copying costs. The Contractor shall provide any password, code or other data required to access, decrypt or reproduce any electronic copies of the Documents that the Contractor gives to the Beneficiary.
- 3.6 The Contractor shall not be liable for any use of the Documents for any purpose other than the purpose they were prepared for.

4 Insurance

- 4.1 Provided that it is available at reasonable premium rates and on reasonable commercial terms, the Contractor shall take out and maintain professional indemnity insurance that will cover all of the Services from the date of the Contractor's engagement under the Contract until the date that is 12 years after the date of practical completion of the Project:
 - 4.1.1 with a well-established insurance company or underwriter of good reputation based in the United Kingdom;
 - 4.1.2 with a limit of indemnity of not less than [REDACTED] for each and every claim or series of claims arising out of one event; and

- 4.1.3 on terms that:
- (i) do not require the Contractor to discharge any liability before being entitled to recover from the insurers; and
 - (ii) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights against Insurers) Act 2010.
- 4.2 If insurers require the payment of any increased or additional premiums, or offer insurance on terms more onerous than those usually offered, as a result of the Contractor's claims record or other act, failure to act or circumstance particular to it, this shall be deemed to be within reasonable rates and terms for the purposes of this Warranty.
- 4.3 Without the Beneficiary's prior written consent, the Contractor shall not:
- 4.3.1 settle or compromise any claim against the insurers that relates to a claim by the Beneficiary against the Contractor; or
 - 4.3.2 by any act or omission lose or affect the Contractor's right to make, or to proceed with, any claim against the insurers that relates to a claim by the Beneficiary against the Contractor.
- 4.4 As and when it is reasonably required to do so by the Beneficiary, the Contractor shall make available for inspection by the Beneficiary documentary evidence that the insurance is being maintained in accordance with this Warranty.
- 4.5 Subject to clause 4.2, the Contractor shall inform the Beneficiary immediately if this insurance ceases to be available to the Contractor at reasonable premium rates or on reasonable commercial terms. If this happens:
- 4.5.1 the Beneficiary and the Contractor shall discuss and agree on the best means of protecting themselves; and
 - 4.5.2 the Beneficiary may require the Contractor to take out and maintain insurance at the best premium rates and on the best commercial terms available to the Contractor. If the Beneficiary exercises this right, subject to clause 4.2, it shall reimburse to the Contractor the difference between the premium paid and the premium that would have been reasonable.
- 4.6 If required by the terms of its insurance policy, the Contractor undertakes and warrants that:
- 4.6.1 prior to the execution of this Warranty, it has:
 - (i) disclosed the contents of this Warranty to its insurers and brokers; and
 - (ii) received confirmation from its insurers and brokers that the terms of this Warranty are covered by the terms of the insurance policy; and
 - 4.6.2 it shall disclose the contents of this Warranty to its insurers and brokers when it renews its insurance.]

5 Termination and suspension by Contractor

- 5.1 For the purposes of this Warranty, “**Another Person**” means the Beneficiary’s nominee or an administrator, an administrative receiver or a receiver appointed by the Beneficiary.
- 5.2 The Contractor shall not exercise any right which the Contractor has to rescind or terminate the Contract or its engagement under the Contract, or to suspend or discontinue the Works, unless the Contractor has given at least 31 days’ prior written notice to the Employer and the Beneficiary specifying:
 - 5.2.1 the breach of the Contract which the Contractor considers entitles it to rescind or terminate the Contract or its engagement under the Contract, or to suspend or discontinue the Works; and
 - 5.2.2 full details of any amounts owed by and due from the Employer to the Contractor under the Contract for the last three outstanding payments covering the three payment periods before that in which the notice is given.
- 5.3 Within 31 days of receipt of a notice under clause 5.2, if the Beneficiary notifies the Contractor that it or Another Person wishes to enter into a new agreement with the Contractor on the same terms and conditions as the Contract to complete the Contractor’s obligations under the Contract in accordance with it:
 - 5.3.1 the Contractor shall enter into a new agreement with the Beneficiary or Another Person subject to clause 5.4, but otherwise on the same terms and conditions as the Contract and, if this happens, the Contract shall terminate but, subject to clause 5.3.2, without prejudice to the accrued rights of the parties;
 - 5.3.2 if the Contract is terminated in accordance with clause 5.3.1, the Contractor shall not have a claim against the Employer arising solely out of the termination; and
 - 5.3.3 subject to clause 5.2, if the Contract has been terminated in accordance with clause 5.3.1, pending entry into the new agreement, the Contractor shall comply with the instructions of the Beneficiary (or Another Person) under the Contract as if it had not been terminated, and the Beneficiary shall pay (or shall procure that Another Person shall pay) to the Contractor all sums owed and due to it for the Works it has [designed and]constructed pursuant to those instructions.
- 5.4 The Beneficiary shall be liable (or shall procure that Another Person shall be liable) under the new agreement to pay the Contractor for the Works it [designs and]constructs from the date of the new agreement, but it shall have no other liability in respect of the Contract except that the Beneficiary shall pay (or shall procure that Another Person shall pay) to the Contractor:
 - 5.4.1 any amounts referred to in clause 5.2.2 and detailed in the notice given under clause 5.2; and
 - 5.4.2 any amounts accrued and unpaid that are owed by and due from the Employer to the Contractor for the period from the date of the last payment referred to in clause 5.2.2 until the date of the new agreement.

- 5.5 If the breach of the Contract referred to in clause 5.2.1 has been remedied and the Contractor has withdrawn unreservedly the notice it gave under clause 5.2 without making any claim against the Employer, the rights of the Contractor and the Beneficiary to enter into (and the right of the Beneficiary to appoint Another Person to enter into) a new agreement shall cease.
- 5.6 If the Contractor has given rights relating to the Contract similar to those in clause 5 to more than one person, and more than one person notifies the Contractor that it wishes to enter into a new agreement with the Contractor in accordance with those rights, the order of priority shall be (with the highest priority first and the lowest last):
- 5.6.1 a notice served by the Employer;
 - 5.6.2 a notice served by the Beneficiary;
 - 5.6.3 a notice served by any other beneficiary; and
- all notices that the Contractor receives shall take effect in accordance with this order of priority.]

6 Termination of the Agreement

- 6.1 If the Beneficiary gives written notice to the Employer and the Contractor that the Agreement has been rescinded or terminated, at any time within 31 days of giving the notice, the Beneficiary may either:
- 6.1.1 comply with the obligations of the Employer under the Contract and, if this happens, the Contractor shall comply with its obligations and [design and]construct the Works under the Contract, and the Beneficiary shall comply with the obligations of the Employer under the Contract, as though the Beneficiary was and always had been the employer under the Contract in the place of the Employer; or
 - 6.1.2 enter into (or appoint Another Person to enter into), and require the Contractor to enter into, a new agreement as if clauses 5.1 to 5.3 applied and references in clause 5.3 to the notice under clause 5.2 were references to the notice under clause 6.1, and the provisions of clauses 5.1 to 5.6 shall apply as appropriate.
- 6.2 After it has received the notice given under clause 6.1, the Contractor shall comply with the instructions of the Beneficiary (or Another Person), and the Contractor shall enter into a new agreement at the Beneficiary's written request as described in clause 6.1.2.
- 6.3 The Contractor may treat the Beneficiary's notice under clause 6.1 that the Agreement has been rescinded or terminated as sufficient evidence that this has happened.
- 6.4 The Employer shall not have a claim against the Contractor arising solely out of the Contractor's compliance with the instructions of the Beneficiary (or Another Person) in accordance with clause 6.]

7 Conflict

- 7.1 If there is any conflict between the terms and conditions of this Warranty and the terms and conditions of the Contract, the terms and conditions of this Warranty shall have priority.

8 Limitation

- 8.1 In any action, claim or proceedings brought against the Contractor by the Beneficiary, the Contractor may rely on the same limitations as are in the Contract and raise the equivalent rights in defence of liability as it would have if the Beneficiary were named as joint employer in the Contract, provided that the Contractor shall not be entitled to raise in defence rights of abatement, set-off or counterclaim or raise a defence that a loss suffered by the Beneficiary is of a different kind or type from that which would have been suffered by the Employer.

9 Assignment

- 9.1 At any time, the Beneficiary may assign or transfer all or any of its benefit under this Warranty without the consent of the Contractor to:

9.1.1 a mortgagee of the Beneficiary; or

9.1.2 any holding, subsidiary or associated company of the Beneficiary within the meaning of sections 1159 or 1162 Companies Act 2006 and/or section 435 Insolvency Act 1986, including any such holding, subsidiary or associated company which becomes a legal entity and/or is incorporated after the date of this Warranty.

- 9.2 At any time, the Beneficiary may assign or transfer all or any of its benefit under this Warranty to any person not referred to in clause 9.1 without the consent of the Contractor on two occasions only. The consent of the Contractor, which shall not be delayed or withheld unreasonably, shall be required for any further assignments or transfers.

10 Contracts (Rights of Third Parties) Act 1999

- 10.1 The Contracts (Rights of Third Parties) Act 1999 does not apply to this Warranty and nothing in it, unless stated expressly, confers or purports to confer on any third party any benefit or any right to enforce any of its terms or conditions.

11 Waiver

- 11.1 No acknowledgement, admission, advice, approval, comment, confirmation, consent, direction, enquiry, guideline, indication of satisfaction, inspection, instruction or anything similar, given or made by or on behalf of the Beneficiary, the Employer, any of the Employer's consultants or any of their agents, or failure to give or make any of these, shall exclude, limit, modify, qualify or reduce the Contractor's obligations or liability under the Contract or this Warranty.

- 11.2 The failure, delay or omission of the Beneficiary to exercise or enforce, in whole or in part, any right, power or privilege under this Warranty shall not operate as a waiver of that right, power or privilege or preclude the exercise or enforcement of it at any time or times thereafter, or constitute an election to affirm this Warranty.

- 11.3 A waiver given or consent granted by the Beneficiary under this Warranty will be effective only if given in writing and then only in the instance and for the purpose for

which it is given and shall not prevent the Beneficiary from subsequently enforcing any of the provisions of this Warranty.

12 Severability

- 12.1 If any provision of this Warranty is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Warranty.
- 12.2 If any provision of this Warranty is found to be invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

13 Counterparts

- 13.1 This Warranty may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by each party shall constitute a complete original of this Warranty for all purposes.

14 Notices

- 14.1 Any written notice, communication or document given under this Warranty shall be given properly if it is delivered by hand or sent by pre-paid post to the recipient's address stated at the beginning of this Warranty or if it sent electronically to the email address of the recipient stated at the beginning of this Warranty, or to such other address as the recipient may from time to time notify the sender. Such notice, communication or document shall be deemed to have been received on the day of delivery if it is delivered by hand or by email and on the second Business Day after the day of posting if it is sent by pre-paid post.
- 14.2 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration, adjudication or other method of dispute resolution.

15 Governing law, dispute resolution and jurisdiction

- 15.1 This Warranty 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 English law.
- 15.2 Each party irrevocably agrees that English courts shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Warranty or its subject matter or formation (including non-contractual disputes or claims).

16 Execution as a deed

- 16.1 This Warranty is executed as a deed and it was delivered when it was dated.

Executed as a deed by **[BENEFICIARY]** acting by either two directors or one director and the company secretary:

.....	
Director's name (CAPITAL LETTERS)	Director's signature
.....	
Director's/Company secretary's name (CAPITAL LETTERS)	Director's/Company secretary's signature

Executed as a deed by **[NAME OF CONTRACTOR]** acting by either two directors or one director and the company secretary:

.....	
Director's name (CAPITAL LETTERS)	Director's signature
.....	
Director's/Company secretary's name (CAPITAL LETTERS)	Director's/Company secretary's signature

[Executed as a deed by **[NAME OF EMPLOYER]** acting by either two directors or one director and the company secretary:

.....	
Director's name (CAPITAL LETTERS)	Director's signature
.....	
Director's/Company secretary's name (CAPITAL LETTERS)	Director's/Company secretary's signature]

Appendix 3

Schedule of Third Party Rights against the Contractor

(referred to in clause 7.5)

Part 1: Third Party Rights for any Beneficiary

1 Definitions and Interpretation

- 1.1 In this Schedule capitalised terms which are not defined in this Schedule have the meanings set out in the Contract.
- 1.2 Unless the context otherwise requires:
 - 1.2.1 words in the singular shall include the plural and words in the plural include the singular;
 - 1.2.2 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assignees; and
 - 1.2.3 a company includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.3 Paragraph headings shall not affect the interpretation of this Schedule.
- 1.4 A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.5 A reference to legislation or a legislative provision, code of practice or guidance is a reference to it as amended, extended or re-enacted from time to time.
- 1.6 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.7 Any words following the terms "including", "include", "in particular", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 Contractor warranties

- 2.1 The Contractor undertakes and warrants to the Beneficiary that:
 - 2.1.1 the Contractor has complied and shall comply with the Contractor's obligations under and in connection with the Contract in accordance with it;
 - 2.1.2 the Contractor has used and shall use all the reasonable skill, care and diligence, and good up to date practice, to be expected of a fully qualified and competent professional designer experienced in designing, specifying and carrying out work for projects of a similar size, scope, nature, complexity and timescale to the Works; and
 - 2.1.3 (unless otherwise instructed or authorised by or on behalf of the Employer) the Contractor shall not use or permit to be used, and has not used or permitted to be used, in the Works anything which is Deleterious.

3 Documents

- 3.1 The Contractor grants to the Beneficiary an irrevocable, non-terminable royalty-free and non-exclusive licence, such licence to remain in full force and effect notwithstanding practical completion of the Works or the termination of the Contractor's employment under the Contract, to copy and use the Contractor's Design Documents and to reproduce the designs and contents of them:
- 3.1.1 for any purpose relating to the Project, the Works and/or the site and/or the Beneficiary's interest in any of them including their advertisement, alteration, building information modelling, completion, construction, demolition, design, development, disposal, fitting-out, funding, letting, maintenance, modification, promotion, reconstruction, refurbishment, reinstatement, repair, sale and use; and
 - 3.1.2 in connection with any extension of the Project, the Works and/or the site and/or the Beneficiary's interest in any of them, but not to reproduce the designs in the Contractor's Design Documents in any such extension.
- 3.2 The Beneficiary may grant sub-licences under the Beneficiary's licence and both the Beneficiary's licence and any sub-licences shall be transferable to others.
- 3.3 The Contractor shall not be liable for any use of the Contractor's Design Documents for any purpose other than the purpose they were prepared for.
- 3.4 The Beneficiary may, at any time (whether before or after practical completion of the Works or termination of the Contractor's employment under the Contract), request a paper and/or electronic copy or copies of any or all of the Contractor's Design Documents from the Contractor. On the Beneficiary's payment of the Contractor's reasonable charges for providing the copy or copies, the Contractor shall provide the copy or copies to the Beneficiary together with any password code or other data required to access, decrypt or reproduce any electronic copy or copies.

4 Insurance

- 4.1 The Contractor shall maintain professional indemnity insurance in accordance with clause 6.15 of the Contract.

5 Conflict

- 5.1 If there is any conflict between this Schedule and the Contract, this Schedule shall have priority.

6 Limitation

- 6.1 In any action, claim or proceedings brought against the Contractor by the Beneficiary, the Contractor may rely on the same limitations as are in the Contract and raise the equivalent rights in defence of liability as it would have if the Beneficiary were named as joint employer in the Contract, provided that the Contractor shall not be entitled to raise in defence rights of abatement, set-off or counterclaim or raise a defence that a loss suffered by the Beneficiary is of a different kind or type from that which would have been suffered by the Employer.

7 Assignment

7.1 The Beneficiary may assign the benefit of this Schedule:

7.1.1 on two occasions to any person; and

7.1.2 without counting as an assignment under paragraph 7.1.1:

7.1.2.1 by way of security to a person who is to provide funding to the Beneficiary (including any reassignment on redemption of security); or

7.1.2.2 to and from subsidiary or other associated companies within the same group of companies as the Beneficiary;

7.1.3 on further occasions with the consent of the Contractor which shall not be unreasonably withheld or delayed.

7.2 The Beneficiary shall notify the Contractor of any assignment.

7.3 The Contractor shall not contend that any person to whom the benefit of this Schedule is assigned under paragraph 7.1 may not recover any sum under this Schedule because that person is an assignee and not a Beneficiary of this Schedule.

8 Third Parties

8.1 It is not intended that any third party (other than the Beneficiary) should have the right to enforce this Schedule pursuant to the Contracts (Rights of Third Parties) Act 1999.

8.2 The parties may rescind or vary this Schedule without the consent of a third party to whom an express right to enforce any of its terms has been provided.

9 Non-waiver

9.1 No acknowledgement, admission, advice, approval, comment, confirmation, consent, direction, enquiry, guideline, indication of satisfaction, inspection, instruction or anything similar, given or made by or on behalf of the Beneficiary, the Employer or any other party, or failure to give or make any of these, shall exclude, limit, modify, qualify or reduce the Contractor's obligations or liability under this Schedule.

9.2 The failure or delay of the Beneficiary to exercise or enforce any right under this Schedule shall not operate as a waiver of that right or preclude the exercise or enforcement of it at any time or times thereafter.

10 Severability

10.1 If any provision of this Schedule is declared to be unenforceable, invalid or illegal by the decision-maker in any dispute-resolution process to which it is subject, that provision shall be severed from this Schedule and its unenforceability, invalidity or illegality shall not prejudice or affect the enforceability, validity or legality of the remaining provisions of this Schedule.

11 Notices

11.1 Any written notice or communication given under this Schedule shall be given properly if it is delivered by hand or sent by Royal Mail special delivery to a party at its address

at the beginning of this Schedule or another address which a party may specify by written notice to the other parties from time to time.

- 11.2 A notice shall be deemed to have been received on the day of delivery if it is delivered by hand and on the second working day after the day of posting if it is sent by Royal Mail special delivery.

12 Governing law, dispute resolution and jurisdiction

- 12.1 This Schedule shall be governed by, and construed and interpreted in accordance with, English law.
- 12.2 The parties agree to submit any dispute or difference between them arising out of, or in connection with, this Schedule to the exclusive jurisdiction of the English courts, except for the purpose of enforcement proceedings in respect of any judgment or award of the English courts in another jurisdiction.

Part 2: Additional Third Party Rights for a Funder

13 Termination and suspension by Contractor

- 13.1 For the purposes of this Schedule, “**Another Person**” means the Beneficiary’s nominee or an administrator, an administrative receiver or a receiver appointed by the Beneficiary.
- 13.2 The Contractor shall not exercise any right which the Contractor has to rescind or terminate the Contract or its employment under the Contract, or to suspend or discontinue the Works, unless the Contractor has given at least 31 days’ prior written notice to the Employer and the Beneficiary specifying:
- 13.2.1 the breach of the Contract which the Contractor considers entitles it to rescind or terminate the Contract or its employment under the Contract, or to suspend or discontinue the Works; and
- 13.2.2 full details of any amounts owed by and due from the Employer to the Contractor under the Contract for the last three outstanding payments covering the three payment periods before that in which the notice is given.
- 13.3 Within 31 days of receipt of a notice under paragraph 13.2, if the Beneficiary notifies the Contractor that it or Another Person wishes to enter into a new agreement with the Contractor on the same terms and conditions as the Contract to complete the Contractor’s obligations under the Contract in accordance with it:
- 13.3.1 the Contractor shall enter into a new agreement with the Beneficiary or Another Person subject to paragraph 13.4, but otherwise on the same terms and conditions as the Contract and, if this happens, the Contract shall terminate but, subject to paragraph 13.3.2, without prejudice to the accrued rights of the parties;
- 13.3.2 if the Contract is terminated in accordance with paragraph 13.3.1, the Contractor shall not have a claim against the Employer arising solely out of the termination; and
- 13.3.3 subject to paragraph 13.2, if the Contract has been terminated in accordance with paragraph 13.3.1, pending entry into the new agreement,

the Contractor shall comply with the instructions of the Beneficiary (or Another Person) under the Contract as if it had not been terminated, and the Beneficiary shall pay (or shall procure that Another Person shall pay) to the Contractor all sums owed and due to it for the Works it has carried out pursuant to those instructions.

- 13.4 The Beneficiary shall be liable (or shall procure that Another Person shall be liable) under the new agreement to pay the Contractor for the Works it carries out from the date of the new agreement, but it shall have no other liability in respect of the Contract except that the Beneficiary shall pay (or shall procure that Another Person shall pay) to the Contractor:

13.4.1 any amounts referred to in paragraph 13.2.2 and detailed in the notice given under paragraph 13.2; and

13.4.2 any amounts accrued and unpaid that are owed by and due from the Employer to the Contractor for the period from the date of the last payment referred to in paragraph 13.2.2 until the date of the new agreement.

- 13.5 If the breach of the Contract referred to in paragraph 13.2.1 has been remedied and the Contractor has withdrawn unreservedly the notice it gave under paragraph 13.2 without making any claim against the Employer, the rights of the Contractor and the Beneficiary to enter into (and the right of the Beneficiary to appoint Another Person to enter into) a new agreement shall cease.

- 13.6 If the Contractor has given rights relating to the Contract similar to those in paragraph 13 to more than one person, and more than one person notifies the Contractor that it wishes to enter into a new agreement with the Contractor in accordance with those rights, the order of priority shall be (with the highest priority first and the lowest last):

13.6.1 a notice served by the Employer;

13.6.2 a notice served by the Beneficiary;

13.6.3 a notice served by any other beneficiary; and

all notices that the Contractor receives shall take effect in accordance with this order of priority.

14 Termination of the Agreement

- 14.1 If the Beneficiary gives written notice to the Employer and the Contractor that the agreement between the Employer and the Beneficiary for the provision of finance in connection with Works (the “**Agreement**”) has been rescinded or terminated, at any time within 31 days of giving the notice, the Beneficiary may either:

14.1.1 comply with the obligations of the Employer under the Contract and, if this happens, the Contractor shall comply with its obligations and carry out the Works under the Contract, and the Beneficiary shall comply with the obligations of the Employer under the Contract, as though the Beneficiary was and always had been the employer under the Contract in the place of the Employer; or

14.1.2 enter into (or appoint Another Person to enter into), and require the Contractor to enter into, a new agreement as if paragraphs 13.1 to 13.3

applied and references in paragraph 13.3 to the notice under paragraph 13.2 were references to the notice under paragraph 14.1, and the provisions of paragraphs 13.1 to 13.6 shall apply as appropriate.

- 14.2 After it has received the notice given under paragraph 14.1, the Contractor shall comply with the instructions of the Beneficiary (or Another Person), and the Contractor shall enter into a new agreement at the Beneficiary's written request as described in paragraph 14.1.2.
- 14.3 The Contractor may treat the Beneficiary's notice under paragraph 14.1 that the Agreement has been rescinded or terminated as sufficient evidence that this has happened.
- 14.4 The Employer shall not have a claim against the Contractor arising solely out of the Contractor's compliance with the instructions of the Beneficiary (or Another Person) in accordance with paragraph 14.

Appendix 4

Deed of Warranty from Key Sub-Contractor to Employer

DATED _____

[NAME OF EMPLOYER] (1)

and

[SUB-CONTRACTOR] (2)

**DEED OF WARRANTY
for [PROJECT DESCRIPTION]**

THIS WARRANTY is made on

BETWEEN:

- (1) **[NAME OF EMPLOYER]** [(company number [number])] whose [registered][principal] office is at [address]. Email **[insert email address]** ("**Beneficiary**" which expression shall include its successors in title and assigns); and
- (2) **[SUB-CONTRACTOR]** [(company number [number])] whose [registered][principal] office is at [address]. Email **[insert email address]** ("**Sub-Contractor**").

BACKGROUND:

- (A) The Beneficiary has entered into a contract with **[NAME OF CONTRACTOR]** ("**Contractor**") dated ("**Contract**") for the carrying out of the work described in the Contract ("**Works**") for **[DESCRIPTION]** ("**Project**").
- (B) The Contractor has entered into a sub-contract with the Sub-Contractor dated ("**Sub-Contract**") for the carrying out of the **[DESCRIPTION]** sub-contract work described in the Sub-Contract ("**Sub-Contract Works**") being part of the Works.
- (C) It is a condition of the Sub-Contract and of the Contract that the Sub-Contractor gives this Warranty to the Beneficiary.

In consideration of the payment of £1 (a pound) by the Beneficiary to the Sub-Contractor (receipt of which the Sub-Contractor acknowledges) **IT IS AGREED:**

1 Sub-Contract Works

1.1 The Sub-Contractor undertakes and warrants to the Beneficiary that:

- 1.1.1 the Sub-Contractor has complied and shall comply with the Sub-Contractor's obligations under and in connection with the Sub-Contract in accordance with it; and
- 1.1.2 the Sub-Contractor has used and shall use, in the [design and]construction of the Sub-Contract Works, all the reasonable skill, care and diligence and the best up-to-date practice to be expected of a fully qualified and competent [designer and]sub-contractor experienced in[designing and] constructing sub-contract works for projects of a similar size, scope, nature, complexity and timescale to the Project.

2 Materials and building practices

2.1 The Sub-Contractor undertakes and warrants to the Beneficiary that (unless otherwise instructed or authorised by or on behalf of the Beneficiary):

- 2.1.1 the Sub-Contractor has not and shall not specify, select and/or approve for use; and
- 2.1.2 the Sub-Contractor has used and shall use the level of skill, care and diligence referred to in clause 1.1.2 to ensure that there shall not be used in the Project:

any material, substance, building practice or technique which is:

- (e) prohibited by the Sub-Contract;
- (f) not in accordance with any relevant British Standard, Eurocode, code of practice, best up-to-date building practice or agrément certificate issued by the British Board of Agrément;
- (g) not in accordance with the guidance and comment contained in the British Council for Offices' publication: "Good Practice in the Selection of Construction Materials 2011"; or
- (h) generally known within the construction industry at the time of specification, selection, approval or use (as the case may be) to:
 - (i) be deleterious;
 - (ii) be harmful to the health or safety of any person;
 - (iii) threaten the structural stability, physical integrity or performance of the Project or any part or component of the Project; or
 - (iv) reduce the normal life-expectancy of the Project or any part or component of the Project.

3 Documents

- 3.1 For the purposes of this Warranty, "**Documents**" means any and all activity schedules, algorithms, bills of quantities,[BIM Documents (as defined in the Sub-Contract),] brochures, budgets, CAD materials, calculations, data, design details, designs, diagrams, drawings, graphs, minutes, models, notes of meetings, photographs, plans, programmes, reports, schedules, sketches, specifications, surveys, details and specifications of materials, goods and workmanship and other similar materials whether in hard copy, on computer disk, stored electronically on a computer or in a virtual "cloud", in any other computer-generated format or on any magnetic or optical storage medium prepared by or on behalf of the Sub-Contractor (whether in existence or to be created) in connection with the Sub-Contract Works and/or the Project.
- 3.2 The Sub-Contractor grants to the Beneficiary an irrevocable, royalty-free and non-exclusive licence, such licence to remain in full force and effect notwithstanding practical completion of the Sub-Contract Works or the termination of the Sub-Contractor's engagement under the Sub-Contract, to copy and use the Documents and to reproduce the designs and contents of them for:
 - 3.2.1 any purpose relating to the Project and/or the Beneficiary's interest in the Project including, but not limited to, the advertisement, alteration, building information modelling, completion, construction, demolition, design, development, disposal, fitting-out, funding, letting, maintenance, modification, promotion, reconstruction, refurbishment, reinstatement, repair, sale and use of the Project and/or the Beneficiary's interest in the Project; and
 - 3.2.2 the extension of the Works or the Project, so that the Beneficiary can interface any extension of the Works or the Project with the existing Works

or Project, but the licence shall not include a licence to reproduce the designs in the Documents for any extension of the Works or the Project.

- 3.3 The Beneficiary shall be entitled to grant sub-licences under the Beneficiary's licence and both the Beneficiary's licence and any sub-licences shall be transferable to others.
- 3.4 The Sub-Contractor undertakes and warrants that it shall procure that each individual author of the Documents, on or before practical completion of the Sub-Contract Works or the Project, signs a waiver in respect of the Documents prepared by the author, unconditionally and irrevocably waiving all moral rights to which the author may now or in the future be entitled under the Copyright, Designs and Patents Act 1988 and all similar legislation in force from time to time anywhere in the world. This waiver shall be made in favour of the Beneficiary and it shall include any sub-licensees and assignees under clause 3.3, any assignees under clause 9, any successors in title to the copyright in the design under the Sub-Contract and any successors in title to the Beneficiary's business.
- 3.5 Notwithstanding practical completion of the Sub-Contract Works or the termination of the Sub-Contractor's engagement under the Sub-Contract, the Sub-Contractor shall give to the Beneficiary any paper copies and electronic copies of the Documents that the Beneficiary reasonably requests. The Sub-Contractor shall give these copies to the Beneficiary within seven days of any request, and the Beneficiary shall pay the Sub-Contractor's reasonable copying costs. The Sub-Contractor shall provide any password, code or other data required to access, decrypt or reproduce any electronic copies of the Documents that the Sub-Contractor gives to the Beneficiary.
- 3.6 The Sub-Contractor shall not be liable for any use of the Documents for any purpose other than the purpose they were prepared for.

4 Insurance

- 4.1 Provided that it is available at reasonable premium rates and on reasonable commercial terms, the Sub-Contractor shall take out and maintain [professional indemnity][product liability] insurance [that will cover all of the Services]from the date of the Sub-Contractor's engagement under the Sub-Contract until the date that is 12 years after the date of practical completion of the Project:
 - 4.1.1 with a well-established insurance company or underwriter of good repute based in the United Kingdom;
 - 4.1.2 with a limit of indemnity of not less than [REDACTED]
[for each claim or series of claims arising from the same originating or underlying cause]; and
 - 4.1.3 on terms that:
 - (i) do not require the Sub-Contractor to discharge any liability before being entitled to recover from the insurers; and
 - (ii) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights against Insurers) Act 2010.
- 4.2 If insurers require the payment of any increased or additional premiums, or offer insurance on terms more onerous than those usually offered, as a result of the Sub-

Contractor's claims record or other act, failure to act or circumstance particular to it, this shall be deemed to be within reasonable rates and terms for the purposes of this Warranty.

- 4.3 Without the Beneficiary's prior written consent, the Sub-Contractor shall not:
 - 4.3.1 settle or compromise any claim against the insurers that relates to a claim by the Beneficiary against the Sub-Contractor; or
 - 4.3.2 by any act or omission lose or affect the Sub-Contractor's right to make, or to proceed with, any claim against the insurers that relates to a claim by the Beneficiary against the Sub-Contractor.
- 4.4 As and when it is reasonably required to do so by the Beneficiary, the Sub-Contractor shall make available for inspection by the Beneficiary documentary evidence that the insurance is being maintained in accordance with this Warranty.
- 4.5 Subject to clause 4.2, the Sub-Contractor shall inform the Beneficiary immediately if this insurance ceases to be available to the Sub-Contractor at reasonable premium rates or on reasonable commercial terms. If this happens:
 - 4.5.1 the Beneficiary and the Sub-Contractor shall discuss and agree on the best means of protecting themselves; and
 - 4.5.2 the Beneficiary may require the Sub-Contractor to take out and maintain insurance at the best premium rates and on the best commercial terms available to the Sub-Contractor. If the Beneficiary exercises this right, subject to clause 4.2, it shall reimburse to the Sub-Contractor the difference between the premium paid and the premium that would have been reasonable.
- 4.6 If required by the terms of its insurance policy, the Sub-Contractor undertakes and warrants that:
 - 4.6.1 prior to the execution of this Warranty, it has:
 - (i) disclosed the contents of this Warranty to its insurers and brokers; and
 - (ii) received confirmation from its insurers and brokers that the terms of this Warranty are covered by the terms of the insurance policy; and
 - 4.6.2 it shall disclose the contents of this Warranty to its insurers and brokers when it renews its insurance.]

5 Termination and suspension by Sub-Contractor

- 5.1 For the purposes of this Warranty, "**Another Person**" means the Beneficiary's nominee or an administrator, an administrative receiver or a receiver appointed by the Beneficiary.
- 5.2 The Sub-Contractor shall not exercise any right which the Sub-Contractor has to rescind or terminate the Sub-Contract or its engagement under the Sub-Contract, or

to suspend or discontinue the Sub-Contract Works, unless the Sub-Contractor has given at least 31 days' prior written notice to the Beneficiary specifying:

- 5.2.1 the breach of the Sub-Contract which the Sub-Contractor considers entitles it to rescind or terminate the Sub-Contract or its engagement under the Sub-Contract, or to suspend or discontinue the Sub-Contract Works; and
 - 5.2.2 full details of any amounts owed by and due from the Contractor to the Sub-Contractor under the Sub-Contract for the last three outstanding payments covering the three payment periods before that in which the notice is given.
- 5.3 Within 31 days of receipt of a notice under clause 5.2, if the Beneficiary notifies the Sub-Contractor that it or Another Person wishes to enter into a new agreement with the Sub-Contractor on the same terms and conditions as the Sub-Contract to complete the Sub-Contractor's obligations under the Sub-Contract in accordance with it:
- 5.3.1 the Sub-Contractor shall enter into a new agreement with the Beneficiary or Another Person subject to clause 5.4, but otherwise on the same terms and conditions as the Sub-Contract and, if this happens, the Sub-Contract shall terminate but, subject to clause 5.3.2, without prejudice to the accrued rights of the parties;
 - 5.3.2 if the Sub-Contract is terminated in accordance with clause 5.3.1, the Sub-Contractor shall not have a claim against the Contractor arising solely out of the termination; and
 - 5.3.3 subject to clause 5.2, if the Sub-Contract has been terminated in accordance with clause 5.3.1, pending entry into the new agreement, the Sub-Contractor shall comply with the instructions of the Beneficiary (or Another Person) under the Sub-Contract as if it had not been terminated, and the Beneficiary shall pay (or shall procure that Another Person shall pay) to the Sub-Contractor all sums owed and due to it for the Sub-Contract Works it has [designed and]constructed pursuant to those instructions.
- 5.4 The Beneficiary shall be liable (or shall procure that Another Person shall be liable) under the new agreement to pay the Sub-Contractor for the Sub-Contract Works it [designs and]constructs from the date of the new agreement, but it shall have no other liability in respect of the Sub-Contract except that the Beneficiary shall pay (or shall procure that Another Person shall pay) to the Sub-Contractor:
- 5.4.1 any amounts referred to in clause 5.2.2 and detailed in the notice given under clause 5.2; and
 - 5.4.2 any amounts accrued and unpaid that are owed by and due from the Contractor to the Sub-Contractor for the period from the date of the last payment referred to in clause 5.2.2 until the date of the new agreement.
- 5.5 If the breach of the Sub-Contract referred to in clause 5.2.1 has been remedied and the Sub-Contractor has withdrawn unreservedly the notice it gave under clause 5.2 without making any claim against the Contractor, the rights of the Sub-Contractor and the Beneficiary to enter into (and the right of the Beneficiary to appoint Another Person to enter into) a new agreement shall cease.
- 5.6 If the Sub-Contractor has given rights relating to the Sub-Contract similar to those in clause 5 to more than one person, and more than one person notifies the Sub-

Contractor that it wishes to enter into a new agreement with the Sub-Contractor in accordance with those rights, the order of priority shall be (with the highest priority first and the lowest last):

- 5.6.1 a notice served by the Beneficiary;
- 5.6.2 a notice served by a funder;
- 5.6.3 a notice served by any other beneficiary; and

all notices that the Sub-Contractor receives shall take effect in accordance with this order of priority.

6 Termination of the Contract

6.1 If the Beneficiary gives written notice to the Contractor and the Sub-Contractor that the Contract has been rescinded or terminated, at any time within 31 days of giving the notice, the Beneficiary may either:

- 6.1.1 comply with the obligations of the Contractor under the Sub-Contract and, if this happens, the Sub-Contractor shall comply with its obligations and [design and]construct the Sub-Contract Works under the Sub-Contract, and the Beneficiary shall comply with the obligations of the Contractor under the Sub-Contract, as though the Beneficiary was and always had been the employer under the Sub-Contract in the place of the Contractor; or
- 6.1.2 enter into (or appoint Another Person to enter into), and require the Sub-Contractor to enter into, a new agreement as if clauses 5.1 to 5.3 applied and references in clause 5.3 to the notice under clause 5.2 were references to the notice under clause 6.1, and the provisions of clauses 5.1 to 5.6 shall apply as appropriate.

6.2 After it has received the notice given under clause 6.1, the Sub-Contractor shall comply with the instructions of the Beneficiary (or Another Person), and the Sub-Contractor shall enter into a new agreement at the Beneficiary's written request as described in clause 6.1.2.

6.3 The Sub-Contractor may treat the Beneficiary's notice under clause 6.1 that the Contract has been rescinded or terminated as sufficient evidence that this has happened.

6.4 The Contractor shall not have a claim against the Sub-Contractor arising solely out of the Sub-Contractor's compliance with the instructions of the Beneficiary (or Another Person) in accordance with clause 6.

7 Conflict

7.1 If there is any conflict between the terms and conditions of this Warranty and the terms and conditions of the Sub-Contract, the terms and conditions of this Warranty shall have priority.

8 Limitation

- 8.1 In any action, claim or proceedings brought against the Sub-Contractor by the Beneficiary, the Sub-Contractor may rely on the same limitations as are in the Sub-Contract and raise the equivalent rights in defence of liability as it would have if the Beneficiary were named as joint employer in the Sub-Contract, provided that the Sub-Contractor shall not be entitled to raise in defence rights of abatement, set-off or counterclaim or raise a defence that a loss suffered by the Beneficiary is of a different kind or type from that which would have been suffered by the Contractor.

9 Assignment

- 9.1 At any time, the Beneficiary may assign or transfer all or any of its benefit under this Warranty without the consent of the Sub-Contractor to:

9.1.1 a mortgagee of the Beneficiary; or

9.1.2 any holding, subsidiary or associated company of the Beneficiary within the meaning of sections 1159 or 1162 Companies Act 2006 and/or section 435 Insolvency Act 1986, including any such holding, subsidiary or associated company which becomes a legal entity and/or is incorporated after the date of this Warranty.

- 9.2 At any time, the Beneficiary may assign or transfer all or any of its benefit under this Warranty to any person not referred to in clause 9.1 without the consent of the Sub-Contractor on two occasions only. The consent of the Sub-Contractor, which shall not be delayed or withheld unreasonably, shall be required for any further assignments or transfers.

10 Contracts (Rights of Third Parties) Act 1999

- 10.1 The Contracts (Rights of Third Parties) Act 1999 does not apply to this Warranty and nothing in it, unless stated expressly, confers or purports to confer on any third party any benefit or any right to enforce any of its terms or conditions.

11 Waiver

- 11.1 No acknowledgement, admission, advice, approval, comment, confirmation, consent, direction, enquiry, guideline, indication of satisfaction, inspection, instruction or anything similar, given or made by or on behalf of the Beneficiary, any of the Beneficiary's or the Contractor's consultants, the Contractor or any of their agents, or failure to give or make any of these, shall exclude, limit, modify, qualify or reduce the Sub-Contractor's obligations or liability under the Sub-Contract or this Warranty.
- 11.2 The failure, delay or omission of the Beneficiary to exercise or enforce, in whole or in part, any right, power or privilege under this Warranty shall not operate as a waiver of that right, power or privilege or preclude the exercise or enforcement of it at any time or times thereafter, or constitute an election to affirm this Warranty.
- 11.3 A waiver given or consent granted by the Beneficiary under this Warranty will be effective only if given in writing and then only in the instance and for the purpose for which it is given and shall not prevent the Beneficiary from subsequently enforcing any of the provisions of this Warranty.

12 Severability

- 12.1 If any provision of this Warranty is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Warranty.
- 12.2 If any provision of this Warranty is found to be invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

13 Counterparts

- 13.1 This Warranty may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by each party shall constitute a complete original of this Warranty for all purposes.

14 Notices

- 14.1 Any written notice, communication or document given under this Warranty shall be given properly if it is delivered by hand or sent by pre-paid post to the recipient's address stated at the beginning of this Warranty or if it sent electronically to the email address of the recipient stated at the beginning of this Warranty, or to such other address as the recipient may from time to time notify the sender. Such notice, communication or document shall be deemed to have been received on the day of delivery if it is delivered by hand or by email and on the second Business Day after the day of posting if it is sent by pre-paid post.
- 14.2 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration, adjudication or other method of dispute resolution.

15 Governing law, dispute resolution and jurisdiction

- 15.1 This Warranty 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 English law.
- 15.2 Each party irrevocably agrees that English courts shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Warranty or its subject matter or formation (including non-contractual disputes or claims).

16 Execution as a deed

- 16.1 This Warranty is executed as a deed and it was delivered when it was dated.

Executed as a deed by **[NAME OF EMPLOYER]**
acting by either two directors or one director and
the company secretary:

.....	
Director's name (CAPITAL LETTERS)	Director's signature
.....	
Director's/Company secretary's name (CAPITAL LETTERS)	Director's/Company secretary's signature

Executed as a deed by **[SUB-CONTRACTOR]**
acting by either two directors or one director and
the company secretary:

.....	
Director's name (CAPITAL LETTERS)	Director's signature
.....	
Director's/Company secretary's name (CAPITAL LETTERS)	Director's/Company secretary's signature

Appendix 5

Deed of Warranty from Key Sub-Contractor to Beneficiary

DATED _____

[BENEFICIARY] (1)

and

[SUB-CONTRACTOR] (2)

**DEED OF WARRANTY
for [PROJECT DESCRIPTION]**

THIS WARRANTY is made on

BETWEEN:

- (1) **[BENEFICIARY]** [(company number [number])] whose [registered][principal] office is at [address]. Email **[insert email address]** ("**Beneficiary**" which expression shall include its successors in title and assigns); and
- (2) **[SUB-CONTRACTOR]** [(company number [number])] whose [registered][principal] office is at [address]. Email **[insert email address]** ("**Sub-Contractor**").

BACKGROUND:

- (A) [The Beneficiary has entered or shall enter into a contract with [NAME OF EMPLOYER] ("**Employer**") [("**Agreement**")] for the provision of funding for [DESCRIPTION] ("**Project**").]
- (B) [The Beneficiary has entered or shall enter into a contract with [NAME OF EMPLOYER] ("**Employer**") for the [purchase][lease] of the whole or part of [DESCRIPTION] ("**Project**").]
- (C) The Employer has entered into a contract with [NAME OF CONTRACTOR] ("**Contractor**") dated ("**Contract**") for the carrying out of the work described in the Contract ("**Works**") for the Project.
- (D) The Contractor has entered into a sub-contract with the Sub-Contractor dated ("**Sub-Contract**") for the carrying out of the [DESCRIPTION] sub-contract work described in the Sub-Contract ("**Sub-Contract Works**") being part of the Works.
- (E) It is a condition of the Sub-Contract and of the Contract that the Sub-Contractor gives this Warranty to the Beneficiary.

In consideration of the payment of £1 (a pound) by the Beneficiary to the Sub-Contractor (receipt of which the Sub-Contractor acknowledges) **IT IS AGREED:**

1 Sub-Contract Works

1.1 The Sub-Contractor undertakes and warrants to the Beneficiary that:

- 1.1.1 the Sub-Contractor has complied and shall comply with the Sub-Contractor's obligations under and in connection with the Sub-Contract in accordance with it; and
- 1.1.2 the Sub-Contractor has used and shall use, in the [design and]construction of the Sub-Contract Works, all the reasonable skill, care and diligence and the best up-to-date practice to be expected of a fully qualified and competent [designer and]sub-contractor experienced in[designing and] constructing sub-contract works for projects of a similar size, scope, nature, complexity and timescale to the Project.

2 Materials and building practices

2.1 The Sub-Contractor undertakes and warrants to the Beneficiary that (unless otherwise instructed or authorised by or on behalf of the Beneficiary):

- 2.1.1 the Sub-Contractor has not and shall not specify, select and/or approve for use; and
- 2.1.2 the Sub-Contractor has used and shall use the level of skill, care and diligence referred to in clause 1.1.2 to ensure that there shall not be used in the Project:

any material, substance, building practice or technique which is:

- (i) prohibited by the Sub-Contract;
- (j) not in accordance with any relevant British Standard, Eurocode, code of practice, best up-to-date building practice or agrément certificate issued by the British Board of Agrément;
- (k) not in accordance with the guidance and comment contained in the British Council for Offices' publication: "Good Practice in the Selection of Construction Materials 2011"; or
- (l) generally known within the construction industry at the time of specification, selection, approval or use (as the case may be) to:
 - (i) be deleterious;
 - (ii) be harmful to the health or safety of any person;
 - (iii) threaten the structural stability, physical integrity or performance of the Project or any part or component of the Project; or
 - (iv) reduce the normal life-expectancy of the Project or any part or component of the Project.

3 Documents

3.1 For the purposes of this Warranty, "**Documents**" means any and all activity schedules, algorithms, bills of quantities, [BIM Documents (as defined in the Sub-Contract),] brochures, budgets, CAD materials, calculations, data, design details, designs, diagrams, drawings, graphs, minutes, models, notes of meetings, photographs, plans, programmes, reports, schedules, sketches, specifications, surveys, details and specifications of materials, goods and workmanship and other similar materials whether in hard copy, on computer disk, stored electronically on a computer or in a virtual "cloud", in any other computer-generated format or on any magnetic or optical storage medium prepared by or on behalf of the Sub-Contractor (whether in existence or to be created) in connection with the Sub-Contract Works and/or the Project.

3.2 The Sub-Contractor grants to the Beneficiary an irrevocable, royalty-free and non-exclusive licence, such licence to remain in full force and effect notwithstanding practical completion of the Sub-Contract Works or the termination of the Sub-

Contractor's engagement under the Sub-Contract, to copy and use the Documents and to reproduce the designs and contents of them for:

- 3.2.1 any purpose relating to the Project and/or the Beneficiary's interest in the Project including, but not limited to, the advertisement, alteration, building information modelling, completion, construction, demolition, design, development, disposal, fitting-out, funding, letting, maintenance, modification, promotion, reconstruction, refurbishment, reinstatement, repair, sale and use of the Project and/or the Beneficiary's interest in the Project; and
- 3.2.2 the extension of the Works or the Project, so that the Beneficiary can interface any extension of the Works or the Project with the existing Works or Project, but the licence shall not include a licence to reproduce the designs in the Documents for any extension of the Works or the Project.
- 3.3 The Beneficiary shall be entitled to grant sub-licences under the Beneficiary's licence and both the Beneficiary's licence and any sub-licences shall be transferable to others.
- 3.4 The Sub-Contractor undertakes and warrants that it shall procure that each individual author of the Documents, on or before practical completion of the Sub-Contract Works or the Project, signs a waiver in respect of the Documents prepared by the author, unconditionally and irrevocably waiving all moral rights to which the author may now or in the future be entitled under the Copyright, Designs and Patents Act 1988 and all similar legislation in force from time to time anywhere in the world. This waiver shall be made in favour of the Beneficiary and it shall include any sub-licensees and assignees under clause 3.3, any assignees under clause 9, any successors in title to the copyright in the design under the Sub-Contract and any successors in title to the Beneficiary's business.
- 3.5 Notwithstanding practical completion of the Sub-Contract Works or the termination of the Sub-Contractor's engagement under the Sub-Contract, the Sub-Contractor shall give to the Beneficiary any paper copies and electronic copies of the Documents that the Beneficiary reasonably requests. The Sub-Contractor shall give these copies to the Beneficiary within seven days of any request, and the Beneficiary shall pay the Sub-Contractor's reasonable copying costs. The Sub-Contractor shall provide any password, code or other data required to access, decrypt or reproduce any electronic copies of the Documents that the Sub-Contractor gives to the Beneficiary.
- 3.6 The Sub-Contractor shall not be liable for any use of the Documents for any purpose other than the purpose they were prepared for.

4 [Insurance]

- 4.1 Provided that it is available at reasonable premium rates and on reasonable commercial terms, the Sub-Contractor shall take out and maintain [professional indemnity][product liability] insurance [that will cover all of the Services]from the date of the Sub-Contractor's engagement under the Sub-Contract until the date that is 12 years after the date of practical completion of the Project:
 - 4.1.1 with a well-established insurance company or underwriter of good repute based in the United Kingdom;

- 4.1.2 with a limit of indemnity of not less than [REDACTED]
[for each claim or series of claims arising from the same originating or underlying cause]; and
- 4.1.3 on terms that:
 - (i) do not require the Sub-Contractor to discharge any liability before being entitled to recover from the insurers; and
 - (ii) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights against Insurers) Act 2010.
- 4.2 If insurers require the payment of any increased or additional premiums, or offer insurance on terms more onerous than those usually offered, as a result of the Sub-Contractor's claims record or other act, failure to act or circumstance particular to it, this shall be deemed to be within reasonable rates and terms for the purposes of this Warranty.
- 4.3 Without the Beneficiary's prior written consent, the Sub-Contractor shall not:
 - 4.3.1 settle or compromise any claim against the insurers that relates to a claim by the Beneficiary against the Sub-Contractor; or
 - 4.3.2 by any act or omission lose or affect the Sub-Contractor's right to make, or to proceed with, any claim against the insurers that relates to a claim by the Beneficiary against the Sub-Contractor.
- 4.4 As and when it is reasonably required to do so by the Beneficiary, the Sub-Contractor shall make available for inspection by the Beneficiary documentary evidence that the insurance is being maintained in accordance with this Warranty.
- 4.5 Subject to clause 4.2, the Sub-Contractor shall inform the Beneficiary immediately if this insurance ceases to be available to the Sub-Contractor at reasonable premium rates or on reasonable commercial terms. If this happens:
 - 4.5.1 the Beneficiary and the Sub-Contractor shall discuss and agree on the best means of protecting themselves; and
 - 4.5.2 the Beneficiary may require the Sub-Contractor to take out and maintain insurance at the best premium rates and on the best commercial terms available to the Sub-Contractor. If the Beneficiary exercises this right, subject to clause 4.2, it shall reimburse to the Sub-Contractor the difference between the premium paid and the premium that would have been reasonable.
- 4.6 If required by the terms of its insurance policy, the Sub-Contractor undertakes and warrants that:
 - 4.6.1 prior to the execution of this Warranty, it has:
 - (i) disclosed the contents of this Warranty to its insurers and brokers; and

- (ii) received confirmation from its insurers and brokers that the terms of this Warranty are covered by the terms of the insurance policy; and

4.6.2 it shall disclose the contents of this Warranty to its insurers and brokers when it renews its insurance.]

5 Termination and suspension by Sub-Contractor

5.1 For the purposes of this Warranty, “**Another Person**” means the Beneficiary’s nominee or an administrator, an administrative receiver or a receiver appointed by the Beneficiary.

5.2 The Sub-Contractor shall not exercise any right which the Sub-Contractor has to rescind or terminate the Sub-Contract or its engagement under the Sub-Contract, or to suspend or discontinue the Sub-Contract Works, unless the Sub-Contractor has given at least 31 days’ prior written notice to the Beneficiary specifying:

5.2.1 the breach of the Sub-Contract which the Sub-Contractor considers entitles it to rescind or terminate the Sub-Contract or its engagement under the Sub-Contract, or to suspend or discontinue the Sub-Contract Works; and

5.2.2 full details of any amounts owed by and due from the Contractor to the Sub-Contractor under the Sub-Contract for the last three outstanding payments covering the three payment periods before that in which the notice is given.

5.3 Within 31 days of receipt of a notice under clause 5.2, if the Beneficiary notifies the Sub-Contractor that it or Another Person wishes to enter into a new agreement with the Sub-Contractor on the same terms and conditions as the Sub-Contract to complete the Sub-Contractor’s obligations under the Sub-Contract in accordance with it:

5.3.1 the Sub-Contractor shall enter into a new agreement with the Beneficiary or Another Person subject to clause 5.4, but otherwise on the same terms and conditions as the Sub-Contract and, if this happens, the Sub-Contract shall terminate but, subject to clause 5.3.2, without prejudice to the accrued rights of the parties;

5.3.2 if the Sub-Contract is terminated in accordance with clause 5.3.1, the Sub-Contractor shall not have a claim against the Contractor arising solely out of the termination; and

5.3.3 subject to clause 5.2, if the Sub-Contract has been terminated in accordance with clause 5.3.1, pending entry into the new agreement, the Sub-Contractor shall comply with the instructions of the Beneficiary (or Another Person) under the Sub-Contract as if it had not been terminated, and the Beneficiary shall pay (or shall procure that Another Person shall pay) to the Sub-Contractor all sums owed and due to it for the Sub-Contract Works it has [designed and]constructed pursuant to those instructions.

5.4 The Beneficiary shall be liable (or shall procure that Another Person shall be liable) under the new agreement to pay the Sub-Contractor for the Sub-Contract Works it [designs and]constructs from the date of the new agreement, but it shall have no other

liability in respect of the Sub-Contract except that the Beneficiary shall pay (or shall procure that Another Person shall pay) to the Sub-Contractor:

- 5.4.1 any amounts referred to in clause 5.2.2 and detailed in the notice given under clause 5.2; and
- 5.4.2 any amounts accrued and unpaid that are owed by and due from the Contractor to the Sub-Contractor for the period from the date of the last payment referred to in clause 5.2.2 until the date of the new agreement.
- 5.5 If the breach of the Sub-Contract referred to in clause 5.2.1 has been remedied and the Sub-Contractor has withdrawn unreservedly the notice it gave under clause 5.2 without making any claim against the Contractor, the rights of the Sub-Contractor and the Beneficiary to enter into (and the right of the Beneficiary to appoint Another Person to enter into) a new agreement shall cease.
- 5.6 If the Sub-Contractor has given rights relating to the Sub-Contract similar to those in clause 5 to more than one person, and more than one person notifies the Sub-Contractor that it wishes to enter into a new agreement with the Sub-Contractor in accordance with those rights, the order of priority shall be (with the highest priority first and the lowest last):
 - 5.6.1 a notice served by the Employer;
 - 5.6.2 a notice served by the Beneficiary;
 - 5.6.3 a notice served by any other beneficiary; and

all notices that the Sub-Contractor receives shall take effect in accordance with this order of priority.]

6 Termination of the Agreement

- 6.1 If the Beneficiary gives written notice to the Contractor and the Sub-Contractor that the Agreement has been rescinded or terminated, at any time within 31 days of giving the notice, the Beneficiary may either:
 - 6.1.1 comply with the obligations of the Contractor under the Sub-Contract and, if this happens, the Sub-Contractor shall comply with its obligations and [design and]construct the Sub-Contract Works under the Sub-Contract, and the Beneficiary shall comply with the obligations of the Contractor under the Sub-Contract, as though the Beneficiary was and always had been the employer under the Sub-Contract in the place of the Contractor; or
 - 6.1.2 enter into (or appoint Another Person to enter into), and require the Sub-Contractor to enter into, a new agreement as if clauses 5.1 to 5.3 applied and references in clause 5.3 to the notice under clause 5.2 were references to the notice under clause 6.1, and the provisions of clauses 5.1 to 5.6 shall apply as appropriate.
- 6.2 After it has received the notice given under clause 6.1, the Sub-Contractor shall comply with the instructions of the Beneficiary (or Another Person), and the Sub-Contractor shall enter into a new agreement at the Beneficiary's written request as described in clause 6.1.2.

6.3 The Sub-Contractor may treat the Beneficiary's notice under clause 6.1 that the Agreement has been rescinded or terminated as sufficient evidence that this has happened.

6.4 The Contractor shall not have a claim against the Sub-Contractor arising solely out of the Sub-Contractor's compliance with the instructions of the Beneficiary (or Another Person) in accordance with clause 6.]

7 Conflict

7.1 If there is any conflict between the terms and conditions of this Warranty and the terms and conditions of the Sub-Contract, the terms and conditions of this Warranty shall have priority.

8 Limitation

8.1 In any action, claim or proceedings brought against the Sub-Contractor by the Beneficiary, the Sub-Contractor may rely on the same limitations as are in the Sub-Contract and raise the equivalent rights in defence of liability as it would have if the Beneficiary were named as joint employer in the Sub-Contract, provided that the Sub-Contractor shall not be entitled to raise in defence rights of abatement, set-off or counterclaim or raise a defence that a loss suffered by the Beneficiary is of a different kind or type from that which would have been suffered by the Contractor.

9 Assignment

9.1 At any time, the Beneficiary may assign or transfer all or any of its benefit under this Warranty without the consent of the Sub-Contractor to:

9.1.1 a mortgagee of the Beneficiary; or

9.1.2 any holding, subsidiary or associated company of the Beneficiary within the meaning of sections 1159 or 1162 Companies Act 2006 and/or section 435 Insolvency Act 1986, including any such holding, subsidiary or associated company which becomes a legal entity and/or is incorporated after the date of this Warranty.

9.2 At any time, the Beneficiary may assign or transfer all or any of its benefit under this Warranty to any person not referred to in clause 9.1 without the consent of the Sub-Contractor on two occasions only. The consent of the Sub-Contractor, which shall not be delayed or withheld unreasonably, shall be required for any further assignments or transfers.

10 Contracts (Rights of Third Parties) Act 1999

10.1 The Contracts (Rights of Third Parties) Act 1999 does not apply to this Warranty and nothing in it, unless stated expressly, confers or purports to confer on any third party any benefit or any right to enforce any of its terms or conditions.

11 Waiver

11.1 No acknowledgement, admission, advice, approval, comment, confirmation, consent, direction, enquiry, guideline, indication of satisfaction, inspection, instruction or anything similar, given or made by or on behalf of the Beneficiary, the Employer, any of the Employer's or the Contractor's consultants, the Contractor or any of their agents,

or failure to give or make any of these, shall exclude, limit, modify, qualify or reduce the Sub-Contractor's obligations or liability under the Sub-Contract or this Warranty.

- 11.2 The failure, delay or omission of the Beneficiary to exercise or enforce, in whole or in part, any right, power or privilege under this Warranty shall not operate as a waiver of that right, power or privilege or preclude the exercise or enforcement of it at any time or times thereafter, or constitute an election to affirm this Warranty.
- 11.3 A waiver given or consent granted by the Beneficiary under this Warranty will be effective only if given in writing and then only in the instance and for the purpose for which it is given and shall not prevent the Beneficiary from subsequently enforcing any of the provisions of this Warranty.

12 Severability

- 12.1 If any provision of this Warranty is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Warranty.
- 12.2 If any provision of this Warranty is found to be invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

13 Counterparts

- 13.1 This Warranty may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by each party shall constitute a complete original of this Warranty for all purposes.

14 Notices

- 14.1 Any written notice, communication or document given under this Warranty shall be given properly if it is delivered by hand or sent by pre-paid post to the recipient's address stated at the beginning of this Warranty or if it sent electronically to the email address of the recipient stated at the beginning of this Warranty, or to such other address as the recipient may from time to time notify the sender. Such notice, communication or document shall be deemed to have been received on the day of delivery if it is delivered by hand or by email and on the second Business Day after the day of posting if it is sent by pre-paid post.
- 14.2 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration, adjudication or other method of dispute resolution.

15 Governing law, dispute resolution and jurisdiction

- 15.1 This Warranty 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 English law.

- 15.2 Each party irrevocably agrees that English courts shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Warranty or its subject matter or formation (including non-contractual disputes or claims).

16 Execution as a deed

- 16.1 This Warranty is executed as a deed and it was delivered when it was dated.

Executed as a deed by **[BENEFICIARY]** acting by either two directors or one director and the company secretary:

.....	
Director's name (CAPITAL LETTERS)	Director's signature
.....	
Director's/Company secretary's name (CAPITAL LETTERS)	Director's/Company secretary's signature

Executed as a deed by **[SUB-CONTRACTOR]** acting by either two directors or one director and the company secretary:

.....	
Director's name (CAPITAL LETTERS)	Director's signature
.....	
Director's/Company secretary's name (CAPITAL LETTERS)	Director's/Company secretary's signature

Appendix 6

Schedule of Third Party Rights against a Key Sub-Contractor

(referred to in clause 7.8)

1 Definitions and Interpretation

1.1 In this Schedule:

- 1.1.1 **“Sub-Contract”** means the sub-contract dated [] between the Contractor and the Sub-Contractor;
- 1.1.2 **“Sub-Contract Works”** means the design and/or work defined or described in the Sub-Contract;
- 1.1.3 **“Sub-Contractor”** means the person named as such in the Sub-Contract;
- 1.1.4 **“Documents”** means all activity schedules, bills of quantities, brochures, budgets, CAD materials, calculations, data, design details, designs, diagrams, graphs, minutes, models, notes of meetings, photographs, plans, programmes, reports, schedules, sketches, specifications, surveys, drawings and other related documents and information or other similar materials prepared by or for the Sub-Contractor in relation to the design of the Sub-Contract Works whether in hard copy, on computer disk, stored electronically on a computer or in a virtual “cloud”, in any other computer-generated format or magnetic or optical storage medium, and whether in existence or to come into existence; and
- 1.1.2 other capitalised terms have the meanings set out in the Contract.

1.2 Unless the context otherwise requires:

- 1.2.1 words in the singular shall include the plural and words in the plural include the singular;
- 1.2.2 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person’s personal representatives, successors and permitted assigns; and
- 1.2.3 a company includes any company, corporation or other body corporate, wherever and however incorporated or established.

1.3 Paragraph headings shall not affect the interpretation of this Schedule.

1.4 A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.

1.5 A reference to legislation or a legislative provision, code of practice or guidance is a reference to it as amended, extended or re-enacted from time to time.

1.6 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

- 1.7 Any words following the terms “including”, “include”, “in particular”, “for example” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 Sub-Contractor warranties

- 2.1 The Sub-Contractor undertakes and warrants to the Beneficiary that:
 - 2.1.1 the Sub-Contractor has complied and shall comply with the Sub-Contractor’s obligations under and in connection with the Sub-Contract in accordance with it;
 - 2.1.2 the Sub-Contractor has used and shall use all the reasonable skill, care, diligence and good up to date practice to be expected of a fully qualified and competent professional designer experienced in designing, specifying and carrying out work for projects of a similar size, scope, nature, complexity and timescale to the Project; and
 - 2.1.3 (unless otherwise instructed or authorised by or on behalf of the Contractor) the Sub-Contractor shall not use or permit to be used, and has not used or permitted to be used, in the Sub-Contract Works anything which is Deleterious.

3 Documents

- 3.1 The Sub-Contractor grants to the Beneficiary an irrevocable, non-terminable royalty-free and non-exclusive licence, such licence to remain in full force and effect notwithstanding practical completion of the Sub-Contract Works or the termination of the Sub-Contractor’s employment under the Sub-Contract, to copy and use the Documents and to reproduce the designs and contents of them:
 - 3.1.1 for any purpose relating to the Project, the Works and/or the site and/or the Beneficiary’s interest in any of them including their advertisement, alteration, building information modelling, completion, construction, demolition, design, development, disposal, fitting-out, funding, letting, maintenance, modification, promotion, reconstruction, refurbishment, reinstatement, repair, sale and use; and
 - 3.1.2 in connection with any extension of the Project, the Works and/or the site and/or the Beneficiary’s interest in any of them, but not to reproduce the designs in the Documents in any such extension.
- 3.2 The Beneficiary may grant sub-licences under the Beneficiary’s licence and both the Beneficiary’s licence and any sub-licences shall be transferable to others.
- 3.3 The Sub-Contractor shall not be liable for any use of the Documents for any purpose other than the purpose they were prepared for.
- 3.4 The Beneficiary may, at any time (whether before or after practical completion of the Works or termination of the Sub-Contractor’s employment under the Sub-Contract), request a paper and/or electronic copy or copies of any or all of the Documents from the Sub-Contractor. On the Beneficiary’s payment of the Sub-Contractor’s reasonable charges for providing the copy or copies, the Sub-Contractor shall provide the copy or copies to the Beneficiary together with any password code or other data required to access, decrypt or reproduce any electronic copy or copies.

4 Insurance

- 4.1 Provided that it is available at reasonable premium rates and on reasonable commercial terms, the Sub-Contractor shall take out and maintain with a well-established insurance company or underwriter of good repute based in the United Kingdom professional indemnity insurance that covers all of the Sub-Contract Works from the date of the Sub-Contract until the date that is 12 years after the date of practical completion of the Works (or if sooner until the twelfth anniversary of the termination of the employment of the Sub-Contractor under the Sub-Contract) with a limit of indemnity of not less than [REDACTED] and on terms that do not require the Sub-Contractor to discharge any liability before being entitled to recover from the insurers and that would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights against Insurers) Act 2010.
- 4.2 Any increased or additional premium required by insurers because of the Sub-Contractor's claims record or other acts, omissions, matters or things particular to the Sub-Contractor shall be deemed to be within reasonable premium rates.
- 4.3 Whenever the Beneficiary reasonably requests, the Sub-Contractor shall send the Beneficiary evidence that the insurance is being maintained in accordance with this Schedule.

5 Conflict

- 5.1 If there is any conflict between this Schedule and the Sub-Contract, this Schedule shall have priority.

6 Limitation

- 6.1 In any action, claim or proceedings brought against the Sub-Contractor by the Beneficiary, the Sub-Contractor may rely on the same limitations as are in the Sub-Contract and raise the equivalent rights in defence of liability as it would have if the Beneficiary were named as joint employer in the Sub-Contract, provided that the Sub-Contractor shall not be entitled to raise in defence rights of abatement, set-off or counterclaim or raise a defence that a loss suffered by the Beneficiary is of a different kind or type from that which would have been suffered by the Contractor.

7 Assignment

- 7.1 The Beneficiary may assign the benefit of this Schedule:
- 7.1.1 on two occasions to any person; and
 - 7.1.2 without counting as an assignment under paragraph 7.1.1:
 - 7.1.2.1 by way of security to a person who is to provide funding to the Beneficiary (including any reassignment on redemption of security); or
 - 7.1.2.2 to and from subsidiary or other associated companies within the same group of companies as the Beneficiary;
 - 7.1.3 on further occasions with the consent of the Sub-Contractor which shall not be unreasonably withheld or delayed.

- 7.2 The Beneficiary shall notify the Sub-Contractor of any assignment.
- 7.3 The Sub-Contractor shall not contend that any person to whom the benefit of this Schedule is assigned under paragraph 7.1 may not recover any sum under this Schedule because that person is an assignee and not a Beneficiary of this Schedule.

8 Third Parties

- 8.1 It is not intended that any third party (other than the Beneficiary) should have the right to enforce this Schedule pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 8.2 The parties may rescind or vary this Schedule without the consent of a third party to whom an express right to enforce any of its terms has been provided.

9 Non-waiver

- 9.1 No acknowledgement, admission, advice, approval, comment, confirmation, consent, direction, enquiry, guideline, indication of satisfaction, inspection, instruction or anything similar, given or made by or on behalf of the Beneficiary, the Employer or any other party, or failure to give or make any of these, shall exclude, limit, modify, qualify or reduce the Sub-Contractor's obligations or liability under this Schedule.
- 9.2 The failure or delay of the Beneficiary to exercise or enforce any right under this Schedule shall not operate as a waiver of that right or preclude the exercise or enforcement of it at any time or times thereafter.

10 Severability

- 10.1 If any provision of this Schedule is declared to be unenforceable, invalid or illegal by the decision-maker in any dispute-resolution process to which it is subject, that provision shall be severed from this Schedule and its unenforceability, invalidity or illegality shall not prejudice or affect the enforceability, validity or legality of the remaining provisions of this Schedule.

11 Notices

- 11.1 Any written notice or communication given under this Schedule shall be given properly if it is delivered by hand or sent by Royal Mail special delivery to a party at its address at the beginning of this Schedule or another address which a party may specify by written notice to the other parties from time to time.
- 11.2 A notice shall be deemed to have been received on the day of delivery if it is delivered by hand and on the second working day after the day of posting if it is sent by Royal Mail special delivery.

12 Governing law, dispute resolution and jurisdiction

- 12.1 This Schedule shall be governed by, and construed and interpreted in accordance with, English law.
- 12.2 The parties agree to submit any dispute or difference between them arising out of, or in connection with, this Schedule to the exclusive jurisdiction of the English courts, except for the purpose of enforcement proceedings in respect of any judgment or award of the English courts in another jurisdiction.

Appendix 7

Third Party Agreements

[REDACTED]

[REDACTED]

[REDACTED]

Appendix 8

Contract Documents

The parties acknowledge and agree that electronic copies of all the documents as set out in this Appendix have been issued and provided to both the Contractor and the Employer. However, as required, electronic copies of the documents can be made available upon request.

The above is acknowledged and agreed:

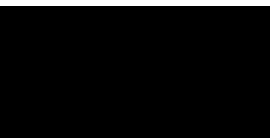


Authorised signatory



Print name

Signed on behalf of **JOHN INNES CENTRE**



Authorised signatory



Print name

Signed on behalf of **MJS PROJECTS (MARCH) LTD**

SWI Southern Loop - Schedule of Contract Documents

Folder	Description	Title / content
[Redacted Content]		



