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

**2024**  
**MINOR WORKS BUILDING CONTRACT**

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

### Appropriate:

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

### Can be used:

- by both private and local authority employers.

### Not suitable:

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

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

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# Agreement

## This Agreement

is made the 22 OCTOBER 2025

## Between

### The Employer

North West Leicestershire District Council

of Whitwick Road, Coalville, Leicestershire, LE67 3FJ

## And

### The Contractor

Another Level Scaffolding Midlands Ltd

Place of incorporation: England and Wales

(Company No. 10096709)<sup>[1]</sup>

whose registered office is at Unit 23a Mill Lane, Syston, Leicester, England,  
LE7 1NS

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

# Recitals

## Whereas

### First

the Employer wishes to have the following work carried out<sup>[2]</sup>:  
Supply and erect scaffolding structures including fixed tubular and towers.  
at  
North West Leicestershire District ('the Works')  
under the direction of the Architect/Contract Administrator referred to in Article 4;

### Second

the Works include the design and construction of<sup>[3]</sup>  
In receipt of any works order for the supply, erection, alteration and/or dismantling of scaffold.  
('the Contractor's Designed Portion');

### Third

the Employer has had the following documents prepared which show and describe the work to be done:  
a Specification ('the Contract Specification')<sup>[4]</sup>  
other documents showing or describing or otherwise stating its requirements for the design and construction of the Contractor's Designed Portion ('the Employer's Requirements')  
which for identification have been signed or initialled by or on behalf of each Party; those documents together with this Agreement, the Conditions and, if applicable, a Schedule of Rates as referred to in the Fourth Recital (collectively 'the Contract Documents') are annexed to this Agreement<sup>[5]</sup>;

### Fourth

the Contractor has supplied the Employer with a copy of the priced Work Schedules<sup>[4]</sup>;

### Fifth

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

[2] State nature and location of intended works.

[3] State nature of work in the Contractor's Designed Portion either here or by reference to an identified Annex to this Contract. The Annex or any continuation sheets to a description here should be signed or initialled by or on behalf of each Party.

[4] Delete as appropriate.

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

**Sixth**

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

**Seventh**

---

the Contract is not supplemented by a Framework Agreement;

**Eighth**

---

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

## Articles

### Now it is hereby agreed as follows

#### Article 1 Contractor's obligations

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

#### Article 2 Contract Sum

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

Two million (£2,000,000) ('the Contract Sum')

or such other sum as becomes payable under this Contract.

#### Article 3 Collaborative working

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

#### Article 4 Architect/Contract Administrator

For the purposes of this Contract the Architect/Contract Administrator<sup>[6]</sup> is

Megan Hodgett

of

Whitwick Road, Coalville, Leicestershire, LE67 3FJ

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

#### Article 5 CDM Regulations – Principal Designer and Principal Contractor

For the purposes of the CDM Regulations:

the Principal Designer is the Architect/Contract Administrator or such replacement as the Employer at any time appoints to fulfil that role;

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

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



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**Article 6                      Building Regulations – Principal Designer and Principal Contractor**

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

the Principal Designer is the Architect/Contract Administrator or such replacement as the Employer at any time appoints to fulfil that role;

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

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**Article 7                      Adjudication**

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If any dispute or difference arises under this Contract either Party may refer it to adjudication in accordance with clause 7.3.<sup>[7]</sup>

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**Article 8                      Arbitration**

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

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**Article 9                      Legal proceedings<sup>[9]</sup>**

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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.

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

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

**[9]** See the Guidance Notes.

Contract Particulars

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

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

Base Date

**Fifth Recital and clause 4.2**

Construction Industry Scheme (CIS)

Employer at the Base Date  
\* is a 'contractor'  
for the purposes of the CIS

**Sixth Recital**

CDM Regulations<sup>[10]</sup>

the project  
\* is notifiable

**Eighth Recital and Schedule 2**

Supplemental Provisions<sup>[11]</sup>  
*(Where neither entry against one of Supplemental Provisions 1 to 3 below is deleted, that Supplemental Provision applies.)*

Supplemental Provision 1: Health and safety  
\* applies  
  
Supplemental Provision 2: Cost savings and value improvements  
\* applies  
  
Supplemental Provision 3: Performance Indicators and monitoring  
\* applies

**Article 8**

Arbitration  
*(If neither entry is deleted, Article 8 and Schedule 1 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must be stated that Article 8 and Schedule 1 apply.)<sup>[12]</sup>*

Article 8 and Schedule 1 (Arbitration)

- [10] Under the CDM Regulations a project is notifiable if the construction work on a construction site is scheduled either to last longer than 30 working days and have more than 20 workers working simultaneously at any point in the project or to exceed 500 person days.
- [11] Supplemental Provision 4 (Transparency) applies only where the Employer is a Local or Public Authority or other body to which the Freedom of Information Act 2000 applies; Supplemental Provision 5 (The Public Contracts Regulations 2015) applies only where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations.
- [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 Guidance Notes. See also footnote [8].

\* apply

### 1.6.2

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Addresses for service of notices by the Parties

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

Employer

Whitwick Road, Coalville, Leicestershire, LE67 3FJ

Contractor

The respective email addresses for the Parties are

Employer's email

megan.hodgett@nwleicestershire.gov.uk

Contractor's email

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

### 2.3

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Works commencement date

1st October 2025

Date for Completion

30th September 2029

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

### 2.9

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Liquidated damages

at the rate of

£ per <sup>[13]</sup>

### 2.11

---

Rectification Period

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

months<sup>[14]</sup>

from the date of practical completion

---

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

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

### 4.3

#### Interim payments – Interim Valuation Dates<sup>[15]</sup>

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

The first Interim Valuation Date is

and thereafter at intervals of

### 4.4

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

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

per cent<sup>[14]</sup>

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

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

per cent<sup>[14]</sup>

### 4.4 and 4.9

#### Fluctuations provision<sup>[16]</sup>

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

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

[ ]

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

[ ] per cent

### 4.9.1

#### Supply of documentation for computation of amount to be finally certified

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

months<sup>[14]</sup>  
from the date of practical completion

### 5.3

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

£10,000,000  
for any one occurrence or series of occurrences arising out of one event

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

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

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## 5.4, 5.5 and 5.6

Insurance of the Works etc. – alternative provisions<sup>[17]</sup>

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

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## 5.4 and 5.5

Percentage to cover professional fees

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

15 per cent

---

## 6.2.3.2

Service of notices by email

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

Clause 6.2.3.2

\* applies

Employer's email

megan.hodgett@nwleicestershire.gov.uk

Contractor's email

---

## 7.1

Notification and negotiation of disputes

The respective nominees of the Parties are

Employer's nominee

Andy Barton

Contractor's nominee

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

---

## 7.3

Adjudication<sup>[18]</sup>

The Adjudicator is

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

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

(If a body has not been selected from those listed below or another body chosen and inserted, the nominating body shall

---

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

Where there are existing structures, it is vital that any prospective Employer – in particular any Employer which is a tenant or a domestic homeowner – which is not familiar with clause 5.5 and the possible solutions under clause 5.6, or an appropriate member of the Employer's professional team, should consult the Employer's insurance advisers prior to the tender stage. Any Employer which is a tenant should also consult its insuring landlord prior to that stage.

[18] 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.

*be one of the bodies listed below selected by the Party requiring the reference to adjudication.)*

\* The Royal Institution of Chartered Surveyors

#### **Schedule 1 (paragraph 2.1)**

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Arbitration<sup>[19]</sup>: appointor of Arbitrator (and of any replacement) – the appointor is  
*(Delete all but one of the asterisked choices. If the body is to be other than one of those listed, insert the name here.)*  
*(If no body is selected from those listed below or another body chosen and inserted, the appointor shall be the President or a Vice-President of the body listed below selected by the Party serving the first notice of arbitration under paragraph 2 of Schedule 1. For any subsequently served notice of arbitration from any Party under paragraph 2 of Schedule 1, the appointor shall be the President or a Vice-President of the same body that was selected for the first notice of arbitration.)*

President or a Vice-President:

\* The Royal Institution of Chartered Surveyors

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

## Attestation

### Note on Execution

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

#### Execution under hand

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

#### Execution as a Deed

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

#### Other forms of Attestation

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

#### Electronic execution

In 2019, the Law Commission published a report on "Electronic execution of documents" to assist in clarifying the legal status of electronic signatures. It reached the general conclusion that: "An electronic signature is capable in law of being used to validly execute a document (including a deed) provided that (i) the person signing the document intends to authenticate the document and (ii) any formalities relating to execution of that document are satisfied."<sup>[20]</sup> The practice of electronic execution has been growing in recent years and JCT understands that this is now commonplace. E-signature platforms are understood to be widely available, but JCT does not endorse any particular software company.

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

## Notes on Execution as a Deed

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

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



*Execution as a Deed*

**Executed as a Deed by the Employer**

namely <sup>1</sup> North West Leicestershire District Council

(B) by affixing hereto the common seal of the company/other body corporate <sup>2,4</sup>

in the presence of

Signature

~~Director~~

*H. Min*  
AUTHORISED SIGNATORY

~~Signature~~

~~Company Secretary/Director~~



*[Common seal of company]*

---

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

**Execution as a Deed**

**Executed as a Deed by the Contractor**

namely ' Another Level Scaffolding Midlands Ltd

(A) acting by a Director and the Company Secretary/two Directors of the company <sup>2,3</sup>

(Print name of signatory)

*Luke Winkless*

Signature

Director

and

(Print name of signatory)

Signature

Company Secretary/Director

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

# Conditions

## Section 1 Definitions and Interpretation

### 1.1 Definitions

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

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

**All Risks Insurance**<sup>[21]</sup>: 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<sup>[22]</sup>;
- (c) loss or damage caused by or arising from:
  - (i) any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation, commandeering, nationalisation or requisition or loss or destruction of or damage to any property by or under the order of any government *de jure* or *de facto* or public, municipal or local authority,
  - (ii) disappearance or shortage if such disappearance or shortage is only revealed when an inventory is made or is not traceable to an identifiable event, or
  - (iii) an Excepted Risk.

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

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

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

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

**Building Regulations:** the Building Regulations 2010.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Parties:** the Employer and the Contractor together.

**Party:** either the Employer or the Contractor.

**PC Regulations:** the Public Contracts Regulations 2015.

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

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

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

**Public Holiday:** Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.<sup>[23]</sup>

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

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

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

reference to **clause 2.11**).

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

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

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

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

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

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

**VAT:** Value Added Tax.

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

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

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

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

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

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

## **1.4 Reckoning periods of days**

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

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

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

## **1.6 Notices and other communications**

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

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

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

## **1.7 Consents and approvals**

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

## **1.8 Applicable law**

This Contract shall be governed by and construed in accordance with the law of England.<sup>[24]</sup>

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

## Section 2 Carrying out the Works

### 2.1 Contractor's obligations

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

Drawings and other documents to be supplied by the Contractor shall be supplied by such means and in such format, if any, as are specified in the Employer's Requirements.<sup>[25]</sup> In the absence of specific requirements they shall be supplied in the form of not less than two copies and, unless otherwise stated in the Employer's Requirements, the Contractor shall allow not less than 7 days from the date of their receipt for the Architect/Contract Administrator's comments on each drawing or other document before commencing the work to which they relate.

### 2.2 Materials, goods and workmanship

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

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

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

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

## **2.3 Commencement and completion**

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

## **2.4 Architect/Contract Administrator's duties**

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

## **2.5 Correction of inconsistencies**

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

## **2.6 Divergences from Statutory Requirements**

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

## **2.7 Fees or charges legally demandable**

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

## **2.8 Extension of time**

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

## **2.9 Damages for non-completion**

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



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

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

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

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

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

## **2.10 Practical completion**

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

## **2.11 Defects**

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

## **2.12 Certificate of making good**

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

## Section 3 Control of the Works

### 3.1 Assignment

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

### 3.2 Person-in-charge

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

### 3.3 Sub-contracting

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

3.3.2 Where considered appropriate, the Contractor shall engage the sub-contractor using the JCT Minor Works Sub-Contract with sub-contractor's design or the JCT Short Form of Sub-Contract.<sup>[26]</sup> It shall be a condition of any sub-contract that:

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

3.3.2.2 (without limiting either party's statutory and/or regulatory duties) each party to the sub-contract shall in relation to the Works and the site comply with applicable CDM Regulations and as applicable Part 2A of the Building Regulations<sup>[27]</sup>;

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

### 3.4 Architect/Contract Administrator's instructions

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

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

### 3.5 Non-compliance with instructions

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

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

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

### 3.6 Variations

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

### 3.7 Provisional Sums

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

### 3.8 Exclusion from the Works

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

### 3.9 CDM Regulations and Part 2A of the Building Regulations

Without limiting either Party's statutory and regulatory duties and responsibilities, each Party undertakes to the other that in relation to the Works and site it will duly comply with applicable CDM Regulations and as applicable Part 2A of the Building Regulations<sup>[28]</sup>, and in particular but without limitation:

- 3.9.1 the Employer shall ensure that the Principal Designer carries out its duties and, where the Contractor is not the Principal Contractor, shall ensure that the Principal Contractor carries out its duties under those regulations;
- 3.9.2 the Contractor in addition to any obligations under clause 2.1.3.3 shall comply with:<sup>[29]</sup>
- 3.9.2.1 regulations 8 and 15 of the CDM Regulations and, where it is the Principal Contractor for the purposes of the CDM Regulations, with regulations 12 to 14 of those regulations; and
- 3.9.2.2 regulations 11F, 11J and 11L of the Building Regulations and, where it is the Principal Contractor for the purposes of the Building Regulations, with regulation 11N of those regulations;
- 3.9.3 if the Employer appoints a replacement for any Principal Designer or Principal Contractor, the Employer shall immediately upon that appointment notify the Contractor with details of the new appointee.

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

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

## Section 4 Payment

### 4.1 VAT

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

### 4.2 Construction Industry Scheme (CIS)

If the Employer is or at any time up to the payment of the final certificate becomes a 'contractor' for the purposes of the CIS<sup>[30]</sup>, its obligation to make any payment under this Contract is subject to the provisions of the CIS.

### 4.3 Interim payments – dates and certificates

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

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

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

### 4.4 Interim payments – calculation of sums due

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

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

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

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

### 4.5 Contractor's applications and payment notices

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

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

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

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

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

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

#### **4.6 Payments – amount and notices**

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

#### **4.7 Failure to pay amount due**

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

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

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

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

#### **4.9 Final certificate and final payment**

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

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

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

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

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

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

#### **4.10 Fixed price and fluctuations provisions**

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

## Section 5 Injury, Damage and Insurance

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

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

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

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

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

### 5.3 Contractor's insurance of its liability

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

- 5.3.1 in respect of claims for personal injury to or the death of any employee of the Contractor arising out of and in the course of such person's employment, shall comply with all relevant legislation; and
- 5.3.2 for all other claims to which clause 5.3 applies<sup>[31]</sup>, shall indemnify the Employer in like manner to the Contractor, but only to the extent that the Contractor may be liable to indemnify the Employer under the terms of this Contract and shall for any one occurrence or series of occurrences arising out of one event be in a sum not less than that stated in the Contract Particulars for clause 5.3.

### 5.4 Joint Names Insurance of the Works by Contractor<sup>[32][33]</sup>

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

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

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

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

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

#### **5.5 Joint Names Insurance of the Works and existing structures by Employer<sup>[33]</sup>**

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

5.5.1 a Joint Names Policy in respect of the existing structures together with the contents of them owned by it or for which it is responsible, for the full cost of reinstatement, repair or replacement of loss or damage due to any of the Specified Perils;

5.5.2 a Joint Names Policy for All Risks Insurance for the full reinstatement value of the Works (plus the percentage, if any, stated in the Contract Particulars to cover professional fees)

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

#### **5.6 Insurance of the Works and existing structures by other means<sup>[33]</sup>**

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

#### **5.7 Evidence of insurance**

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

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

5.8.1 If during the carrying out of the Works any loss or damage affecting any executed work or Site Materials is occasioned by any of the risks covered by the Works Insurance Policy or an Excepted Risk or there is any loss of or damage of any kind to any existing structure or its contents, the Contractor shall forthwith notify the Architect/Contract Administrator and the Employer.

5.8.2 Subject to clauses 5.8.5.1 and 5.8.6, the occurrence of such loss or damage to executed work or Site Materials shall be disregarded in calculating any amounts payable to the Contractor under this Contract.

5.8.3 The Contractor, for itself and its sub-contractors, shall authorise the insurers to pay to the Employer all monies from the Works Insurance Policy, and from any policies covering existing structures or their contents that are effected by the Employer.

5.8.4 Where loss or damage affecting executed work or Site Materials is occasioned by any risk covered by the Works Insurance Policy, the Contractor, after any inspection required by the insurers under that policy, shall and with due diligence restore the damaged work, replace or repair any lost or damaged Site Materials, remove and dispose of any debris (collectively 'reinstatement work') and proceed with the carrying out and completion of the Works.

5.8.5 Where clause 5.4 applies or where clause 5.6 applies and the Contractor is responsible for effecting the Works Insurance Policy:

5.8.5.1 the Employer shall pay all monies from such insurance to the Contractor by instalments under separate reinstatement work certificates issued by the Architect/Contract Administrator at the same dates as those for interim certificates under clause 4.3 but without deduction of retention and less only the amounts referred to in clause 5.8.5.2;

5.8.5.2 the Employer may retain from those monies any amounts properly incurred by the Employer and notified by it to insurers in respect of professional fees up to the aggregate amount of the percentage cover for those fees or (if less) the amount paid by insurers in respect of those fees;

5.8.5.3 in respect of reinstatement work, the Contractor shall not be entitled to any



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

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

**5.9 Loss or damage to existing structures – right of termination**

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

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

## Section 6 Termination

### 6.1 Meaning of insolvency

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

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

### 6.2 Notices under section 6

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

### 6.3 Other rights, reinstatement

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

### 6.4 Default by Contractor

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

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

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

6.4.1.3 fails to comply with clause 3.9,

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

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

## **6.5 Insolvency of Contractor**

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

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

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

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

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

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

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

## **6.7 Consequences of termination under clauses 6.4 to 6.6**

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

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

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

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

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

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

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

date of completion as referred to in clause 6.7.3;

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

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

6.7.5.2 the amount of payments made to the Contractor; and

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

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

## **6.8 Default by Employer**

6.8.1 If the Employer:

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

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

6.8.1.3 fails to comply with clause 3.9,

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

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

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

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

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

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

## **6.9 Insolvency of Employer**

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

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

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

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

6.10.1.1 force majeure;

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

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

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

## **6.11 Consequences of termination under clauses 6.8 to 6.10**

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

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

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

## **6.12 Termination Payment – final date, notices and amount**

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

## Section 7 Settlement of Disputes

### 7.1 Notification and negotiation of disputes

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

### 7.2 Mediation

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

### 7.3 Adjudication

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

### 7.4 Arbitration

For the purposes of Article 8, if it applies, the procedures for arbitration are set out in Schedule 1.<sup>[34]</sup>

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

# Schedules

## Schedule 1 Arbitration

(Clause 7.4)

### Conduct of arbitration

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

### Notice of reference to arbitration

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

### Powers of Arbitrator

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

### Effect of award

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

### Appeal – questions of law

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



**Arbitration Act 1996**

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

## Schedule 2 Supplemental Provisions

(Eighth Recital)

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

### Health and safety

1

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

### Cost savings and value improvements

2

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

### Performance Indicators and monitoring

3

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

#### **Transparency**

- 4 Where the Employer is a Local or Public Authority or other body to which the provisions of the Freedom of Information Act 2000 ('FOIA') apply, the Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of this Contract is not confidential. The Employer shall be responsible for determining in its absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding any other term of this Contract:
  - 4.1 the Contractor hereby consents to the Employer publishing any amendments to the standard form JCT contract in their entirety, including changes to the standard form agreed from time to time, but in each case with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted;
  - 4.2 the Employer shall promptly inform the Contractor of any request for disclosure that it receives in relation to this Contract.

#### **The Public Contracts Regulations 2015**

- 5 Where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations<sup>[35]</sup>:
  - 5.1 where regulation 113 of the PC Regulations applies to this Contract, the Contractor shall include in any sub-contract it enters into suitable provisions to impose the requirements of regulation 113(2)(c)(i) and (ii);
  - 5.2 the Contractor shall include in any sub-contract it enters into provisions requiring the sub-contractor:
    - 5.2.1 to supply and notify to the Contractor the information required (as applicable) under regulations 71(3), 71(4) and 71(5) of the PC Regulations; and
    - 5.2.2 to include in any sub-subcontract the sub-contractor in turn enters into provisions to the same effect as required under paragraph 5.2.1 of Supplemental Provision 5;
  - 5.3
    - 5.3.1 the Contractor shall include in any sub-contract it enters into provisions that shall entitle the Contractor to terminate the sub-contractor's employment where there are grounds for excluding the sub-contractor under regulation 57;
    - 5.3.2 in the event the Employer requires the Contractor to terminate a sub-contractor's employment pursuant to regulation 71(9) the Contractor shall take the appropriate steps to terminate that employment and where required by the Employer under regulation 71(9) shall, or in circumstances where there is no such requirement may, appoint a replacement sub-contractor.

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

## Guidance Notes

### Use of Minor Works Building Contract with contractor's design

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

### Outline of the Contract

#### General

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

#### Architect/Contract Administrator

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

#### Role of the Architect/Contract Administrator

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

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

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

#### **Instructions**

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

#### **Contractor's Designed Portion**

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

#### **Price**

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

#### **Time-scale for the work**

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

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

#### **Payment**

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

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

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

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

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

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

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

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

### **Suspension**

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

### **Termination**

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

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

### **Dealing with disputes**

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

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

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

The Parties may also agree to mediate a dispute.

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

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

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

### **Rights and remedies generally**

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

### **Supplemental Provisions**

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

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

### **Terms used**

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

#### **Base Date**

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

### **CDM Regulations**

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

### **Part 2A of the Building Regulations**

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

### **Principal Designer and Principal Contractor**

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

### **CDM Health and safety file**

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

### **Date for Completion**

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

### **Date of practical completion**

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

### **Rectification Period**

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

### **Insurance in Joint Names**

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

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

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



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

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

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

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

#### **Liquidated damages**

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

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

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

#### **Provisional Sum**

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

#### **Variation**

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

### **MWD User Checklist**

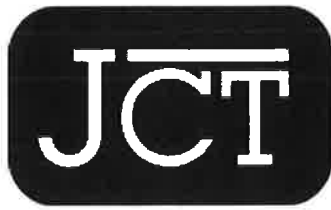
A checklist of the key information that will help you to complete the Agreement may be downloaded from the JCT website.

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

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

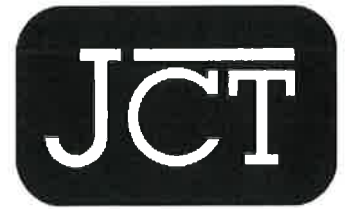


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**MWD 2024**  
**Minor Works Building Contract**  
**with contractor's design 2024**

**2024**  
**MINOR WORKS BUILDING CONTRACT**

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

## Appropriate:

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

## Can be used:

- by both private and local authority employers.

## Not suitable:

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

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

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

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<b>Section 7</b>	<b>Settlement of Disputes</b>	<b>3735</b>
7.1	Notification and negotiation of disputes	
7.2	Mediation	
7.3	Adjudication	
7.4	Arbitration	

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<b>Schedules</b>	<b>3836</b>
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<b>Schedule 1</b>	<b>Arbitration</b>	<b>3836</b>
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<b>Schedule 2</b>	<b>Supplemental Provisions</b>	<b>4038</b>
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<b>Guidance Notes</b>	<b>4240</b>
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# Agreement

## This Agreement

is made the \_\_\_\_\_ 20\_\_\_\_\_

## Between

### The Employer

[\_\_\_\_\_] North West Leicestershire District Council

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

of ~~whose~~ registered office is at Whitwick Road, Coalville, Leicestershire, LE67 3FJ

[\_\_\_\_\_]

## And

### The Contractor

[\_\_\_\_\_] Another Level Scaffolding Midlands Ltd

Place of incorporation: England and Wales

(Company No. [\_\_\_\_\_] 10096709)<sup>[1]</sup>

~~of~~ whose registered office is at Unit 23a Mill Lane, Syston, Leicester, England, LE7 1NS

[\_\_\_\_\_]

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



## Recitals

### Whereas

#### First

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

~~[ ] Supply and erect scaffolding structures including fixed tubular and towers.~~

at

~~[ ] North West Leicestershire District~~ ('the Works')  
under the direction of the Architect/Contract Administrator referred to in Article 4;

#### Second

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

~~[ ] In receipt of any works order for the supply, erection, alteration and/or dismantling of scaffold.~~  
( 'the Contractor's Designed Portion' );

#### Third

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

~~the drawings numbered/listed in [ ] ('the Contract Drawings')~~<sup>[4][5]</sup>

a Specification ('the Contract Specification')<sup>[4]</sup>

~~Work Schedules~~<sup>[4]</sup>

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

which for identification have been signed or initialled by or on behalf of each Party; those documents together with this Agreement, the Conditions and, if applicable, a Schedule of Rates as referred to in the Fourth Recital (collectively 'the Contract Documents') are annexed to this Agreement<sup>[6]</sup>;

#### Fourth

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

[2] State nature and location of intended works.

[3] State nature of work in the Contractor's Designed Portion either here or by reference to an identified Annex to this Contract. The Annex or any continuation sheets to a description here should be signed or initialled by or on behalf of each Party.

[4] Delete as appropriate.

~~[5] State the identifying numbers of the Contract Drawings or identify the schedule of drawings or other document listing them.~~

[6] **+++Now footnote [5]+++** Where a Contract Document has been priced by the Contractor it is that version of the document that should be annexed.

**Fifth**

---

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

**Sixth**

---

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

**Seventh**

---

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

**Eighth**

---

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

## Articles

### Now it is hereby agreed as follows

#### Article 1 Contractor's obligations

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

#### Article 2 Contract Sum

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

                     Two million (£                      2,000,000) ('the Contract Sum')

or such other sum as becomes payable under this Contract.

#### Article 3 Collaborative working

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

#### Article 4 Architect/Contract Administrator

For the purposes of this Contract the Architect/Contract Administrator<sup>[7]</sup> is

                     Megan Hodgett

of

                     Whitwick Road, Coalville, Leicestershire, LE67 3FJ

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

#### Article 5 CDM Regulations – Principal Designer and Principal Contractor

For the purposes of the CDM Regulations:

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

~~(or) <sup>[8]</sup>~~

[7] **+++Now footnote [6]+++** Unless the person appointed by or under Article 4 is entitled to use the title 'Architect' under the Architects Act 1997, the term 'Architect' shall so long as that person holds that post be deemed deleted throughout this Contract. Any appointee as Contract Administrator should be suitably experienced for the role. Irrespective of experience or qualifications, the Employer should not at any time appoint itself to the role without the Contractor's prior agreement.

[8] ~~Insert the name of the Principal Designer if the Architect/Contract Administrator is not to fulfil the role and that of the Principal Contractor if it is to be a person other than the Contractor. Under the CDM Regulations, regardless of whether or not a project is notifiable, and (where applicable) Part 2A of the Building Regulations~~

or

[ ]

~~the Principal Designer is the Architect/Contract Administrator~~ or such replacement as the Employer at any time appoints to fulfil that role;

~~the Principal Contractor is the Contractor~~

(or)<sup>[9]</sup> [ ]

or

[ ]

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

Article 6

Building Regulations – Principal Designer and Principal Contractor

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

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

(or)<sup>[9]</sup> [ ]

or

[ ]

~~the Principal Designer is the Architect/Contract Administrator~~ or such replacement as the Employer at any time appoints to fulfil that role;

~~the Principal Contractor is the Contractor~~

(or)<sup>[9]</sup> [ ]

or

[ ]

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

Article 7

Adjudication

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

Article 8

Arbitration

Where Article 8 applies<sup>[10]</sup>, then, subject to Article 7 and the exceptions set out below, any dispute or difference between the Parties of any kind whatsoever arising out of or in connection with this Contract shall be referred to arbitration in accordance with Schedule 1 and the JCT 2024 edition of

~~there is a requirement to appoint a principal designer and a principal contractor in all cases where there is more than one contractor, or if it is reasonably foreseeable that more than one contractor will be working on a project at any time. For these purposes, the term 'contractor' is broadly defined by the regulations which treat the Contractor's sub-contractors as separate contractors. As to these statutory appointments generally, see the Guidance Notes.~~

[9]

~~+++Now footnote [7]+++~~ As to adjudication in cases where the Employer is a residential occupier within the meaning of section 106 of the Housing Grants, Construction and Regeneration Act 1996, see the Guidance Notes.

[10]

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

the Construction Industry Model Arbitration Rules (CIMAR)<sup>[11]</sup>. The exceptions to this Article 8 are:

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

## Article 9

### Legal proceedings<sup>[10]</sup>

---

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

---

[11] **+++Now footnote [9]+++** See the Guidance Notes.

## Contract Particulars

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

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

Base Date

### Fifth Recital and clause 4.2

Construction Industry Scheme (CIS)

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

### Sixth Recital

CDM Regulations<sup>[12]</sup>

the project  
\* is notifiable ~~is not notifiable~~

### Seventh Recital

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

### Eighth Recital and Schedule 2

Supplemental Provisions<sup>[13]</sup>  
(Where neither entry against one of Supplemental Provisions 1 to 3 below is deleted, that Supplemental Provision applies.)

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

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

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

[12] **+++Now footnote [10]+++** Under the CDM Regulations a project is notifiable if the construction work on a construction site is scheduled either to last longer than 30 working days and have more than 20 workers working simultaneously at any point in the project or to exceed 500 person days.

[13] **+++Now footnote [11]+++** Supplemental Provision 4 (Transparency) applies only where the Employer is a Local or Public Authority or other body to which the Freedom of Information Act 2000 applies; Supplemental Provision 5 (The Public Contracts Regulations 2015) applies only where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations.

\* applies

## Article 8

### Arbitration

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

Article 8 and Schedule 1 (Arbitration)

\* ~~apply/do not apply~~

\* apply

## 1.6.2

### Addresses for service of notices by the Parties

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

Employer

                     Whitwick Road, Coalville, Leicestershire, LE67 3FJ

Contractor

The respective email addresses for the Parties are

Employer's email

                     megan.hodgett@nwleicestershire.gov.uk

Contractor's email

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

## 2.3

### Works commencement date

                     1st October 2025

### Date for Completion

                     30th September 2029

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

## 2.9

### Liquidated damages

at the rate of

£                      per                      <sup>[15]</sup>

[14] **+++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 Guidance Notes. See also footnote [10] **+++ now footnote [8] +++**.

[15] **+++Now footnote [13]+++** Insert 'day', 'week' or other period.



## 2.11

### Rectification Period

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

months<sup>[16]</sup>  
from the date of practical completion

## 4.3

### Interim payments – Interim Valuation Dates<sup>[17]</sup>

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

The first Interim Valuation Date is

and thereafter at intervals of

## 4.4

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

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

per cent<sup>[16]</sup>

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

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

per cent<sup>[16]</sup>

## 4.4 and 4.9

### Fluctuations provision<sup>[18]</sup>

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

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

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

per cent

## 4.9.1

Supply of documentation for computation of amount to be finally certified

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

[16] **+++Now footnote [14]+++** An insertion is needed here only if the default position is not to apply. If no retention is required, insert '100' in the percentage entries for clause 4.4.

[17] **+++Now footnote [15]+++** The first Interim Valuation Date should not be more than one month after the Works commencement date and the intervals between Interim Valuation Dates should not be more than one month.

[18] **+++Now footnote [16]+++** Unless the fluctuations provision is to be the JCT Fluctuations Option, delete all but one of the asterisked choices. The printed text of the JCT Fluctuations Option is no longer included in JCT contract documents but continues to be available on the JCT website [www.jctltd.co.uk](http://www.jctltd.co.uk). If an alternative fluctuation is to be used, the document(s) in which it is contained should be identified here.



months<sup>[19]</sup>  
from the date of practical completion

### 5.3

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

£          10,000,000  
for any one occurrence or series of occurrences arising out of one event

### 5.4, 5.5 and 5.6

Insurance of the Works etc. – alternative provisions<sup>[19]</sup>

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

### 5.4 and 5.5

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

          15 per cent

### 5.6

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

### 6.2.3.2

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

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

Employer's email

          megan.hodgett@nwleicestershire.gov.uk

Contractor's email

### 7.1

Notification and negotiation of disputes

The respective nominees of the Parties are

[19] **+++Now footnote [17]+++** As to choice of applicable insurance provisions, see the Guidance Notes.  
Where there are existing structures, it is vital that any prospective Employer – in particular any Employer which is a tenant or a domestic homeowner – which is not familiar with clause 5.5 and the possible solutions under clause 5.6, or an appropriate member of the Employer's professional team, should consult the Employer's insurance advisers prior to the tender stage. Any Employer which is a tenant should also consult its insuring landlord prior to that stage.

Employer's nominee

Andy Barton

Contractor's nominee

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

### 7.3

#### Adjudication<sup>[20]</sup>

The Adjudicator is

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

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

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

- \* ~~Royal Institute of British Architects~~
- \* The Royal Institution of Chartered Surveyors
- \* ~~constructionadjudicators.com<sup>[21]</sup>~~
- \* ~~Chartered Institute of Arbitrators~~

\*

#### Schedule 1 (paragraph 2.1)

Arbitration<sup>[22]</sup>: appointor of Arbitrator (and of any replacement) – the appointor is

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

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

President or a Vice-President:

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

\*

[20] **+++Now footnote [18]+++** The Parties should either name the Adjudicator and select the nominating body or, alternatively, select only the nominating body.  
The Adjudication Agreement (Adj) and the Adjudication Agreement (Named Adjudicator) (Adj/N) have been prepared by JCT for use when appointing an Adjudicator.

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

[22] **+++Now footnote [19]+++** This only applies where the Contract Particulars state (against the reference to Article 8) that Article 8 and Schedule 1 (Arbitration) apply.

## Attestation

### Note on Execution

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

#### Execution under hand

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

#### Execution as a Deed

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

#### Other forms of Attestation

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

#### Electronic execution

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

[23] +++Now footnote [20]+++ See Statement of Law paragraph (1) at page 2 of the report. The full text of the report is available at [www.lawcom.gov.uk/project/electronic-execution-of-documents](http://www.lawcom.gov.uk/project/electronic-execution-of-documents).

Execution under hand

As witness

the hands of the Parties  
or their duly authorised representatives

Signed by or on behalf of  
the Employer

\_\_\_\_\_

in the presence of:

\_\_\_\_\_  
witness' signature

\_\_\_\_\_  
witness's name

\_\_\_\_\_  
witness's address

Signed by or on behalf of  
the Contractor

\_\_\_\_\_

in the presence of:

\_\_\_\_\_  
witness' signature

\_\_\_\_\_  
witness's name

\_\_\_\_\_  
witness's address

## Notes on Execution as a Deed

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

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

*Execution as a Deed*

**Executed as a Deed by the Employer**

namely <sup>1</sup> North West Leicestershire District Council

~~(A) acting by a Director and the Company Secretary/two Directors of the company~~ <sup>2,3</sup>

~~(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** <sup>2,4</sup>

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~~ <sup>2,5</sup>

~~Signature~~ ~~Director~~

~~in the presence of~~

~~Witness' signature~~ ~~(Print name)~~

~~Witness's address~~

**(D) by attested signature of the individual** <sup>6</sup>

Signature

in the presence of

Witness' signature (Print name)

Witness's address

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

*Execution as a Deed*

**Executed as a Deed by the Contractor**

namely <sup>1</sup> Another Level Scaffolding Midlands Ltd

**(A)** acting by a Director and the Company Secretary/two Directors of the company <sup>2,3</sup>

*(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~~ <sup>2,4</sup>

~~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~~ <sup>2,5</sup>

~~*Signature*~~

~~Director~~

~~in the presence of~~

~~*Witness' signature*~~

~~*(Print name)*~~

~~*Witness's address*~~

**(D)** ~~by attested signature of the individual~~ <sup>6</sup>

~~*Signature*~~

~~in the presence of~~

~~*Witness' signature*~~

~~*(Print name)*~~

~~*Witness's address*~~

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



# Conditions

## Section 1 Definitions and Interpretation

### 1.1 Definitions

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

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

**All Risks Insurance**<sup>[24]</sup>: 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<sup>[25]</sup>;
- (c) loss or damage caused by or arising from:
  - (i) any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation, commandeering, nationalisation or requisition or loss or destruction of or damage to any property by or under the order of any government *de jure* or *de facto* or public, municipal or local authority,
  - (ii) disappearance or shortage if such disappearance or shortage is only revealed when an inventory is made or is not traceable to an identifiable event, or
  - (iii) an Excepted Risk.

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

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

[24] **+++Now footnote [21]+++** The definition of All Risks Insurance defines the risks for which insurance is required. Policies issued by insurers are not standardised and the way in which insurance for those risks is expressed varies.

[25] **+++Now footnote [22]+++** In any policy for All Risks Insurance taken out under clause 5.4 or 5.5.2, cover should not be reduced by any exclusion that goes beyond the terms of paragraph (b) in this definition. For example, an exclusion in terms that 'This Policy excludes all loss of or damage to the property insured due to defective design, plan, specification, materials or workmanship' would not be in accordance with the terms of those insurance clauses or of that definition. Wider All Risks cover than that specified may be available, though it is not standard.



**Building Regulations:** the Building Regulations 2010.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Parties:** the Employer and the Contractor together.

**Party:** either the Employer or the Contractor.

**PC Regulations:** the Public Contracts Regulations 2015.

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

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

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

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

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

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

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[26] +++Now footnote [23]+++ Amend as necessary if different Public Holidays are applicable.

reference to **clause 2.11**).

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

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

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

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

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

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

**VAT:** Value Added Tax.

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

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

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

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

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

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

## **1.4 Reckoning periods of days**

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

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

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

## **1.6 Notices and other communications**

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

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

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

## 1.7 Consents and approvals

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

## 1.8 Applicable law

This Contract shall be governed by and construed in accordance with the law of England.<sup>[27]</sup>

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[27] **+++Now footnote [24]+++** Where the Parties do not wish the law applicable to this Contract to be the law of England appropriate amendments should be made.

## Section 2 Carrying out the Works

### 2.1 Contractor's obligations

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

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

### 2.2 Materials, goods and workmanship

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

[28] **+++Now footnote [25]+++** It is envisaged that any applicable BIM or other communications protocol will be included in the Employer's Requirements.

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

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

## **2.3 Commencement and completion**

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

## **2.4 Architect/Contract Administrator's duties**

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

## **2.5 Correction of inconsistencies**

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

## **2.6 Divergences from Statutory Requirements**

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

## **2.7 Fees or charges legally demandable**

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

## **2.8 Extension of time**

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

## **2.9 Damages for non-completion**

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

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

## **2.10 Practical completion**

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

## **2.11 Defects**

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

## **2.12 Certificate of making good**

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



## Section 3 Control of the Works

### 3.1 Assignment

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

### 3.2 Person-in-charge

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

### 3.3 Sub-contracting

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

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

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

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

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

### 3.4 Architect/Contract Administrator's instructions

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

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

### 3.5 Non-compliance with instructions

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

[29] +++Now footnote [26]+++ The Short Form of Sub-Contract is not appropriate where the sub-contract is to include sub-contractor's design.

[30] +++Now footnote [27]+++ See footnote [31] +++ now footnote [28] +++ to clause 3.9 below.

### 3.6 Variations

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

### 3.7 Provisional Sums

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

### 3.8 Exclusion from the Works

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

### 3.9 CDM Regulations and Part 2A of the Building Regulations

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

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

[31] **+++Now footnote [28]+++** Part 2A of the Building Regulations, introduced by the Building Regulations etc. (Amendment) (England) Regulations 2023 pursuant to the Building Safety Act 2022, sets out a framework of safety duties and competence requirements for those persons involved in the procurement, design and undertaking of building work to which building regulations apply (including higher-risk building work for which additional duties apply). If any project involves higher-risk building work, see the Guidance Notes.

[32] **+++Now footnote [29]+++** Under the CDM Regulations and the Building Regulations, where the Employer is a domestic client (as defined in regulation 2(1) in both sets of regulations), the Principal Contractor may also be responsible for carrying out certain of the client's duties.



## Section 4 Payment

### 4.1 VAT

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

### 4.2 Construction Industry Scheme (CIS)

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

### 4.3 Interim payments – dates and certificates

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

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

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

### 4.4 Interim payments – calculation of sums due

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

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

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

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

### 4.5 Contractor's applications and payment notices

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

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

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

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

[33] +++Now footnote [30]+++ See the Contract Particulars (Fifth Recital and clause 4.2).

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

#### **4.6 Payments – amount and notices**

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

#### **4.7 Failure to pay amount due**

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

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

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

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

#### **4.9 Final certificate and final payment**

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

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

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

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

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

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

#### **4.10 Fixed price and fluctuations provisions**

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

## Section 5 Injury, Damage and Insurance

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

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

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

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

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

### 5.3 Contractor's insurance of its liability

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

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

### 5.4 Joint Names Insurance of the Works by Contractor<sup>[35][36]</sup>

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

[34] **+++Now footnote [31]+++** It should be noted that the cover granted under Public Liability policies taken out pursuant to clause 5.3 may not be co-extensive with the indemnity given to the Employer in clauses 5.1 and 5.2: for example, each claim may be subject to an excess and cover may not be available in respect of loss or damage due to gradual pollution.

[35] **+++Now footnote [32]+++** Where the Contractor has in force an All Risks Policy which insures the Works, this Policy may be used to provide the insurance required by clause 5.4 provided the Policy recognises the Employer as a composite insured in respect of the Works.

[36] **+++Now footnote [33]+++** As to choice of applicable insurance provisions, see the Guidance Notes.

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

#### **5.5 Joint Names Insurance of the Works and existing structures by Employer<sup>[36]</sup>**

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

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

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

#### **5.6 Insurance of the Works and existing structures by other means<sup>[36]</sup>**

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

#### **5.7 Evidence of insurance**

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

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

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

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

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

**5.9 Loss or damage to existing structures – right of termination**

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

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



## Section 6 Termination

### 6.1 Meaning of insolvency

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

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

### 6.2 Notices under section 6

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

### 6.3 Other rights, reinstatement

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

### 6.4 Default by Contractor

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

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

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

6.4.1.3 fails to comply with clause 3.9,

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

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

## **6.5 Insolvency of Contractor**

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

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

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

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

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

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

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

## **6.7 Consequences of termination under clauses 6.4 to 6.6**

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

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

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

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

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

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

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



date of completion as referred to in clause 6.7.3;

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

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

6.7.5.2 the amount of payments made to the Contractor; and

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

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

## 6.8 Default by Employer

6.8.1 If the Employer:

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

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

6.8.1.3 fails to comply with clause 3.9,

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

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

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

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

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

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

## 6.9 Insolvency of Employer

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

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

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

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

6.10.1.1 force majeure;

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

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

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

## **6.11 Consequences of termination under clauses 6.8 to 6.10**

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

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

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

**6.12 Termination Payment – final date, notices and amount**

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

## Section 7 Settlement of Disputes

### 7.1 Notification and negotiation of disputes

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

### 7.2 Mediation

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

### 7.3 Adjudication

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

### 7.4 Arbitration

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

[37] **+++Now footnote [34]+++** Arbitration or legal proceedings are **not** an appeal against the decision of the Adjudicator but are a consideration of the dispute or difference as if no decision had been made by an Adjudicator.

# Schedules

## Schedule 1      Arbitration

(Clause 7.4)

**Conduct of arbitration**

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

**Notice of reference to arbitration**

- 2
- 2.1

Where pursuant to Article 8 either Party requires a dispute or difference to be referred to arbitration, that Party shall serve on the other Party a notice of arbitration to such effect in accordance with Rule 2.1 identifying the dispute and requiring the other Party to agree to the appointment of an arbitrator. The Arbitrator shall be an individual agreed by the Parties or, failing such agreement within 14 days (or any agreed extension of that period) after the notice of arbitration is served, appointed on the application of either Party in accordance with Rule 2.3 by the person selected in accordance with the Contract Particulars.
- 2.2

Where two or more related arbitral proceedings in respect of the Works fall under separate arbitration agreements, Rules 2.6, 2.7 and 2.8 shall apply.
- 2.3

After the Arbitrator has been appointed either Party may give a further notice of arbitration to the other Party and to the Arbitrator referring any other dispute which falls under Article 8 to be decided in the arbitral proceedings and Rule 3.3 shall apply.

**Powers of Arbitrator**

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

**Effect of award**

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

**Appeal – questions of law**

- 5
- The Parties hereby agree pursuant to section 45(2)(a) and section 69(2)(a) of the Arbitration Act 1996 that either Party may (upon notice to the other Party and to the Arbitrator):
- 5.1

apply to the courts to determine any question of law arising in the course of the reference, and
- 5.2

appeal to the courts on any question of law arising out of an award made in an arbitration under this arbitration agreement.

**Arbitration Act 1996**

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

## Schedule 2 Supplemental Provisions

(Eighth Recital)

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

### Health and safety

1

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

### Cost savings and value improvements

2

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

### Performance Indicators and monitoring

3



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

#### Transparency

- 4 Where the Employer is a Local or Public Authority or other body to which the provisions of the Freedom of Information Act 2000 ('FOIA') apply, the Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of this Contract is not confidential. The Employer shall be responsible for determining in its absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding any other term of this Contract:
  - 4.1 the Contractor hereby consents to the Employer publishing any amendments to the standard form JCT contract in their entirety, including changes to the standard form agreed from time to time, but in each case with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted;
  - 4.2 the Employer shall promptly inform the Contractor of any request for disclosure that it receives in relation to this Contract.

#### The Public Contracts Regulations 2015

- 5 Where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations<sup>[38]</sup>:
  - 5.1 where regulation 113 of the PC Regulations applies to this Contract, the Contractor shall include in any sub-contract it enters into suitable provisions to impose the requirements of regulation 113(2)(c)(i) and (ii);
  - 5.2 the Contractor shall include in any sub-contract it enters into provisions requiring the sub-contractor:
    - 5.2.1 to supply and notify to the Contractor the information required (as applicable) under regulations 71(3), 71(4) and 71(5) of the PC Regulations; and
    - 5.2.2 to include in any sub-subcontract the sub-contractor in turn enters into provisions to the same effect as required under paragraph 5.2.1 of Supplemental Provision 5;
  - 5.3
    - 5.3.1 the Contractor shall include in any sub-contract it enters into provisions that shall entitle the Contractor to terminate the sub-contractor's employment where there are grounds for excluding the sub-contractor under regulation 57;
    - 5.3.2 in the event the Employer requires the Contractor to terminate a sub-contractor's employment pursuant to regulation 71(9) the Contractor shall take the appropriate steps to terminate that employment and where required by the Employer under regulation 71(9) shall, or in circumstances where there is no such requirement may, appoint a replacement sub-contractor.

[38] **+++Now footnote [35]+++** See the Guidance Notes. Provisions relating to the PC Regulations are also set out in section 6 (Termination) of this Contract. The JCT Minor Works Sub-Contract with sub-contractor's design (MWSub/D) and the JCT Short Form of Sub-Contract (ShortSub) meet the requirements of Supplemental Provision 5.



## Guidance Notes

### Use of Minor Works Building Contract with contractor's design

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

### Outline of the Contract

#### General

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

#### Architect/Contract Administrator

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

#### Role of the Architect/Contract Administrator

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

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

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

#### **Instructions**

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

#### **Contractor's Designed Portion**

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

#### **Price**

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

#### **Time-scale for the work**

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

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

#### **Payment**

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

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

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

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

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

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

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

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

### **Suspension**

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

### **Termination**

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

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

### **Dealing with disputes**

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

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

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

The Parties may also agree to mediate a dispute.

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

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

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

### **Rights and remedies generally**

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

### **Supplemental Provisions**

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

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

### **Terms used**

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

#### **Base Date**

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



**CDM Regulations**

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

**Part 2A of the Building Regulations**

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

**Principal Designer and Principal Contractor**

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

**CDM Health and safety file**

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

**Date for Completion**

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

**Date of practical completion**

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

**Rectification Period**

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

**Insurance in Joint Names**

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

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

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

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

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

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

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

#### **Liquidated damages**

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

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

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

#### **Provisional Sum**

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

#### **Variation**

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

### **MWD User Checklist**

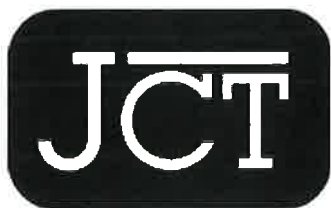
A checklist of the key information that will help you to complete the Agreement may be downloaded from the JCT website.

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

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



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