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CM/A 2016
Construction Management
Appointment 2016

DRYAFFE

2016
CONSTRUCTION MANAGEMENT

Construction Management Appointment (CM/A)

Appropriate:

- where a Construction Manager is to manage the project on behalf of the Employer; and
- where the Employer is to enter into direct separate trade contracts using the Construction Management Trade Contract (CM/TC) or a special Trade Contract.

Can be used:

- where the works are to be carried out in sections.

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For details of 2016 Edition changes, see the Construction Management Guide (CM/G) and the Tracked Change Document.

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Contents

	Agreement	1
	Recitals	2
	Articles	3
1	Construction Manager's obligations	
2	Payment	
3	Principal Designer	
4	Principal Contractor	
5	Adjudication	
6	Arbitration	
7	Legal proceedings	
	Contract Particulars	5
	Part 1: General	
	Part 2: Consultant Team	
	Attestation	12
	Conditions	17
Section 1	Definitions and Interpretation	17
	Definitions	
1.1	Definitions	
	Interpretation	
1.2	Reference to clauses etc.	
1.3	Agreement etc. to be read as a whole	
1.4	Headings, references to persons, legislation etc.	
1.5	Reckoning periods of days	
1.6	Contracts (Rights of Third Parties) Act 1999	
1.7	Notices and other communications	
1.8	Confidentiality	
1.9	Consents and approvals	
1.10	Applicable law	
Section 2	Procurement of the Project	23
	Construction Manager's Obligations	
2.1	Procurement of the Project and provision of services	
2.2	Construction Manager's Personnel	
2.3	Issue of completion certificates	
2.4	Issue of Certificates of Making Good	
2.5	Issue of Final Statements	
2.6	Issue of Final Certificate	
	Construction Manager's Liability	
2.7	Skill and care	
2.8	Liability for design	
2.9	Limits on liability	
	Employer's Consultants	
2.10	Appointment of the Consultant Team	
2.11	Cost Consultant	
	Information provided by Employer	
2.12	Information provided by Employer	

	Access, Control and Occupation	
2.13	Access to and control of the Project site	
2.14	Early use by Employer	
2.15	Takeover and occupation of part by Employer	
2.16	Insurance – Relevant Part	
Section 3	Control of the Project	26
	Employer's Role	
3.1	Employer's Representative	
3.2	Employer's instructions	
3.3	Appointment of Trade Contractors	
	Sub-Contracting	
3.4	Sub-Contracting	
	CDM Regulations	
3.5	CDM Regulations	
Section 4	Payment	28
	Payments to Construction Manager	
4.1	Payments to Construction Manager	
	Interim Payments, Final Payment and Notices	
4.2	Submission of interim accounts	
4.3	Payment of interim accounts – due dates and notices	
4.4	Submission of final account	
4.5	Payment of final account – due date and Final Payment Notice	
4.6	Payment of interim and final accounts	
4.7	Construction Manager's right of suspension	
	Taxes	
4.8	VAT	
4.9	Construction Industry Scheme (CIS)	
Section 5	Adjustments to the Construction Management Fee	31
5.1	Adjustment of Pre-Construction Period or Construction Period Management Fee	
5.2	Final adjustment of Construction Management Fee	
Section 6	Injury, Damage and Insurance	32
	Personal Injury and Property Damage	
6.1	Construction Manager's liability – personal injury or death	
6.2	Construction Manager's liability – loss, injury or damage to property	
6.3	Loss or damage to Existing Structures or their contents	
6.4	Employer's liability – personal injury or death	
6.5	Employer's liability – loss, injury or damage to property	
	Insurance against Personal Injury and Property Damage	
6.6	Construction Manager's liability insurance and limitation of liability	
6.7	Employer's insurance of his liability	
	Insurance of the Project and Existing Structures	
6.8	Obligation to insure	
6.9	Related definitions	
6.10	Sub-contractors – Specified Perils cover under Project Insurance Policies	
6.11	Terrorism Cover – policy extensions and premiums	
6.12	Terrorism Cover – non-availability – Employer's options	
6.13	Evidence of insurance	
6.14	Loss or damage to Project – insurance claims and Construction Manager's obligations	
6.15	Loss or damage to Existing Structures – right of termination	
	Professional Indemnity Insurance	
6.16	Obligation to insure	
6.17	Increased cost and non-availability	
Section 7	Assignment, Third Party Rights and Collateral Warranties	38

7.1	Assignment Assignment	
	Clauses 7.5 to 7.8 – Preliminary	
7.2	Rights Particulars	
7.3	Notices	
7.4	Execution of Collateral Warranties	
	Third Party Rights from Construction Manager	
7.5	Rights for Purchasers and Tenants	
7.6	Rights for a Funder	
	Collateral Warranties from Construction Manager	
7.7	Construction Manager's Warranties – Purchasers and Tenants	
7.8	Construction Manager's Warranty – Funder	
Section 8	Termination	40
	General	
8.1	Meaning of insolvency	
8.2	Notices under section 8	
8.3	Other rights, reinstatement	
	Termination	
8.4	Termination by Employer	
8.5	Termination by Construction Manager	
8.6	Consequences of termination	
Section 9	Settlement of Disputes	43
	Mediation	
9.1	Mediation	
	Adjudication	
9.2	Adjudication	
	Arbitration	
9.3	Conduct of arbitration	
9.4	Notice of reference to arbitration	
9.5	Other arbitration agreements	
9.6	Powers of Arbitrator	
9.7	Effect of award	
9.8	Appeal – questions of law	
9.9	Arbitration Act 1996	
	Schedules	45
Schedule 1	Definition of Reimbursable Cost	45
	Part 1: General	
	Part 2: Construction Manager's Personnel	
	Part 3: Sundry Costs incurred by Construction Manager	
Schedule 2	Insurance	47
	Insurance of Project and Existing Structures	
Schedule 3	Third Party Rights	48
	Part 1: Third Party Rights for Purchasers and Tenants	
	Part 2: Third Party Rights for a Funder	
Schedule 4	Consultant Team – Terms of Engagement	52
Schedule 5	Construction Manager's Services	53
	Part 1: Services	
	Part 2: Additional Services	
Schedule 6	Site Facilities and Services	54

Schedule 7	Cost Planning and Control	55
	Part 1: Cost Planning	
	Part 2: Procurement	
	Part 3: Cost Control	
Schedule 8	Supplemental Provisions	56

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Agreement

This Agreement

is made the _____ 20_____

Between

The Employer

[_____]

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

of/whose registered office is at

[_____]

And

The Construction Manager

[_____]

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

of/whose registered office is at

[_____]

[1] Where the Employer or Construction Manager 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 Construction Management Guide.

Recitals

Whereas

First

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

[] at [] ('the Project'),
for which he has prepared and supplied to the Construction Manager the Employer's Initial Brief and the Preliminary Project Cost Plan and in connection with which he has appointed or intends to appoint the professional consultants ('the Consultant Team') identified in Part 2 of the Contract Particulars under a leader ('the Consultant Team Leader') for its design and other services;

Second

the Employer wishes to appoint the Construction Manager to procure the Project in accordance with the Conditions;

Third

the Project comprises work to be carried out under contracts between the Employer and contractors ('Trade Contracts' and 'Trade Contractors') and the provision by the Construction Manager of such Site Facilities and services as are listed in Schedule 6;

Fourth

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

Fifth

where so stated in the Contract Particulars, this Contract is supplemented by the Framework Agreement identified in those particulars;

Sixth

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

[2] State nature and location of intended works.

Articles

Now it is hereby agreed as follows

Article 1 Construction Manager's obligations

The Construction Manager shall fulfil the obligations set out in clause 2.1 in accordance with this Contract.

Article 2 Payment

The Employer shall pay the Construction Manager the sums referred to in clause 4.1.

Article 3 Principal Designer^[3]

The Principal Designer for the purposes of the CDM Regulations is

[]

of

[]

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

Article 4 Principal Contractor^[3]

The Principal Contractor for the purposes of the CDM Regulations is the Construction Manager

(or)^[4] []

of

[]

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

Article 5 Adjudication

If any dispute or difference arises under this Contract, either Party may refer it to adjudication in accordance with clause 9.2.^[5]

[3] Under the CDM Regulations 2015, regardless of whether or not a project is notifiable, there is a requirement to appoint a principal designer and a principal contractor in all cases where there is more than one contractor, or if it is reasonably foreseeable that more than one contractor will be working on a project at any time. For these purposes, the term 'contractor' is broadly defined by the regulations and treats the Contractor's sub-contractors as separate contractors.

[4] Insert the name of the Principal Contractor only where the Construction Manager is not to fulfil this role.

[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 Construction Management Guide.

Article 6 **Arbitration**

Where Article 6 applies^[6], then, subject to Article 5 and the exceptions set out below, any dispute or difference between the Parties of any kind whatsoever arising out of or in connection with this Contract shall be referred to arbitration in accordance with clauses 9.3 to 9.9 and the JCT 2016 edition of the [Construction Industry Model Arbitration Rules \(CIMAR\)](#). The exceptions to this Article 6 are:

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

Article 7 **Legal proceedings^[6]**

Subject to Article 5 and (where it applies) to Article 6, the English courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.

DRRAFT

[6] If it is intended, subject to the right of adjudication and exceptions stated in Article 6, that disputes or differences should be determined by arbitration and not by legal proceedings, the Contract Particulars **must** state that Article 6 and clauses 9.3 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 7 (see also clause 1.10).

Contract Particulars

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

Part 1: General

Fourth Recital and clause 4.9

Construction Industry Scheme (CIS)

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

Fifth Recital

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

[]

Sixth Recital and Schedule 8

Supplemental Provisions^[7]

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

Supplemental Provision 1: Collaborative working
* applies/does not apply

Supplemental Provision 2: Health and safety
* applies/does not apply

Supplemental Provision 3: Cost savings and value improvements^[8]
* applies/does not apply

Supplemental Provision 4: Sustainable development and environmental considerations
* applies/does not apply

Supplemental Provision 5: Performance Indicators and monitoring
* applies/does not apply

Supplemental Provision 6: Notification and negotiation of disputes
* applies/does not apply

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

Employer's nominee

[]

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

[8] In view of the Construction Manager's services and duties under this Contract, care should be taken in deciding whether or not Supplemental Provision 3 is to apply (and, in default of an entry, it will apply) or whether modification is required. See the Construction Management Guide.

Construction Manager's nominee

[]

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

Article 6

Arbitration

(If neither entry is deleted, Article 6 and clauses 9.3 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 6 and clauses 9.3 to 9.9 apply.)^[9]

Article 6 and clauses 9.3 to 9.9 (*Arbitration*)
* apply/do not apply

1.1

Base Date

[]

BIM Protocol

(Not applicable unless it is stated to apply, with the title, edition, date or other identifiers of the relevant documents stated, and the identified protocol is included in the listing of services in Schedule 5.)

* applies as set out in the following document(s) included in the listing of services in Schedule 5

[]

* does not apply

Construction Manager's Personnel

The names, Project roles and duration of appointment together with relevant details of their terms and conditions of employment^[10]

are set out in the following document(s)

[]

Employer's Initial Brief

(State reference number and date or other identifier of the relevant document(s).)^[10]

[]

Employer's Representative

[]

Preliminary Project Cost Plan

(State reference number and date or other identifier of the relevant document(s).)^[10]

[]

Project Cost Plan

is to be prepared
* by the Construction Manager
* by the Cost Consultant

[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 Construction Management Guide. See also footnote [6].

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

1.7

Addresses for service of notices by the Parties

(If none is stated, the address in each case, subject to clause 1.7.3, shall be that shown at the commencement of the Agreement.)^[11]

Employer

[]

Construction Manager

[]

2.9.1

Limitation of Liability

(If no limit is stated, clause 2.9.1 does not apply.)

Clause 2.9.1

* does not apply

* applies with a limit on the Construction Manager's liability of

£[]

4.1 and Schedule 1, paragraph 1.2

Reimbursable Cost: substitution by lump sums/rates – the items for which lump sums and/or specific rates have been agreed, the amounts or rates agreed in each case, and the basis for adjustment of any such lump sums or rates as a result of compliance with instructions^[10]

* are as follows

* are set out in the following document

[]

4.1.2

Construction Management Fee

The Pre-Construction Period Management Fee is

(Where not a fixed fee, state the reference number and date or other identifier(s) of the document setting out the basis of calculation.)

* £[]

* an amount calculated by reference to the following document

[]

The Construction Period Management Fee is

(Where not a fixed fee, state the reference number and date or other identifier(s) of the document setting out the basis of calculation.)

* £[]

* an amount calculated by reference to the following document

[]

[11] As to service of notices etc. outside the United Kingdom, see the Construction Management Guide.

4.2.1

Submission of Construction Manager's account – monthly date
(If none is stated, the date shall be the last Business Day of each month.)

[]

4.2.1.1

Pre-Construction Period Management Fee: instalments^[12]

Milestone/date ^[13]	Percentage of Pre-Construction Period Management Fee/amount ^[13]	Cumulative percentage/amount ^[13]
[]	[]	[]

4.2.1.2

Construction Period Management Fee: instalments^[12]

Milestone/date ^[13]	Percentage of Construction Period Management Fee/amount ^[13]	Cumulative percentage/amount ^[13]
[]	[]	[]

5.2

The method for final adjustment of the Construction Management Fee where the Reimbursable Cost and total of the sums payable to Trade Contractors exceed the costs stated in the Project Cost Plan

is set out in the following document

[]

6.6.1

Construction Manager's Public Liability insurance: injury to persons or property – insurance cover
(for any one occurrence or series of occurrences arising out of one event)

£ []

6.8 and Schedule 2

Percentage to cover professional fees^[14]
(If no other percentage is stated, it shall be 15 per cent.)

[] per cent

Insurance of Existing Structures – paragraph 2 of Schedule 2^[15]

- [12] 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.
- [13] Delete as appropriate.
- [14] The percentage for professional fees should be calculated on a basis which includes the Construction Manager's fee.
- [15] The provisions of paragraph 2 of Schedule 2 apply in the case of alterations of or extensions to Existing Structures. Under clause 6.8 and Schedule 2, the **Employer** is required to take out a Joint Names Policy for All Risks Insurance for the Project and also, if paragraph 2 of Schedule 2 applies, a Joint Names Policy to insure the Existing Structures and their contents owned by him or for which he is responsible against loss or damage by the Specified Perils. Some Employers (e.g. tenants) may not be able readily to obtain the Joint Names cover required under paragraph 2. Where that is the case, alternative arrangements and amendments will be necessary and in so doing consideration should be given to how the Construction Manager's interest is to be maintained in such alternative policies/arrangements.

(Unless otherwise stated, paragraph 2 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 'Paragraph 2 Replacement Schedule')

6.11 and Schedule 2

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

are set out in the following document(s)

[]

6.16

Professional Indemnity insurance

Level of cover

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

Amount of indemnity required

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

(If no amount is stated, insurance under clause 6.16 shall not be required.)

and is

£[]

Cover for pollution and contamination claims

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

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

£[]

- * is not required

Expiry of required period of Professional Indemnity insurance

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

- * 6 years
- * 12 years
- * [] years
(not exceeding 12 years)

7.2

Third Party Rights and Collateral Warranties – details of the requirements for the grant by the Construction Manager of P&T Rights and/or Funder Rights in respect of the Project, either as third party rights or by collateral warranties ('Rights Particulars') are set out in the following document^[16]
(State reference number and date or other identifier of the relevant document.)

See the Construction Management Guide.

Where there are Existing Structures, it is vital that any prospective Employer who is not familiar with paragraph 2 of Schedule 2 – in particular any Employer who is a tenant – or an appropriate member of the Employer's professional team, should consult specialist insurance advisers prior to the tender stage. Any Employer who is a tenant should also consult his insuring landlord prior to that stage.

[]

9.2

Adjudication^[17]

The Adjudicator is []

Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)^[18]

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

- * Royal Institute of British Architects
- * The Royal Institution of Chartered Surveyors
- * constructionadjudicators.com^[19]
- * Chartered Institute of Arbitrators

9.4.1

Arbitration^[20] – appointor of Arbitrator (and of any replacement)^[21]

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

President or a Vice-President:

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

Schedule 5 (paragraph 3.3.4 of the Schedule 5 Model Services)

Construction Manager's limit of authority^[22]

for one event is

£[]

as a monthly aggregate is

£[]

[16] The relevant Rights Particulars should identify the beneficiaries (by name, class or description), specify whether rights are to be granted 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 Construction Management Guide and is also available on the JCT website www.jctltd.co.uk.

In the case of third party rights the relevant limits and details required for the purposes of the respective parts of Schedule 3 of this Contract are the same as those required for the purposes of the Warranty Particulars for the corresponding Collateral Warranty (CMWa/P&T or CMWa/F). See also the Construction Management Guide.

[17] 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.

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

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

[20] This only applies where the Contract Particulars state (against the reference to Article 6) that Article 6 and clauses 9.3 to 9.9 (*Arbitration*) apply.

[21] Delete all but one of the bodies asterisked.

[22] Revise or delete these Contract Particulars where the Schedule 5 Model Services are not adopted.

Part 2: Consultant Team

The Consultant Team Leader is

[]

of []

who has been appointed to

[]

The Cost Consultant (if any) is

[]

of []

The other members or anticipated members of the Consultant Team are:^[23]

(1) []

of []

who may be/has been appointed to

[]

(2) []

of []

who may be/has been appointed to

[]

(3) []

of []

who may be/has been appointed to

[]

[23] 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.

Attestation

Note on Execution

This Agreement should be executed by both the Employer and the Construction Manager either under hand or as a deed. As to factors relevant to that choice, see the Construction Management Guide.

Execution under hand

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

Execution as a Deed

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

Other forms of Attestation

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

DRY
ATTESTATION

Execution under hand

As witness

the hands of the Parties
or their duly authorised representatives

Signed by or on behalf of
the Employer

in the presence of:

witness' signature

witness' name

witness' address

Signed by or on behalf of
the Construction Manager

in the presence of:

witness' signature

witness' name

witness' address

Notes on Execution as a Deed

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

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

Execution as a Deed

Executed as a Deed by the Employer

namely ¹ []

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

(Print name of signatory)

Signature Director

and

(Print name of signatory)

Signature Company Secretary/Director

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

in the presence of

Signature Director

Signature Company Secretary/Director

[Common seal of company]

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

Signature Director

in the presence of

Witness' signature _____ *(Print name)* _____

Witness' address _____

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

Signature

in the presence of

Witness' signature _____ *(Print name)* _____

Witness' address _____

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

Execution as a Deed

Executed as a Deed by the Construction Manager

namely ¹ []

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

(Print name of signatory)

Signature Director

and

(Print name of signatory)

Signature Company Secretary/Director

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

in the presence of

Signature Director

Signature Company Secretary/Director

[Common seal of company]

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

Signature Director

in the presence of

Witness' signature (Print name)

Witness' address

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

Signature

in the presence of

Witness' signature (Print name)

Witness' address

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

Conditions

Section 1 Definitions and Interpretation

Definitions

1.1 Definitions

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

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

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

All Risks Insurance: see **clause 6.9**.

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

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

Base Date: the date stated as such date in the **Contract Particulars** (against the reference to **clause 1.1**)^[24].

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

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

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

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

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

Construction Management Fee: the total of the Pre-Construction Period Management Fee and the Construction Period Management Fee, as adjusted, where applicable, in accordance with **section 5**.

Construction Manager: the person named as Construction Manager in the **Agreement**.

Construction Manager's Personnel: those of the Construction Manager's personnel identified as such in or by the **Contract Particulars** (against the reference to **clause 1.1**) together with any replacements or additions agreed under **clause 2.2.1**.

Construction Period Management Fee: that part of the Construction Management Fee referred to as such in the **Contract Particulars** (against the reference to **clause 4.1.2**), as adjusted, where applicable, in accordance with **section 5**.

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

Consultancy Agreement: the terms of engagement by the Employer of any member of the Consultant Team.

[24] The Base Date is relevant to the Fourth Recital (CIS) and to clause 4.8.2 (VAT).

Consultant Team: the consultants named in **Part 2 of the Contract Particulars**, or subsequently appointed to the Consultant Team by the Employer.

Consultant Team Leader: the consultant named as Consultant Team Leader in **Part 2 of the Contract Particulars** or any successor appointed by the Employer.

Consultants: see **clause 7.2**.

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

Cost Consultant: the person, if any, named as Cost Consultant in **Part 2 of the Contract Particulars** or any person subsequently appointed as such by the Employer.

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

Employer's Initial Brief: the document referred to in the **First Recital** and the **Contract Particulars** outlining the Employer's requirements for the Project and including identification of site boundaries.

Employer's Representative: the person named as Employer's Representative in the **Contract Particulars** (against the reference to **clause 1.1**), or any successor appointed by the Employer.

Excepted Risks: see **clause 6.9**.

Existing Structures: any and all existing structures within which the Project or part of it is to be executed or to which it is to form an extension, together with any Section for which a Section Completion Certificate has been issued and, as from the Relevant Date, any Relevant Part taken over under **clause 2.15**.

Final Certificate: see **clause 2.6**.

Final Payment Notice: see **clause 4.5.2**.

Final Statement: see **clause 2.5**.

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

Funder: the person named or otherwise sufficiently identified as such (whether by class or description) in or by the Rights Particulars and in respect of whom the Employer gives notice under **clause 7.6.1**.

Funder Rights: the rights in favour of the Funder to be granted by the Construction Manager as third party rights under **Part 2 of Schedule 3** or by JCT collateral warranty CMWa/F.

Insolvent: see **clause 8.1**.

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

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

Joint Names Policy: see **clause 6.9**.

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

P&T Rights: the rights in favour of a Purchaser or Tenant to be granted by the Construction Manager as third party rights under **Part 1 of Schedule 3** or by JCT collateral warranty CMWa/P&T.

Paragraph 2 Replacement Schedule: (where applicable) the insurance schedule and/or other documents identified as such in the **Contract Particulars** (against the reference to **clause 6.8** and **Schedule 2**).

Parties: the Employer and the Construction Manager together.

Party: either the Employer or the Construction Manager.

Pay Less Notice: see **clauses 4.6.4** and **4.6.5**.

Payment Notice: see **clause 4.3.2**.

PC Regulations: the Public Contracts Regulations 2015.

Pre-Construction Period: the period starting on the agreed date on which the Construction Manager begins to perform his obligations under this Contract and ending on the day immediately prior to the commencement of work on site by the Trade Contractor first in time.

Pre-Construction Period Management Fee: that part of the Construction Management Fee referred to as such in the **Contract Particulars** (against the reference to **clause 4.1.2**), as adjusted, where applicable, in accordance with **clause 5.1**.

Preliminary Project Cost Plan: the cost plan referred to in the **First Recital** and the **Contract Particulars** prepared by the Employer for development into the Project Cost Plan.

Principal Contractor: the Construction Manager or other person named in **Article 4** or any successor appointed by the Employer.

Principal Designer: the person named in **Article 3** or any successor appointed by the Employer.

Project: the works briefly described in the **First Recital**.

Project Brief: the brief for the Project developed from the Employer's Initial Brief by the Employer with the Construction Manager and the Consultant Team during the Pre-Construction Period and signed not later than the end of the Pre-Construction Period by or on behalf of the Employer, the Construction Manager and the Consultant Team.

Project Completion Certificate: see **clause 2.3.2**.

Project Cost Plan: the cost plan, set out in sufficient detail for the purposes of cost control of the Project, prepared by the Construction Manager/the Cost Consultant^[25] from the Preliminary Project Cost Plan after consultation with the Consultant Team and stating the total estimated cost of the Project based on the Project Drawings, the Project Specification and the Project Programme and agreed and signed by or on behalf of the Employer, the Consultant Team and the Construction Manager.

Project Drawings: the drawings for the Project prepared by the Consultant Team during the Pre-Construction Period for the purpose of compiling the Project Cost Plan and agreed and signed by or on behalf of the Employer, the Consultant Team and the Construction Manager.

Project Insurance Policy: the Joint Names Policy or policies covering the Project to be effected and maintained by the Employer under clause 6.8 and in accordance with Schedule 2.

Project Programme: the programme for the design and construction of the Project prepared by the Construction Manager during the Pre-Construction Period for the purpose of compiling the Project Cost Plan and agreed and signed by or on behalf of the Employer, the Consultant Team and the Construction Manager.

Project Specification: the specification for the Project prepared by the Consultant Team during the Pre-Construction Period for the purpose of compiling the Project Cost Plan and agreed and signed by or on behalf of the Employer, the Consultant Team and the Construction Manager.

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

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

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

Reimbursable Cost: the amount of the costs incurred by the Construction Manager in accordance with **Schedule 1**.

Relevant Date: see **clause 2.15**.

[25] See the Contract Particulars (against the reference to clause 1.1) which states if the Construction Manager or the Cost Consultant is to prepare the Project Cost Plan.

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

Relevant Part: see **clause 2.15**.

Rights Particulars: see **clause 7.2** and the **Contract Particulars** for that clause.

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

Section: (where applicable) a part of the Project which the Employer wishes to be completed separately from other parts of the Project.

Section Completion Certificate: see **clause 2.3.2**.

Site Facilities: see **clause 6.9**.

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

Special Trade Contract: see **clause 3.3**; a trade contract prepared by the Construction Manager for a Trade Contract where the trade contract CM/TC is not to be used.

Specified Perils: see **clause 6.9**.

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

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

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

Terrorism Cover: see **clause 6.9**.

Trade Contract: the contract between the Employer and a Trade Contractor as referred to in **clause 3.3**.

Trade Contractors: the persons contracted by the Employer as referred to in **clause 3.3** to carry out items of work for the Project which are to be carried out by Trade Contractors.

VAT: Value Added Tax.

Works: in respect of any Trade Contract the works shown and described in the trade contract documents and including any changes made to those works in accordance with the Trade Contract.

Interpretation

1.2 Reference to clauses etc.

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

1.3 Agreement etc. to be read as a whole

The Agreement and these Conditions are to be read as a whole; nothing contained in any other document referred to in this Contract shall override or modify them.

1.4 Headings, references to persons, legislation etc.

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

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

- 1.4.2 the singular includes the plural and vice versa;
- 1.4.3 a gender includes any other gender;
- 1.4.4 a reference to a 'person' includes any individual, firm, partnership, company and any other body corporate;
- 1.4.5 a reference to a statute, statutory instrument or other subordinate legislation ('legislation') is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification, and including corresponding legislation in any other relevant part of the United Kingdom; and
- 1.4.6 references to documents shall, where there is a BIM Protocol or other protocol relating to the supply of documents or information under this Contract, be deemed to include information in a form or medium conforming to that protocol.

1.5 Reckoning periods of days

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

1.6 Contracts (Rights of Third Parties) Act 1999

Other than such rights of any Purchasers, Tenants and/or Funder as take effect pursuant to clauses 7.5 and/or 7.6, nothing in this Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

1.7 Notices and other communications

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

1.8 Confidentiality

- 1.8.1 Unless otherwise required by law:
 - 1.8.1.1 no documents, including those referred to in clause 2.12, prepared for the carrying out of the Project shall be used by the Construction Manager for any purpose other than the performance of his obligations under this Contract;

[27] In cases where there is no BIM Protocol, the Parties should agree a communications protocol for the Project on or before entering into this Contract, or as soon thereafter as is practicable.

1.8.1.2 (subject to clause 1.8.2) the Employer and the Employer's Representative shall not divulge or use except for the purposes of the Project documents prepared by the Construction Manager pursuant to this Contract or any rates or prices used for the Construction Management Fee or the Reimbursable Cost.

1.8.2 Where the Employer is a Local or Public Authority or other body of the type mentioned in Supplemental Provision 7, his obligations of confidentiality shall be subject to that Supplemental Provision.

1.9 Consents and approvals

Where consent or approval of either Party is expressly required under these Conditions and is requested by the other Party, such consent or approval shall not be unreasonably delayed or withheld, except in the case of either Party's consent under clause 7.1 the giving of which shall be at the sole discretion of the Party from whom it is sought.

1.10 Applicable law

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

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

Section 2 Procurement of the Project

Construction Manager's Obligations

2.1 Procurement of the Project and provision of services

The Construction Manager shall manage the procurement of the Project in compliance with the Project Brief, the Project Cost Plan and the Construction Phase Plan and in particular shall:

- 2.1.1 provide the services set out or referred to in Part 1 of Schedule 5;
- 2.1.2 subject to clause 5.1 provide such additional services set out or referred to in Part 2 of Schedule 5 as may be instructed by the Employer;
- 2.1.3 provide or secure the provision of such Site Facilities as are set out or referred to in Schedule 6;
- 2.1.4 as agent for the Employer fulfil all the duties required of the Construction Manager as such agent under each Trade Contract.

2.2 Construction Manager's Personnel

- 2.2.1 To enable him to perform his obligations under this Contract, the Construction Manager may appoint the Construction Manager's Personnel. The Construction Manager shall obtain the Employer's consent to the replacement of, addition to, or removal of any such personnel.
- 2.2.2 The Construction Manager shall take all reasonable steps to encourage the Construction Manager's Personnel to be registered cardholders under the Construction Skills Certification Scheme (CSCS) or any successor or qualified under an equivalent recognised qualification scheme.

2.3 Issue of completion certificates

- 2.3.1 When in the Construction Manager's opinion the Works of any Trade Contractor or such works in a Section have reached practical completion, the Construction Manager shall, as required by the relevant Trade Contract, issue a certificate to that effect.
- 2.3.2 When practical completion of the last Trade Contract to be completed in respect of the Project or a Section has been certified, the Construction Manager shall forthwith issue a Project Completion Certificate or Section Completion Certificate and practical completion of the Project or relevant Section shall for all the purposes of this Contract be deemed to have taken place on the date stated in that certificate.

2.4 Issue of Certificates of Making Good

When in the Construction Manager's opinion all defects, shrinkages or other faults in the Works or in such works in a Section which he has required to be made good under a Trade Contract have been made good, the Construction Manager shall issue a certificate to that effect (a 'Certificate of Making Good') under that contract.

2.5 Issue of Final Statements

The Construction Manager shall issue a Final Statement to each Trade Contractor in accordance with the relevant Trade Contract.

2.6 Issue of Final Certificate

After the issue of Final Statements to all Trade Contractors and as soon as the Construction Manager, after consultation with the Employer, is satisfied that there are no outstanding adjudication, arbitration or other proceedings in relation to the Trade Contracts, the Construction Manager shall issue the Final Certificate.

Construction Manager's Liability

2.7 Skill and care

The Construction Manager in the discharge of his obligations under this Contract shall exercise the degree of skill, care and diligence to be expected of a reasonably competent construction manager experienced in carrying out projects of a similar size, scope and complexity.

2.8 Liability for design

Subject to the indemnities to the Employer given in clauses 6.1 and 6.2, and notwithstanding any liability for design placed on a Trade Contractor under a Trade Contract, the Construction Manager shall not be liable to the Employer in respect of any defect or insufficiency in the design of the Project.

2.9 Limits on liability

2.9.1 If the Contract Particulars state that clause 2.9.1 applies, the liability of the Construction Manager to the Employer under this Contract, excluding any liability under the indemnities to the Employer given in clauses 6.1 and 6.2, shall be limited to the sum specified in the Contract Particulars.

2.9.2 The Construction Manager shall not be liable under this Contract to the extent that the discharge of his obligations is prevented or delayed by any act or omission of the Consultant Team or any member of it, provided that all reasonable efforts have been made by the Construction Manager to avoid or mitigate the effect of any such act or omission on the discharge of his obligations.

Employer's Consultants

2.10 Appointment of the Consultant Team

2.10.1 The Employer shall, so far as he has not already done so, engage the Consultant Team under the Consultant Team Leader for the design of the Project, preparation of the Project Drawings and the Project Specification, compiling the Project Cost Plan and providing drawings, specifications, bills of quantities and similar documents for the Trade Contracts.

2.10.2 The terms of engagement of each member of the Consultant Team ('Consultancy Agreement') shall be substantially in the terms set out or referred to in Schedule 4. The Employer shall make clear in those terms:

2.10.2.1 that he has engaged the Construction Manager for the Project on the terms of the JCT Construction Management Appointment (CM/A);

2.10.2.2 that the work comprised in the Project is to be carried out under contracts between the Employer and Trade Contractors;

2.10.2.3 the identity of the Consultant Team Leader, the Employer's Representative and, where one is engaged, the Cost Consultant;

2.10.2.4 that the Employer requires the consultant to note and act in a manner consistent with relevant provisions of the JCT Construction Management Appointment,

and shall supply to each member of the Consultant Team copies of the Employer's Initial Brief and Preliminary Project Cost Plan or, where prepared at the time of engagement, the Project Brief and the Project Cost Plan, together with a copy of this Contract, excluding details of the Construction Management Fee.

2.10.3 The Employer shall provide the Construction Manager on request with a copy of any such Consultancy Agreement, excluding details of the fee.

2.10.4 If the Consultant Team Leader ceases to be Consultant Team Leader, the Employer shall promptly appoint another consultant as his successor.

2.10.5 The Employer shall notify the Construction Manager of any appointment under clause 2.10.1 or 2.10.4 and of any other changes in the Consultant Team.

2.11 Cost Consultant

If not already appointed, the Employer may appoint a Cost Consultant to provide to the Employer the services set out in Schedule 7 and shall notify the Construction Manager accordingly.

Information provided by Employer

2.12 Information provided by Employer

Where the Construction Manager considers it reasonably necessary for the discharge of his obligations, the Employer shall without charge provide copies of such drawings, specifications, details, descriptive schedules and other similar documents as are necessary to explain or amplify the Project Drawings and Project Specification.

Access, Control and Occupation

2.13 Access to and control of the Project site

From the date that work commences on site or Site Facilities are first provided, if earlier, up to and including the date of issue of the Project Completion Certificate or Section Completion Certificate, the site or, in the case of a Section, the relevant part of it and access to it shall be under the control of the Construction Manager, subject to clause 2.14.

2.14 Early use by Employer

The Employer may by written arrangement with the Construction Manager use or occupy the site or the Project or parts of them, whether for storage or otherwise, before the date of issue of the Project Completion Certificate or relevant Section Completion Certificate. Before such arrangement comes into effect, in the case of the Project Insurance Policy the Construction Manager or the Employer and, where there are Existing Structures, the Party responsible for any insurance cover relating to them shall notify the insurers and obtain confirmation that such use or occupation will not prejudice the insurance. If any insurer's confirmation is conditional on an additional premium being paid, then either the Employer shall pay that premium and notify the Construction Manager or the Construction Manager with the Employer's agreement shall pay it and it will form part of the Reimbursable Cost.

2.15 Takeover and occupation of part by Employer

If at any time or times before the date of issue of the Project Completion Certificate or relevant Section Completion Certificate the Employer wishes to take over any part or parts of the Project and agreement has been obtained from the relevant Trade Contractors, he shall be entitled to do so and shall notify the Construction Manager, identifying the part or parts taken over and the date of takeover ('the Relevant Part' and 'the Relevant Date' respectively). Practical completion of the Relevant Part shall be deemed to have occurred on the Relevant Date.

2.16 Insurance – Relevant Part

As from the Relevant Date the Project insurance obligations of the Employer under paragraph 1 of Schedule 2 shall cease in respect of the Relevant Part and the Existing Structures (if any) shall from that date be deemed to include that part.

Section 3 Control of the Project

Employer's Role

3.1 Employer's Representative

The Employer's Representative shall as agent for the Employer exercise all the functions ascribed to the Employer in these Conditions unless the Employer specifies otherwise by notice to the Construction Manager. If at the date of this Contract no appointment has been made to the post, or if at any time the appointee ceases to hold the post, the Employer shall promptly appoint or replace the Employer's Representative and notify the Construction Manager accordingly.

3.2 Employer's instructions

- 3.2.1 The Employer shall issue to the Construction Manager such instructions as are reasonably necessary to enable the Construction Manager properly to discharge his obligations under this Contract.
- 3.2.2 If instructions are issued by the Employer other than in writing they shall within 7 days of issue be confirmed in writing by the Employer to the Construction Manager or vice versa.
- 3.2.3 The Employer may issue instructions to alter or modify the design, quality, quantity, duration or sequence of the Project.

3.3 Appointment of Trade Contractors

The Employer shall:

- 3.3.1 appoint persons (other than the Construction Manager) as Trade Contractors after giving due consideration to the recommendations of the Construction Manager in respect of such appointments and, in respect of any design services to be provided by such persons, to the views of the Consultant Team Leader; and
- 3.3.2 enter into a Trade Contract with each Trade Contractor utilising a current JCT Construction Management Trade Contract (CM/TC) or, where agreed with the Construction Manager, a Special Trade Contract.

Sub-Contracting

3.4 Sub-Contracting

The Construction Manager shall not sub-contract the performance of his obligations under this Contract without the prior consent of the Employer.

CDM Regulations

3.5 CDM Regulations

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

- 3.5.1 where the Construction Manager is not the Principal Designer, the Employer shall ensure that the Principal Designer carries out his duties and, where the Construction Manager is not the Principal Contractor, shall ensure that the Principal Contractor carries out his duties under those regulations;
- 3.5.2 where the Construction Manager is and while he remains the Principal Designer, he shall comply with the duties of a Principal Designer and shall prepare, and deliver to the Employer, the health and safety file;

- 3.5.3 the Construction Manager shall comply with regulations 8 and 15 and, where he is the Principal Contractor, with regulations 12 to 14;^[29]
- 3.5.4 whether or not the Construction Manager is the Principal Contractor, compliance by the Construction Manager with his duties under the regulations, including any such directions as are referred to in regulation 15(3), shall be at no cost to the Employer;
- 3.5.5 if the Employer appoints a replacement for the Principal Designer or Principal Contractor, the Employer shall immediately upon that appointment notify the Construction Manager with details of the new appointee.

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

Section 4 Payment

Payments to Construction Manager

4.1 Payments to Construction Manager

The Employer shall pay the Construction Manager in accordance with these Conditions:

- 4.1.1 the Reimbursable Cost; and
- 4.1.2 the Construction Management Fee.

Interim Payments, Final Payment and Notices

4.2 Submission of interim accounts

4.2.1 The Construction Manager shall submit interim accounts to the Employer as at the monthly dates specified in the Contract Particulars. Each interim account shall state the sum the Construction Manager considers due to him and the basis on which that sum has been calculated. The sum due in each case shall be the aggregate of, and shall be shown as,:

- 4.2.1.1 cumulative instalments of the Pre-Construction Period Management Fee as set out or referred to in the Contract Particulars which have become due;
- 4.2.1.2 cumulative instalments of the Construction Period Management Fee as set out or referred to in the Contract Particulars which have become due;
- 4.2.1.3 the total amount of Reimbursable Cost which has been incurred by the Construction Manager (including sums which are due from and payable by the Construction Manager to third parties); and
- 4.2.1.4 any other sums due and payable to the Construction Manager by the Employer in accordance with these Conditions;

less the sum of the amounts previously paid by the Employer to the Construction Manager.

4.2.2 The Construction Manager shall at all times keep full and accurate accounts of amounts incurred which are chargeable as Reimbursable Cost and on the Employer's reasonable request shall make available to him all vouchers, invoices and records relating to such amounts.

4.3 Payment of interim accounts – due dates and notices

- 4.3.1 The due date for payment of each interim account shall be the monthly date referred to in clause 4.2.1 or, if later, the date of receipt of the account by the Employer.
- 4.3.2 Not later than 5 days after the due date the Employer shall give a notice to the Construction Manager, stating the sum he considers to be due or have been due at the due date and the basis on which that sum has been calculated (a 'Payment Notice').

4.4 Submission of final account

Not later than one month after the date of issue of the Final Certificate the Construction Manager shall submit to the Employer a final account showing the total sum due to the Construction Manager and the basis on which it has been calculated. The sum due shall be the aggregate of:

- 4.4.1 the Construction Management Fee (as finally adjusted where relevant under section 5);
- 4.4.2 the total Reimbursable Cost; and
- 4.4.3 the total amount of any other sums payable to the Construction Manager by the Employer in accordance with these Conditions;

less the sum of amounts previously paid by the Employer to the Construction Manager.

4.5 Payment of final account – due date and Final Payment Notice

- 4.5.1 The due date for the final payment shall be the date of issue of the Final Certificate or, if later, the date of receipt of the final account by the Employer.
- 4.5.2 Not later than 5 days after the due date the Employer shall give a notice to the Construction Manager, stating the sum he considers to be due to the Construction Manager or Employer, as the case may be, and the basis on which that sum has been calculated (the 'Final Payment Notice').

4.6 Payment of interim and final accounts

- 4.6.1 The final date for payment of each interim account and the final account shall be 14 days from its due date.
- 4.6.2 Subject to any Pay Less Notice given by the Employer under clause 4.6.4, the Employer shall pay the Construction Manager the sum stated as due in the Payment Notice on or before the final date for payment. If a Payment Notice is not given in accordance with clause 4.3.2, the Employer shall, subject to any Pay Less Notice under clause 4.6.4, pay the Construction Manager the sum stated as due in the Construction Manager's interim account.
- 4.6.3 In the case of the final payment, subject to any Pay Less Notice under clause 4.6.4, the paying Party shall pay the sum stated as due in the Final Payment Notice on or before the final date for payment. If a Final Payment Notice is not given in accordance with clause 4.5.2, the paying Party shall, subject to any Pay Less Notice under clause 4.6.4, pay the sum stated as due in the Construction Manager's final account.
- 4.6.4 Where:
- 4.6.4.1 the Employer intends to pay less than the sum stated as due from him in his Payment Notice or, where applicable, in the Construction Manager's interim account; or
- 4.6.4.2 the paying Party intends to pay less than the sum stated as due in the Final Payment Notice or, in default of such notice, less than the sum stated as due in the Construction Manager's final account,

the Party by whom the payment is stated to be payable shall not later than 5 days before the final date for payment give the other Party notice of that intention in accordance with clause 4.6.5 (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.

- 4.6.5 A Pay Less Notice given by either Party shall specify the sum he considers to be due to the other Party at the date the notice is given and the basis on which that sum has been calculated.
- 4.6.6 A Payment Notice, the Final Payment Notice or a Pay Less Notice to be given by the Employer may be given on his behalf by the Employer's Representative or by any other person who the Employer notifies the Construction Manager as being authorised to do so. It is immaterial to the requirement for the giving of notices under section 4 that the amount then considered to be due may be zero.
- 4.6.7 If either Party fails to pay a sum, or any part of it, due to the other Party under these Conditions by its final date for payment, he shall, in addition to any unpaid amount that should properly have been paid, pay the other Party simple interest on that amount at the Interest Rate for the period from the final date for payment until payment is made.
- 4.6.8 Any such unpaid amount and any interest under clause 4.6.7 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 Construction Manager's rights to suspend performance under clause 4.7 or terminate his engagement under section 8.

4.7 Construction Manager's right of suspension

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

Taxes

4.8 VAT

- 4.8.1 The amounts payable in accordance with clause 4.6 are exclusive of VAT and in relation to each payment to the Construction Manager under this Contract, the Employer shall in addition pay the amount of any VAT properly chargeable in respect of it.
- 4.8.2 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 Construction Manager an amount equal to the input tax on the supply to the Construction Manager of goods and services that contribute to the Project which as a consequence of that exemption the Construction Manager cannot recover.

4.9 Construction Industry Scheme (CIS)

If the Employer is or at any time up to the payment of the final account becomes a 'contractor' for the purposes of the CIS^[30], his obligation to make any payment under this Contract is subject to the provisions of the CIS.

[30] See the Contract Particulars (Fourth Recital and clause 4.9).

Section 5 Adjustments to the Construction Management Fee

5.1 Adjustment of Pre-Construction Period or Construction Period Management Fee

If the Employer wishes to modify or add to the services to be provided by the Construction Manager in accordance with Part 1 of Schedule 5 or requires the Construction Manager to provide any of the additional services set out or referred to in Part 2 of Schedule 5, such modification, addition or requirement shall be effective only after an appropriate adjustment to the Pre-Construction Period Management Fee and/or Construction Period Management Fee has been agreed between the Employer and the Construction Manager.

5.2 Final adjustment of Construction Management Fee

Where the sum of the total Reimbursable Cost and the total of the sums payable by the Employer to all Trade Contractors exceeds the estimate of such costs stated in the Project Cost Plan, the Construction Management Fee shall be finally adjusted in accordance with the document referred to in the Contract Particulars.

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Section 6 Injury, Damage and Insurance

Personal Injury and Property Damage

6.1 Construction Manager's liability – personal injury or death

Subject to clause 6.6.1 the Construction Manager shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings whatsoever in respect of personal injury to or the death of any person arising out of or in the course of or caused by the carrying out by the Construction Manager of his obligations under this Contract, to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Construction Manager, his employees or agents.

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

Subject to clauses 6.3 and 6.6.1, the Construction Manager shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out by the Construction Manager of his obligations under this Contract to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Construction Manager, his employees or agents.

6.3 Loss or damage to Existing Structures or their contents

6.3.1 Where paragraph 2 of Schedule 2 applies, the Construction Manager's liability and indemnity under clause 6.2 excludes any loss or damage to Existing Structures or to any of their contents required to be insured under that schedule that is caused by any of the risks or perils required or agreed to be insured against under that schedule.

6.3.2 The exclusion in clause 6.3.1 shall apply notwithstanding that the loss or damage is or may be due in whole or in part to the negligence, breach of statutory duty, omission or default of the Construction Manager, his employees or agents.

6.3.3 Where a Paragraph 2 Replacement Schedule applies in lieu of paragraph 2, the Construction Manager's liability and indemnity under clause 6.2 shall, in respect of loss, injury or damage to the Existing Structures and their contents due to the causes specified in that clause, be subject only to such limitations or exclusions as are specified in that replacement schedule.

6.3.4 The reference in clause 6.2 to 'property real or personal' does not include the Project, work executed, Site Materials or Site Facilities up to and including whichever is the earliest of the date of issue of the Project Completion Certificate, the date of termination of the Construction Manager's engagement, or the date of any abandonment of the Project, except that:

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

6.3.4.2 if clause 2.15 has been operated, the Relevant Part shall no longer be so regarded after the Relevant Date.

6.4 Employer's liability – personal injury or death

The Employer shall be liable for, and shall indemnify the Construction Manager against, any expense, liability, loss, claim or proceedings whatsoever in respect of personal injury to or the death of any person arising out of or in the course of carrying out the Project, to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Employer, his employees or agents (other than the Construction Manager).

6.5 Employer's liability – loss, injury or damage to property

The Employer shall be liable for, and shall indemnify the Construction Manager against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal in so far as such loss, injury or damage arises out of or in the course of the carrying out the Project to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Employer, his employees or agents (other than the Construction Manager).

Insurance against Personal Injury and Property Damage

6.6 Construction Manager's liability insurance and limitation of liability

6.6.1 Without prejudice to his obligation to indemnify the Employer under clauses 6.1 and 6.2, the Construction Manager shall effect and maintain insurance in respect of claims arising out of the liabilities referred to in those clauses which:

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

6.6.1.2 for all other claims to which clause 6.6.1 applies^[31], shall indemnify the Employer in like manner to the Construction Manager (but only to the extent that the Construction Manager may be liable to indemnify the Employer under the terms of this Contract) and shall be in a sum not less than that stated in the Contract Particulars for clause 6.6.1^[32],

provided that the Construction Manager's liability to indemnify the Employer under clauses 6.1 and 6.2 (subject to clauses 6.3.1 to 6.3.3) shall be limited in respect of any one occurrence or series of occurrences arising out of any one event to the amount of the insurance cover stated in the Contract Particulars.^[33]

6.6.2 As to evidence that such insurances have been effected and are being maintained and the consequences of failure to comply, clause 6.13 shall apply.

6.7 Employer's insurance of his liability

6.7.1 Without limiting or affecting his indemnities to the Construction Manager under clauses 6.4 and 6.5, the Employer shall take out and maintain adequate insurance in respect of his liability referred to in those clauses.

6.7.2 As to evidence that such insurances have been effected and are being maintained and the consequences of failure to comply, clause 6.13 shall apply.

Insurance of the Project and Existing Structures

6.8 Obligation to insure

6.8.1 The Employer shall insure the Project and any Existing Structures subject to and in accordance with Schedule 2.

6.8.2 In relation to the Joint Names Policy to be effected by the Employer under paragraph 1 of Schedule 2 (the 'Project Insurance Policy'), the Employer shall maintain the Construction Manager's interest in that policy as an insured up to and including the date of issue of the Project Completion Certificate, or last Section Completion Certificate, or (if earlier) the date of termination of the Construction Manager's engagement, except that the obligation to maintain that interest:

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

[31] It should be noted that the cover granted under Public Liability policies taken out pursuant to clause 6.6.1 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.

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

[33] See the Construction Management Guide.

6.8.2.2 shall not as from the Relevant Date apply in relation to any Relevant Part to which clause 2.15 refers.

6.9 Related definitions

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

All Risks Insurance^[34]: insurance which provides cover against any physical loss or damage to work executed, Site Materials and Site Facilities and against the reasonable cost of the removal and disposal of debris and of any shoring or propping of the Project which results from such physical loss or damage but excluding the cost necessary to repair, replace or rectify:

- (a) property which is defective due to:
 - (i) wear and tear,
 - (ii) obsolescence, or
 - (iii) deterioration, rust or mildew;
- (b) damage to any item of Site Facilities caused by its own electrical or mechanical breakdown or derangement;
- (c) damage to tyres by the application of brakes or by cuts, bursts or punctures;
- (d) any work executed or any Site Materials and Site Facilities lost or damaged as a result of its own defect in design, plan, specification, material or workmanship or any other work executed which is lost or damaged in consequence thereof where such work relied for its support or stability on such work which was defective^[35];
- (e) 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

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

[35] In an All Risks Insurance policy taken out under Schedule 2, cover should not be reduced by any exclusion that goes beyond the terms of paragraph (d) in this definition. For example, an exclusion in terms '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 Schedule 2 or that definition.

- (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 amongst others includes the Employer and the Construction Manager as composite insured under which the insurers have no right of recourse against any person having an interest in the policy as an insured, or, pursuant to clause 6.10, recognised as an insured thereunder.

Pool Re Cover: such insurance against loss or damage to work executed, Site Materials and Site Facilities caused by or resulting from terrorism as is from time to time generally available from insurers who are members of the Pool Reinsurance Company Limited scheme or of any similar successor scheme.^[36]

Site Facilities: facilities provided by the Construction Manager further to the obligation contained in Schedule 6.

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, Site Materials and Site Facilities (and/or, for the purposes of clause 6.12.1, to an Existing Structure and/or its contents) caused by or resulting from terrorism.^[36]

6.10 Sub-contractors – Specified Perils cover under Project Insurance Policies

6.10.1 The Employer shall ensure that the Project Insurance Policy either:

6.10.1.1 provides for recognition of each sub-contractor of the Construction Manager as an insured under the policy; or

6.10.1.2 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 Project, Site Materials and Site Facilities.

6.10.2 Clause 6.10.1 applies also in respect of any Project Insurance Policy taken out in default under clause 6.13.2.

6.11 Terrorism Cover – policy extensions and premiums

To the extent that the Project Insurance Policy excludes (or would otherwise exclude) loss or damage caused by terrorism, the Employer shall unless otherwise agreed effect and maintain, either as an extension to the Project Insurance Policy or as a separate Joint Names Policy, in the same amount and for the same period as the Project Insurance Policy, such Terrorism Cover as is specified in or by the Contract Particulars, subject to clause 6.12.

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

6.12.1 If the insurers named in any Joint Names Policy notify either Party that, with effect from a specified date (the 'cessation date'), Terrorism Cover will cease and will no longer be available or will only continue to be available with a reduction in the scope or level of such cover, the recipient shall immediately inform the other Party.

6.12.2 The Employer, after receipt of such notification but before the cessation date, shall give notice to the Construction Manager in writing either:

6.12.2.1 that, notwithstanding the cessation or reduction in scope or level of Terrorism Cover, the Employer requires that the Project continues to be carried out; or

6.12.2.2 that on the date stated in the Employer's notice (which shall be a date after the date of the insurers' notification but no later than the cessation date) the Construction Manager's engagement under this Contract shall terminate.

6.12.3 If the Employer gives notice of termination under clause 6.12.2.2, then upon and from such termination the provisions of clause 8.6 (excluding clause 8.6.1.3.4) shall apply and,

[36] As respects Terrorism Cover and the requirements of Schedule 2, see footnote [34] and the Construction Management Guide.

notwithstanding any other provision of this Contract, no further sum shall become due to the Construction Manager other than the amounts referred to in clauses 8.6.1.3.1 to 8.6.1.3.3.

- 6.12.4 If the Employer does not give notice of termination under clause 6.12.2.2, but work executed and/or Site Materials thereafter suffer physical loss or damage caused by terrorism, clause 6.14 shall as appropriate apply.

6.13 Evidence of insurance

- 6.13.1 Where a Party is required by this Contract to effect and maintain an insurance policy or cover under any of clauses 6.6, 6.7, 6.8 and 6.11, or is responsible for ensuring that it is effected and maintained, that Party shall at the request of the other Party supply such documentary evidence as the other Party may reasonably require that the policy or cover has been effected and remains in force.
- 6.13.2 If a Party required to provide such documentary evidence fails to provide it within 7 days of a request being made, the other Party may assume that there has been a failure to insure, and may insure against any risk, liability or expense to which he may be exposed as a consequence, but shall not be obliged to do so. If the other Party insures, the defaulting Party shall be liable for the costs that the other Party incurs in taking out and maintaining that insurance. Any costs payable to the Construction Manager shall form part of the Reimbursable Cost; any costs payable to the Employer may be deducted from any sums due or to become due to the Construction Manager or shall be recoverable from the Construction Manager as a debt.

6.14 Loss or damage to Project – insurance claims and Construction Manager's obligations

- 6.14.1 If during the carrying out of the Project any loss or damage affecting any executed work, Site Facilities or Site Materials is occasioned by any of the risks covered by the Project 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 Construction Manager shall forthwith upon it occurring or becoming apparent give notice to the Employer of its nature, location and extent.
- 6.14.2 Subject to clauses 6.14.3 and 6.14.5, the occurrence of such loss or damage to any executed work, Site Facilities or Site Materials shall be disregarded in computing any amounts payable to the Construction Manager under this Contract.
- 6.14.3 The Construction Manager, for himself and for all his sub-contractors recognised as an insured under that Project 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.
- 6.14.4 Where loss or damage affecting executed work or Site Materials is occasioned by any risk covered by the Project Insurance Policy, subject to clause 6.14.5 and (where relevant) clause 6.15, the Construction Manager shall after any inspection required by the insurers under the Project Insurance Policy and with due diligence secure the restoration of the damaged work, the replacement or repair of any lost or damaged Site Materials, and the removal and disposal of any debris by a Trade Contractor (collectively 'reinstatement work') and proceed with the carrying out of the Project.
- 6.14.5 Where clause 6.14.4 applies or where loss or damage is caused by an Excepted Risk, the securing of reinstatement work by the Construction Manager shall be treated as an Employer's instruction, subject to clause 2.1.^[37]

6.15 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 Construction Manager's engagement under this Contract by notice given to the other in accordance with clause 1.7.4 within 28 days of the occurrence of that loss or damage. If such notice is given, then:

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

[37] See the Construction Management Guide.

- 6.15.2 upon the giving of that notice or, where a dispute resolution procedure is invoked within that period, upon any final upholding of the notice, the provisions of clause 8.6 (except clause 8.6.1.3.4) shall apply.

Professional Indemnity Insurance

6.16 Obligation to insure

The Construction Manager shall:

- 6.16.1 forthwith after this Contract has been entered into, take out (unless he has already done so) a Professional Indemnity insurance policy with a limit of indemnity of the type and in an amount not less than that stated in the Contract Particulars^[38];
- 6.16.2 thereafter, provided it is available at commercially reasonable rates, maintain such insurance until the expiry of the period stated in the Contract Particulars from the date of practical completion of the Project; and
- 6.16.3 as and when reasonably requested to do so by the Employer, produce for inspection documentary evidence that such insurance has been effected and/or is being maintained.

6.17 Increased cost and non-availability

If the insurance referred to in clause 6.16 ceases to be available at commercially reasonable rates, the Construction Manager shall immediately give notice to the Employer so that the Construction Manager and the Employer can discuss the means of best protecting their respective positions in the absence of such insurance.

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[38] See the Construction Management Guide.

Section 7 Assignment, Third Party Rights and Collateral Warranties

Assignment

7.1 Assignment

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

Clauses 7.5 to 7.8 – Preliminary

7.2 Rights Particulars

The requirements for the grant of P&T Rights and Funder Rights by the Construction Manager ('Rights Particulars') are set out in the document(s) identified in the Contract Particulars against the reference to clause 7.2.^[39] As respects those requirements:

- 7.2.1 such rights are conferred only on persons sufficiently identified (by name, class or description) in the Rights Particulars;
- 7.2.2 if in relation to an identified beneficiary the Rights Particulars fail to specify the method by which such rights are to be conferred, the Construction Manager may elect to do so either as third party rights or by collateral warranty;
- 7.2.3 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 Consultant Team, together with any other consultants providing design services to the Employer in connection with the Project.

7.3 Notices

Each notice to the Construction Manager referred to in clauses 7.5 to 7.8 shall be given in accordance with clause 1.7.4.

7.4 Execution of Collateral Warranties

Where this Contract is executed as a deed, any collateral warranty to be entered into by the Construction Manager pursuant to clause 7.7 or 7.8 shall be executed as a deed. Where this Contract is executed under hand, any such warranty may be executed under hand.^[40]

Third Party Rights from Construction Manager

7.5 Rights for Purchasers and Tenants

- 7.5.1 Where the Rights Particulars state that the Construction Manager 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 Construction Manager of the Employer's notice to that effect, stating the name of the Purchaser or Tenant and the nature of his interest in the Project.

[39] The relevant Rights Particulars should identify the beneficiaries (by name, class or description), specify whether rights are to be granted 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 Construction Management Guide and is also available on the JCT website www.jctltd.co.uk.

In the case of third party rights the relevant limits and details required for the purposes of the respective parts of Schedule 3 of this Contract are the same as required for the purposes of the Warranty Particulars for the corresponding Collateral Warranty (CMWa/P&T or CMWa/F). See also the Construction Management Guide.

[40] See the footnote to clause 7.2 above.

- 7.5.2 Where P&T Rights have vested in any Purchaser or Tenant, the Employer and the Construction Manager shall not be entitled without the consent of that Purchaser or Tenant to amend or vary the express provisions of this clause 7.5 or of Part 1 of Schedule 3 (Third Party Rights for Purchasers and Tenants) but, subject thereto, the rights of the Employer and/or the Construction Manager:
- 7.5.2.1 to terminate the Construction Manager's engagement under this Contract (whether under section 8 or otherwise), or to agree to rescind this Contract;
 - 7.5.2.2 to agree to amend or otherwise vary or to waive any terms of this Contract;
 - 7.5.2.3 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.

7.6 Rights for a Funder

- 7.6.1 Where the Rights Particulars state that the Construction Manager 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 Construction Manager of the Employer's notice to that effect.
- 7.6.2 Where Funder Rights have been vested in the Funder pursuant to clause 7.6.1:
- 7.6.2.1 no amendment or variation shall be made to the express terms of this clause 7.6, to Part 2 of Schedule 3 (Third Party Rights for a Funder) or to the relevant Rights Particulars without the prior written consent of the Funder; and
 - 7.6.2.2 neither the Employer nor the Construction Manager shall agree to rescind this Contract, and the rights of the Construction Manager to terminate his engagement under this Contract or to treat it as repudiated shall in all respects be subject to the provisions of paragraph 6 of Part 2 of Schedule 3

but, subject thereto, unless and until the Funder gives notice under paragraph 5 or paragraph 6.4 of Part 2 of Schedule 3, the Construction Manager shall remain free without the consent of the Funder to agree with the Employer to amend or otherwise vary or to waive any term of this Contract and to settle any dispute or other matter arising out of or in connection with this Contract, in each case in such terms as they think fit, without any requirement that the Construction Manager obtain the consent of the Funder.

Collateral Warranties from Construction Manager

7.7 Construction Manager's Warranties – Purchasers and Tenants

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

7.8 Construction Manager's Warranty – Funder

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

Section 8 Termination

General

8.1 Meaning of insolvency

For the purposes of these Conditions:

8.1.1 a company becomes Insolvent:

8.1.1.1 when it enters administration within the meaning of Schedule B1 to the Insolvency Act 1986;

8.1.1.2 on the appointment of an administrative receiver or a receiver or manager of its property under Chapter I of Part III of that Act, or the appointment of a receiver under Chapter II of that Part;

8.1.1.3 on the passing of a resolution for voluntary winding-up without a declaration of solvency under section 89 of that Act; or

8.1.1.4 on the making of a winding-up order under Part IV or V of that Act.

8.1.2 a partnership becomes Insolvent:

8.1.2.1 on the making of a winding-up order against it under any provision of the Insolvency Act 1986 as applied by an order under section 420 of that Act; or

8.1.2.2 when sequestration is awarded on the estate of the partnership under section 12 of the Bankruptcy (Scotland) Act 1985 or the partnership grants a trust deed for its creditors.

8.1.3 an individual becomes Insolvent:

8.1.3.1 on the making of a bankruptcy order against him under Part IX of the Insolvency Act 1986; or

8.1.3.2 on the sequestration of his estate under the Bankruptcy (Scotland) Act 1985 or when he grants a trust deed for his creditors.

8.1.4 a person also becomes Insolvent if:

8.1.4.1 he enters into an arrangement, compromise or composition in satisfaction of his debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction); or

8.1.4.2 (in the case of a partnership) each partner is the subject of an individual arrangement or any other event or proceedings referred to in this clause 8.1.

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

8.2 Notices under section 8

8.2.1 Notice of termination of the Construction Manager's engagement under clause 8.4.2, 8.4.3 or 8.5 shall not be given unreasonably or vexatiously.

8.2.2 Such termination shall take effect on receipt of the relevant notice.

8.2.3 Each notice referred to in this section shall be given in accordance with clause 1.7.4.

8.3 Other rights, reinstatement

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

either Party.

- 8.3.2 Irrespective of the grounds of termination, the Construction Manager's engagement may at any time be reinstated if and on such terms as the Parties agree.

Termination

8.4 Termination by Employer

The Employer may by notice terminate the Construction Manager's engagement under this Contract:

- 8.4.1 at any time; or
- 8.4.2 if the Construction Manager is Insolvent; or
- 8.4.3 if the Construction Manager fails to exercise the degree of skill, care and diligence required by clause 2.7 and such notice identifies the failure.

8.5 Termination by Construction Manager

8.5.1 If:

8.5.1.1 the Employer does not pay by the final date for payment in accordance with this Contract the amount due to the Construction Manager in accordance with clause 4.6 and/or any VAT properly chargeable on that amount; or

8.5.1.2 the whole of or substantially the whole of the uncompleted Project is suspended for a continuous period of 6 months due to reasons other than any breach by the Construction Manager of his obligations under this Contract

the Construction Manager may give notice that if the Employer continues such failure, or the suspension is continued, for 14 days from the date of receipt of the notice, the Construction Manager may by further notice terminate his engagement under this Contract.

- 8.5.2 If the Employer is Insolvent the Construction Manager may by notice terminate his engagement under this Contract.

8.6 Consequences of termination

8.6.1 In the event of termination of the Construction Manager's engagement under clause 8.4 or 8.5 and so long as that engagement has not been reinstated the Construction Manager shall:

8.6.1.1 take the necessary steps to bring to an end the provision of the services referred to in or by Schedule 5 in an orderly manner and with all reasonable speed and economy;

8.6.1.2 if so required by the Employer, and so far as he lawfully can, assign to the Employer within 14 days of the termination the benefit of any agreements entered into by the Construction Manager for the provision of the Site Facilities listed in Schedule 6;

8.6.1.3 with reasonable dispatch prepare and submit an account setting out:

8.6.1.3.1 the Reimbursable Cost;

8.6.1.3.2 the Pre-Construction Period Management Fee or such part thereof as may be due;

8.6.1.3.3 a proportion of the Construction Period Management Fee, having the same ratio to the total of the Reimbursable Cost and the sums properly payable to Trade Contractors in accordance with the Trade Contracts as the Construction Period Management Fee bears to the total estimated cost of the Project stated in the Project Cost Plan; and

8.6.1.3.4 save where the Construction Manager's engagement has been terminated under clause 8.4.2 or 8.4.3, any direct loss and/or damage caused to the Construction Manager by the termination.

- 8.6.2 Within 28 days of receipt of the Construction Manager's account under clause 8.6.1, the Employer shall issue a payment notice, deducting from the total shown in the account (unless already deducted) any amounts previously paid to the Construction Manager and, where the Construction Manager's engagement has been terminated under clause 8.4.2 or 8.4.3, the amount of any loss and/or damage caused to the Employer by that termination. The resulting balance shall be, and shall be shown as, a debt payable by the Construction Manager to the Employer, or by the Employer to the Construction Manager, as the case may be, and the provisions (as relevant) of clause 4.6 shall correspondingly apply.

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Section 9 Settlement of Disputes

Mediation

9.1 Mediation

Subject to Article 5, 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.^[41]

Adjudication

9.2 Adjudication

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

Arbitration

9.3 Conduct of arbitration

Any arbitration pursuant to Article 6 shall be conducted in accordance with the JCT 2016 edition of the [Construction Industry Model Arbitration Rules \(CIMAR\)](#), provided that if any amendments to that edition of the Rules have been issued by the JCT the Parties may, by a joint notice in writing to the Arbitrator, state that they wish the arbitration to be conducted in accordance with the Rules as so amended. References in clauses 9.4 and 9.5 to a Rule or Rules are references to such Rule(s) as set out in the JCT 2016 edition of [CIMAR](#).^[42]

9.4 Notice of reference to arbitration

9.4.1 Where pursuant to Article 6 either Party requires a dispute or difference to be referred to arbitration, that Party shall serve on the other Party a notice of arbitration to such effect in accordance with Rule 2.1 identifying the dispute and requiring the other Party to agree to the appointment of an arbitrator. The Arbitrator shall be an individual agreed by the Parties or, failing such agreement within 14 days (or any agreed extension of that period) after the notice of arbitration is served, appointed on the application of either Party in accordance with Rule 2.3 by the person named in the Contract Particulars.

9.4.2 After the Arbitrator has been appointed either Party may give a further notice of arbitration to the other Party and to the Arbitrator referring any other dispute which falls under Article 6 to be decided in the arbitral proceedings and Rule 3.3 shall apply.

9.5 Other arbitration agreements

9.5.1 Where Article 6 applies each Trade Contract shall, subject to the Trade Contractor's right to refer a dispute or difference to adjudication, provide that any dispute or difference as to the construction of the Trade Contract or as to any matter or thing of whatsoever nature arising under the Trade Contract or in connection therewith shall be referred to arbitration in accordance with the provisions on arbitration in the Trade Contract.

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

[41] See the Construction Management Guide.

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

9.6 Powers of Arbitrator

Subject to the provisions of Article 6, the Arbitrator shall, without prejudice to the generality of his powers, have power to rectify this Contract so that it accurately reflects the true agreement made by the Parties, to direct such measurements and/or valuations as may in his opinion be desirable in order to determine the rights of the Parties and to ascertain and award any sum which ought to have been the subject of or included in any certificate and to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice had been given.

9.7 Effect of award

Subject to clause 9.8 the award of the Arbitrator shall be final and binding on the Parties.

9.8 Appeal – questions of law

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

9.8.1 apply to the courts to determine any question of law arising in the course of the reference; and

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

9.9 Arbitration Act 1996

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

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Schedules

Schedule 1 Definition of Reimbursable Cost

(Clause 4.1.1)

Part 1: General

1

- 1.1 The Reimbursable Cost of the Project shall comprise the sum of the following VAT-exclusive costs insofar as they have been incurred in accordance with this Contract:
- 1.1.1 costs relating to the Construction Manager's Personnel as referred to in paragraph 2;
 - 1.1.2 the costs reasonably and properly incurred by the Construction Manager in respect of such Site Facilities provided by the Construction Manager as are listed in Schedule 6 or as may be required by an Employer's instruction;
 - 1.1.3 sundry costs as defined in paragraph 3,
- subject in each case to any modifications in the Contract Particulars, against the reference to clause 4.1 and Schedule 1 (references in this Schedule to the Contract Particulars being deemed to include any separate document there referred to).
- 1.2 Where the Contract Particulars state that a lump sum shall be paid for, or a specific rate used to calculate, particular items set out in Part 2 or Part 3 of this Schedule or any Site Facilities and services set out or referred to in Schedule 6, the lump sum or amount calculated by applying that rate shall be included in lieu of the actual cost of such items. The basis on which any lump sum or rate shall be adjusted as a result of compliance by the Construction Manager with instructions of the Employer or for items materially increased or decreased for any other reason beyond the control of the Construction Manager shall be that stated or referred to in the Contract Particulars or, where none is identified, on a fair and reasonable basis.
- 1.3 Reimbursable Cost shall not include any costs to the extent that they have been incurred as a result of any failure of the Construction Manager to exercise the degree of skill, care and diligence to which clause 2.7 refers in discharging his obligations under this Contract.

Part 2: Construction Manager's Personnel

2

- 2.1 Payments to or in respect of the Construction Manager's Personnel working on the site up to the date of issue of the Project Completion Certificate or last Section Completion Certificate or engaged in the provision of services to be provided by the Construction Manager under this Contract after that date.
- 2.2 The payments referred to in paragraph 2.1 shall comprise:
- 2.2.1 salaries and other emoluments;
 - 2.2.2 subsistence or similar allowances;
 - 2.2.3 fares and travel allowances (including reasonable cost or allowances for the use of cars);
 - 2.2.4 employer's contributions in respect of approved pension schemes;

2.2.5 the amount of any insurance, contributions, levy or tax or other payments imposed by statute and payable in respect of the personnel by the Construction Manager in his capacity as an employer, excluding any redundancy payments and paid parental leave^[43],

paid in accordance with the Construction Manager's normal terms and conditions of employment for such personnel and/or in order to comply with the Construction Manager's statutory obligations.

Part 3: Sundry Costs incurred by Construction Manager

- 3 The net cost reasonably incurred by the Construction Manager of the following to the extent that they are not provided by the Construction Manager under Schedule 6:
- 3.1 charges arising from work carried out by Statutory Undertakers;
 - 3.2 charges arising from compliance with the Statutory Requirements to the extent that such charges are not payable by the Employer or by Trade Contractors under the Trade Contracts;
 - 3.3 charges for water, electricity and gas used on the site;
 - 3.4 rates or other similar statutory charges on temporary buildings for his on-site staff and for those of the Employer and the Consultant Team;
 - 3.5 payments for hoardings and similar licences, less any payments for advertising received by the Construction Manager;
 - 3.6 fees, royalties and similar charges;
 - 3.7 furniture, furnishings, office equipment, stationery and office consumables for on-site staff, including telephone, e-mail and fax equipment, computers, electronic data interchange and their programs, together with any related charges authorised by the Employer (such authorisation not to be unreasonably delayed or withheld) for the Construction Manager's on-site staff and those of the Employer, the Employer's Representative and the Consultant Team, less any credits obtained on the disposal of such items;
 - 3.8 postage and other delivery charges for correspondence, etc. sent from the site;
 - 3.9 reproduction of drawings and other documents generated on or necessary for use on the site;
 - 3.10 travelling and subsistence incurred in off-site inspection of materials and work;
 - 3.11 premiums for the insurance taken out by the Construction Manager pursuant to clause 6.6.1, any additional insurance premium pursuant to clause 2.14 and any costs incurred by the Construction Manager under clause 6.13.2;
 - 3.12 testing as may be specifically instructed;
 - 3.13 the provision of health and safety measures necessary to comply with any of the Statutory Requirements including the preparation of the Construction Phase Plan and discharging all other statutory duties of the Construction Manager as the Principal Contractor and, if so appointed, as the Principal Designer;
 - 3.14 carrying out such credit checks on Trade Contractors as may be required pursuant to this Contract;
 - 3.15 legal fees incurred with the consent of the Employer in connection with defending claims made by Trade Contractors against the Employer and/or the Construction Manager;
 - 3.16 progress photographs;
 - 3.17 any other authorised costs not dealt with elsewhere in this Schedule.

[43] Redundancy payments, paid parental leave and similar contingent liabilities are matters which the Construction Manager should treat as overheads and for which he should make provision in the Construction Management Fee.

Schedule 2 Insurance

(Clause 6.8)

Insurance of Project and Existing Structures

The Project – Joint Names Policy for All Risks

- 1 The Employer shall effect and maintain a Joint Names Policy for All Risks Insurance with cover no less than that specified in clause 6.9 for the full reinstatement value of the Project or (where applicable) Sections (plus the percentage, if any, stated in the Contract Particulars to cover professional fees)^[44] and the replacement value of the Site Facilities, together with the limited defects liability protection for Trade Contractors referred to in paragraph 1 of Schedule 3 to the Trade Contract (CM/TC) and shall maintain the Construction Manager's interest in the Joint Names Policy as an insured for the period specified in clause 6.8.2.

Existing Structures and contents – Joint Names Policy for Specified Perils^[45]

- 2 The Employer shall unless otherwise stated by the Contract Particulars for clause 6.8 and this Schedule effect and maintain a Joint Names Policy in respect of the Existing Structures together with the contents thereof owned by him or for which he is responsible, for the full cost of reinstatement^[44], repair or replacement of loss or damage due to any of the Specified Perils and shall maintain the interest of the Construction Manager in such Joint Names Policy for the period specified in clause 6.8.2.

Loss or damage

- 3 If during the carrying out of the Project there is any loss of or damage of any kind to any executed work, Site Facilities or Site Materials and/or to any Existing Structures or their contents the provisions of clauses 6.14 and 6.15 shall as relevant apply.

[44] The percentage for professional fees should be calculated on a basis which includes the Construction Manager's fee.

[45] The Joint Names Policy required by paragraph 2 or the extension of a subsisting structure and contents policy to being a Joint Names Policy may not be readily available – and that provision is often not now appropriate for – refurbishment projects or alterations by tenant Employers where Existing Structures insurance is the landlord's responsibility.

The Contract Particulars for clause 6.8 and Schedule 2 therefore expressly allow the Parties in those circumstances to disapply paragraph 2 and, by means of a Paragraph 2 Replacement Schedule, to include in place of that paragraph provisions that are tailored to their particular requirements. In considering those alternative arrangements thought should be given to how the Construction Manager's interest is to be maintained in such alternative policies/arrangements.

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

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

Schedule 3 Third Party Rights

(Clauses 7.5 and 7.6)

Part 1: Third Party Rights for Purchasers and Tenants

('P&T Rights')

1

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

2 The Construction Manager further warrants that unless required by this Contract or unless otherwise authorised in writing by the Employer, no materials have been or will be used in the Project other than in accordance with the guidelines contained in the edition of 'Good Practice in Selection of Construction Materials' (British Council for Offices) current at the date of this Contract. In the event of any breach of this warranty the provisions of paragraph 1 shall apply.

3 The Purchaser or Tenant has no authority to issue any direction or instruction to the Construction

Manager in relation to this Contract.

- 4 The Construction Manager warrants that he has and shall maintain Professional Indemnity insurance in the amount, on the terms and for the period referred to in clause 6.16 and its related Contract Particulars. The Construction Manager shall immediately give written notice to the Purchaser or Tenant if such insurance ceases to be available at commercially reasonable rates in order that the Construction Manager 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 Construction Manager shall produce for inspection documentary evidence that his Professional Indemnity insurance is being maintained.
- 5 P&T Rights may be assigned without the Construction Manager'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 Project and by P1, by way of absolute legal assignment, to another person (P2) taking an assignment of P1's interest in the Project. In such cases the assignment shall only be effective upon written notice of it being given to the Construction Manager. 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.
- 6 Any notice to be given by the Purchaser or Tenant to the Construction Manager or by the Construction Manager to the Purchaser or Tenant shall be duly given if delivered by hand or sent by Recorded Signed for or Special Delivery post to the recipient at such address as he may from time to time notify to the sender or (if no such address is then current) his last known principal business address or (where a body corporate) its registered or principal office. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.
- 7 No action or proceedings for any breach of P&T Rights shall be commenced against the Construction Manager after the expiry of the relevant period from the date of practical completion of the Project. Where there are Sections, no action or proceedings shall be commenced against the Construction Manager 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:
 - 7.1 where this Contract is executed under hand, 6 years; and
 - 7.2 where this Contract is executed as a deed, 12 years.
- 8 For the avoidance of doubt, the Construction Manager shall have no liability to the Purchaser or Tenant under this Schedule for delay in completion of the Project.
- 9 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 Construction Manager 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 Construction Manager warrants that he has complied and will continue to comply with this Contract. In the event of any breach of this warranty:
 - 1.1 the Construction Manager's liability to the Funder for costs under this Schedule shall be limited to the proportion of the Funder's losses which it would be just and equitable to require the Construction Manager to pay having regard to the extent of the Construction Manager's responsibility for the same, on the assumptions that the Consultant(s):
 - 1.1.1 has or have provided contractual undertakings to or conferred third party rights on the Funder that he or they has or have and will perform his or their services in connection with the Project in accordance with the terms of his or their respective consultancy agreements and that there are no limitations on liability as between the Consultant and the Employer in the consultancy agreement(s); and
 - 1.1.2 has or have paid to the Funder such proportion of the Funder's losses as it would be just and equitable for them to pay having regard to the extent of their responsibility for the Funder's losses;

- 1.2 the Construction Manager shall be entitled in any action or proceedings by the Funder to rely on any term in this Contract and to raise the equivalent rights in defence of liability as he would have against the Employer under this Contract;
- 1.3 the obligations of the Construction Manager under or pursuant to this paragraph 1 shall not be released or diminished by the appointment of any person by the Funder to carry out any independent enquiry into any relevant matter.
- 2 The Construction Manager further warrants that unless required by this Contract or unless otherwise authorised in writing by the Employer, no materials have been or will be used in the Project other than in accordance with the guidelines contained in the edition of 'Good Practice in Selection of Construction Materials' (British Council for Offices) current at the date of this Contract. In the event of any breach of this warranty the provisions of paragraph 1 shall apply.
- 3 The Funder has no authority to issue any direction or instruction to the Construction Manager in relation to this Contract unless and until the Funder has given notice under paragraph 5 or 6.4.
- 4 The Funder has no liability to the Construction Manager in respect of amounts due under this Contract unless and until the Funder has given notice under paragraph 5 or 6.4.
- 5 The Construction Manager agrees that, in the event of the termination of the Finance Agreement by the Funder, the Construction Manager shall, if so required by written notice given by the Funder and subject to paragraph 7, accept the instructions of the Funder or its appointee to the exclusion of the Employer in respect of the Project upon the terms and conditions of this Contract. The Employer acknowledges that the Construction Manager shall be entitled to rely on a notice given to the Construction Manager by the Funder under this paragraph 5 as conclusive evidence for the purposes of this Contract of the termination of the Finance Agreement by the Funder; and further acknowledges that such acceptance of the instructions of the Funder to the exclusion of the Employer shall not constitute any breach of the Construction Manager's obligations to the Employer under this Contract.
- 6
- 6.1 The Construction Manager shall not exercise any right of termination of his engagement under this Contract without having first:
- 6.1.1 copied to the Funder any notices required by this Contract to be sent to the Employer prior to the Construction Manager being entitled to give notice under this Contract that his engagement under this Contract is terminated; and
- 6.1.2 given to the Funder written notice that he has the right under this Contract forthwith to notify the Employer that his engagement under this Contract is terminated.
- 6.2 The Construction Manager shall not treat this Contract as having been repudiated by the Employer without having first given to the Funder written notice that he intends so to notify the Employer.
- 6.3 The Construction Manager shall not:
- 6.3.1 issue a notice to the Employer to which paragraph 6.1.2 refers; or
- 6.3.2 notify the Employer that he is treating this Contract as having been repudiated by the Employer as referred to in paragraph 6.2
- before the lapse of 14 days from receipt by the Funder of the notice by the Construction Manager which the Construction Manager 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 Construction Manager 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 Project upon the terms and conditions of this Contract. The Employer acknowledges that the Construction Manager shall be entitled to rely on a notice given to the Construction Manager by the Funder under this paragraph 6.4 and that acceptance by the Construction Manager of the instructions of the Funder to the exclusion of the Employer shall not constitute any breach of the Construction Manager's obligations to the Employer under this Contract. Provided that nothing in this paragraph 6.4 shall relieve the Construction Manager of any liability he may have to the Employer for any breach by the Construction Manager 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 Construction Manager 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 Construction Manager's engagement under this Contract, nor any right of the Construction Manager to treat this Contract as having been repudiated by the Employer, had arisen and the Construction Manager shall be liable to the Funder and its appointee under this Contract in lieu of his liability to the Employer. If any notice given by the Funder under paragraph 5 or 6.4 requires the Construction Manager to accept the instructions of the Funder's appointee, the Funder shall be liable to the Construction Manager as guarantor for the payment of all sums from time to time due to the Construction Manager from the Funder's appointee.
- 8** The Construction Manager warrants that he has and shall maintain Professional Indemnity insurance in the amount, on the terms and for the period referred to in clause 6.16 and its related Contract Particulars. The Construction Manager shall immediately give written notice to the Funder if such insurance ceases to be available at commercially reasonable rates in order that the Construction Manager 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 Construction Manager shall produce for inspection documentary evidence that his Professional Indemnity insurance is being maintained.
- 9** The rights contained in this Schedule may be assigned without the Construction Manager'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 Project 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 Project. In such cases the assignment shall only be effective upon written notice of it being given to the Construction Manager. No further or other assignment of Funder Rights will be permitted and in particular P2 shall not be entitled to assign these rights.
- 10** Any notice to be given by the Construction Manager to the Funder or by the Funder to the Construction Manager shall be duly given if delivered by hand or sent by Recorded Signed for or Special Delivery post to the recipient at such address as he may from time to time notify to the sender or (if no such address is then current) his last known principal business address or (where a body corporate) its registered or principal office. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.
- 11** No action or proceedings for any breach of the rights contained in this Schedule shall be commenced against the Construction Manager after the expiry of the relevant period from the date of practical completion of the Project. Where there are Sections, no action or proceedings shall be commenced against the Construction Manager 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:
- 11.1 where this Contract is executed under hand, 6 years; and
 - 11.2 where this Contract is executed as a deed, 12 years.
- 12** Notwithstanding the rights contained in this Schedule, the Construction Manager shall have no liability to the Funder for delay under this Contract unless and until the Funder serves notice pursuant to paragraph 5 or 6.4. For the avoidance of doubt the Construction Manager shall not be required to pay damages in respect of the period of delay where the same has been paid to or deducted by the Employer.
- 13**
- 13.1 This Schedule shall be governed by and construed in accordance with the law of England and subject to paragraph 13.2 the English courts shall have jurisdiction over any dispute or difference between the Construction Manager and the Funder which arises out of or in connection with this Schedule.
 - 13.2 Following the giving of any notice by the Funder pursuant to paragraph 5 or 6.4, any dispute or difference which shall arise between the Construction Manager and the Funder (including any appointee or permitted assignee) shall be subject to the provisions of Article 5 and (where they apply) Article 6 and clauses 9.3 to 9.9.

Schedule 4 Consultant Team – Terms of Engagement

(First Recital and clause 2.10.2)

Insert below or refer below to the terms of engagement that are to apply to the consultants.

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Schedule 5 Construction Manager's Services

(Clause 2.1)

Insert below or refer below to the services to be provided by the Construction Manager. See the Construction Management Guide for a set of model provisions. These provisions may be downloaded from the JCT website. Care should be taken to ensure that all the functions required to be performed under this Contract are covered in the services to be provided.

Part 1: Services

Part 2: Additional Services

DRYTEXT

Schedule 6 Site Facilities and Services

(Clause 2.1)

Insert below or refer below to the Site Facilities and services to be provided by the Construction Manager. See the Construction Management Guide for a model checklist of items. This checklist may be downloaded from the JCT website. Care should be taken to avoid duplication with the sundry items treated as Reimbursable Cost, as set out in Part 3 of Schedule 1.

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Schedule 7 Cost Planning and Control

(Clause 2.11)

Insert below the services to be provided by the Cost Consultant, if one is to be appointed. See the Construction Management Guide for a set of model provisions. These provisions may be downloaded from the JCT website.

Part 1: Cost Planning

Part 2: Procurement

Part 3: Cost Control

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Schedule 8 Supplemental Provisions

(Sixth Recital)

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

Collaborative working

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

Health and safety

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

Cost savings and value improvements^[46]

- 3
- 3.1 The Construction Manager is encouraged during the construction phase of the Project to continue to propose changes to designs and specifications for the Project and/or to the programme for their execution that may benefit the Employer, whether in the form of a reduction in the cost of the Project or its associated life cycle costs, through practical completion at an earlier date or otherwise.
- 3.2 The Construction Manager shall provide details of his proposed changes, identifying them as suggested under this Supplemental Provision 3, together with his assessment of the benefit he believes the Employer may obtain, expressed in financial terms, and a quotation.
- 3.3 Where the Employer wishes to implement a change proposed by the Construction Manager that originates during the construction phase, the Parties shall negotiate with a view to agreeing its value, the financial benefit and any adjustment to relevant completion dates. Upon agreement, the change and the amount of any adjustment of the Construction Management Fee as the Construction Manager's share of the financial benefit shall be

[46] In view of the Construction Manager's services and duties under this Contract, care should be taken in deciding whether or not Supplemental Provision 3 is to apply (and, in default of an entry, it will apply) or whether modification is required. See the Construction Management Guide.

confirmed in an Employer's instruction, together with any adjustment to completion dates.

- 3.4 Original proposals by the Construction Manager that fall within this Supplemental Provision 3 may only be instructed by the Employer in accordance with it, provided always that nothing shall prevent the Employer from implementing such changes after practical completion of the Project.

Sustainable development and environmental considerations

4

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

Performance Indicators and monitoring

5

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

Notification and negotiation of disputes

6

With a view to avoidance or early resolution of disputes or differences (subject to Article 5), each Party shall promptly notify the other of any matter that appears likely to give rise to a dispute or difference. The senior executives nominated in the Contract Particulars (or if either is not available, a colleague of similar standing) shall meet as soon as practicable for direct, good faith negotiations to resolve the matter.

Transparency

7

Where the Employer is a Local or Public Authority or other body to whom the provisions of the Freedom of Information Act 2000 ('FOIA') apply, the Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of this Contract is not confidential. The Employer shall be responsible for determining in his absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding clause 1.8.1.2 or any other term of this Contract:

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

The Public Contracts Regulations 2015

8

Where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations^[47]:

- 8.1 where regulation 113 applies to this Contract, the Construction Manager shall include in

[47] An explanatory summary of those provisions in the PC Regulations that are reflected in this Contract is contained in the Construction Management Guide.

- any sub-contract entered into by him suitable provisions to impose the requirements of regulation 113(2)(c)(i) and (ii);
- 8.2 the Construction Manager shall include in any sub-contract entered into by him provisions requiring the sub-contractor:
- 8.2.1 to supply and notify to the Construction Manager the information required (as applicable) under regulations 71(3), 71(4) and 71(5); and
- 8.2.2 to include in any sub-subcontract he in turn enters into with any sub-subcontractor provisions to the same effect as required under paragraph 8.2.1 of Supplemental Provision 8;
- 8.3 where regulation 73(1) applies to this Contract, the Employer shall be entitled by notice to the Construction Manager to terminate the Construction Manager's engagement where any of the grounds set out in that regulation apply. Upon termination under this paragraph 8.3, the provisions of clause 8.6 shall apply (excluding clause 8.6.1.3.4);
- 8.4
- 8.4.1 the Construction Manager shall include in any sub-contract entered into by him provisions that shall entitle him to terminate the sub-contractor's employment where there are grounds for excluding the sub-contractor under regulation 57;
- 8.4.2 in the event the Employer requires the Construction Manager to terminate a sub-contractor's employment pursuant to regulation 71(9) the Construction Manager shall take the appropriate steps to terminate that employment and where required by the Employer under regulation 71(9) shall, or in circumstances where there is no such requirement may, appoint a replacement sub-contractor.

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