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MTC 2016  
Measured Term Contract 2016

DRAFT

**2016**  
MEASURED TERM CONTRACT

## Measured Term Contract (MTC)

Appropriate for use:

- by Employers who have a regular flow of maintenance and minor works, including improvements, to be carried out by a single contractor over a specified period of time and under a single contract;
- where the work is to be instructed from time to time and measured and valued on the basis of an agreed schedule of rates; and
- where a Contract Administrator is to administer the conditions.

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For details of 2016 Edition changes, see the Measured Term Contract Guide (MTC/G) and the Tracked Change Document.

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# Agreement

## This Agreement

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

## Between

### The Employer

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

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

of/whose registered office is at

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

## And

### The Contractor

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

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

of/whose registered office is at

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

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

## Recitals

### Whereas

#### First

---

the Employer requires maintenance and minor works to be carried out in:

[ ] ('the Contract Area')  
in accordance with the details set out or referred to in the Contract Particulars;

#### Second

---

the Contractor has offered to carry out the required works at specified rates or as otherwise determined in accordance with the Conditions and the Employer has accepted that offer;

#### Third

---

the Employer has appointed a Contract Administrator to issue Orders for the required works and carry out the functions ascribed to the Contract Administrator by the Conditions;

#### Fourth

---

the Contractor has supplied to the Employer the Contractor's safety policy complying with Statutory Requirements, a copy of which is annexed;

#### Fifth

---

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

## Articles

### Now it is hereby agreed as follows

---

**Article 1 Contractor's obligations**

---

The Contractor shall carry out all Orders that are placed with him during the Contract Period in accordance with the Contract Documents.

---

**Article 2 Payment**

---

The Employer shall pay the Contractor at the times and in the manner specified in the Conditions amounts calculated by reference to the Schedule of Rates identified in the Contract Particulars (item 12), adjusted and, if appropriate, revised as therein mentioned, or (where applicable and appropriate) calculated by reference to a Schedule of Hourly Charges (subject to items 13 and 14).

---

**Article 3 Contract Administrator**

---

For the purposes of this Contract the Contract Administrator is

[ ]

of

[ ]

or, if he ceases to be the Contract Administrator, such other person as the Employer nominates in accordance with clause 3.10 of the Conditions.

---

**Article 4 Principal Designer**

---

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

(or)<sup>[2]</sup> [ ]

of

[ ]

or such other person as the Employer at any time appoints to fulfil that role either in relation to all Orders or for specific Orders.

---

**Article 5 Principal Contractor**

---

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

(or)<sup>[2]</sup> [ ]

---

[2] Insert the name of the Principal Designer in Article 4 if the Contract Administrator is not to fulfil that role and that of the Principal Contractor in Article 5 if that is to be a person other than the Contractor.  
Under the CDM Regulations 2015, regardless of whether or not a project is notifiable, there is a requirement to appoint a principal designer and a principal contractor in all cases where there is more than one contractor, or if it is reasonably foreseeable that more than one contractor will be working on a project at any time. For these purposes, the term 'contractor' is broadly defined by the regulations and treats the Contractor's sub-contractors as separate contractors.

of

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

or such other contractor as the Employer at any time appoints to fulfil that role either in relation to all Orders or for specific Orders.

---

**Article 6 Adjudication**

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

---

**Article 7 Arbitration**

Where Article 7 applies<sup>[3]</sup>, then, subject to Article 6 and the exceptions set out below, any dispute or difference between the Parties of any kind whatsoever arising out of or in connection with this Contract shall be referred to arbitration in accordance with clauses 9.3 to 9.8 and the JCT 2016 edition of the [Construction Industry Model Arbitration Rules \(CIMAR\)](#). The exceptions to this Article 7 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 8 Legal proceedings<sup>[3]</sup>**

Subject to Article 6 and (where it applies) to Article 7, the English courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.

---

**[3]** If it is intended, subject to the right of adjudication and exceptions stated in Article 7, that disputes or differences should be determined by arbitration and not by legal proceedings, the Contract Particulars **must** state that Article 7 and clauses 9.3 to 9.8 apply and the words "do not apply" **must** be deleted. If the Parties wish any dispute or difference to be determined by the courts of another jurisdiction the appropriate amendment should be made to Article 8 (see also clause 1.7).

## Contract Particulars

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

**1 Properties and description of the types of work**  
(First Recital)

1.1 List of properties in the Contract Area in respect of which Orders may be issued:

[ ]

1.2 Description of the types of work for which Orders may be issued:<sup>[4]</sup>

[ ]

**2 Supplemental Provisions<sup>[5]</sup>**  
(Fifth Recital and Schedule 1)

*(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  
\* 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

[ ]

Contractor's nominee

[ ]

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

**[4]** Where the National Schedule of Rates is to apply (see items 12.1 and 12.2 of the Contract Particulars) but some (or all) of the work is of a type for which it is appropriate to use as a basis for pricing a version of the National Schedule other than 'Building Works', the Parties, in addition to stating that in item 12.2, should make appropriate entries here (or in any separate document incorporated by reference here) indicating the types of work to which it is agreed that such alternative version of the National Schedule shall apply.

**[5]** 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.

**3 Contract Period<sup>[6]</sup>**  
(Article 1 and clause 7.1)

Subject to clause 7.1, the Contract Period will be [ ] year(s)/months  
commencing on [ ]

**4 Arbitration**  
(Article 7)

*(If neither entry is deleted, Article 7 and clauses 9.3 to 9.8 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must be stated that Article 7 and clauses 9.3 to 9.8 apply.)<sup>[7]</sup>*

Article 7 and clauses 9.3 to 9.8 (Arbitration)  
\* apply/do not apply

**5 BIM Protocol**  
(Clause 1.1)

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

[ ]

**6 Orders – minimum and maximum value**  
(Clause 2.4)

Minimum value of any one Order to be issued

£[ ]

(words [ ])

Maximum value of any one Order to be issued

£[ ]

(words [ ])

**7 Orders – value of work to be carried out**  
(Clause 2.5)

Approximate anticipated value of work to be carried out under this Contract

\* £[ ] (words [ ]) per annum

\* £[ ] (words [ ]) for the Contract Period

**8 Orders – priority coding<sup>[8]</sup>**  
(Clause 2.6)

[ ]

[6] The period is envisaged as normally being at least one year.

[7] 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 Measured Term Contract Guide. See also footnote [3].

[8] To be completed if the Employer requires; as an example the code might be:  
'A': response time to be 4 hours;  
'B': to be commenced within 2 days;  
'C': to be commenced within 14 days;  
'D': to be commenced as agreed.

**9 Construction Industry Scheme (CIS)**  
(Clause 4.2)

The Employer at the commencement of the Contract Period

- \* is a 'contractor'
- \* is not a 'contractor'

for the purposes of the CIS

**10 Payments**  
(Clauses 4.3, 4.4 and 4.5)

Estimated value of an Order above which progress payments can be applied for  
(If none is stated, it is £2,500.)

£[ ]

Valuation Dates  
(If no date is stated, the Valuation Date is the last day of each month.)

The Valuation Date in each month is the

[ ] day of the month

**11 Responsibility for measurement and valuation**  
(Clause 5.2)

(Unless one of the three options below is selected and, if relevant, an estimated value specified, the Contract Administrator shall measure and value all Orders.)

- \* The Contract Administrator shall measure and value all Orders
- \* The Contract Administrator shall measure and value each Order with an estimated value of

£[ ]

or more; the Contractor shall measure and value all other Orders

- \* The Contractor shall measure and value all Orders

**12 Schedule of Rates**  
(Clauses 5.3, 5.6.1 and 5.6.2)

12.1 The Schedule of Rates is

- \* the National Schedule of Rates

- \* [ ]  
(identify the Schedule of Rates to be used)

subject to adjustment of the rates listed in that Schedule by

- \* the addition
- \* the deduction

of the Adjustment Percentage, which is

- \* [ ] per cent
- \* as set out in the following document [ ]

12.2 Where the Schedule of Rates is the National Schedule of Rates the version(s) identified below are to apply<sup>[9]</sup>

- \* National Schedule of Rates (Building Works)
- \* National Schedule of Rates (Access Audit)

[9] Delete all versions that do not apply. See also footnote [4].

- \* National Schedule of Rates (Electrical Services in Buildings)
- \* National Schedule of Rates (Mechanical Services in Buildings)
- \* National Schedule of Rates (Painting and Decorating)
- \* National Schedule of Rates (Highways Maintenance)
- \* National Housing Maintenance Schedule

12.3 Rates – Fluctuations

Clause 5.6.1

*(Unless 'applies' is deleted, the clause shall be deemed to apply.)*

- \* applies
- \* does not apply

12.4 Basis and dates of revision

*(Not applicable where the National Schedule of Rates applies)*

Where clause 5.6.1 applies, the basis on which the Schedule of Rates is to be revised under clause 5.6.1.2

*(If no basis is identified the rates remain fixed for all Orders.)*

- \* is as follows
- \* is set out in the following document

[ ]

Where clause 5.6.1 applies, the dates as at which the Schedule of Rates is to be revised are

*(If no other date(s) are specified here or in the document setting out the basis for revision, the date shall be 1 August in each year.)*

[ ]

**13 Daywork**

*(Clauses 5.4, 5.6.3 and 5.6.4)*

13.1 Valuation – percentage additions

Where not included in or annexed to the Schedule of Hourly Charges, the percentage additions to the invoice price of non-labour items are as follows:

Overheads and profit on Materials

[ ] per cent

Overheads and profit on Plant, Services and Consumable Stores

[ ] per cent

Overheads and profit on Sub-Contractors

[ ] per cent

13.2 Revision of Schedule of Hourly Charges

Clause 5.6.3

*(Unless 'applies' is deleted, the clause shall be deemed to apply.)*

- \* applies
- \* does not apply

(Where clause 5.6.3 applies) the annual revision date (if other than 1 August) is

[ ]

(Where clause 5.6.3 applies) the basis of revision of hourly charges, if not set out in the Schedule of Hourly Charges<sup>[10]</sup>

- \* is as follows
- \* is set out in the following document

[ ]

**14 Overtime work**  
(Clause 5.7)

The percentage addition in respect of overheads and profit on non-productive overtime rates is  
(Not applicable where an inclusive rate for such overtime is included in the Schedule of Hourly Charges)

[ ] per cent

**15 Insurance**  
(Clauses 6.4.1, 6.7, 6.8, 6.9 and 6.12)

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

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

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

[ ] per cent

15.3 Insurance of existing structures – clause 6.7.1<sup>[11]</sup>  
(Unless otherwise stated, clause 6.7.1 applies. If it is not to apply, state the reference number and date or other identifier of the replacement document(s).)

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

[ ]  
(the 'Clause 6.7.1 Replacement Schedule')

15.4 Insurance of work or supply comprised in Orders – clause 6.8  
(If neither entry is deleted, the clause does not apply.)

- \* applies
- \* does not apply

15.5 Where clause 6.8 applies and cover is to be provided under the Contractor's annual policy, the annual renewal date is (as supplied by the Contractor)

[ ]

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

are set out in the following document(s)

[ ]

**[10]** If clause 5.6.3 applies but the basis of revision is not set out in the Schedule of Hourly Charges or identified, clause 5.6.5 will apply.

**[11]** As to choice of applicable insurance provisions, see the Measured Term Contract Guide. In respect of existing structures, it is vital that any prospective Employer who is not familiar with clause 6.7 and the alternative solutions under clause 6.7.1 – 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.

**16 Break Provisions – Employer or Contractor**  
(Clause 7.1)

The period of notice, if less than 13 weeks, is

[ ] weeks

**17 Settlement of Disputes**  
(Clauses 9.2, 9.3 and 9.4.1)

**Adjudication<sup>[12]</sup>**

The Adjudicator is [ ]

Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)<sup>[13]</sup>

*(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<sup>[14]</sup>
- \* Chartered Institute of Arbitrators

**Arbitration<sup>[15]</sup>**

Appointor of Arbitrator (and of any replacement)<sup>[16]</sup>

*(If no appointor is selected, the appointor shall be the President or a Vice-President of The Royal Institution of Chartered Surveyors.)*

President or a Vice-President:

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

- 
- [12] 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.
- [13] Delete all but one of the nominating bodies asterisked.
- [14] constructionadjudicators.com is a trading name of Contractors Legal Grp Ltd.
- [15] This only applies where the Contract Particulars state (against the reference to Article 7) that Article 7 and clauses 9.3 to 9.8 (*Arbitration*) apply.
- [16] Delete all but one of the bodies asterisked.

## Attestation

### Note on Execution

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

#### Execution under hand

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

#### Execution as a Deed

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

#### Other forms of Attestation

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

DRY

*Execution under hand*

## As witness

the hands of the Parties  
or their duly authorised representatives

---

Signed by or on behalf of  
the Employer

---

in the presence of:

---

*witness' signature*

---

*witness' name*

---

*witness' address*

---

---

Signed by or on behalf of  
the Contractor

---

in the presence of:

---

*witness' signature*

---

*witness' name*

---

*witness' address*

---

## Notes on Execution as a Deed

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

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

*Execution as a Deed*

**Executed as a Deed by the Employer**

namely <sup>1</sup> [ ]

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

\_\_\_\_\_  
*(Print name of signatory)*

Signature Director

and

\_\_\_\_\_  
*(Print name of signatory)*

Signature Company Secretary/Director

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

in the presence of

\_\_\_\_\_  
Signature Director

\_\_\_\_\_  
Signature Company Secretary/Director

*[Common seal of company]*

**(C)** by attested signature of a single Director **of the company** <sup>2,5</sup>

\_\_\_\_\_  
Signature Director

in the presence of

\_\_\_\_\_  
Witness' signature (Print name)

\_\_\_\_\_  
Witness' address

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

\_\_\_\_\_  
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 Contractor**

namely <sup>1</sup> [ ]

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

\_\_\_\_\_  
*(Print name of signatory)*

\_\_\_\_\_  
*Signature* Director

and

\_\_\_\_\_  
*(Print name of signatory)*

\_\_\_\_\_  
*Signature* Company Secretary/Director

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

in the presence of

\_\_\_\_\_  
*Signature* Director

\_\_\_\_\_  
*Signature* Company Secretary/Director

*[Common seal of company]*

**(C)** by attested signature of a single Director **of the company** <sup>2,5</sup>

\_\_\_\_\_  
*Signature* Director

in the presence of

*Witness' signature* \_\_\_\_\_ *(Print name)* \_\_\_\_\_

*Witness' address* \_\_\_\_\_

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

\_\_\_\_\_  
*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

### 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.

**Adjustment Percentage:** the percentage tendered by the Contractor on or off the rates listed in the Schedule of Rates and stated in the **Contract Particulars (item 12.1)** (which shall not apply to any valuation of an Order or a part of it as daywork).

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

**All Risks Insurance:** see **clause 6.6**.

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

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

**BIM Protocol:** (where applicable) the document identified as such in the **Contract Particulars (item 5)**.

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

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

**Clause 6.7.1 Replacement Schedule:** (where applicable) the insurance schedule and/or other documents identified as such in the **Contract Particulars (item 15.3)**.

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

**Construction Industry Scheme (or 'CIS'):** the current scheme under the Income and Corporation Taxes Act 1988.

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

**Contract Administrator:** the person named in **Article 3** or any successor nominated or otherwise agreed under **clause 3.10**.

**Contract Area:** see the **First Recital**.

**Contract Documents:** the Agreement, these Conditions, the Schedule of Rates and (where applicable) the BIM Protocol.

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

**Contract Period:** subject to **clause 7.1**, the period stated in the **Contract Particulars (item 3)**.

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

**Contractor's Persons:** the Contractor's employees and agents, all other persons employed or engaged in the execution of Orders or any part of them and any other person properly on the Site in

connection therewith, excluding the Contract Administrator, the Employer, Employer's Persons and any Statutory Undertaker.

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

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

**Excepted Risks:** see **clause 6.6**.

**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 Names Policy:** see **clause 6.6**.

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

**National Schedule of Rates:** the National Schedule of Rates (Building Works) and/or such alternative version of the [National Schedule of Rates](#) (published by NSR Management Ltd.) identified in the **Contract Particulars (item 12.2)**.

**Order:** the written description and/or drawings of any work and/or the supply of labour, plant, materials and/or goods to be carried out under this Contract on instructions from the Contract Administrator, including any Variation thereto.

**Order Completion Date:** see **clause 2.11**.

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

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

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

**Principal Contractor:** the Contractor or such other contractor as is either named in **Article 5** or appointed by the Employer in relation to any Order.

**Principal Designer:** the Contract Administrator or such other person as is either named in **Article 4** or appointed by the Employer in relation to any Order.

**Public Holiday:** Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.<sup>[17]</sup>

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

**Schedule of Hourly Charges:** see **clause 5.4.1**.

**Schedule of Rates:** the schedule of rates identified in the **Contract Particulars (item 12)**, together with the preliminaries and specification preambles applicable to this Contract included in or annexed to it.

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

**Site:** the building(s) and/or land within the Contract Area to which an Order relates.

**Site Materials:** all unfixated materials and goods delivered to and placed on or adjacent to a Site which are intended for incorporation in the work under an Order relating to that Site.

**Specified Perils:** see **clause 6.6**.

**Statutory Requirements:** any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the work in any Order 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 that work or with whose systems the work is, or is to be, connected.

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

**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.

**Terrorism Cover:** see **clause 6.6**.

**Valuation Date:** each date as specified by the **Contract Particulars (item 10)**.

**Variation:** see **clause 5.1**.

**VAT:** Value Added Tax.

**Works Insurance Policy:** the Joint Names Policy or policies covering the work or supply comprised in Orders to be effected and maintained under clause 6.7.2 or 6.8.

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

The Agreement and these Conditions are to be read as a whole. Nothing contained in any other Contract Document or in any drawing or specification issued as part of an Order shall override or modify the Agreement or these Conditions.

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

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

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

## 1.4 Reckoning periods of days

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

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

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

## 1.6 Notices and other communications

- 1.6.1 Each Order, notice, instruction or other communication referred to in the Agreement or these Conditions shall be in writing.
- 1.6.2 Unless otherwise stated in these Conditions, any notice or other communication under this Contract may be given to or served on the recipient by any effective means at the address specified in the Agreement or such other address as he shall notify to the other Party. If no address is then current, the notice or other communication shall be treated as effectively given or served if addressed and sent by pre-paid post to the recipient's last known principal business address or (where a body corporate) its registered or principal office.

**1.7 Applicable law**

This Contract shall be governed by and construed in accordance with the law of England.<sup>[18]</sup>

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

## Section 2 Carrying out Work

### 2.1 Contractor's obligations

On receipt of an Order the Contractor shall carry it out in a proper and workmanlike manner and in accordance with the Contract Administrator's instructions, the Contract Documents, the Construction Phase Plan and Statutory Requirements, and shall give all notices required by the Statutory Requirements.

### 2.2 Materials, goods and workmanship

2.2.1 The Contractor in carrying out each Order shall use materials, goods and workmanship of the quality and standards specified in the Order or, if not so specified, as specified in the Schedule of Rates.

2.2.2 Insofar as the quality of materials or goods or of the standards of workmanship are stated to be a matter for the Contract Administrator's approval, such quality and standards shall be to his reasonable satisfaction.

2.2.3 To the extent that the quality of materials and goods or standards of workmanship are not described in the Order or Schedule of Rates nor stated to be a matter for such approval or satisfaction, they shall be of a standard appropriate to the relevant work.

2.2.4 For the purposes of carrying out each Order the Contractor, subject to clause 2.3.1.2, shall:

2.2.4.1 provide all the labour, materials and goods necessary;

2.2.4.2 provide, unless otherwise stated in the Contract Documents, the requisite plant and equipment for the proper execution of all Orders, including scaffolding, tackle, machinery, tools or other appliances and everything necessary for the use of his workmen and shall be responsible for carrying them to the place where they are required, for any necessary erection and for subsequent removal;

2.2.4.3 provide all items necessary to comply with the Statutory Requirements in respect of safety, health and welfare,

and for the purposes of this Contract shall take all reasonable steps to encourage Contractor's Persons to be registered cardholders under the [Construction Skills Certification Scheme \(CSCS\)](#) or qualified under an equivalent recognised qualification scheme.

### 2.3 Rights of Employer

2.3.1 The Employer reserves the right:

2.3.1.1 to place orders for similar work with other contractors or his own labour within the Contract Area;

2.3.1.2 to supply any of the materials, goods or plant and equipment necessary for the carrying out of any Order.

2.3.2 Materials and goods supplied by the Employer under clause 2.3.1.2 shall remain the property of the Employer and shall be used by the Contractor for the carrying out of an Order and for no other purpose and the Contractor shall be responsible for their safe storage whilst on the Site. Any such materials or goods not required for the carrying out of an Order shall, on completion of the Order or on the termination of the Contractor's employment, whichever first occurs, be disposed of or dispatched by the Contractor as directed by the Contract Administrator; the cost of such disposal or dispatch shall be certified by the Contract Administrator for payment by the Employer under clause 4.6.

2.3.3 The Contractor shall give a receipt for any materials or goods handed over to him by the Contract Administrator and shall obtain a receipt for any returned.

- 2.3.4 The Contractor shall be responsible for the safe storage of any plant and equipment supplied for him by the Employer under clause 2.3.1.2 and shall return such plant and equipment to the Contract Administrator at the Site on completion of the Order for which it is supplied or on termination of the Contractor's employment, whichever first occurs. The Contractor shall give a receipt for such plant and equipment and obtain a receipt from the Contract Administrator on its return.
- 2.3.5 The Employer shall notify the Contractor of the then current value of any materials or goods or usage of plant supplied under this clause 2.3 and the Contractor shall be entitled to a handling charge of 5% on that value. The Adjustment Percentage shall not be applied to that charge.
- 2.3.6 Materials and goods supplied by the Employer for any Order shall be of the respective kinds described in the Schedule of Rates; the Contractor shall not be liable for any loss or damage resulting from failure of such materials or goods to conform with this clause 2.3.6.

## **2.4 Size and duration of Orders**

Unless otherwise agreed between the Contractor and the Contract Administrator, Orders shall be of a size consistent with the Contract Particulars (item 6) and shall be reasonably capable of being carried out within the Contract Period.

## **2.5 Value of work to be carried out under this Contract**

With regard to the anticipated value of work as stated in the Contract Particulars (item 7), the Employer gives no warranty or undertaking as to the actual amount of work that will be ordered and no variance in the actual value of work ordered shall give rise to a change in any rate, price or percentage adjustment.

## **2.6 Orders – completion**

Unless covered by a priority coding referred to in the Contract Particulars (item 8), each Order shall state a commencement date and a reasonable date for its completion and, subject to clause 2.10.2, the Contractor shall complete each Order by that completion date.

## **2.7 Programme**

Where the Contract Administrator requests, the Contractor, without charge to the Employer, shall provide the Contract Administrator with a programme for carrying out the Orders identified by the Contract Administrator in his request and, within a reasonable time after the issue of a Variation, with amendments and revisions to that programme to take account of the Variation. Nothing in the programme or in any amendment or revision of it shall impose any obligations beyond those imposed by the Contract Documents.

## **2.8 Divergences from Statutory Requirements**

- 2.8.1 If the Contractor becomes aware of any divergence between the Statutory Requirements and either an Order or a Variation, he shall immediately give to the Contract Administrator a notice specifying the divergence.
- 2.8.2 Provided the Contractor is not in breach of clause 2.8.1, the Contractor shall not be liable under this Contract if the work comprised in an Order does not comply with the Statutory Requirements to the extent that the non-compliance results from the Contractor having carried out work in accordance with the Order or with any instruction requiring a Variation.

## **2.9 Fees or charges**

The Contractor shall pay all fees and charges (including any rates or taxes) legally demandable under any of the Statutory Requirements in respect of an Order. The Contractor shall be reimbursed for payment of such fees and charges to the extent that they are not included in the rates or prices in the Schedule of Rates.

## **2.10 Extension of time**

- 2.10.1 The Contractor shall forthwith give notice to the Contract Administrator of any matter which is causing or is likely to cause delay in the completion of an Order beyond the date stated for its completion but shall constantly use his best endeavours to carry out each Order by the stated date.

2.10.2 If the Contractor is unable to complete an Order by its stated date for completion, due to a suspension by the Contractor of the performance of his obligations under this Contract pursuant to clause 4.7 or for reasons beyond his control (including compliance with any instruction of the Contract Administrator that does not arise from the Contractor's default), the Contract Administrator shall fix such later date for completion as may be fair and reasonable and notify the Parties accordingly. Provided the Order when issued complied with clause 2.4, the Contractor shall not be relieved of his obligations to complete the Order by the later date so fixed by reason of that later date being outside the Contract Period.

## **2.11 Order Completion Date**

2.11.1 The Contractor shall notify the Contract Administrator the date when in his opinion an Order has been completed and/or supplied in accordance with this Contract. If the Contract Administrator does not dissent by notice, giving reasons, within 14 days of receipt of the Contractor's notice, the date so notified shall for all the purposes of this Contract be the date when the Order was completed and/or supplied in accordance with this Contract (the 'Order Completion Date').

2.11.2 If the Contract Administrator dissents, then, as soon as he is satisfied that the Order has been duly completed and/or supplied, he shall as soon as practicable notify the Contractor and, unless otherwise agreed or determined in accordance with the dispute resolution procedures of this Contract, the Order Completion Date shall be the date stated in the Contract Administrator's notice.

## **2.12 Defects**

Any defects, shrinkages or other faults which appear within 6 months of the Order Completion Date and which are due to materials or workmanship not in accordance with this Contract, shall be made good by the Contractor at no cost to the Employer.

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## Section 3 Control of Work

### 3.1 Assignment

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

### 3.2 Sub-contracting

The Contractor shall not without the prior consent of the Contract Administrator sub-contract any Order or part of an Order. Such consent shall not be unreasonably delayed or withheld and shall apply to all Orders except to the extent otherwise stated in that consent. Where considered appropriate, the Contractor shall engage the Sub-Contractor using the JCT Short Form of Sub-Contract.

### 3.3 Contractor's representative

The Contractor shall employ a competent Contractor's representative and any Orders or Variations given to him by the Contract Administrator shall be deemed to have been issued to the Contractor.

### 3.4 Access to the Site

3.4.1 Except to the extent that the Schedule of Rates otherwise provides, access to the Site shall be arranged by, and in accordance with instructions of, the Contract Administrator who, where the Site is occupied, shall also be responsible for ensuring that the occupier removes such fixtures, fittings or other items as are necessary to enable the Contractor to carry out the Order and does not otherwise unreasonably prevent or impede the Contractor from carrying out such Order.

3.4.2 If the Contractor is unable to gain access to the Site in accordance with the Contract Administrator's instructions or, having been granted access to an occupied Site, cannot reasonably carry out the Order by reason of the Contract Administrator's or occupier's non-compliance with clause 3.4.1, he shall forthwith notify the Contract Administrator; the time necessarily spent unproductively by the Contractor in consequence shall be assessed or recorded and valued as daywork under clause 5.4.1, and clause 5.4.2 shall apply so far as relevant.

3.4.3 To the extent that clauses 3.4.1 and 3.4.2 do not apply because the Schedule of Rates provides otherwise, the Contractor shall comply with the access provisions of that Schedule.

### 3.5 Variations

3.5.1 The Contract Administrator may from time to time require Variations, through instructions and/or the issue of further drawings, details, directions and/or explanations.

3.5.2 The Contractor shall not make any alteration in, addition to or omission from the work and/or supply comprised in any Order except as required under clause 3.5.1. If the Contractor carries out a Variation otherwise than pursuant to an instruction or other requirement of the Contract Administrator, the Contract Administrator may sanction it.

3.5.3 No Variation required by the Contract Administrator or subsequently sanctioned by him shall invalidate the Order or vitiate this Contract.

3.5.4 The value of any Variation issued or sanctioned by the Contract Administrator shall be ascertained in accordance with section 5 and, as soon as ascertained in whole or in part, the ascertained amount shall be included in the estimated value of the relevant Order for the purposes of clause 4.3 (progress payments) and in the valuation of it for the purposes of clause 4.4 or 4.5 (final payment).

### 3.6 Cancellation of an Order

3.6.1 The Contract Administrator may cancel any Order.

3.6.2 On the cancellation of an Order:

- 3.6.2.1 the Contract Administrator shall value and certify, in accordance with clause 4.4, for payment by the Employer under that clause, any work or supply which in his opinion has been properly carried out or made by the Contractor against that Order, taking into account any amounts previously certified in respect of it; and
- 3.6.2.2 the Employer shall reimburse the Contractor such additional direct costs as may reasonably have been incurred by the Contractor as a result.

### **3.7 Exclusion from the Site**

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

### **3.8 Non-compliance with instructions**

If within 7 days after receipt of a notice from the Contract Administrator requiring compliance with a Contract Administrator's instruction the Contractor does not comply, the Employer may employ and pay other persons to execute any work whatsoever which may be necessary to give effect to that instruction. The Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and such costs may be withheld or deducted by the Employer from any monies due or to become due to the Contractor under this Contract or shall be recoverable from the Contractor as a debt.

### **3.9 CDM Regulations**

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

- 3.9.1 the Employer shall in each case ensure that the Principal Designer carries out his duties and, where the Contractor is not the Principal Contractor, shall ensure that the Principal Contractor carries out his duties under those regulations;
- 3.9.2 the Contractor shall comply with regulations 8 and 15 and, where he is the Principal Contractor, with regulations 12 to 14;<sup>[19]</sup>
- 3.9.3 whether or not the Contractor is the Principal Contractor, compliance by the Contractor with his duties under the regulations, including any such directions as are referred to in regulation 15(3), shall be at no cost to the Employer and shall not entitle the Contractor to an extension of time;
- 3.9.4 if the Employer appoints any other person as the Principal Designer or Principal Contractor either in relation to all Orders or for specific Orders, the Employer shall immediately upon that appointment notify the Contractor with details of the new appointee.

### **3.10 Replacement of Contract Administrator**

If the Contract Administrator at any time ceases to hold that post for the purposes of this Contract, the Employer shall as soon as reasonably practicable, and in any event within 14 days of the cessation, nominate a replacement. No replacement Contract Administrator appointed for this Contract shall be entitled to disregard or overrule any certificate, opinion, decision, approval or instruction given or expressed by any predecessor in that post, save to the extent that that predecessor if still in the post would then have had power under this Contract to do so.

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**[19]** 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

### 4.1 VAT

Sums certified for payment are exclusive of VAT and in relation to each payment to the Contractor under this Contract, the Employer shall in addition pay the amount of any VAT properly chargeable in respect of it.

### 4.2 Construction Industry Scheme (CIS)

Where it is stated in the Contract Particulars (item 9) that the Employer is a 'contractor' for the purposes of the Construction Industry Scheme (CIS) or if at any time up to the final payment in respect of the last Order outstanding under this Contract the Employer becomes such a 'contractor', his obligation to make any payment under this Contract is subject to the provisions of the CIS.

### 4.3 Progress payments

4.3.1 Where at the date of issue of an Order or of any Variation to it (after adjustment for the effects of any relevant Variations):

4.3.1.1 the value of the Order is estimated by the Contract Administrator to exceed the amount stated in the Contract Particulars (item 10); and/or

4.3.1.2 the duration of the work comprised in that Order is estimated to be 45 days or more

the Contractor may not later than each subsequent Valuation Date make an application to the Contract Administrator for a progress payment of the amount he considers due for the work carried out or supplies made pursuant to the Order calculated as at the relevant Valuation Date. The application shall state the basis on which that sum has been calculated and shall be accompanied by such further information as may be specified in the Contract Documents.

4.3.2 The due date for a progress payment shall in each case be the date 7 days after the relevant Valuation Date.

4.3.3 Where an application is made in accordance with clause 4.3.1, the Contract Administrator shall not later than 5 days after the due date issue a certificate, stating the sum that he considers to be, or to have been, due to the Contractor at the due date in respect of the progress payment, after taking into account any amounts previously certified and (where relevant) any sums paid under clause 4.6.3 in respect of any application made after the issue of the latest certificate. The certificate shall state the basis on which that sum has been calculated.

### 4.4 Final payment where Contract Administrator measures and values Orders

Where the Contract Administrator is to value an Order pursuant to clause 5.2:

4.4.1 the due date shall be 28 days after the Order Completion Date or, for Orders where progress payments are to be made, 51 days after the Order Completion Date;

4.4.2 the Contract Administrator shall not later than 5 days after the relevant due date issue a certificate stating as the sum due the total amount that he considers to be or have been due to the Contractor under these Conditions in respect of the completed Order, less any amounts previously certified in respect of it under clause 4.3.3 and (where relevant) any sums paid in respect of any such application as is mentioned in clause 4.3.3, and stating the basis on which the sum has been calculated;

4.4.3 if the Contract Administrator does not issue a certificate in respect of the Order in accordance with clause 4.4.2 within 33 days of the Order Completion Date or, for Orders where progress payments are to be made, within 56 days of the Order Completion Date, the Contractor may make an application stating the sum that he considers will or has become due to him in respect of the Order and the basis on which that sum has been calculated.

#### **4.5 Final payment where Contractor measures and values Orders**

Where the Contractor is to value an Order pursuant to clause 5.2:

- 4.5.1 the Contractor shall following the Order Completion Date make an application to the Contract Administrator in respect of the completed Order, stating the sum that the Contractor considers will become due to him on the due date in respect of the Order and the basis on which that sum has been calculated, accompanied by such further information as may be specified in the Contract Documents;
- 4.5.2 the due date for payment in respect of the completed Order shall be the date 7 days after the next monthly Valuation Date following receipt by the Contract Administrator of the Contractor's application. Not later than 5 days after the due date the Contract Administrator shall issue a certificate stating the sum that he considers to be due to the Contractor in respect of the completed Order, after taking into account any amounts previously certified in respect of the Order, and the basis on which that sum has been calculated;
- 4.5.3 if the Contractor fails to make an application in accordance with clause 4.5.1 within 56 days after the Order Completion Date, the Contract Administrator may at any time give the Contractor notice that, unless the Contractor makes an application within a period of 28 days after the date of issue of the notice, the Contract Administrator will arrange for the measurement and valuation of the work and/or supply comprising the Order;
- 4.5.4 if the Contractor fails to make an application within the period of notice given under clause 4.5.3:
  - 4.5.4.1 the Contract Administrator shall arrange for measurement and valuation of the Order;
  - 4.5.4.2 the due date shall be 35 days from the date of expiry of the notice period; and
  - 4.5.4.3 the Contract Administrator shall not later than 5 days after the due date issue a certificate in accordance with clause 4.5.2 but, in addition to deducting any amounts previously certified in respect of the Order, shall also be entitled to deduct the amount of the costs reasonably and properly incurred by or on behalf of the Employer in respect of the measurement and valuation;
- 4.5.5 if clause 4.5.4 applies but the Contract Administrator fails to issue a certificate as required by clause 4.5.4.3, the Contractor may at any time after the expiry of the 5 day period referred to in clause 4.5.4.3 make an application giving the details required by clause 4.5.1.

#### **4.6 Payments – final date and amount**

- 4.6.1 Subject to clause 4.6.4, the final date for payment of each payment under clauses 4.3 to 4.5 shall be 14 days from its due date.
- 4.6.2 Subject to any notice given by the Employer under clause 4.6.5, the Employer shall pay the sum stated as due in the relevant certificate on or before the final date for payment.
- 4.6.3 If a certificate is not issued in accordance with clause 4.3.3, 4.4.2, 4.5.2 or 4.5.4, the Employer shall, subject to any notice given under clause 4.6.5, pay the Contractor the sum stated as due in the application.
- 4.6.4 Where an application is made by the Contractor in the circumstances mentioned in clause 4.4.3 or 4.5.5, the final date for payment of the sum specified in it shall for all purposes be regarded as postponed by the same number of days after the last date for issue of the certificate referred to in clause 4.4.2 or 4.5.4.3 that the application is made but notice by the Employer under clause 4.6.5 may not be given prior to the application being made.
- 4.6.5 Where the Employer intends to pay less than the sum stated as due from him in the certificate or application, he shall not later than 5 days before the final date for payment give the Contractor notice of that intention specifying the sum he considers to be due to the Contractor at the date the notice is given and the basis on which that sum has been calculated. Where such notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated as due in the notice.
- 4.6.6 If the Employer fails to pay a sum, or any part of it, due to the Contractor under these Conditions by its final date for payment, the Employer shall, in addition to any unpaid amount that should properly have been paid, pay the Contractor simple interest on that

amount at the Interest Rate for the period from the final date for payment until payment is made.

- 4.6.7 Any such unpaid amount and any interest under clause 4.6.6 shall be recoverable as a debt. Acceptance of a payment of interest shall not in any circumstances be construed as a waiver either of the Contractor's right to proper payment of the principal amount due, to suspend performance under clause 4.7 or to terminate his employment under section 8.
- 4.6.8 A notice to be given by the Employer under clause 4.6.5 may be given on his behalf by the Contract Administrator or by any other person who the Employer notifies the Contractor as being authorised to do so.
- 4.6.9 In relation to the requirements for the issue of certificates and the giving of notices under section 4, it is immaterial that the amount then considered to be due may be zero.

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

- 4.7.1 If the Employer fails to pay a sum payable to the Contractor in accordance with clause 4.6 (together with any VAT properly chargeable in respect of that payment) by the final date for payment and the failure continues for 7 days after the Contractor has given notice to the Employer, with a copy to the Contract Administrator, of his intention to suspend the performance of his obligations under this Contract and the grounds for such suspension, the Contractor, without affecting his other rights and remedies, may suspend performance of any or all of those obligations until payment is made in full.
- 4.7.2 Where the Contractor 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 Contract Administrator and the Contractor shall with his application or on request submit such details of them as are reasonably necessary for ascertaining the amount in question. When ascertained or agreed, the amount shall be included in the next certificate.

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## Section 5 Measurement and Valuation

### 5.1 Definition of Variations

The term 'Variation' means:

- 5.1.1 the alteration or modification of the design, quality or quantity of work or supply comprised in an Order;
- 5.1.2 any other addition to, omission from or alteration of any Order; or
- 5.1.3 the removal of any inconsistencies in or between any documents included in an Order.

### 5.2 Measurement and Valuation – responsibility

Unless otherwise agreed by the Contract Administrator and the Contractor, all work carried out pursuant to an Order (including any Variations required by the Contract Administrator or subsequently sanctioned by him) shall be valued in accordance with clauses 5.3 to 5.8. Such valuation of an Order shall be undertaken by whichever of them is designated in the Contract Particulars (item 11).

### 5.3 Valuation – measurement

- 5.3.1 Subject to clauses 2.3.5, 5.4.1 and 5.5 the valuation of an Order shall be ascertained by measurement and valuation in accordance with the principles of measurement and the rates or prices in the Schedule of Rates applicable at the date of the Order, insofar as such rates or prices apply, subject to adjustment by the Adjustment Percentage.
- 5.3.2 Where the Contract Administrator is to undertake measurement of an Order, he shall give the Contractor an opportunity to be present at the time of such measurement and to take such notes and measurements as the Contractor may require.

### 5.4 Valuation – daywork

- 5.4.1 Where in the Contract Administrator's opinion the appropriate basis for valuation of an Order or part of an Order is daywork, the direct labour element shall be calculated in accordance with the all-in labour rates (inclusive of incidental costs, overheads and profit) set out in the Schedule of Hourly Charges annexed to this Contract, with related charges being calculated in accordance with that Schedule and/or the Contract Particulars<sup>[20]</sup>.
- 5.4.2 The Contractor shall give to the Contract Administrator reasonable prior notice of the commencement of any work (or supply of labour and/or materials) which he considers should be carried out as daywork and not later than 7 Business Days after the work has been executed the Contractor shall deliver to the Contract Administrator for verification return(s) in the form required by the Contract Administrator specifying the time spent daily upon the work, the workmen's names, and the plant, materials and other items employed. A copy of the returns, if approved by the Contract Administrator, shall be returned to the Contractor.

### 5.5 Derived rates

- 5.5.1 Where the rates or prices in the Schedule of Rates do not apply or where there is no applicable all-in labour rate in the Schedule of Hourly Charges, as the case may be, the value shall be based upon such rates or prices as may fairly be deduced therefrom, rates and prices deduced from the Schedule of Rates being subject to adjustment by the Adjustment Percentage.
- 5.5.2 If it is not practicable or would not be fair and reasonable to apply the rates or prices in the Schedule of Rates or Schedule of Hourly Charges or to deduce rates or prices therefrom, the value shall be agreed between the Parties, failing which it shall be ascertained on a fair

[20] In addition to the inclusive labour rates set out in the Schedule of Hourly Charges, this Contract envisages that that Schedule, alone or in combination with the Contract Particulars, will set out the basis of charging for any daywork sub-contracted and will provide for any percentage or other handling charges that are to be added to the cost of materials, goods, plant, services, consumables and (if appropriate) sub-contract work supplied.

and reasonable basis by the Contract Administrator after consultation with the Contractor.

## **5.6 Rates – Fluctuations**

- 5.6.1 Unless it is stated in the Contract Particulars (item 12.3) that this clause 5.6.1 does not apply:
- 5.6.1.1 where the Schedule of Rates is the National Schedule of Rates, the rates in that Schedule current at the commencement of the Contract Period will apply to the valuation of Orders issued prior to the next following 1 August and subsequently the update for those rates at 1 August in each year will apply to Orders issued on or after 1 August; or
- 5.6.1.2 where the Schedule of Rates is not the National Schedule of Rates, the basis on which and the dates as at which the rates in that Schedule are to be revised during the Contract Period shall be those stated or referred to in the Contract Particulars (item 12.4).
- 5.6.2 If it is stated in the Contract Particulars that clause 5.6.1 does not apply or, where the Schedule of Rates is not the National Schedule of Rates, if there is no identified basis for revision as referred to in clause 5.6.1.2, the rates given in the Schedule of Rates current at the commencement of the Contract Period shall remain fixed for all Orders.
- 5.6.3 Unless it is stated in the Contract Particulars (item 13.2) that this clause 5.6.3 does not apply, the all-in labour rates set out in the Schedule of Hourly Charges shall be revised at 1 August in each year, or such other annual revision date as is stated in that item, in accordance with the basis (if any) set out in that Schedule or identified in the Contract Particulars or, if none, in accordance with clause 5.6.5.
- 5.6.4 Whether or not clause 5.6.3 applies, any all-in hourly rate deduced or fixed under clause 5.5 shall be revised on such revision date (if any) as is fixed for revision of the relevant Schedule or, if none is fixed, as at 1 August in each year.
- 5.6.5 In the absence of any express basis for revision where clause 5.6.3 applies or in the case of revision under clause 5.6.4, the revised rates shall be agreed between the Contractor and the Contract Administrator or, failing agreement, determined by the Contract Administrator on a fair and reasonable basis.

## **5.7 Overtime work**

- 5.7.1 For the purposes of this clause 5.7:
- 5.7.1.1 'overtime' means time worked in addition to 'normal working hours' as defined in the rules or decisions of the Construction Industry Joint Council or other wage-fixing body applicable to the work comprised in the Order, as promulgated at the date of the Order; and
- 5.7.1.2 'non-productive overtime rates' means the net amounts, in excess of the rates paid for work in normal working hours, which are to be paid for overtime in accordance with the rules or decisions mentioned above as promulgated at the date of the Order.
- 5.7.2 Where overtime work for an Order is specifically directed by the Contract Administrator, unless an all-in non-productive overtime rate is included in the Schedule of Hourly Charges, the Contractor, in addition to the amount otherwise due under this section 5 in respect of the valuation of the Order, shall be paid the amount of the non-productive overtime rates paid by the Contractor, adjusted by the percentage set out in the Contract Particulars (item 14).
- 5.7.3 No payment shall be due under clause 5.7.2 unless the Contractor has submitted to the Contract Administrator returns, in a format directed by the Contract Administrator or as provided in the preliminaries in the Schedule of Rates, stating the amount of overtime worked in accordance with the directions referred to in clause 5.7.2 and the amount of the non-productive overtime rates paid by the Contractor. A copy of those returns, if approved, shall be certified by the Contract Administrator and returned to the Contractor.

## **5.8 Interruption of work – unproductive costs**

If, while carrying out the work comprised in any Order, the Contractor is required by the Contract

Administrator during normal working hours (as referred to in clause 5.7.1) to interrupt such work and to carry out other work in priority to that comprised in the Order, any agreed lost time or other unproductive costs shall be valued as daywork under clause 5.4.1, and clause 5.4.2 shall apply so far as relevant.

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## Section 6 Injury, Damage and Insurance

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

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

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

Subject to clause 6.3, the Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of an Order and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor or any Contractor's Person.

### 6.3 Loss or damage to existing structures or their contents

6.3.1 Where clause 6.7.1 applies, the Contractor's liability and indemnity under clause 6.2 excludes any loss or damage to existing structures or to any of their contents required to be insured under clause 6.7 that is caused by any of the risks or perils required or agreed to be insured against under that clause.

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

6.3.3 Where a Clause 6.7.1 Replacement Schedule applies in lieu of clause 6.7.1, the Contractor's liability and indemnity under clause 6.2 shall, in respect of loss, injury or damage to the existing structures and their contents due to the causes specified in that clause, be subject only to such limitations or exclusions as are specified in that schedule.

6.3.4 The reference in clause 6.2 to 'property real or personal' does not include the work comprised in an Order, work executed or Site Materials up to and including whichever is the earlier of the Order Completion Date or the date of termination of the Contractor's employment.

### 6.4 Contractor's insurance of his liability

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

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

6.4.1.2 for all other claims to which clause 6.4.1 applies<sup>[21]</sup>, shall indemnify the Employer in like manner to the Contractor (but only to the extent that the Contractor may be liable to indemnify the Employer under the terms of this Contract) and shall for any one occurrence or series of occurrences arising out of one event be in a sum not less than that stated in the Contract Particulars (item 15.1).<sup>[22]</sup>

6.4.2 As to evidence that such insurances have been effected and are being maintained and the consequences of failure to comply, clause 6.11 shall apply.

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

[22] The Contractor may, if he wishes, insure for a sum greater than that stated in the Contract Particulars (item 15).

## 6.5 Excepted Risks

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

## 6.6 Related definitions

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

**All Risks Insurance**<sup>[23]</sup>: insurance which provides cover against any physical loss or damage to work executed or supplies made pursuant to an Order and Site Materials (whether supplied by the Employer or by the Contractor) and against the reasonable cost of the removal and disposal of debris and of any shoring and propping which results from such physical loss or damage but excluding the cost necessary to repair, replace or rectify:

- (a) property which is defective due to:
  - (i) wear and tear,
  - (ii) obsolescence, or
  - (iii) deterioration, rust or mildew;
- (b) any work executed or supplies made or any Site Materials lost or damaged as a result of its own defect in design, plan, specification, material or workmanship or any other work executed which is lost or damaged in consequence thereof where such work relied for its support or stability on such work which was defective<sup>[24]</sup>;
- (c) loss or damage caused by or arising from:
  - (i) any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation, commandeering, nationalisation or requisition or loss or destruction of or damage to any property by or under the order of any government *de jure* or *de facto* or public, municipal or local authority,
  - (ii) disappearance or shortage if such disappearance or shortage is only revealed when an inventory is made or is not traceable to an identifiable event, or
  - (iii) an Excepted Risk.

**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

[23] 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 under this Contract also require discussion and agreement between the Parties and their insurance advisers at an early stage, **prior to entering into the Contract**. See the Measured Term Contract Guide.

[24] In an All Risks Insurance policy in respect of works to be carried out under this Contract, cover should not be reduced by any exclusion that goes beyond the terms of paragraph (b) in this definition. For example, an exclusion in terms that 'This Policy excludes all loss of or damage to the property insured due to defective design, plan, specification, materials or workmanship' would not be in accordance with the terms of clause 6.7.2 or 6.8 or that definition. Wider All Risks cover than that specified may be available, though it is not standard.

- (c) any act of terrorism that is not within the Terrorism Cover from time to time required to be taken out and maintained under this Contract.

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

**Pool Re Cover:** such insurance against loss or damage to work executed and Site Materials caused by or resulting from terrorism as is from time to time generally available from insurers who are members of the Pool Reinsurance Company Limited scheme or of any similar successor scheme.<sup>[25]</sup>

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

**Terrorism Cover:** Pool Re Cover or other insurance against loss or damage to work executed or supplies made pursuant to an Order and Site Materials (and/or, for the purposes of clause 6.13.1, to an existing structure and/or its contents) caused by or resulting from terrorism.<sup>[25]</sup>

#### **6.7 Joint Names Insurance of work or supply comprised in Orders and existing structures by the Employer<sup>[26]</sup>**

The Employer shall:

- 6.7.1 unless otherwise stated by the Contract Particulars (item 15.3) effect and maintain a Joint Names Policy in respect of the existing structures for which Orders may be issued, together with the contents of them owned by him or for which he is responsible, for the full cost of reinstatement, repair or replacement of loss or damage due to any of the Specified Perils;
- 6.7.2 subject to clause 6.8 where the Contract Particulars state that that clause applies (item 15.4), effect and maintain a Joint Names Policy for All Risks Insurance with cover no less than that specified in clause 6.6 for the full reinstatement value of each and every Order (plus the percentage, if any, stated in the Contract Particulars to cover professional fees (item 15.2))

and shall maintain such Joint Names Policies up to and including the end of the Contract Period (or up to the Order Completion Date of any Order which either pursuant to clause 2.10 or by agreement pursuant to clause 2.4 occurs after the end of the Contract Period), or (if earlier) the date of termination of the Contractor's employment under this Contract. In respect of the insurance referred to in this clause 6.7 the Employer shall notify his insurer of the identity of the properties in respect of which Orders may be issued and the Contract Period (but with the proviso that work or supply in respect of such properties may continue to be carried out or made by the Contractor until any later Order Completion Date).

#### **6.8 Joint Names Insurance of work or supply comprised in Orders by the Contractor**

If the Contract Particulars (item 15.4) state that this clause 6.8 applies, the Contractor shall effect and maintain with insurers approved by the Employer a Joint Names Policy for All Risks Insurance with cover no less than that specified in clause 6.6<sup>[27]</sup> for the full reinstatement value of each and every Order (plus the percentage, if any, stated in the Contract Particulars (item 15.2) to cover professional

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[25] As respects Terrorism Cover and the insurance requirements, see footnote [23] and the Measured Term Contract Guide.

[26] **Clause 6.7 can be used in its existing printed form by those Employers who are able to effect the Joint Names, Specified Perils cover referred to for the Contractor in respect of existing structures and their contents that are owned by the Employer or for which he is responsible.**

However, the Joint Names Policy required by clause 6.7.1 or the extension of a subsisting structure and contents policy to being a Joint Names Policy may not be readily available – and that provision is often not now appropriate for – refurbishment projects or alterations by tenant Employers where existing structures insurance is the landlord's responsibility.

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

The Contract Particulars for clause 6.7.1 (item 15.3) therefore expressly allow the Parties in those circumstances to disapply clause 6.7.1 and, by means of a Clause 6.7.1 Replacement Schedule, to include in place of that clause provisions that are tailored to their particular requirements.

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

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

[27] In some cases it may not be possible for insurance to be taken out against certain of the risks covered by the definition of All Risks Insurance and note the potential difficulty with respect to Terrorism Cover mentioned at footnote [23].

fees) up to and including the Order Completion Date for that Order and shall maintain that policy up to and including:

6.8.1 the end of the Contract Period or (if later) the last Order Completion Date; or

6.8.2 (if earlier) the date of termination of the Contractor's employment.

#### **6.9 Clause 6.8 – use of Contractor's annual policy – as alternative**

If and so long as the Contractor independently of this Contract maintains an annual insurance policy which in respect of the work or supplies comprised in Orders:

6.9.1 provides (inter alia) All Risks Insurance with cover and in amounts no less than those specified in clause 6.8; and

6.9.2 is a Joint Names Policy,

that policy shall satisfy the Contractor's obligations under clause 6.8. The annual renewal date of the policy, as supplied by the Contractor, is stated in the Contract Particulars (item 15.5).

#### **6.10 Notification by Contractor of occupation and use**

Where clause 6.8 applies, the Contractor shall before commencing to carry out the first Order under this Contract notify the insurer of the Joint Names Policy to which clause 6.8 refers that the Employer may have occupation and use of any property in respect of which Orders may be issued, and shall obtain the agreement of the insurer that any exclusion in the policy relating to such occupation and use shall not apply.

#### **6.11 Evidence of insurance**

6.11.1 Where a Party is required by this Contract to effect and maintain an insurance policy or cover under any of clauses 6.4, 6.7, 6.8 and 6.12, 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.

6.11.2 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 Contractor shall be reimbursed to him by the Employer and shall be recoverable from the Employer as a debt; any costs payable to the Employer may be deducted by him from any sums due or to become due to the Contractor under this Contract or shall be recoverable from the Contractor as a debt.

#### **6.12 Terrorism Cover – policy extensions and premiums**

6.12.1 To the extent that the Works Insurance Policy excludes (or would otherwise exclude) loss or damage caused by terrorism, the Contractor, where clause 6.8 applies, or the Employer, where clause 6.7.2 applies, shall unless otherwise agreed effect and maintain, either as an extension to the Works Insurance Policy or as a separate Joint Names Policy, in the same amount and for the same period as the Works Insurance Policy, such Terrorism Cover as is specified in or by the Contract Particulars (item 15.6), subject to clauses 6.12.4 and 6.13.

6.12.2 Where clause 6.8 applies and the Contractor is required to take out and maintain Pool Re Cover, the cost of that cover and its renewal shall be deemed to be included in the Contractor's rates and prices save that, if at any renewal of the cover there is a variation in the rate on which the premium is based, the amounts payable to the Contractor shall be adjusted by the net amount of the difference between the premium paid by the Contractor and the premium that would have been paid but for the change in rate.

6.12.3 Where clause 6.8 applies and Terrorism Cover other than Pool Re Cover is specified as required, the cost of such other cover and of its renewal shall be added to the amounts payable to the Contractor.

6.12.4 Where clause 6.8 applies and the Employer is a Local or Public Authority, if at any renewal of the Terrorism Cover (of any type) there is an increase in the rate on which the premium is based, he may instruct the Contractor not to renew the Terrorism Cover. If he so instructs, clause 6.14.5.3 shall apply with effect from the renewal date.

### **6.13 Terrorism Cover – non-availability – Employer's options**

- 6.13.1 If the insurers named in any Joint Names Policy notify either Party that, with effect from a specified date (the 'cessation date'), Terrorism Cover will cease and will no longer be available or will only continue to be available with a reduction in the scope or level of such cover, the recipient shall immediately notify the other Party.
- 6.13.2 The Employer, after receipt of such notification but before the cessation date, shall give notice to the Contractor:
- 6.13.2.1 that, notwithstanding the cessation or reduction in scope or level of Terrorism Cover, the Employer requires that the work comprised in all or certain specified Orders continue to be carried out; and/or
- 6.13.2.2 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) work on all or certain specified Orders shall terminate.
- 6.13.3 Where clause 6.8 applies and the Employer gives notice under clause 6.13.2 requiring continuation of the work comprised in any Orders, he may instruct the Contractor to effect and maintain any alternative or additional form of Terrorism Cover then reasonably obtainable by the Contractor; the net additional cost to the Contractor of any such cover and its renewal shall be added to the amounts payable to the Contractor.
- 6.13.4 If the Employer gives notice of termination under clause 6.13.2 in respect of any Orders, a valuation of work completed (or of labour, materials and/or plant supplied) that has not been valued and certified before such termination shall be made and certified in respect of those Orders in accordance with sections 4 and 5 and the Employer shall pay the certified amount in accordance with clause 4.6.
- 6.13.5 In the case of any Orders in respect of which notice of termination is not given under clause 6.13.2.2, but work executed and/or Site Materials under any such Order thereafter suffer physical loss or damage caused by terrorism, clauses 6.14 and 6.15 shall as appropriate apply.

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

- 6.14.1 If loss or damage affecting any executed work, Site Materials or other supplies made pursuant to an Order is occasioned by any of the risks covered by the Works Insurance Policy or an Excepted Risk or there is any loss of or damage of any kind to any existing structure or its contents, the Contractor shall forthwith upon it occurring or becoming apparent give notice both to the Contract Administrator and to the Employer of its nature, location and extent.
- 6.14.2 Subject to clauses 6.14.5.1 and 6.14.6, the occurrence of such loss or damage shall be disregarded in computing any amounts payable to the Contractor under this Contract.
- 6.14.3 The Contractor, for himself and his sub-contractors, shall authorise the insurers to pay to the Employer all monies from the Works Insurance Policy, and from any policies covering existing structures or their contents that are effected by the Employer.
- 6.14.4 Where loss or damage affecting executed work or Site Materials or other supplies made pursuant to an Order is occasioned by any risk covered by the Works Insurance Policy, and subject to clause 6.15 where relevant, the Contractor shall after any inspection required by the insurers under the Works Insurance Policy and with due diligence restore the damaged work, replace or repair any lost or damaged Site Materials or supplies made, remove and dispose of any debris (collectively 'reinstatement work') and proceed with the carrying out and completion of the Order(s).
- 6.14.5 Where clause 6.8 applies:
- 6.14.5.1 unless the Employer cancels the Order affected by the loss or damage, the Employer shall pay all monies from such insurance to the Contractor by instalments under separate reinstatement work certificates issued by the Contract Administrator at the same dates as those for certificates under section 4 less only the amounts referred to in clause 6.14.5.2;
- 6.14.5.2 the Employer may retain from those monies any amounts properly incurred by the Employer and notified by him to insurers in respect of professional fees up to

the aggregate amount of the percentage cover for those fees or (if less) the amount paid by insurers in respect of those fees;

6.14.5.3 in respect of reinstatement work, the Contractor shall not be entitled to any payment other than amounts received under the Works Insurance Policy except where there has been a cessation of or reduction in Terrorism Cover under clause 6.12.4 or 6.13 and loss or damage is then caused by or results from terrorism, in which case the reinstatement work shall, to the extent that its cost is no longer recoverable under the policy, be treated as a Variation and under section 4 or clause 6.14.5.1 included in Contract Administrator's certificates. In neither case shall there be any reduction in any amount payable by reason of any act or neglect of the Contractor or of any sub-contractor which may have contributed to the physical loss or damage.

6.14.6 Where clause 6.7.2 applies or where loss or damage is caused by an Excepted Risk, reinstatement work shall be treated as a Variation.

#### **6.15 Loss or damage to existing structures – right of termination in respect of Orders**

If there is material loss of or damage to any existing structure, the Employer shall be under no obligation to reinstate that structure, but either Party may, if it is just and equitable, give notice to the other within 28 days of the occurrence of that loss or damage that work on any affected Orders shall terminate. 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;

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 6.13.4 shall apply.

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## Section 7 Break Provision – Rights of each Party

### 7.1 Break notice

Each Party shall have the right to reduce the duration of the Contract Period by giving the other Party not less than 13 weeks' notice to that effect (or such lesser period of notice as is stated in the Contract Particulars (item 16)). That notice may in either case expire at any time not less than 6 months after the date of commencement of the Contract Period.

### 7.2 Existing and subsequent Orders

As from receipt by the Employer or the Contractor, as the case may be, of notice under clause 7.1 the Contractor shall not, unless otherwise agreed between him and the Contract Administrator, be under any obligation to accept any subsequent Orders which cannot reasonably be completed before the expiration of the notice, but the Contractor shall not be relieved of his obligation to complete all Orders properly given prior to the receipt of the notice, even if such Orders cannot be, or are not, completed before the expiry of such notice, and to complete any subsequent Orders that can reasonably be completed before that expiration or that he otherwise accepts.

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## Section 8 Termination for Default, etc.

### 8.1 Meaning of insolvency

For the purposes of these Conditions:

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

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

### 8.2 Notices under section 8

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

### 8.3 Other rights, reinstatement

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

available to either Party.

- 8.3.2 Irrespective of the grounds of termination, the Contractor's employment may at any time be reinstated, either generally or in respect of any particular Order or Orders, if and on such terms as the Parties agree.

#### **8.4 Default by Contractor**

- 8.4.1 If the Contractor:

8.4.1.1 fails to comply with the CDM Regulations; or

8.4.1.2 without reasonable cause fails in such a manner to comply with his obligations under this Contract that the carrying out of any Order or Orders is materially disrupted, suspended or delayed,

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

- 8.4.2 If the Contractor continues a specified default for 14 days from receipt of the notice under clause 8.4.1, the Employer may on, or within 21 days from, the expiry of that 14 day period by a further notice to the Contractor terminate the Contractor's employment under this Contract.

- 8.4.3 If the Employer does not give the further notice referred to in clause 8.4.2 (whether as a result of the ending of any specified default or otherwise) but the Contractor repeats a specified default (whether previously repeated or not), then, upon or within a reasonable time after such repetition, the Employer may by notice to the Contractor terminate that employment.

#### **8.5 Insolvency of Contractor**

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

- 8.5.2 The Contractor shall immediately notify the Employer if he makes any proposal, gives notice of any meeting or becomes the subject of any proceedings or appointment relating to any of the matters referred to in clause 8.1.

- 8.5.3 As from the date the Contractor becomes Insolvent, whether or not the Employer has given such notice of termination:

8.5.3.1 clause 8.10 shall apply as if such notice had been given;

8.5.3.2 the Contractor's obligations under Article 1 and these Conditions to carry out and complete any Orders shall be suspended; and

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

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

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

#### **8.7 Default by Employer**

- 8.7.1 If the Employer:

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

8.7.1.2 without reasonable cause fails in such a manner to comply with his obligations under this Contract that the ability of the Contractor to comply with his obligations under it is materially prejudiced; or

8.7.1.3 interferes with or obstructs the issue of any certificate; or

8.7.1.4 fails to comply with the CDM Regulations,

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

8.7.2 If the Employer continues a specified default for 14 days from the receipt of notice under clause 8.7.1, the Contractor may on, or within 21 days from, the expiry of that 14 day period by a further notice to the Employer terminate the Contractor's employment under this Contract.

8.7.3 If the Contractor for any reason does not give the further notice referred to in clause 8.7.2, but the Employer repeats a specified default (whether previously repeated or not), then, upon or within a reasonable time after such repetition, the Contractor may by notice to the Employer terminate the Contractor's employment under this Contract.

## **8.8 Insolvency of Employer**

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

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

8.8.3 as from the date the Employer becomes Insolvent, the Contractor's obligations under Article 1 and these Conditions to carry out and complete any Orders shall be suspended pending such termination.

## **8.9 Termination by Employer – regulations 73(1)(a) and 73(1)(c) of the PC Regulations**

Where this Contract is one to which regulation 73(1) of the PC Regulations applies the Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment under this Contract where the grounds set out in regulation 73(1)(a) or 73(1)(c) of the PC Regulations apply.

## **8.10 Consequences of termination under clauses 8.4 to 8.6**

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

8.10.1 the Employer may employ and pay other persons to carry out and complete uncompleted Orders;

8.10.2 no further sum shall become due to the Contractor under this Contract other than any amount that may become due to him under clause 8.10.3 and the Employer need not pay any sum that has already become due either:

8.10.2.1 insofar as the Employer has given or gives a notice under clause 4.6.5; or

8.10.2.2 if the Contractor, after the last date upon which such notice could have been given by the Employer in respect of that sum, has become insolvent within the meaning of clauses 8.1.1 to 8.1.3;

8.10.3 the Contract Administrator shall within 13 weeks of the date of termination make a valuation and issue a certificate showing:

8.10.3.1 the value of such work properly executed (or of labour, materials and/or plant supplied) and any other amounts due to the Contractor under this Contract that have not been valued and certified before such termination; and

8.10.3.2 the amount of any direct loss and/or damage caused to the Employer by the termination;

8.10.4 if the amount of direct loss and/or damage exceeds the value certified under clause 8.10.3 the difference shall be a debt payable by the Contractor to the Employer or, if it is less, by the Employer to the Contractor;

8.10.5 the final date for payment of the amount of the difference referred to in clause 8.10.4 shall be 28 days from the date of the certificate.

**8.11 Consequences of termination under clauses 8.7 to 8.9**

8.11.1 Where the Contractor's employment is terminated under clause 8.7, 8.8 or 8.9, the Contractor shall within 13 weeks of the date of termination submit an account in respect of:

8.11.1.1 the value of such work properly executed (or of labour, materials and/or plant supplied) as has not been valued and certified before such termination; and

8.11.1.2 only where the Contractor's employment is terminated under clause 8.7 or 8.8, the amount of any direct loss and/or damage caused to the Contractor by the termination.

8.11.2 The Employer shall pay to the Contractor the amount properly due in respect of the account within 28 days of its submission by the Contractor.

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## Section 9 Settlement of Disputes

### 9.1 Mediation

Subject to Article 6, if a dispute or difference arises under this Contract which cannot be resolved by direct negotiations, each Party shall give serious consideration to any request by the other to refer the matter to mediation.<sup>[28]</sup>

### 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 (item 17).

### 9.3 Arbitration – Conduct of arbitration

Any arbitration pursuant to Article 7 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 to the Arbitrator, state that they wish the arbitration to be conducted in accordance with the Rules as so amended. References in clause 9.4 to a Rule or Rules are references to such Rule(s) as set out in the JCT 2016 edition of CIMAR.<sup>[29]</sup>

### 9.4 Notice of reference to arbitration

9.4.1 Where pursuant to Article 7 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 (item 17).

9.4.2 Where two or more related arbitral proceedings in respect of any Orders or work under this Contract fall under separate arbitration agreements, Rules 2.6, 2.7 and 2.8 shall apply.

9.4.3 After the Arbitrator has been appointed either Party may give a further notice of arbitration to the other Party and to the Arbitrator referring any other dispute which falls under Article 7 to be decided in the arbitral proceedings and Rule 3.3 shall apply.

### 9.5 Powers of Arbitrator

Subject to the provisions of Article 7 the Arbitrator shall, without prejudice to the generality of his powers, have power to rectify this Contract so that it accurately reflects the true agreement made by the Parties, to direct such measurements and/or valuations as may in his opinion be desirable in order to determine the rights of the Parties and to ascertain and award any sum which ought to have been the subject of or included in any certificate and to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice had been given.

### 9.6 Effect of award

Subject to clause 9.7 the award of the Arbitrator shall be final and binding on the Parties.

### 9.7 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):

[28] See the Measured Term Contract Guide.

[29] 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.

- 9.7.1 apply to the courts to determine any question of law arising in the course of the reference;  
and
- 9.7.2 appeal to the courts on any question of law arising out of an award made in an arbitration  
under this arbitration agreement.

**9.8 Arbitration Act 1996**

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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## Schedule 1 Supplemental Provisions

(Fifth 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 Contractor undertakes to:
- 2.2.1 comply with any and all approved codes of practice produced or promulgated by the Health and Safety Executive;
- 2.2.2 ensure that all personnel engaged by the Contractor and members of the Contractor's supply chain on site receive appropriate site-specific health and safety induction training and regular refresher training;
- 2.2.3 ensure that all such personnel have access at all times to competent health and safety advice in accordance with regulation 7 of the Management of Health and Safety at Work Regulations 1999; and
- 2.2.4 ensure that there is full and proper health and safety consultation with all such personnel in accordance with the Health and Safety (Consultation with Employees) Regulations 1996.

### Cost savings and value improvements

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

## **Sustainable development and environmental considerations**

4

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

## **Performance Indicators and monitoring**

5

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

## **Notification and negotiation of disputes**

6

With a view to avoidance or early resolution of disputes or differences (subject to Article 6), 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 any other term of this Contract:

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

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

## **The Public Contracts Regulations 2015**

8

Where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations<sup>[30]</sup>:

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

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

8.2.1 to supply and notify to the Contractor the information required (as applicable)

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[30] An explanatory summary of those provisions in the PC Regulations that are reflected in this Contract is contained in the Measured Term Contract Guide. Provisions relating to the PC Regulations are also set out in section 8 (Termination) of this Contract. The JCT Short Form of Sub-Contract (ShortSub) meets the requirements of Supplemental Provision 8.

under regulations 71(3), 71(4) and 71(5) of the PC Regulations; and

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

8.3

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

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

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