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DB 2024  
Design and Build Contract 2024

**2024**  
DESIGN AND BUILD CONTRACT

## Design and Build Contract (DB)

Appropriate:

- where detailed contract provisions are necessary and Employer's Requirements have been prepared and provided to the Contractor;
- where the Contractor is not only to carry out and complete the works, but also to complete the design; and
- where the Employer employs an agent (such an agent may be an external consultant or employee) to administer the conditions.

Can be used:

- where the works are to be carried out in sections;
- by both private and local authority employers.

Where the Contractor's design responsibility is restricted to discrete parts of the works and the Contractor is not responsible for completing the design for the whole works, consideration should be given to using one of the JCT contracts that provide for the employment of an Architect/Contract Administrator and limited design input by the Contractor.

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# Agreement

## This Agreement

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

## Between

### The Employer

Hyndburn Borough Council

of Scaitcliffe House, Ormerod Street, Accrington, BB5 0PF

## And

### The Contractor

Krol Corlett Construction Limited

Place of incorporation: England and Wales

(Company No. 05974400)<sup>[1]</sup>

whose registered office is at Morgan Brightside Building, Bradman Road, Knowsley Industrial Park, Knowsley, Merseyside, L33 7UR

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

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## Recitals

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### Whereas

#### First

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

To Market Hall; Installation of new louvre vents at roof level, and new rooflights to roof lanterns, Access and edge protection to maintenance deck and roof, including new access ladders and walkways, Fit-out of Market Hall including F&B kitchens and bar, market stalls and pergolas, associated signage and FF&E, Refurbishment of existing staircases and balustrades, Installation of new public WCs and amenities, including prayer, ablution, and sensory room, Refurbishment of existing trader WC and kitchen facilities, MEP installation including kitchen extract, drainage, local heating, lighting and small power, Roof refurbishment works, including slate roofs, gutters and RWPs, lead flashings, MEP penetrations and PVs and;

To Burtons Chambers; Installation of wall lining to perimeter walls for thermal upgrade and tanking at ground floor, Installation of roof infill to former rooflight opening, Roof works including formation of risers, roof hatch and repairs to roof and parapets, Repairs to rotten timber joists and lintels, Installation of new staircase and platform lift, Fire protection to all floors, New partition walls and doors to form cellular offices and amenity spaces at all floors, FF&E fit-out to all office and common spaces, including circulation areas, WCs, kitchenettes and meeting spaces, Full MEP fit-out including drainage connections and power supply

at

Accrington Town Square, Accrington  
Market Hall; Peel Street, Accrington, BB5 1ER  
Burton Chambers; 61-69 Blackburn Road, BB5 1JJ ('the Works')  
and the Employer has supplied to the Contractor documents showing and describing or otherwise stating its requirements ('the Employer's Requirements');

#### Second

---

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

- documents showing and describing the Contractor's proposals for the design and construction of the Works ('the Contractor's Proposals'); and
- an analysis of the Contract Sum ('the Contract Sum Analysis');

#### Third

---

the Employer has examined the Contractor's Proposals and, subject to the Conditions, is satisfied that they appear to meet the Employer's Requirements<sup>[3]</sup>;

#### Fourth

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for the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004, the status of

[2] State nature and location of intended works.

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

the Employer is, as at the Base Date, that stated in the Contract Particulars;

**Fifth**

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the division of the Works into Sections is shown in the Employer's Requirements or in such other documents as are identified in the Contract Particulars<sup>[4]</sup>;

**Sixth**

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the Contract is not supplemented by a Framework Agreement;

**Seventh**

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whether any of Supplemental Provisions 1 to 7 apply is stated in the Contract Particulars;

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**[4]** Delete the Fifth Recital if the Works are not divided into Sections.

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## Articles

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### Now it is hereby agreed as follows

**Article 1**      **Contractor's obligations**

The Contractor shall complete the design for the Works and carry out and complete the construction of the Works in accordance with the Contract Documents.

**Article 2**      **Contract Sum**

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

pounds only [REDACTED] ('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**      **Employer's Agent**

For the purposes of this Contract the Employer's Agent is

[REDACTED]  
of

[REDACTED]  
or such other person as the Employer nominates in its place. Save to the extent that the Employer may otherwise specify by notice to the Contractor, the Employer's Agent shall have full authority to receive and issue applications, consents, instructions, notices, requests or statements and otherwise to act for the Employer under any of the Conditions.

**Article 5**      **Employer's Requirements and Contractor's Proposals**

The Employer's Requirements, the Contractor's Proposals and the Contract Sum Analysis are those referred to in the Contract Particulars.

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

For the purposes of the CDM Regulations:

the Principal Designer is the Contractor 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 Building Regulations – Principal Designer and Principal Contractor**

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For the purposes of the Building Regulations:

the Principal Designer is the Contractor 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 8 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 9.3.<sup>[5]</sup>

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**Article 9 Arbitration**

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Not applicable

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**Article 10 Legal proceedings<sup>[6]</sup>**

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Subject to Article 8 and (where it applies) to Article 9, 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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[5] 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 Design and Build Contract Guide.

[6] If it is intended, subject to the right of adjudication and exceptions stated in Article 9, that disputes or differences should be determined by arbitration and not by legal proceedings, the Contract Particulars **must** state that Article 9 and clauses 9.4 to 9.9 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 10 (see also clause 1.11 and Schedule 5 Part 1 and Part 2).

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## Contract Particulars

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

### Fourth Recital and clause 4.5

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Construction Industry Scheme (CIS)

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

### Fifth Recital

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Description of Sections (if any)  
*(If not shown or described in the Employer's Requirements, state the reference numbers and dates or other identifiers of documents in which they are shown.)<sup>[7]</sup>*

Section 1: Market Hall  
Section 2: Burton Chambers

### Seventh Recital and Part 1 of Schedule 2

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Supplemental Provisions – Part 1  
*(Where neither entry against one of Supplemental Provisions 1 to 3 below is deleted, that Supplemental Provision does not apply.)*

- \* Supplemental Provision 1: Named Sub-Contractors  
does not apply
- \* Supplemental Provision 2: Valuation of Changes – Contractor's estimates  
applies
- \* Supplemental Provision 3: Loss and expense – Contractor's estimates  
applies

### Seventh Recital and Part 2 of Schedule 2

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Supplemental Provisions<sup>[8]</sup> – Part 2  
*(Where neither entry against one of Supplemental Provisions 4 to 7 below is deleted, that Supplemental Provision applies.)*

- \* Supplemental Provision 4: Acceleration Quotation  
applies
- \* Supplemental Provision 5: Health and safety  
applies
- \* Supplemental Provision 6: Cost savings and value improvements  
applies
- Supplemental Provision 7: Performance Indicators and monitoring

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

[8] Supplemental Provision 8 (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 9 (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 5**

Employer's Requirements  
(State reference numbers and dates or other identifiers of the relevant documents.)<sup>[7]</sup>

Refer to Section 01: Employer's Requirements

Contractor's Proposals  
(State reference numbers and dates or other identifiers of the relevant documents.)<sup>[7]</sup>

Refer to Section 02: Contractor's Proposals

Contract Sum Analysis  
(State reference numbers and dates or other identifiers of the relevant documents.)<sup>[7]</sup>

Refer to Section 03: Contract Sum Analysis

**Article 9**

Arbitration  
(If neither entry is deleted, Article 9 and clauses 9.4 to 9.9 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must be stated that Article 9 and clauses 9.4 to 9.9 apply.)<sup>[9]</sup>

Article 9 and clauses 9.4 to 9.9 (Arbitration)  
\* do not apply

**1.1**

Base Date



BIM Protocol (where applicable)  
(State title, edition, date or other identifiers of the relevant documents.)

Not applicable

Sections: Dates for Completion of Sections<sup>[10]</sup>



**1.7.3**

Addresses for service of notices by the Parties  
(If a Party's address is not stated, it shall, subject to clause 1.7.3, be that shown at the commencement of the Agreement.)<sup>[11]</sup>

Employer

Scaitcliffe House, Ormerod Street, Accrington, BB5 0PF

Contractor

[9] 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 Design and Build Contract Guide. See also footnote [6].

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

[11] As to service of notices etc. outside the United Kingdom, see the Design and Build Contract Guide.

Morgan Brightside Building, Bradman Road, Knowsley Industrial Park, Knowsley, Merseyside, L33 7UR

The respective email addresses for the Parties are

Employer's email



or, subject to clause 1.7.3, such other email address as each Party may notify to the other from time to time

#### 1.7.4.2

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Service of notices by email  
(If neither entry is deleted or an email address for each Party is not specified, clause 1.7.4.2 shall not apply.)

Clause 1.7.4.2  
\* does not apply

#### 2.3

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Sections: Dates of Possession of Sections<sup>[10]</sup>

Section Market Hall :   
Section Burton Chambers : 

#### 2.4

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Sections: deferment of possession of Sections

Clause 2.4  
\* applies

Maximum period of deferment (if less than 6 weeks) is<sup>[10]</sup>

Section Market Hall : 6 weeks  
Section Burton Chambers : 6 weeks

#### 2.17.3

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Limit of Contractor's liability for loss of use etc. (if any)



#### 2.29.2

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Sections: rate of liquidated damages for each Section<sup>[10]</sup>

Section Market Hall : £Refer to Schedule of Amendments for the rate of Liquidated Damages per week or part thereof.

Section Burton Chambers : £Refer to Schedule of Amendments for the rate of Liquidated Damages per week or part thereof.

#### 2.34

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Sections: Section Sums<sup>[10]</sup>

Section Market Hall : [REDACTED]  
Section Burton Chambers : [REDACTED]

**2.35**

Sections: Rectification Periods<sup>[10]</sup>  
(If no other period is stated, the period is 6 months.)

Section Market Hall : 12 months  
Section Burton Chambers : 12 months  
from the date of practical completion of each Section

**4.2, 4.12 and 4.13**

Fluctuations Provision<sup>[12]</sup>  
(Unless another option or entry is selected, JCT Fluctuations Option A applies. References in this Contract to the JCT Fluctuations Options A, B and C (or any provision as set out in such Option(s)) and in the case of Fluctuations Option C the JCT Formula Rules referred to in paragraph C.1.1.1 of Option C are references to the JCT 2024 edition of those Options or Rules.)

\* no Fluctuations Provision applies

**4.7.1**

Method of payment – alternatives<sup>[13]</sup>  
(If no Alternative is selected, Alternative B applies.)

\* periodically in accordance with Alternative B (clause 4.13)

**4.7.2**

Interim Payments – Interim Valuation Dates  
(The dates apply for each Alternative; if no date is stated, the first Interim Valuation Date is one month after the Date of Possession.)

The first Interim Valuation Date is

30th September 2025  
and thereafter the same date in each month or the nearest Business Day in that month<sup>[14]</sup>

**4.15.4**

Listed Items – uniquely identified  
(Delete the entry if no bond is required.)

No bond is required for Listed Items uniquely identified.

[12] Unless the Fluctuations Provision is to be JCT Fluctuations Option A, delete all but one of the asterisked choices. The printed text of the JCT Fluctuations Options 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). JCT Fluctuations Option A provides for increases or decreases in contributions, levies and taxes. JCT Fluctuations Option B should be used where the Parties have agreed to allow the labour and materials cost and tax fluctuations to which paragraphs B.1 to B.3 of that Option refer. JCT Fluctuations Option C should be used where the Parties have agreed that fluctuations should be dealt with by adjustment of the Contract Sum under the JCT Formula Rules. If an alternative fluctuation or cost adjustment formula is to be used, the document(s) in which it is contained should be identified here.

[13] Delete whichever Alternative is not applicable. Where Interim Payments are to be made by stages (including by quantity of units and sub-units completed) make the appropriate entries or prepare and insert a separate schedule of cumulative stage values.

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

**4.15.5**

Listed Items – not uniquely identified  
(Delete the entry if clause 4.15.5 does not apply.)

No bond is required for Listed Items not uniquely identified.

**4.18.1**

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

[REDACTED]

**4.21.6 and 4.21.7**

Relevant Matters  
(In the case of each clause referred to below, where neither entry against the clause is deleted, that clause does not apply.)

\* Clause 4.21.6 (the effects of an epidemic on the execution of the Works etc.)  
\* does not apply

\* Clause 4.21.7 (exercise of a statutory power etc.)  
\* does not apply

**5.5**

Daywork

The Percentage Additions to each section of the prime cost or, if they apply in respect of labour, the All-Inclusive Rates, are set out in the following document<sup>[7]</sup>

N/A

**6.4.1**

Contractor's Public Liability insurance: injury to persons or property – the required level of cover is not less than  
[REDACTED]  
for any one occurrence or series of occurrences arising out of one event

**6.5.1**

Insurance – liability of Employer

Minimum amount of indemnity for any one occurrence or series of occurrences arising out of one event<sup>[15]</sup>

[REDACTED]

**6.7 and Schedule 3**

Works insurance – Insurance Option applicable

Schedule 3:  
\* Insurance Option C applies

[15] Insert an amount where it is stated in the Employer's Requirements that insurance under clause 6.5.1 is required. If the indemnity is to be for an aggregate amount and not for any one occurrence or series of occurrences, the entry should be amended to make this clear.

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

Where Insurance Option C applies, paragraph C.1<sup>[16]</sup>  
(Unless otherwise stated, paragraph C.1 applies. If it is not to apply, state the reference number and date or other identifier of the replacement document(s).)

- \* applies
- \* is replaced by the provisions of the following document(s)

[ ]  
(the 'C.1 Replacement Schedule')

### 6.10 and Schedule 3

Terrorism Cover – details of the required cover  
(Unless otherwise stated, Pool Re Cover is required.)<sup>[17]</sup>

are set out in the following document(s)

Pool re Cover

### 6.15

Professional Indemnity insurance<sup>[18]</sup>

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

- Amount of indemnity required
- \* is for any one claim or series of claims arising out of one event

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

and is

£Refer to Schedule of Contract Amendments - Clause 6.15

Sub-limits within the overall level of cover

Refer to Schedule of Contract Amendments - Clause 6.15

Specific exclusions listed in the relevant schedule(s) (or other policy document(s)) to the relevant policy

Refer to Schedule of Contract Amendments - Clause 6.15

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

[16] Insurance Option C is for use in the case of alterations of or extensions to Existing Structures. Under that option, the Employer is required to take out a Joint Names Policy for All Risks Insurance for the Works and also, if paragraph C.1 applies, a Joint Names Policy to insure the Existing Structures and their contents owned by it or for which it is responsible against loss or damage by the Specified Perils. Some Employers (e.g. tenants and some homeowners) may not be able readily to obtain the Joint Names cover required under paragraph C.1. Where that is the case, alternative arrangements and amendments will be necessary. See the Design and Build Contract Guide. **Where there are Existing Structures, it is vital that any prospective Employer which is not familiar with Insurance Option C – in particular any Employer which is a tenant or domestic homeowner – or an appropriate member of the Employer's professional team, should consult specialist insurance advisers prior to the tender stage. Any Employer which is a tenant should also consult its insuring landlord prior to that stage.**

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

[18] See the Design and Build Contract Guide.

\* Refer to Schedule of Contract Amendments - Clause 6.15 years  
(not exceeding 12 years)

**6.17**

The Joint Fire Code

\* applies<sup>[19]</sup>

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

\* Yes<sup>[19]</sup>

**6.20**

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

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

**7.2**

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

Clause 7.2  
\* applies

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

\* Rights under clause 7.2 apply to each Section

**7.3.1**

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

\* is required

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

Refer to Schedule of Amendments

Initial value

Sum

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

- \* the date of practical completion of the Works
- \* 2 weeks after the date of expiry of the Rectification Period for the Works
- \* the date for issue of the Notice of Completion of Making Good for the Works

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

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

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

7.3.2

Guarantee from the Contractor's parent company

\* is not required

7.4

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

NOT USED - Refer to Articles 11, 12 and 13 of the Schedule of Amendments

8.9.2

Period of suspension

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

2 months

8.11.1.1 to 8.11.1.7

Period of suspension

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

2 months

9.1

Notification and negotiation of disputes

The respective nominees of the Parties are

Employer's nominee

Contractor's nominee

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

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

### 9.3.1

#### Adjudication<sup>[22]</sup>

The Adjudicator is To be appointed by the nominating body

Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established) the nominating body is  
*(Delete all but one of the asterisked choices. If the body is to be other than one of those listed, insert the name here.)  
(If a body has not been selected from those listed below or another body chosen and inserted, the nominating body shall be one of the bodies listed below selected by the Party requiring the reference to adjudication.)*

- \* The Royal Institution of Chartered Surveyors

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

## Attestation

### Note on Execution

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

#### Execution under hand

If this Agreement is to be executed under hand, use the form set out on the following page. Each Party or 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] 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> Hyndburn Borough Council

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

in the presence of

Signature

Signature

Company Secretary/Director



Seal No. 15340

[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 <sup>1</sup> Krol Corlett Construction Limited

(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

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

updates and revisions.

**Consultants:** see clause 7.4.3.

**Contract Documents:** the Agreement and these Conditions, together with the Employer's Requirements, the Contractor's Proposals, the Contract Sum Analysis and (where applicable) the BIM Protocol.

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

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

**Contract Sum Analysis:** see the Second Recital and the Contract Particulars (against the reference to Article 5).

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

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

**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 Employer, Employer's Persons and any Statutory Provider.

**Contractor's Proposals:** see the Second Recital and the Contract Particulars (against the reference to Article 5).

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

**Date of Possession:** the date stated as such date in the Contract Particulars (against the reference to clause 2.3) in relation to the Works or a Section.

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

**Development Control Requirements:** any statutory provisions and any decision of a relevant authority thereunder which control the right to develop the site.

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

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

**Employer's Agent:** see Article 4.

**Employer's Final Statement:** the final statement prepared by or on behalf of the Employer pursuant to clause 4.24.4.

**Employer's Persons:** all persons employed, engaged or authorised by the Employer, excluding the Contractor, Contractor's Persons, and any Statutory Provider but including any such third party as is referred to in clause 3.15.2 or 3.15.4.

**Employer's Requirements:** see the First Recital and the Contract Particulars (against the reference to Article 5).

**Excepted Risks:** see clause 6.8.

**Existing Structures:** any and all existing structures within which the Works or part of them are to be executed or to which they are to form an extension, together with any Section for which a Section Completion Statement has been issued and, as from the Relevant Date, any Relevant Part taken into possession under clause 2.30.

**Final Payment Notice:** see clause 4.8.

successor appointed by the Employer.

**Principal Designer:** the Contractor or other person named in **Article 6** or **Article 7** or any successor appointed by the Employer.

**Provisional Sum:** a provisional sum for work included in the Employer's Requirements.

**Public Holiday:** Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.<sup>[25]</sup>

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

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

**Rectification Period:** the period stated as such period in the **Contract Particulars** (against the reference to **clause 2.35**) in relation to the Works or (where applicable) a Section.

**Relevant Date:** see **clause 2.30**.

**Relevant Event:** see **clause 2.26**.

**Relevant Matter:** see **clause 4.21**.

**Relevant Omission:** see **clause 2.23.3**.

**Relevant Part:** see **clause 2.30**.

**Retention:** see **clauses 4.14** and **4.16** to **4.18**.

**Retention Percentage:** the percentage stated in the **Contract Particulars** (against the reference to **clause 4.18.1**).

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

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

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

**Section Completion Statement:** see **clause 2.27.2**.

**Section Sum:** see **clause 2.34** and the **Contract Particulars**.

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

**Specified Perils:** see **clause 6.8**.

**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, including Development Control Requirements.

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

**Termination Payment:** a payment to which **clauses 8.7.6, 8.8.3, 8.12.5** and **8.13** refer.

**Terrorism Cover:** see **clause 6.8**.

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

- 1.7.2 Subject to clause 1.7.4, each such notice or other communication and any documents to be supplied may or (where so required) shall be sent or transmitted by the means (electronic or otherwise) and in such format as the Parties have agreed or may from time to time agree in writing for the purposes of this Contract.<sup>[26]</sup>
- 1.7.3 Subject to clauses 1.7.2 and 1.7.4, any notice, communication or document may be given or served by any effective means and shall be duly given or served if:
- 1.7.3.1 delivered by hand or sent by pre-paid post to the recipient's address stated in the Contract Particulars against clause 1.7.3, 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
- 1.7.3.2 sent by email to the recipient's email address stated in the Contract Particulars against clause 1.7.3, or to such other email address as the recipient may from time to time notify to the sender.
- 1.7.4 Any notice expressly required by this Contract to be given in accordance with this clause 1.7.4:
- 1.7.4.1 shall 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
- 1.7.4.2 (where clause 1.7.4.2 is stated in the Contract Particulars to apply) shall be sent by email to the recipient's email address stated in the Contract Particulars against clause 1.7.4.2, 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 1.7.4.2), and shall be deemed to have been received on the next Business Day after the day on which it was sent.
- 1.7.5 If in an emergency any communication is made orally with respect to health and safety, risk of damage to property or insurance matters, written confirmation of it shall be sent as soon thereafter as is reasonably practicable.

## 1.8 Effect of Final Statement

- 1.8.1 As from the due date for the final payment specified in clause 4.24.5 and in addition to the effects referred to in clause 4.24.6, the Final Statement or, as the case may be, the Employer's Final Statement ('the relevant statement') shall, except as provided in clauses 1.8.2 and 4.24.6 (and save in respect of fraud), have effect in any proceedings under or arising out of or in connection with this Contract (whether by adjudication, arbitration or legal proceedings) as conclusive evidence that:
- 1.8.1.1 where and to the extent that any particular quality of any materials or goods or any particular standard of an item of workmanship was expressly described in the Employer's Requirements, or in any instruction issued by the Employer under these Conditions, to be for the Employer's approval, the particular quality or standard was to the Employer's reasonable satisfaction, but the relevant statement shall not be conclusive evidence that they or any other materials, goods or workmanship comply with any other requirement or term of this Contract;
- 1.8.1.2 all and only such extensions of time, if any, as are due under clause 2.25 have been given; and
- 1.8.1.3 the reimbursement of direct loss and/or expense, if any, due to the Contractor as agreed, ascertained or valued in accordance with these Conditions is in final settlement of all and any claims which the Contractor has or may have arising out of the occurrence of any Relevant Matters, whether such claim be for breach of contract, duty of care, statutory duty or otherwise.
- 1.8.2 The effects of the relevant statement specified in clauses 1.8.1 and 4.24.6 shall be

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

## Section 2 Carrying out the Works

### Contractor's Obligations

#### 2.1 General obligations<sup>[28]</sup>

- 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 for that purpose shall complete the design for the Works including the selection of any specifications for the kinds and standards of the materials, goods and workmanship to be used in the construction of the Works so far as not described or stated in the Employer's Requirements or Contractor's Proposals, and shall give all notices required by the Statutory Requirements.
- 2.1.2 The Contractor's obligation to the Employer to comply with the Statutory Requirements under clause 2.1.1 shall not apply to the extent that the relevant part or parts of the Employer's Requirements state specifically that the Employer's Requirements comply with the Statutory Requirements.
- 2.1.3 The Contractor shall pass to the Employer all approvals received by the Contractor in connection with the Statutory Requirements.
- 2.1.4 The Contractor shall comply with any instruction and be bound by any decision of the Employer issued or made under or pursuant to these Conditions and any such instruction or decision shall have effect except to the extent that it is varied by the Employer or under the dispute resolution procedures of this Contract.
- 2.1.5 The Contractor is encouraged to suggest economically viable amendments to the Works which, if instructed as a Change, 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.

#### 2.2 Materials, goods and workmanship

- 2.2.1 All materials and goods for the Works shall, so far as procurable, be of the kinds and standards described in the Employer's Requirements or, if not there specifically described, as described in the Contractor's Proposals or other Contractor's Design Documents. The Contractor shall not substitute any materials or goods so described without the Employer's consent which, if given, shall not relieve the Contractor of its other obligations.
- 2.2.2 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.
- 2.2.3 Workmanship for the Works shall be of the standards described in the Employer's Requirements or, if not there specifically described, as described in the Contractor's Proposals or other Contractor's Design Documents.
- 2.2.4 The Contractor shall before carrying out the relevant work and/or ordering the relevant goods or materials provide the Employer with such samples of the standard of workmanship or the quality of the goods or materials which the Contractor intends to provide as are specifically referred to in the Employer's Requirements or in the Contractor's Proposals.
- 2.2.5 The Contractor shall at the Employer's request provide the Employer with reasonable proof that the materials and goods used comply with this clause 2.2.
- 2.2.6 The Contractor shall take all reasonable steps to encourage Contractor's Persons to be

[28] The Parties may wish to agree an overall cap on the Contractor's liabilities. See the Design and Build Contract Guide which provides guidance regarding the use of such a cap including a model provision.

Contractor, shall (unless previously provided or unless the BIM Protocol or other communications protocol requires otherwise) provide the Contractor with one copy, certified on behalf of the Employer, of the Contract Documents, together with any pre-construction information required to be provided to the Contractor under regulation 4(4) of the CDM Regulations and any building information required to be provided to the Contractor under regulation 11A(4) of the Building Regulations.

2.7.3 The Contractor shall keep on the site or accessible there to the Employer's Agent at all reasonable times copies of the Contract Documents and the Contractor's Design Documents.

2.7.4 Neither Party shall divulge or use except for the purposes of this Contract:

2.7.4.1 the Contract Documents and the Contractor's Design Documents; or

2.7.4.2 any confidential information of the other Party,

save that the Employer may use in connection with the maintenance, use, repair, advertisement, letting or sale of the Works any of the documents supplied by the Contractor.

2.7.5 Where the Employer is a Local or Public Authority or other body of the type mentioned in Supplemental Provision 8, its obligations of confidentiality shall be subject to that Supplemental Provision.

## 2.8 Construction information

Save for any Contractor's Design Documents contained in the Contractor's Proposals, the Contractor shall without charge provide to the Employer copies of the Contractor's Design Documents as and when necessary from time to time in accordance with the Design Submission Procedure and the Contractor shall not commence any work to which such a document relates before that procedure has been complied with.

## 2.9 Site boundaries

The Employer shall define the boundaries of the site.

## Discrepancies and Divergences

### 2.10 Divergence in Employer's Requirements and definition of site boundary

2.10.1 Any divergence between the Employer's Requirements and the definition of the site boundary as provided under clause 2.9 shall be corrected by an instruction issued by the Employer and such instruction shall be treated as a Change.

2.10.2 If the Employer or the Contractor becomes aware of any such divergence it shall immediately give the other notice with details.

### 2.11 Preparation of Employer's Requirements

Subject to clause 2.15, the Contractor shall not be responsible for the contents of the Employer's Requirements or for verifying the adequacy of any design contained within them.

### 2.12 Employer's Requirements – inadequacy

2.12.1 If an inadequacy is found in any design in the Employer's Requirements and the Contractor under clause 2.11 is not responsible for verifying its adequacy, then, if or to the extent that the inadequacy is not dealt with in the Contractor's Proposals, the Employer's Requirements shall be corrected, altered or modified accordingly.

2.12.2 Subject to clause 2.15, any correction, alteration or modification under clause 2.12.1 shall be treated as a Change.

### 2.13 Notice of discrepancies etc.

If the Contractor becomes aware of any inadequacy as is referred to in clause 2.12 or any other discrepancy or divergence in or between any of the following, namely:

2.13.1 the Employer's Requirements;

## Design Work – liabilities and limitation

### 2.17 Design Work – liabilities and limitation

#### 2.17.1

2.17.1.1 Insofar as its design of the Works is comprised in the Contractor's Proposals and in what it is to complete in accordance with the Employer's Requirements and these Conditions (including any further design that it is required to carry out as a result of a Change), the Contractor warrants, subject to clause 2.17.1.2, that it shall use the reasonable skill and care in such design to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in scope and character to such design of the Works.

2.17.1.2 To the extent permitted by the Statutory Requirements, the Contractor shall have no greater duty, obligation or liability than to exercise reasonable skill and care as provided in clause 2.17.1.1 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.

2.17.2 Where and to the extent that this Contract involves the Contractor in taking on work for or in connection with the provision of a dwelling or dwellings or work in relation to a dwelling or dwellings, clause 2.17.1 includes the Contractor's liability under the Defective Premises Act 1972.

2.17.3 Where or to the extent that this Contract does not involve the Contractor in taking on work for or in connection with the provision of a dwelling or dwellings or work in relation to a dwelling or dwellings to which that Act applies, the Contractor's liability for loss of use, loss of profit or other consequential loss arising in respect of the Contractor's liability under clause 2.17.1 shall be limited to the amount, if any, stated in the Contract Particulars; but such a limitation shall not apply to or be affected by any liability for liquidated damages under clause 2.29.

## Fees, Royalties and Patent Rights

### 2.18 Fees or charges legally demandable

The Contractor shall pay all fees or charges (including any rates or taxes) legally demandable under any Statutory Requirement and indemnify the Employer against any liability resulting from any failure to do so. No adjustment shall be made to the Contract Sum in respect of the amount of any such fees or charges (including any rates or taxes other than VAT) unless they are stated by way of a Provisional Sum in the Employer's Requirements, in which case clause 4.2 shall apply.

### 2.19 Patent rights and royalties – Contractor's indemnity

Where the carrying out of the Works involves the supply or use of any patented article, process or invention or drawings or models of buildings that are the subject of copyright, other than drawings or models provided by the Employer, all royalties or other sums payable in respect of such supply and use shall be deemed to have been included in the Contract Sum or, where appropriate, the quoted adjustment to that sum, and the Contractor shall indemnify the Employer from and against all claims and proceedings which may be brought or made against the Employer, and all damages, costs and expense to which it may be put, by reason of the Contractor infringing or being held to have infringed any patent rights in relation to any such articles, processes and inventions or infringing or being held to have infringed copyright.

### 2.20 Patent rights – Instructions

2.20.1 Where in order to comply with the Employer's instructions, it is necessary for the Contractor in carrying out the Works to supply and/or use any patented article, process or invention, the Contractor shall not be liable in respect of any infringement or alleged infringement of any patent rights relating to such article, process or invention and all royalties, damages or other sums which the Contractor may be liable to pay to the persons entitled to such rights shall be added to the Contract Sum.

2.20.2 If prior to the instructions being carried out the Employer or the Contractor is or becomes aware that such supply or use may infringe any patent rights, it shall promptly notify and

- 2.25.1.2 completion of the Works or of any Section is likely to be delayed thereby beyond the relevant Completion Date,
- then, save where these Conditions expressly provide otherwise, the Employer shall give an extension of time by fixing such later date as the Completion Date for the Works or Section as it then estimates to be fair and reasonable.
- 2.25.2 The Employer shall notify the Contractor of its decision in respect of each notice and particulars under clauses 2.24.1 and 2.24.2 and each notification (if any) under clause 2.24.3, whether or not an extension is given, as soon as is reasonably practicable and in any event not later than 8 weeks from the later of:
- 2.25.2.1 the date of receipt of the particulars or notification; or
- 2.25.2.2 the date of receipt of the further information required under clause 2.24.4.
- Where the period from receipt to the Completion Date is less than 8 weeks, it shall endeavour to do so prior to the Completion Date.
- 2.25.3 The Employer shall in its decision state:
- 2.25.3.1 the extension of time that it has attributed to each Relevant Event; and
- 2.25.3.2 (in the case of a decision under clause 2.25.4 or 2.25.5) the reduction in time that it has attributed to each Relevant Omission.
- 2.25.4 After the first fixing of a later Completion Date in respect of the Works or a Section, either under clause 2.25.1 or by a Pre-agreed Adjustment, but subject to clauses 2.25.6.3 and 2.25.6.4, the Employer may by notice to the Contractor, giving the details referred to in clause 2.25.3, fix a Completion Date for the Works or that Section earlier than that previously so fixed if the fixing of such earlier Completion Date is fair and reasonable, having regard to any Relevant Omissions for which instructions have been issued after the last occasion on which a new Completion Date was fixed for the Works or for that Section.
- 2.25.5 After the Completion Date for the Works or for a Section, if this occurs before the date of practical completion, the Employer may, and not later than the expiry of 12 weeks after the date of practical completion shall, by notice to the Contractor, giving the details referred to in clause 2.25.3:
- 2.25.5.1 fix a Completion Date for the Works or for the Section later than that previously fixed if that is fair and reasonable having regard to any Relevant Events, whether on reviewing a previous decision or otherwise and whether or not the Relevant Event has been specifically notified by the Contractor under clause 2.24; or
- 2.25.5.2 subject to clauses 2.25.6.3 and 2.25.6.4, fix a Completion Date earlier than that previously fixed if that is fair and reasonable having regard to any instructions for Relevant Omissions issued after the last occasion on which a new Completion Date was fixed for the Works or Section; or
- 2.25.5.3 confirm the Completion Date previously fixed.
- 2.25.6 Provided always that:
- 2.25.6.1 the Contractor shall constantly use its best endeavours to prevent delay in the progress of the Works or any Section, however caused, and to prevent the completion of the Works or Section being delayed or further delayed beyond the relevant Completion Date;
- 2.25.6.2 in the event of any delay the Contractor shall do all that may reasonably be required to the satisfaction of the Employer to proceed with the Works or Section;
- 2.25.6.3 no decision of the Employer under clause 2.25.4 or 2.25.5.2 shall fix a Completion Date for the Works or any Section earlier than the relevant Date for Completion; and
- 2.25.6.4 no decision under clause 2.25.4 or 2.25.5.2 shall alter the length of any Pre-agreed Adjustment except where that adjustment relates to a Change and that

- 2.26.10 exceptionally adverse weather conditions;
- 2.26.11 loss or damage occasioned by any Specified Peril;
- 2.26.12 civil commotion or the use or threat of terrorism and/or the activities of the relevant authorities in dealing with such event or threat;
- 2.26.13 strike, lock-out or local combination of any trades employed upon the Works or engaged in the preparation, manufacture or transportation of any of the goods or materials required for them or any persons engaged in design work for the Works;
- 2.26.14 delay in receipt of any necessary permission or approval of any statutory body which the Contractor has taken all practicable steps to avoid or reduce;
- 2.26.15 force majeure.

## Practical Completion, Lateness and Liquidated Damages

### 2.27 Practical completion

When practical completion of the Works or a Section is achieved and the Contractor has complied sufficiently with clauses 2.37 and 3.16 in respect of the supply of documents and information, then:

- 2.27.1 in the case of the Works, the Employer shall forthwith issue a statement to that effect ('the Practical Completion Statement');
- 2.27.2 in the case of a Section, it shall forthwith issue a statement of practical completion of that Section (a 'Section Completion Statement');

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

### 2.28 Non-Completion Notice

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

### 2.29 Payment or allowance of liquidated damages

- 2.29.1 Provided:
  - 2.29.1.1 the Employer has issued a Non-Completion Notice for the Works or a Section; and
  - 2.29.1.2 the Employer has notified the Contractor before the due date for the final payment under clause 4.24.5 or (if applicable) the Termination Payment under clause 8.7.5, 8.8.2 or 8.12.4 that it may require payment of, or may withhold or deduct, liquidated damages,

the Employer may, not later than 5 days before the final date for payment of the amount payable under clause 4.24 or (if applicable) 8.7.6, 8.8.3 or 8.12.5, give notice to the Contractor in the terms set out in clause 2.29.2.

- 2.29.2 A notice from the Employer under clause 2.29.1 shall state that for the period between the Completion Date and the date of practical completion of the Works or that Section:
  - 2.29.2.1 it requires the Contractor to pay liquidated damages at the rate stated in the Contract Particulars, or lesser rate stated in the notice, in which event the Employer may recover the same as a debt; and/or
  - 2.29.2.2 that it will withhold or deduct liquidated damages at the rate stated in the Contract Particulars, or at such lesser stated rate, from sums due to the Contractor.<sup>[30]</sup>

[30] In addition to the notice under clause 2.29.2, the Employer, if it intends to withhold or deduct all or any of the liquidated damages payable, must give the appropriate Pay Less Notice under clause 4.9.5 or (if applicable) 8.13.3 or 8.13.5.

- 2.35.1 such defects, shrinkages and other faults shall be specified by the Employer in a schedule of defects which it shall deliver to the Contractor as an instruction not later than 14 days after the expiry of that Rectification Period; and
- 2.35.2 prior to issue of that schedule, the Employer may whenever it considers it necessary issue instructions requiring any such defect, shrinkage or other fault to be made good, provided no instructions under this clause 2.35.2 shall be issued after delivery of that schedule or more than 14 days after the expiry of the relevant Rectification Period.

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

### 2.36 Notice of Completion of Making Good

When the defects, shrinkages or other faults in the Works or a Section which under clause 2.35 the Employer has required to be made good have been made good, it shall issue a notice to that effect (a 'Notice of Completion of Making Good'). That notice shall not be unreasonably delayed or withheld, and completion of that making good shall for the purposes of this Contract be deemed to have taken place on the date stated in that notice.

## Contractor's Design Documents

### 2.37 As-built Drawings

The Contractor, in addition to its obligations under the CDM Regulations in relation to information for the health and safety file, shall, before practical completion of the Works or relevant Section and without further charge to the Employer, supply for retention and use by the Employer such Contractor's Design Documents and related information as is specified in the Contract Documents or as the Employer may reasonably require that show or describe the Works as built or relate to the maintenance and operation of them or their installations.

### 2.38 Copyright and use

- 2.38.1 Subject to any rights in any designs, drawings and other documents supplied to the Contractor for the purposes of this Contract by or on behalf of the Employer, all rights including (without limitation) copyright in all Contractor's Design Documents shall remain vested in the Contractor.
- 2.38.2 Subject to all sums due and payable under this Contract to the Contractor having been paid, the Employer shall have an irrevocable, royalty-free, non-exclusive licence to copy and use the Contractor's Design Documents and to reproduce the designs and content of them for any purpose relating to the Works including, without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Works. That licence shall enable the Employer to copy and use the Contractor's Design Documents for an extension of the Works but shall not include any right or licence to reproduce the designs contained in them for any such extension.
- 2.38.3 The licence shall be assignable to any owner from time to time of the Works or any part of them and may be sub-licensed to any owner or tenant of the Works or part of them and to any person engaged for the purposes permitted by clause 2.38.2.
- 2.38.4 The Contractor shall not be liable for any use by the Employer of any of the Contractor's Design Documents for any purpose other than that for which they were prepared.

- 3.4.1.1 the sub-contractor may suspend the performance of its obligations under the sub-contract with effect from the date of termination of the Contractor's employment until receipt of any such written notice (if one is served), or if no such notice is served the sub-contractor's employment under the sub-contract shall immediately terminate on the day after the last date on which such written notice may be served;
- 3.4.1.2 any such suspension shall be deemed to be a suspension as a result of an instruction of the Employer under this Contract passed on to the sub-contractor as a direction by the Contractor under the sub-contract;
- 3.4.2 the sub-contract shall provide:
- 3.4.2.1 that, except for use on the Works, no Site Materials delivered to the Works by or for the sub-contractor shall be removed without the Contractor's written consent (such consent not to be unreasonably delayed or withheld) and (in addition to any provision for earlier vesting in the Contractor of title to any Listed Items for the purposes of clause 4.15.2.1 of these Conditions) that:
- 3.4.2.1.1 where, in accordance with clause 4.12 or 4.13 and clause 4.14 of these Conditions, the value of any Site Materials has been included in any Interim Payment and that Interim Payment has been paid by the Employer to the Contractor, they shall upon such payment become, and the sub-contractor shall not deny that they have become, the Employer's property;
- 3.4.2.1.2 if the Contractor pays the sub-contractor for any Site Materials before their value is included in an Interim Payment, they shall upon such payment become the Contractor's property;
- 3.4.2.2 that the sub-contractor shall give access to workshops or other premises in accordance with clause 3.1 of these Conditions;
- 3.4.2.3 that (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>823</sup>;
- 3.4.2.4 in terms equivalent to those of clause 4.9.6 of these Conditions, that if by a final date for payment under the sub-contract the Contractor fails to pay the sub-contractor any amount that should properly have been paid, the Contractor shall, in addition to that amount, pay simple interest on it at the Interest Rate for the period from the final date for payment until such payment is made;
- 3.4.2.5 that where the Rights Particulars provide for the grant of third party rights from and/or for the execution and delivery of collateral warranties by the sub-contractor:
- 3.4.2.5.1 the sub-contract and, where applicable, those collateral warranties shall if those particulars require be executed as deeds;
- 3.4.2.5.2 any third party rights required shall vest on receipt of notice from the Contractor to that effect and any collateral warranty required shall be executed and delivered by the sub-contractor within 14 days of receipt of the Contractor's notice requiring execution;
- 3.4.2.5.3 the terms of and those governing such third party rights or collateral warranties shall in each case be consistent with those of clauses 2.26 and 2.27 and Schedule 5 of the JCT Design and Build Sub-Contract Conditions;
- 3.4.3 where documents or information and/or the grant of licences are or may be required from the sub-contractor for the BIM Protocol, where applicable, and/or for the purposes of clauses 2.37 and 3.16 of these Conditions, the sub-contractor shall also provide for the supply and grant to and by the sub-contractor of all information and licences reasonably necessary for that purpose.

[32] See footnote [33] to clause 3.16 below.

pursuant to clauses 2.1.1 to 2.1.4 to comply with such instruction.

**3.10 Postponement of work**

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

**3.11 Instructions on Provisional Sums**

The Employer shall issue instructions in regard to the expenditure of Provisional Sums included in the Employer's Requirements.

**3.12 Inspection – tests**

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

**3.13 Work not in accordance with the Contract**

If any work, materials or goods are not in accordance with this Contract the Employer, in addition to its other powers, may:

- 3.13.1 issue instructions in regard to the removal from the site of all or any of such work, materials or goods;
- 3.13.2 after consultation with the Contractor, issue such Change instructions (to which the proviso in clause 3.9.1 applies) as are a reasonably necessary consequence of any instruction under clause 3.13.1 (but to the extent that such instructions are reasonably necessary, no addition shall be made to the Contract Sum and no extension of time shall be given); and/or
- 3.13.3 having due regard to the Code of Practice set out in Schedule 4, issue such instructions under clause 3.12 to open up for inspection or to test as are reasonable in all the circumstances to establish to its reasonable satisfaction the likelihood or extent, as appropriate to the circumstances, of any further similar non-compliance. To the extent that those instructions are reasonable, whatever the results of the opening up, no addition shall be made to the Contract Sum but clauses 2.25 and 2.26.2.3 shall apply unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract.

**3.14 Workmanship not in accordance with the Contract**

Where there is any failure to comply with clauses 2.1.1 to 2.1.4 in regard to the carrying out of work in a proper and workmanlike manner or in accordance with the Construction Phase Plan, the Employer, in addition to its other powers, may, after consultation with the Contractor, issue such instructions (whether requiring a Change or otherwise) as are in consequence reasonably necessary. To the extent that such instructions are reasonably necessary, no addition shall be made to the Contract Sum and no extension of time shall be given.

**3.15 Antiquities, asbestos, contaminated material and unexploded ordnance**

- 3.15.1 All fossils, antiquities and other objects of interest or value which may be found on the site or in excavating it during the progress of the Works shall become the Employer's property. Upon discovery of any such object the Contractor shall forthwith:
  - 3.15.1.1 use its best endeavours not to disturb the object and cease work if and insofar as continuing work would endanger the object or prevent or impede the object's excavation or removal;
  - 3.15.1.2 take all steps necessary to preserve the object in the exact position and condition in which it was found; and
  - 3.15.1.3 inform the Employer of the object's discovery and precise location.
- 3.15.2 The Employer shall issue instructions as to action to be taken concerning any object

## Section 4 Payment

### Contract Sum and Adjustments

#### 4.1 Adjustment only under the Conditions

The Contract Sum shall not be adjusted or altered in any way other than in accordance with the express provisions of these Conditions.

#### 4.2 Items included in adjustments

The Contract Sum shall be adjusted by:

- 4.2.1 any amount agreed by the Employer and the Contractor in respect of Changes and other work of the types referred to in clause 5.2 and the amount of each Valuation;
- 4.2.2 any amount agreed by Confirmed Acceptance of an Acceleration Quotation;
- 4.2.3 (where the Contract Particulars state that a Fluctuations Provision applies) any amounts payable or allowable under that provision;
- 4.2.4 any other amounts referred to in clause 4.12.2 or 4.13.2 (excluding any loss and/or expense to the extent included under clause 4.2.2) and any other deductions referred to in clause 4.12.3 or 4.13.3;
- 4.2.5 the deduction of all Provisional Sums included in the Employer's Requirements; and
- 4.2.6 any other amount which under this Contract is to be added to the Contract Sum or may be deducted from it.

#### 4.3 Taking adjustments into account

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

### Taxes

#### 4.4 VAT

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

#### 4.5 Construction Industry Scheme (CIS)

If the Employer is or at any time up to the final payment under clause 4.9 becomes a 'contractor' for the purposes of the CIS<sup>[35]</sup>, its obligation to make any payment under this Contract is subject to the provisions of the CIS.

[35] See the Contract Particulars (Fourth Recital and clause 4.5).

clause 4.10.1 (a 'Pay Less Notice'). Where a Pay Less Notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated in it as due.

4.9.6 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.

4.9.7 Any such unpaid amount and any interest under clause 4.9.6 shall be recoverable as a debt. Acceptance of a payment of interest shall not in any circumstances be construed as a waiver either of the recipient's right to proper payment of the principal amount due or of the Contractor's rights to suspend performance under clause 4.11 or terminate its employment under section 8.

#### 4.10 Pay Less Notices and other general provisions

4.10.1 A Pay Less Notice given by either Party shall specify the sum it considers to be due to the other Party at the date the notice is given and the basis on which that sum has been calculated.

4.10.2 A Payment Notice, a Final Payment Notice or a Pay Less Notice to be given by the Employer may be given on its behalf by the Employer's Agent or by any other person which the Employer notifies the Contractor as being authorised to do so.

4.10.3 In relation to the requirements for the giving of Payment Notices, the Final Payment Notice, Pay Less Notices and the submission of a Final Statement, it is immaterial that the amount then considered to be due may be zero.

4.10.4 The Employer's fiduciary interest in the Retention referred to in clause 4.16 shall not prevent the Employer from exercising any right under this Contract to withhold or deduct from a sum due to the Contractor, subject to clause 4.9.5, even if that sum includes any Retention due for release under clause 4.18.

#### 4.11 Contractor's right of suspension

4.11.1 If the Employer fails to pay a sum payable to the Contractor in accordance with clause 4.9 (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 of its intention to suspend the 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 its obligations until payment is made in full.

4.11.2 Where the Contractor exercises its right of suspension under clause 4.11.1, 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.

4.11.3 Applications in respect of any such costs and expenses shall be made to the Employer 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.

#### Interim Payments – calculation of sums due

##### 4.12 Gross Valuation – Alternative A

The Gross Valuation for each Interim Payment shall be the total of the amounts referred to in clauses 4.12.1 and 4.12.2, less the deductions referred to in clause 4.12.3, each calculated as at the Interim Valuation Date:

4.12.1 the total of the following, which are subject to Retention:

4.12.1.1 the cumulative value of stages completed;

4.12.1.2 the value of any Changes or other work referred to in clause 5.2 that are relevant to the Interim Payment (whether agreed pursuant to clause 5.2 or valued under the Valuation Rules) but excluding any amounts referred to in clause 4.12.2.4;

- 4.13.2.3 the amount of any loss and/or expense to which the Contractor is entitled under clause 4.19.1 or by a Confirmed Acceptance;
- 4.13.2.4 where Insurance Option B or C applies or to the extent that the work is under clause 6.13.5.3 to be treated as a Change, any amounts in respect of reinstatement work under clause 6.13.4; and
- 4.13.2.5 any amount payable to the Contractor under any applicable Fluctuations Provision, other than by means of an adjustment made under clause 4.13.1;
- 4.13.3 the following deductions:
  - 4.13.3.1 any amounts deductible under clause 2.35, 3.6, 6.12.2 or 6.19.2; and
  - 4.13.3.2 any amount allowable by the Contractor under clause 6.10.2 or under any applicable Fluctuations Provision, other than by means of an adjustment made under clause 4.13.1.

#### 4.14 Sums due as Interim Payments

The sum due as an Interim Payment shall in each case be an amount equal to the Gross Valuation under clause 4.12 where the Contract Particulars state that Alternative A applies, or clause 4.13 where Alternative B applies, in either case less the following deductions:

- 4.14.1 any amount which may be deducted and retained by the Employer under clauses 4.16 to 4.18 ('the Retention');
- 4.14.2 the cumulative total of the amounts of any advance payment that have then become due for reimbursement to the Employer in accordance with the terms stated in the Contract Particulars for clause 4.6; and
- 4.14.3 the amounts paid in previous Interim Payments.

### Listed Items

#### 4.15 Listed Items

The conditions for inclusion of the value of a Listed Item in the Gross Valuation before its delivery to or adjacent to the Works as referred to in clause 4.12.1.3 or 4.13.1.3 are:

- 4.15.1 the Listed Item is in accordance with this Contract;
- 4.15.2 the Contractor has provided the Employer with reasonable proof that:
  - 4.15.2.1 property in the Listed Item is vested in the Contractor; and
  - 4.15.2.2 the Listed Item is and will remain insured against loss or damage for its full value under a policy of insurance protecting the interests of the Employer and the Contractor in respect of the Specified Perils until delivered to, or adjacent to, the Works;
- 4.15.3 at the premises where the Listed Item is situated pending delivery, there is in relation to that item clear identification of:
  - 4.15.3.1 the Employer as the person to whose order it is held; and
  - 4.15.3.2 the Works as its destination,each item being either set apart or clearly and visibly marked, individually or as a set, by letters, figures or a pre-determined code; and
- 4.15.4 for uniquely identified Listed Items, the Contractor, if it is stated in the Contract Particulars as required, has provided a bond in favour of the Employer from a surety approved by the Employer in the terms set out in Part 2 of Schedule 6<sup>[36]</sup> ('the required bond') in the amount specified in the Contract Particulars for this clause 4.15.4; or

[36] As to approval of sureties, see the Design and Build Contract Guide.

#### 4.20 Notification and ascertainment

- 4.20.1 The Contractor shall notify the Employer as soon as the likely effect of a Relevant Matter on regular progress or the likely nature and extent of any loss and/or expense arising from a deferment of possession becomes (or should have become) reasonably apparent to it.
- 4.20.2 That notification shall be accompanied or, as soon as reasonably practicable, followed by the Contractor's initial assessment of the loss and/or expense incurred and any further amounts likely to be incurred, together with such information as is reasonably necessary to enable the Employer to ascertain the loss and/or expense incurred.
- 4.20.3 The Contractor shall thereafter, in such form and manner as the Employer may reasonably require, update that assessment and information at monthly intervals until all information reasonably necessary to allow ascertainment of the total amount of such loss and expense has been supplied.
- 4.20.4 Within 28 days of receipt of the initial assessment and information and 14 days of each subsequent update of them the Employer shall notify the Contractor of the ascertained amount of the loss and/or expense incurred, each ascertainment being made by reference to the information supplied by the Contractor and in sufficient detail to enable the Contractor to identify differences between it and the Contractor's assessment.

#### 4.21 Relevant Matters

The following are the Relevant Matters:

- 4.21.1 Changes and any other matters or instructions which under these Conditions are to be treated as a Change;
- 4.21.2 Employer's instructions:
- 4.21.2.1 under clause 3.10 or 3.11; or
- 4.21.2.2 for the opening up for inspection or testing of any work, materials or goods under clause 3.12 (including making good), unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract;
- 4.21.3 compliance with clause 3.15.1 or with Employer's instructions under clause 3.15.2 or (except to the extent that the presence of asbestos or contaminated material has been identified in the Contract Documents and/or any such material has been brought on to the site by the Contractor or any Contractor's Person) compliance with clause 3.15.3 or with Employer's instructions under clause 3.15.4;
- 4.21.4 delay in receipt of any permission or approval for the purposes of Development Control Requirements necessary for the Works to be carried out or proceed, which delay the Contractor has taken all practicable steps to avoid or reduce;
- 4.21.5 any impediment, prevention or default, whether by act or omission, by the Employer or any Employer's Person, except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or any Contractor's Person;
- 4.21.6 (where the Contract Particulars state that clause 4.21.6 applies) an epidemic:
- 4.21.6.1 first occurring after the Base Date which affects the execution of the Works; or
- 4.21.6.2 first occurring before the Base Date whose effects change after the Base Date and any such change affects the execution of the Works
- by limiting the availability or use of labour or the availability of persons engaged in providing services for the Works where such labour and/or persons are necessary for the proper carrying out of the Works, or preventing the Contractor from, or delaying the Contractor in, securing such goods or materials or such services as are necessary for the proper carrying out of the Works;
- 4.21.7 (where the Contract Particulars state that clause 4.21.7 applies) the occurrence after the Base Date of any of the following which affects the execution of the Works:
- 4.21.7.1 the passing into law of any statute, statutory instrument or other subordinate legislation, regulation or bye-law, whether to make a new law or change or

notice to the Contractor disputing anything in the Final Statement or the Contractor gives notice to the Employer disputing anything in the Employer's Final Statement, and subject to clause 1.8.2, the relevant statement shall upon the due date become conclusive as to the sum due under clause 4.24.2 and have the further effects stated in clause 1.8.

- 5.4.2 The valuation of additional or substituted work shall be consistent with the values of work of a similar character set out in the Contract Sum Analysis, making due allowance for any change in the conditions under which work is carried out and/or any significant change in the quantity of the work so set out. Where there is no work of a similar character set out in the Contract Sum Analysis a fair valuation shall be made.
- 5.4.3 The valuation of the omission of work set out in the Contract Sum Analysis shall be in accordance with the values therein for such work.
- 5.4.4 Any valuation of work under clauses 5.4.2 and 5.4.3 shall include allowance for any necessary addition to or reduction of the provision of site administration, site facilities and temporary works.
- 5.4.5 Allowance shall be made for any percentage or lump sum adjustments in the Contract Sum Analysis.

## 5.5 Daywork

Where the execution of additional or substituted work cannot be valued in accordance with clause 5.4, the Valuation shall comprise:

- 5.5.1 the prime cost of such work (calculated in accordance with the 'Definition of Prime Cost of Daywork carried out under a Building Contract' issued by The Royal Institution of Chartered Surveyors (RICS) and Construction Industry Publications Ltd as current at the Base Date) together with Percentage Additions to each section of the prime cost at the rates stated in the document identified in the Contract Particulars or, if they apply in respect of labour, at the All-Inclusive Rates stated in such document; or
- 5.5.2 where the work is within the province of any specialist trade and the RICS and the appropriate body representing the employers in that trade have agreed and issued a definition of prime cost of daywork<sup>[40]</sup>, the prime cost of such work calculated in accordance with that definition current at the Base Date, together with Percentage Additions on the prime cost at the rates stated in the document identified in the Contract Particulars or, if they apply in respect of labour, at the All-Inclusive Rates stated in such document.

Provided that in any case vouchers specifying the time daily spent upon the work, the operatives' names, the plant and the materials employed shall be delivered for verification to the Employer not later than 7 Business Days after the work has been executed.

## 5.6 Change of conditions for other work

If as a result of:

- 5.6.1 compliance with any instruction requiring a Change; or
- 5.6.2 compliance with any instruction as to the expenditure of a Provisional Sum,

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

## 5.7 Additional provisions

- 5.7.1 To the extent that a Valuation does not relate to the execution of additional or substituted work or the omission of work or to the extent that the valuation of any work or liabilities directly associated with a Change cannot reasonably be effected in the Valuation by the application of clauses 5.4 to 5.6, a fair valuation shall be made.
- 5.7.2 No allowance shall be made under the Valuation Rules for any effect upon the regular progress of the Works or of any part of them or for any other direct loss and/or expense for which the Contractor would be reimbursed by payment under any other provision in these Conditions.

[40] There are currently three definitions to which clause 5.5.2 refers, namely those agreed between the RICS and The Electrical Contractors' Association and SELECT, the RICS and The Building and Engineering Services Association, and the RICS and The Association of Plumbing and Heating Contractors and The Scottish and Northern Ireland Plumbing Employers' Federation.

6.4.1.2 for all other claims to which clause 6.4.1 applies<sup>[41]</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 6.4.1.<sup>[42]</sup>

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

## 6.5 Contractor's insurance of liability of Employer

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

6.5.1.1 for which the Contractor is liable under clause 6.2;

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

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

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

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

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

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

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

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

6.5.2 Any insurance under clause 6.5.1 shall be placed with insurers approved by the Employer, and the Contractor shall upon its issue deposit the policy with the Employer.

6.5.3 As to evidence that such insurance has been effected and is being maintained and the consequences of failure to comply, clause 6.12 shall apply.

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

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

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

**Excepted Risks:** the risks comprise:

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

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

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

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

**Terrorism Cover:** Pool Re Cover or other insurance against loss or damage to work executed and Site Materials (and/or, for the purposes of clause 6.11.1, to an Existing Structure and/or its contents) caused by or resulting from terrorism.<sup>[46]</sup>

## 6.9

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

- 6.9.1 The Contractor, where Insurance Option A applies, and the Employer, where Insurance Option B or C applies, shall ensure that the Works Insurance Policy either:
  - 6.9.1.1 provides for recognition of each sub-contractor as an insured under the policy; or
  - 6.9.1.2 includes a waiver by the insurers of any right of subrogation which they may have against any such sub-contractor

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

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

[46] As respects Terrorism Cover and the requirements of Insurance Options A, B and C, see footnote [44] and the Design and Build Contract Guide.

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

**6.13 Loss or damage – insurance claims and reinstatement**

- 6.13.1 If during the carrying out of the Works any loss or damage affecting any executed work or Site Materials is occasioned by any of the risks covered by the Works Insurance Policy or an Excepted Risk or there is any loss of or damage of any kind to any of the Existing Structures or their contents, the Contractor shall forthwith upon it occurring or becoming apparent give notice to the Employer of its nature, location and extent.
- 6.13.2 Subject to clauses 6.13.5.1 and 6.13.6, the occurrence of such loss or damage to executed work or Site Materials shall be disregarded in calculating any amounts payable to the Contractor under this Contract.
- 6.13.3 The Contractor, for itself and for all its sub-contractors recognised as an insured under the Works Insurance Policy, shall authorise the insurers to pay to the Employer all monies from such insurance, and from any policies covering Existing Structures or their contents that are effected by the Employer.
- 6.13.4 Where loss or damage affecting executed work or Site Materials is occasioned by any risk covered by the Works Insurance Policy, and subject to clause 6.14 where relevant, the Contractor shall after any inspection required by the insurers under the Works Insurance Policy and with due diligence restore the damaged work, replace or repair any lost or damaged Site Materials, remove and dispose of any debris (collectively 'reinstatement work') and proceed with the carrying out and completion of the Works.
- 6.13.5 Where Insurance Option A applies:
- 6.13.5.1 the Employer shall pay all monies from such insurance to the Contractor by instalments under separate reinstatement work statements issued by the Employer at the same dates as those for Payment Notices under clause 4.7.5 but without deduction of Retention and less only the amounts referred to in clause 6.13.5.2;
- 6.13.5.2 the Employer may retain from those monies any amounts properly incurred by the Employer and notified by 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;
- 6.13.5.3 in respect of reinstatement work, the Contractor shall not be entitled to any payment other than amounts received under the Works Insurance Policy except where there has been a cessation of or reduction in Terrorism Cover under clause 6.10.4 or 6.11 and loss or damage is then caused by or results from terrorism, in which case the reinstatement work shall, to the extent that its cost is no longer recoverable under the policy, be treated as a Change and under clause 4.12.2.4, 4.13.2.4 or 6.13.5.1 included in Payment Notices. In neither case shall there be any reduction in any amount payable by reason of any act or neglect of the Contractor or of any sub-contractor which may have contributed to the physical loss or damage;
- 6.13.5.4 for the purposes of clause 2.26.1 (but not otherwise under these Conditions except as referred to in clause 6.13.5.3) reinstatement work shall be treated as a Change.
- 6.13.6 Where Insurance Option B or paragraph C.2 of Insurance Option C applies or where loss or damage is caused by an Excepted Risk, reinstatement work shall be treated as a Change.

**6.14 Loss or damage to Existing Structures – right of termination**

If there is material loss of or damage to any of the Existing Structures, the Employer shall be under no obligation to reinstate those structures, but either Party may, if it is just and equitable, terminate the

**6.20 Joint Fire Code – amendments/revisions**

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

description) in the Rights Particulars;

7.4.2 if in relation to an identified beneficiary the Rights Particulars fail to specify the method by which such rights are to be conferred, the Contractor in relation to rights to be granted by it may elect to do so either as third party rights or by collateral warranty;

7.4.3 unless otherwise stated in the Rights Particulars, the term 'the Consultants' shall in all third party rights and/or collateral warranties to be granted mean the Employer's Agent (including any replacements) and any other consultants providing design services to the Employer in connection with the Works.

## 7.5 Notices

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

## 7.6 Execution of Collateral Warranties

Where this Contract is executed as a deed, any collateral warranty to be entered into by the Contractor pursuant to clause 7.9 or 7.10 shall be executed as a deed. Where this Contract is executed under hand, any such warranty may be executed under hand.<sup>[49]</sup>

## Third Party Rights from Contractor

### 7.7 Rights for Purchasers and Tenants

7.7.1 Where the Rights Particulars state that the Contractor shall confer P&T Rights on a Purchaser or Tenant as third party rights, those rights shall vest in that Purchaser or Tenant on the date of receipt by the Contractor of the Employer's notice to that effect, stating the name of the Purchaser or Tenant and the nature of its interest in the Works, and (where paragraph 7.2, Part 1 of Schedule 5 (Third Party Rights for Purchasers and Tenants) is to apply) an email address for that Purchaser or Tenant.

7.7.2 Where P&T Rights have vested in any Purchaser or Tenant, the Employer and the Contractor shall not be entitled without the consent of that Purchaser or Tenant to amend or vary the express provisions of this clause 7.7 or of Part 1 of Schedule 5 (Third Party Rights for Purchasers and Tenants) but, subject thereto, the rights of the Employer and/or the Contractor:

7.7.2.1 to terminate the Contractor's employment under this Contract (whether under section 8 or otherwise), or to agree to rescind this Contract;

7.7.2.2 to agree to amend or otherwise vary or to waive any terms of this Contract;

7.7.2.3 to agree to settle any dispute or other matter arising out of or in connection with this Contract, in each case in or on such terms as they shall in their absolute discretion think fit,

shall not be subject to the consent of any Purchaser or Tenant.

### 7.8 Rights for a Funder

7.8.1 Where the Rights Particulars state that the Contractor shall confer Funder Rights on a Funder as third party rights, those rights shall vest in the Funder on the date of receipt by the Contractor of the Employer's notice to that effect, which (where paragraph 11.2, Part 2 of Schedule 5 (Third Party Rights for a Funder) is to apply) shall state an email address for the Funder.

7.8.2 Where Funder Rights have been vested in the Funder pursuant to clause 7.8.1:

7.8.2.1 no amendment or variation shall be made to the express terms of this clause 7.8, to Part 2 of Schedule 5 (Third Party Rights for a Funder) or to the relevant Rights Particulars without the prior written consent of the Funder; and

7.8.2.2 neither the Employer nor the Contractor shall agree to rescind this Contract, and the rights of the Contractor to terminate its employment under this Contract or to

[49] See the footnote to clause 7.4 above.

## Section 8 Termination

### General

#### 8.1 Meaning of insolvency

For the purposes of these Conditions:

- 8.1.1 a company becomes Insolvent:
  - 8.1.1.1 when it enters administration within the meaning of Schedule B1 to the Insolvency Act 1986;
  - 8.1.1.2 on the appointment of an administrative receiver or a receiver or manager of its property under Chapter I of Part III of that Act, or the appointment of a receiver under Chapter II of that Part;
  - 8.1.1.3 on the passing of a resolution for voluntary winding-up without a declaration of solvency under section 89 of that Act; or
  - 8.1.1.4 on the making of a winding-up order under Part IV or V of that Act.
- 8.1.2 a partnership becomes Insolvent:
  - 8.1.2.1 on the making of a winding-up order against it under any provision of the Insolvency Act 1986 as applied by an order under section 420 of that Act; or
  - 8.1.2.2 when sequestration is awarded on the estate of the partnership under section 22 of the Bankruptcy (Scotland) Act 2016 or the partnership grants a trust deed for its creditors.
- 8.1.3 an individual becomes Insolvent:
  - 8.1.3.1 on the making of a bankruptcy order against them under Part IX of the Insolvency Act 1986; or
  - 8.1.3.2 on the sequestration of their estate under the Bankruptcy (Scotland) Act 2016 or when they grant a trust deed for their creditors.
- 8.1.4 a person also becomes Insolvent if:
  - 8.1.4.1 it enters 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);
  - 8.1.4.2 (in the case of a partnership) each partner is the subject of an individual arrangement or any other event or proceedings referred to in this clause 8.1;
  - 8.1.4.3 (in the case of a company) a moratorium pursuant to Part A1 of the Insolvency Act 1986 comes into force with respect to it; or
  - 8.1.4.4 (in the case of a company) an order is made sanctioning a compromise or arrangement pursuant to Part 26A of the Companies Act 2006 with respect to it.

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

#### 8.2 Notices under section 8

- 8.2.1 Notice of termination of the Contractor's employment shall not be given unreasonably or vexatiously.
- 8.2.2 Such termination shall take effect on receipt of the relevant notice.

taking of those measures.

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

The Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment under this or any other contract with the Employer if, in relation to this or any other such contract, the Contractor or any person employed by 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.

## 8.7 Consequences of termination under clauses 8.4 to 8.6

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

- 8.7.1 the Employer may employ and pay other persons to carry out and complete the Works and to make good any defects of the kind referred to in clause 2.35, 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;
- 8.7.2 the Contractor shall:
- 8.7.2.1 when required in writing by the Employer to do so (but not before), remove or procure the removal from the Works of any temporary buildings, plant, tools, equipment, goods and materials belonging to the Contractor or Contractor's Persons;
  - 8.7.2.2 provide the Employer with copies of all Contractor's Design Documents then prepared, whether or not previously provided;
  - 8.7.2.3 if so required by the Employer within 14 days of the date of termination, assign (so far as assignable and so far as it may lawfully be required to do so) to the Employer, without charge, the benefit of any agreement for the supply of materials or goods and/or for the execution of any work for the purposes of this Contract<sup>[50]</sup>;
- 8.7.3 no further sum shall become due to the Contractor under this Contract other than any amount that may become due to it under clause 8.7.6 or 8.8.3 and the Employer need not pay any sum that has already become due either:
- 8.7.3.1 insofar as the Employer has given or gives a Pay Less Notice under clause 4.9.5; or
  - 8.7.3.2 if the Contractor, after the last date upon which such notice could have been given by the Employer in respect of that sum, has become insolvent within the meaning of clauses 8.1.1 to 8.1.3;
- 8.7.4 upon completion of the Works and the making good of defects in them (or of instructions otherwise, as referred to in clause 2.35) ('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 8.7 to have taken place on the date so notified;
- 8.7.5 the due date for the Termination Payment under clause 8.7.6 shall be 2 months after the date of completion as referred to in clause 8.7.4;
- 8.7.6 the amount due on termination shall be calculated in accordance with the following amounts:
- 8.7.6.1 the amount of expenses properly incurred by the Employer, including those incurred pursuant to clause 8.7.1 and, where applicable, clause 8.5.3.3, and of any direct loss and/or damage caused to the Employer and for which the Contractor is liable, whether arising as a result of the termination or otherwise;
  - 8.7.6.2 the amount of payments made to the Contractor; and

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

expiry of that 14 day period by a further notice to the Employer terminate the Contractor's employment under this Contract.

8.9.4 If the Contractor for any reason does not give the further notice referred to in clause 8.9.3, but (whether previously repeated or not):

8.9.4.1 the Employer repeats a specified default; or

8.9.4.2 a specified suspension event is repeated for any period, such that the regular progress of the Works is or is likely to be materially affected thereby,

then, upon or within a reasonable time after such repetition, the Contractor may by notice to the Employer terminate the Contractor's employment under this Contract.

#### 8.10 Insolvency of Employer

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

8.10.2 the Employer shall immediately notify the Contractor if it makes any proposal, gives notice of any meeting or becomes the subject of any proceedings or appointment relating to any of the matters referred to in clause 8.1;

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

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

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

8.11.1 If, before practical completion of the Works, the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for the relevant continuous period of the length stated in the Contract Particulars by reason of one or more of the following events:

8.11.1.1 force majeure;

8.11.1.2 Employer's instructions under clause 2.13, 3.9 or 3.10 issued as a result of the negligence or default of any Statutory Provider;

8.11.1.3 loss or damage to the Works occasioned by any risk covered by the Works Insurance Policy or by an Excepted Risk;

8.11.1.4 civil commotion or the use or threat of terrorism and/or the activities of the relevant authorities in dealing with such event or threat;

8.11.1.5 an epidemic:

8.11.1.5.1 first occurring after the Base Date which affects the execution of the Works; or

8.11.1.5.2 first occurring before the Base Date whose effects change after the Base Date and any such change affects the execution of the Works

by limiting the availability or use of labour or the availability of persons engaged in providing services for the Works where such labour and/or persons are necessary for the proper carrying out of the Works, or preventing the Contractor from, or delaying the Contractor in, securing such goods or materials or such services as are necessary for the proper carrying out of the Works;

8.11.1.6 the occurrence after the Base Date of any of the following which affects the execution of the Works:

8.11.1.6.1 the passing into law of any statute, statutory instrument or other subordinate legislation, regulation or bye-law, whether to make a new law or change or repeal an existing law;

8.11.1.6.2 the exercise of any statutory power, except to the extent caused or

(whether ascertained before or after the date of termination);

- 8.12.5.3 the reasonable cost of removal under clause 8.12.2;
- 8.12.5.4 the cost of materials or goods (including Site Materials) properly ordered for the Works for which the Contractor then has paid or is legally bound to pay;
- 8.12.5.5 (only where the Contractor's employment is terminated either under clause 8.9 or 8.10, or under clause 8.11.1.3 if the loss or damage to the Works was caused by the negligence or default of the Employer or any Employer's Person) 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 8.12.5.4 shall be subject to those materials and goods thereupon becoming the Employer's property.

## Termination Payment – final date, notices and amount

### 8.13 Termination Payment – final date, notices and amount

- 8.13.1 Subject to clause 8.13.5, the final date for payment of the Termination Payment shall be 14 days from its due date, as fixed in accordance with clause 8.7.5, 8.8.2 or 8.12.4.
- 8.13.2 Not later than 5 days after the due date for the Termination Payment the Employer shall give a notice to the Contractor, stating the sum that it considers to be or have been due at the due date, calculated in accordance with clause 8.7.6, 8.8.3 or 8.12.5, and the basis on which that sum has been calculated (the 'Employer's Termination Payment Notice'). Such notice shall show the difference or amount referred to in clause 8.7.6, 8.8.3 or 8.12.5 as a balance due to the Contractor from the Employer or vice versa.
- 8.13.3 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 in accordance with clause 4.10.1.
- 8.13.4 Where a Pay Less Notice is given under clause 8.13.3, 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.
- 8.13.5 If an Employer's Termination Payment Notice is not given in accordance with clause 8.13.2:
  - 8.13.5.1 the Contractor may at any time after the 5 day period referred to in clause 8.13.2 give a notice to the Employer, stating the sum that the Contractor considers to have become due under clause 8.7.6, 8.8.3 or 8.12.5 at the due date and the basis on which that sum has been calculated (the 'Contractor's Termination Payment Notice') and, subject to any Pay Less Notice given under clause 8.13.5.3, the Termination Payment shall be the sum stated as due in the Contractor's Termination Payment Notice;
  - 8.13.5.2 if the Contractor gives a Contractor's Termination Payment Notice, 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 8.13.2 that the Contractor's Termination Payment Notice is given;
  - 8.13.5.3 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 4.10.1 and, if it gives such notice, the provisions of clause 8.13.4 shall correspondingly apply.
- 8.13.6 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 8.13.6 shall be recoverable as a debt.
- 8.13.7 In relation to the requirements in this clause 8.13 for the giving of Employer's Termination

## Section 9 Settlement of Disputes

### Notification and negotiation of disputes

#### 9.1 Notification and negotiation of disputes

With a view to avoidance or early resolution of disputes or differences (subject to Article 8), 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.

### Mediation

#### 9.2 Mediation

Subject to Article 8, 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.<sup>[51]</sup>

### Adjudication

#### 9.3 Adjudication

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

9.3.1 for the purposes of the Scheme the Adjudicator shall be the person (if any) and the nominating body shall be that stated in the Contract Particulars;

9.3.2 where the dispute or difference is or includes a dispute or difference relating to clause 3.13.3 and as to whether an instruction issued thereunder is reasonable in all the circumstances:

9.3.2.1 the Adjudicator to decide such dispute or difference shall (where practicable) be an individual with appropriate expertise and experience in the specialist area or discipline relevant to the instruction or issue in dispute;

9.3.2.2 if the Adjudicator does not have the appropriate expertise and experience, the Adjudicator shall appoint an independent expert with such expertise and experience to advise and report in writing on whether or not the instruction under clause 3.13.3 is reasonable in all the circumstances.

### Arbitration

9.4 Not applicable

9.5 Not applicable

9.6 Not applicable

9.7 Not applicable

9.8 Not applicable

9.9 Not applicable

[51] See the Design and Build Contract Guide.

giving rise to a Change; and

- 8.3 neither compliance with the design submission procedure in this Schedule nor with the Employer's comments shall diminish the Contractor's obligations to ensure that the Contractor's Design Documents and Works are in accordance with this Contract.

there has been a material breach of paragraph 1.3; and

- 1.4.3 the Contractor shall account to the Employer for such proportion of any amount that it recovers, or with reasonable diligence could have recovered, from the Named Sub-Contractor in respect of the termination, as may properly and fairly be regarded as due to the Employer to offset the cost to it of the Change.
- 1.5 The Contractor shall include in any Named Sub-Contract a condition stating that the Named Sub-Contractor, having had notice of the terms in this Supplemental Provision 1, undertakes not to contend, whether in proceedings or otherwise, that the Contractor has suffered or incurred no loss and/or expense or that its liability to the Contractor should be in any way reduced or extinguished by reason of this Supplemental Provision 1 and in particular paragraph 1.4.
- 1.6 The Contractor's responsibility for carrying out and completing the Works in all respects in accordance with clauses 2.1.1 to 2.1.4 shall not be affected in any manner by the naming of any person for any work in accordance with this Supplemental Provision 1 or by any of the events that it refers to.

### Valuation of Changes – Contractor's estimates

2

- 2.1 Section 5 (*Changes*), clauses 2.23 to 2.26 (*Adjustment of Completion Date*) and clauses 4.19 to 4.23 (*Loss and Expense*) shall have effect as modified by the provisions of paragraphs 2.2 to 2.6.
- 2.2 Where compliance with instructions of the Employer under clause 3.9 will in the opinion of the Contractor or of the Employer entail a Valuation under clause 5.2 and/or the making of an adjustment of time in respect of the Relevant Event and/or the ascertainment of direct loss and/or expense under clause 4.20 the Contractor, before such compliance, shall submit to the Employer within 14 days of the date of the relevant instruction (or within such other period as may be agreed or, failing agreement, within such other period as may be reasonable in all the circumstances) estimates, or such of those as are relevant, as referred to in paragraphs 2.3.1 to 2.3.5 unless:
- 2.2.1 the Employer with the instructions or within 14 days thereafter states in writing that such estimates are not required; or
- 2.2.2 the Contractor within 10 days of receipt of the instructions raises for itself or on behalf of any sub-contractor reasonable objection to the provision of all or any of such estimates.
- 2.3 The estimates required under paragraph 2.2 shall be in substitution for any Valuation under clause 5.2 and/or any ascertainment under clause 4.20 and shall comprise:
- 2.3.1 the value of the adjustment to the Contract Sum, supported by all necessary calculations by reference to the values in the Contract Sum Analysis;
- 2.3.2 the additional resources (if any) required to comply with the instructions;
- 2.3.3 a method statement for compliance with the instructions;
- 2.3.4 the length of any extension of time required and the resultant change in the Completion Date; and
- 2.3.5 the amount of any direct loss and/or expense, not included in any other estimate, which results from the regular progress of the Works or any part of them being materially affected by compliance with the instructions under clause 3.9.
- 2.4 Upon submission of the estimates required under paragraph 2.2 the Employer and Contractor shall take all reasonable steps to agree those estimates and upon such agreement those estimates shall be binding on the Employer and Contractor.
- 2.5 If within 10 days of receipt of the Contractor's estimates the Contractor and Employer cannot agree on all or any of the matters therein the Employer:
- 2.5.1 may instruct compliance with the instruction and this Supplemental Provision 2

charges in respect of such direct loss and/or expense which have been suffered or incurred by the Contractor prior to the date of issue of the Final Statement or Employer's Final Statement.

## Part 2

Supplemental Provisions 4 to 7 apply unless otherwise stated in the Contract Particulars. Supplemental Provision 8 applies where the Employer is a Local or Public Authority or other body of the type mentioned in that provision; Supplemental Provision 9 applies where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations.

### Acceleration Quotation

#### 4

##### 4.1

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

4.1.1.1 provide an Acceleration Quotation accordingly, identifying the time that can be saved, the amount of the adjustment to the Contract Sum (inclusive of such amounts as are referred to in paragraph 4.1.2) and any other conditions attached; or

4.1.1.2 explain why it would be impracticable to achieve practical completion earlier than the Completion Date.

4.1.2 The adjustment to the Contract Sum to be specified under paragraph 4.1.1.1 shall include the amount to be paid in respect of any direct loss and/or expense that is not included in any other Confirmed Acceptance or in any ascertainment under clause 4.20 together with a fair and reasonable amount in respect of the cost of preparing the quotation.

4.1.3 The Employer may on or before receipt of the quotation seek revised proposals.

4.1.4 Without affecting its obligations under clauses 2.1.1 to 2.1.4 and 2.3, the Contractor shall be under no obligation to accelerate, or take any steps for that purpose, until it receives a Confirmed Acceptance of its Acceleration Quotation under paragraph 4.3.

##### 4.2

4.2.1 Unless otherwise agreed, the Acceleration Quotation shall be submitted in compliance with the invitation not later than 21 days from the later of:

4.2.1.1 the date of receipt of the invitation; or

4.2.1.2 the date of receipt by the Contractor of information sufficient to enable it to prepare the quotation.

4.2.2 The quotation shall remain open for acceptance by the Employer for not less than 7 days from its receipt.

4.2.3 The Parties may agree to increase or reduce any of the periods referred to in this Supplemental Provision 4; confirmation of such agreement shall be notified to the Contractor by or on behalf of the Employer.

4.3 If the Employer wishes to accept an Acceleration Quotation, it shall within the period for acceptance confirm such acceptance by an instruction to the Contractor (a 'Confirmed Acceptance') stating:

4.3.1 the adjustment of the Contract Sum (including any amounts referred to in paragraph 4.1.2) to be made for complying with the instruction;

4.3.2 the adjustment to the time required by the Contractor for completion of the

### Performance Indicators and monitoring

7

- 7.1 The Employer shall monitor and assess the Contractor's performance by reference to any performance indicators stated or identified in the Contract Documents.
- 7.2 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.
- 7.3 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

8

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 clause 2.7.4 or any other term of this Contract:

- 8.1 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;
- 8.2 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

9

Where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations<sup>[52]</sup>:

- 9.1 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);
- 9.2 the Contractor shall include in any sub-contract it enters into provisions requiring the sub-contractor:
  - 9.2.1 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
  - 9.2.2 to include in any sub-subcontract the sub-contractor in turn enters into provisions to the same effect as required under paragraph 9.2.1 of Supplemental Provision 9;
- 9.3
  - 9.3.1 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;
  - 9.3.2 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.

[52] An explanatory summary of those provisions in the PC Regulations that are reflected in this Contract is contained in the Design and Build Contract Guide. Provisions relating to the PC Regulations are also set out in section 8 (Termination) of this Contract. The JCT Design and Build Sub-Contract (DBSub) meets the requirements of Supplemental Provision 9.

## **Insurance Option B**

**(New Buildings – All Risks Insurance of the Works by the Employer)<sup>[53]</sup>**

Not applicable

## Schedule 4 Code of Practice

(Clause 3.13.3)

The purpose of the Code is to assist in the fair and reasonable operation of the requirements of clause 3.13.3.

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

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

- 4 The Purchaser or Tenant, insofar as it is the purchaser or tenant of any part(s) of the site, and subject to the Contractor having been paid all sums due and payable under this Contract, shall in respect of such parts have rights and licences in relation to the Contractor's Design Documents in the same terms as those conferred on the Employer by clause 2.38, but subject to similar conditions, limitations and exclusions as apply thereunder to the Employer.
- 5 Where this Contract requires the Contractor to take out and maintain Professional Indemnity insurance, the Contractor warrants that it has and shall maintain that insurance in the amount, on the terms and for the period referred to in clause 6.15 and its related Contract Particulars<sup>[56]</sup>. The Contractor shall immediately give written notice to the Purchaser or Tenant if such insurance ceases to be available at commercially reasonable rates or terms in order that the Contractor and the Purchaser or Tenant can discuss the means of best protecting their respective positions in the absence of such insurance. As and when reasonably requested to do so by the Purchaser or Tenant, the Contractor shall produce for inspection documentary evidence that its Professional Indemnity insurance is being maintained.
- 6 P&T Rights may be assigned without the Contractor's consent by a Purchaser or Tenant, by way of absolute legal assignment, to another person (P1) taking an assignment of the Purchaser's or Tenant's interest in the Works and by P1, by way of absolute legal assignment, to another person (P2) taking an assignment of P1's interest in the Works. In such cases the assignment shall only be effective upon written notice of it being given to the Contractor. No further or other assignment of a Purchaser's or Tenant's rights under this Schedule will be permitted and in particular P2 shall not be entitled to assign these rights.
- 7 Any notice to be given by the Purchaser or Tenant to the Contractor or by the Contractor to the Purchaser or Tenant shall be duly given if:
  - 7.1 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) to the recipient at such address as it may from time to time notify to the sender or (if no such address is then current) its last known principal business address or (where a body corporate) its registered or principal office and, where sent by post in that manner, it shall be deemed to have been received on the second Business Day after the date of posting; or
  - 7.2 (where an email address has been stated for the Purchaser or Tenant (as the case may be) in the Employer's notice under clause 7.7.1 and for the Contractor in the Contract Particulars against clause 1.7.3) sent by email to the recipient's email address as there stated, or to such other email address as the recipient may from time to time notify to the sender, and shall be deemed to have been received on the next Business Day after the day on which it was sent.
- 8 No action or proceedings for any breach of P&T Rights shall be commenced against the Contractor after the expiry of the relevant period from the date of practical completion of the Works. Where there are Sections, no such action or proceedings shall be commenced against the Contractor in respect of any Section after the expiry of the relevant period from the date of practical completion of such Section. For the purposes of this paragraph, the relevant period shall be:
  - 8.1 where this Contract is executed under hand, 6 years; and
  - 8.2 where this Contract is executed as a deed, 12 years.
- 9 For the avoidance of doubt, the Contractor shall have no liability to the Purchaser or Tenant under this Schedule for delay in completion of the Works.
- 10 This Schedule shall be governed by and construed in accordance with the law of England and the English courts shall have jurisdiction over any dispute or difference between the Contractor and any Purchaser or Tenant which arises out of or in connection with the P&T Rights of that Purchaser or Tenant.

## Part 2: Third Party Rights for a Funder

### ('Funder Rights')

- 1 The Contractor warrants that it has complied and will continue to comply with this Contract. In the event of any breach of this warranty:

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[56] For Contractors which do not carry Professional Indemnity insurance, see the Design and Build Contract Guide.

before the lapse of 14 days from receipt by the Funder of the notice by the Contractor which the Contractor is required to give under paragraph 6.1.2 or 6.2.

- 6.4 The Funder may, not later than the expiry of the period referred to in paragraph 6.3, require the Contractor by written notice and subject to paragraph 7 to accept the instructions of the Funder or its appointee to the exclusion of the Employer in respect of the Works upon the terms and conditions of this Contract. The Employer acknowledges that the Contractor shall be entitled to rely on a notice given to the Contractor by the Funder under this paragraph 6.4 and that acceptance by the Contractor of the instructions of the Funder to the exclusion of the Employer shall not constitute any breach of the Contractor's obligations to the Employer under this Contract. Provided that nothing in this paragraph 6.4 shall relieve the Contractor of any liability it may have to the Employer for any breach by the Contractor of this Contract.
- 7 It shall be a condition of any notice given by the Funder under paragraph 5 or 6.4 that the Funder or its appointee accepts liability for payment of the sums due and payable to the Contractor under this Contract and for performance of the Employer's obligations including payment of any sums outstanding at the date of such notice. Upon the issue of any notice by the Funder under paragraph 5 or 6.4, this Contract shall continue in full force and effect as if no right of termination of the Contractor's employment under this Contract, nor any right of the Contractor to treat this Contract as having been repudiated by the Employer, had arisen and the Contractor shall be liable to the Funder and its appointee under this Contract in lieu of the Contractor's liability to the Employer. If any notice given by the Funder under paragraph 5 or 6.4 requires the Contractor to accept the instructions of the Funder's appointee, the Funder shall be liable to the Contractor as guarantor for the payment of all sums from time to time due to the Contractor from the Funder's appointee.
- 8 Subject to the Contractor having been paid all sums due and payable under this Contract, the Funder shall have rights and licences in relation to the Contractor's Design Documents in the same terms as those conferred on the Employer by clause 2.38, but subject to similar conditions, limitations and exclusions as apply thereunder to the Employer.
- 9 Where this Contract requires the Contractor to take out and maintain Professional Indemnity insurance, the Contractor warrants that it has and shall maintain that insurance in the amount, on the terms and for the period referred to in clause 6.15 and its related Contract Particulars<sup>[56]</sup>. The Contractor shall immediately give written notice to the Funder if such insurance ceases to be available at commercially reasonable rates or terms in order that the Contractor and the Funder can discuss the means of best protecting their respective positions in the absence of such insurance. As and when reasonably requested to do so by the Funder or its appointee under paragraph 5 or 6.4, the Contractor shall produce for inspection documentary evidence that its Professional Indemnity insurance is being maintained.
- 10 The rights contained in this Schedule may be assigned without the Contractor's consent by the Funder, by way of absolute legal assignment, to another person (P1) providing finance or re-finance in connection with the carrying out of the Works and by P1, by way of absolute legal assignment, to another person (P2) providing finance or re-finance in connection with the carrying out of the Works. In such cases the assignment shall only be effective upon written notice of it being given to the Contractor. No further or other assignment of Funder Rights will be permitted and in particular P2 shall not be entitled to assign these rights.
- 11 Any notice to be given by the Contractor to the Funder or by the Funder to the Contractor shall be duly given if:
- 11.1 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) to the recipient at such address as it may from time to time notify to the sender or (if no such address is then current) its last known principal business address or (where a body corporate) its registered or principal office and, where sent by post in that manner, it shall be deemed to have been received on the second Business Day after the date of posting; or
- 11.2 (where an email address has been stated for the Funder in the Employer's notice under clause 7.8.1 and for the Contractor in the Contract Particulars against clause 1.7.3) sent by email to the recipient's email address as there stated, or to such other email address as the recipient may from time to time notify to the sender, and shall be deemed to have been received on the next Business Day after the day on which it was sent.
- 12 No action or proceedings for any breach of the rights contained in this Schedule shall be commenced against the Contractor after the expiry of the relevant period from the date of practical completion of the Works. Where there are Sections, no such action or proceedings shall be commenced against the

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## Schedule 6      Forms of Bonds

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(Clauses 4.6, 4.15 and 4.17)

(Agreed between the JCT and the British Bankers' Association<sup>[57]</sup>)

### Part 1: Advance Payment Bond<sup>[58]</sup>

Not applicable

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**[57]** The British Bankers' Association has been merged into UK Finance.

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

### Part 3: Retention Bond<sup>[59]</sup>

Not applicable

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