



This document has changed from the published version. A comparison document must be provided.

# CE 2016 JCT - Constructing Excellence Contract 2016



DRAFT

# 2016

## JCT - CONSTRUCTING EXCELLENCE CONTRACT

## JCT - Constructing Excellence Contract (CE)

Appropriate:

- for the procurement of construction works and construction related services;
- for use throughout the supply chain including the provision of professional services;
- for use where participants wish to engender collaborative and integrative working;
- for use in partnering.

Can be used:

- whether or not the supplier is to design;
- where the works are to be carried out in sections;
- for Target Cost or Lump Sum.

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

The JCT - Constructing Excellence Contract documentation is based upon the Be Collaborative Contract. The principal authors of both documents are solicitors Martin Howe and Giles Dixon.

This document has been produced electronically by Rapidocs software and is derived from the published printed version (March 2017). Its use is subject to the software licence agreement. Thomson Reuters and the Thomson Reuters Logo are trademarks of Thomson Reuters. Sweet & Maxwell ® is a registered trademark of Thomson Reuters (Professional) UK Limited.

For details of 2016 Edition changes, see the JCT - Constructing Excellence Contract Guide (CE/G) and the Tracked Change Document.

[www.jctltd.co.uk](http://www.jctltd.co.uk)

# Contents

|                  |  |           |
|------------------|--|-----------|
|                  | <b>Agreement</b>   | <b>1</b>  |
|                  | <b>Articles</b>  | <b>2</b>  |
| 1                | Supplier's obligations   |           |
| 2                | Target Cost/Contract Sum   |           |
| 3                | Adjudication   |           |
| 4                | Legal proceedings  |           |
|                  | <b>Contract Particulars</b>  | <b>3</b>  |
|                  | Part 1: Details Relevant to the Conditions   |           |
|                  | Part 2: Brief  |           |
|                  | Part 3: Services   |           |
|                  | Part 4: Supplier's Key Personnel, Key Members of the Supply Chain and the Project Team |           |
|                  | Part 5: Risk Allocation Schedule   |           |
|                  | Part 6: Key Performance Indicators   |           |
|                  | Part 7: Payment Terms  |           |
|                  | Part 8: Third Party Rights and Collateral Warranties                                   |           |
|                  | Part 9: Details of any Supplementary Conditions  |           |
|                  | <b>Attestation</b>   | <b>30</b> |
|                  | <b>Conditions</b>  | <b>35</b> |
| <b>Section 1</b> | <b>Definitions and Interpretation</b>  | <b>35</b> |
| 1.1              | Definitions  |           |
| 1.2              | Reference to clauses   |           |
| 1.3              | Headings, references to persons, legislation etc.                                      |           |
| 1.4              | Reckoning periods of days  |           |
| 1.5              | Contract to be read as a whole   |           |
| 1.6              | Contracts (Rights of Third Parties) Act 1999   |           |
| 1.7              | Giving of notices  |           |
| 1.8              | Consents and approvals   |           |
| 1.9              | Applicable law   |           |
| <b>Section 2</b> | <b>Working Together</b>  | <b>39</b> |
| 2.1              | Overriding Principle   |           |
| 2.2              | Entry into a Project Team Agreement  |           |
| 2.3              | Composition of Project Team  |           |
| 2.4              | Role of Project Team   |           |
| 2.5              | Progress meetings  |           |
| 2.6              | Drawing up of a project protocol   |           |
| 2.7              | Signatories to and display of project protocol   |           |
| 2.8              | Status of project protocol   |           |
| 2.9              | Effect of Overriding Principle   |           |
| 2.10             | Provision of information   |           |
| 2.11             | Identification of ambiguities and discrepancies  |           |
| <b>Section 3</b> | <b>Primary Obligations of the Purchaser</b>  | <b>41</b> |
| 3.1              | Provision of information and a copy of any Purchaser's Contract                        |           |
| 3.2              | Responses to requests for approval and decisions                                       |           |
| 3.3              | Access to Site   |           |
| 3.4              | Payment  |           |
| 3.5              | Purchaser's Representative   |           |
| 3.6              | Consultation with Supplier   |           |
| 3.7              | Certifying completion  |           |
| <b>Section 4</b> | <b>Primary Obligations of the Supplier</b>   | <b>42</b> |
| 4.1              | Provision of information   |           |

- 4.2 Delivery of Services and responsibility for Supply Chain
- 4.3 Carrying out Services
- 4.4 Duty of care
- 4.5 Extended duty of care
- 4.6 Lead Designer
- 4.7 Lead Supplier
- 4.8 Support for Lead Designer and/or Lead Supplier
- 4.9 Copies of designs
- 4.10 Copyright
- 4.11 Payment of royalties
- 4.12 Goods and materials
- 4.13 Deleterious materials
- 4.14 Compliance with instructions of Purchaser
- 4.15 Key personnel
- 4.16 Involvement of Supply Chain
- 4.17 Engagement of Supply Chain
- 4.18 Statutory requirements
- 4.19 Project Programme
- 4.20 Progress meetings
- 4.21 Where Supplier is a sub-supplier

## **Section 5 Allocation of Risks**

**45**

### **Risk Register**

- 5.1 Risk assessment
- 5.2 Updating Risk Register

### **Risk Allocation Schedule**

- 5.3 Completion and effect of Risk Allocation Schedule
- 5.4 Notification of occurrence of risks identified in the Risk Allocation Schedule

### **Ownership of and risk in materials**

- 5.5 Risk in materials
- 5.6 Property in materials

### **Relief Events**

- 5.7 Relief Events
- 5.8 Testing and compliance
- 5.9 Notification of Relief Events
- 5.10 Involvement of Project Team
- 5.11 Provision of a statement of the likely effect of a Relief Event
- 5.12 Provision of further information
- 5.13 Agreement of the effect of a Relief Event
- 5.14 Effects of Relief Event too uncertain
- 5.15 Purchaser's assessment of the effect of Relief Events in the absence of notification
- 5.16 Delay in notification of any Relief Event

## **Section 6 Measurement of Performance**

**49**

- 6.1 Monitoring of performance
- 6.2 Regular reviews
- 6.3 Collective reviews
- 6.4 Written record

## **Section 7 Payment**

**50**

### **Payment Option**

- 7.1 Payment Option

### **Target Cost Option**

- 7.2 Open book recording of costs
- 7.3 Access to original vouchers and books of account
- 7.4 Regular breakdowns of Allowable Cost and Supplier's Margin
- 7.5 Purchaser's objection to any Allowable Cost
- 7.6 Date when payment due
- 7.7 Final date for payment
- 7.8 Notice of payment due
- 7.9 Pay Less Notice
- 7.10 Change to Supplier's Margin

|                   |  |           |
|-------------------|--|-----------|
| 7.11              | Allowable Cost less than Target Cost   |           |
| 7.12              | Allowable Cost greater than Target Cost but less than Guaranteed Maximum Cost    |           |
| 7.13              | Allowable Cost greater than Guaranteed Maximum Cost                              |           |
| 7.14              | Additions to Target Cost and Guaranteed Maximum Cost                             |           |
| 7.15              | Reductions from Target Cost and Guaranteed Maximum Cost                          |           |
|                   | <b>Contract Sum Option</b>   |           |
| 7.16              | Applications for payment   |           |
| 7.17              | Additional information   |           |
| 7.18              | Disagreement as to completion of activities/milestones or payments due           |           |
| 7.19              | Date when payment due  |           |
| 7.20              | Final date for payment   |           |
| 7.21              | Notice of payment due to Supplier  |           |
| 7.22              | Pay Less Notice  |           |
| 7.23              | Adjustments to Payment Schedule and Contract Sum                                 |           |
| 7.24              | Payment Schedule revision  |           |
|                   | <b>General</b>   |           |
| 7.25              | VAT  |           |
| 7.26              | Issuing notices  |           |
| 7.27              | Interest on late payments  |           |
| 7.28              | Suspension   |           |
| 7.29              | Liquidated damages   |           |
| 7.30              | Bonus for early completion   |           |
| 7.31              | Payment of liquidated damages and bonuses  |           |
| <b>Section 8</b>  | <b>Insurance</b>   | <b>55</b> |
| 8.1               | Duty to insure   |           |
| 8.2               | Approval of insurance  |           |
| 8.3               | Evidence of insurance  |           |
| 8.4               | Liability of Supplier – personal injury or death                                 |           |
| 8.5               | Liability of Supplier – injury or damage to property                             |           |
| 8.6               | Limitation on liability  |           |
| <b>Section 9</b>  | <b>Assignment, Subletting, Third Party Rights and Collateral Warranties</b>      | <b>56</b> |
| 9.1               | Assignment or novation   |           |
| 9.2               | Subletting   |           |
| 9.3               | Liability of Supplier following subletting                                       |           |
| 9.4               | Rights granted by Supplier and sub-suppliers                                     |           |
| <b>Section 10</b> | <b>Termination</b>   | <b>57</b> |
| 10.1              | Meaning of insolvency  |           |
| 10.2              | Termination by Purchaser   |           |
| 10.3              | Termination by Supplier  |           |
| 10.4              | Purchaser's instructions following termination                                   |           |
| 10.5              | Payment following termination by Purchaser                                       |           |
| 10.6              | Payment following termination by Supplier  |           |
| <b>Section 11</b> | <b>Dispute Resolution</b>  | <b>59</b> |
| 11.1              | Notification of anticipated disputes   |           |
| 11.2              | Negotiation between senior executives, mediation and involvement of Project Team |           |
| 11.3              | Adjudication   |           |
| 11.4              | Litigation   |           |
| 11.5              | Failure to reach agreement under this Contract                                   |           |
| <b>Section 12</b> | <b>Supplementary Conditions</b>  | <b>60</b> |
| 12.1              | Health and safety  |           |
| 12.2              | Sustainable development and environmental considerations                         |           |
| 12.3              | Transparency   |           |
| 12.4              | The Public Contracts Regulations 2015  |           |
| 12.5              | Other Conditions   |           |

# Agreement

## This Agreement

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

## Between

### The Supplier

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

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

of/whose registered office is at

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

## And

### The Purchaser

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

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

of/whose registered office is at

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

[1] Where the Supplier or Purchaser 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 JCT - Constructing Excellence Contract Guide.

## Articles

### Now it is agreed as follows

---

**Article 1**      **Supplier's obligations**

---

The Supplier shall carry out and complete the Services in accordance with this Contract.

---

**Article 2**      **Target Cost/Contract Sum**

---

The Purchaser shall pay the Supplier at the times and in the manner specified the sum or sums as shall become payable under this Contract.

---

**Article 3**      **Adjudication**

---

If any dispute or difference arises under this Contract, either Party may refer it to adjudication in accordance with clause 11.3.

---

**Article 4**      **Legal proceedings**

---

Subject to Article 3, the English courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.

## Contract Particulars

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

### Part 1: Details Relevant to the Conditions

#### 1.1

##### Client (if different from the Purchaser)

Name: [ ]

Address: [ ]

Where the Purchaser is not the Client, he is:

\* a Tier 1 Supplier

\* a Tier 2 Supplier

##### Purchaser's Representative

Name: [ ]

Address: [ ]

Telephone: [ ]

Fax: [ ]

E-mail: [ ]

##### General description of the Project

[ ]

##### Description of Sections (if any)<sup>[2][3]</sup>

Section [ ] : [ ]

##### Site

[ ]

##### Brief

The Brief for the Services is referred to in Part 2.

##### General description of the Services

(Where appropriate, further details of the Services are set out or referred to in Part 3.)

[ ]

##### Supplier engaged as a professional consultant

The Supplier is engaged as a professional consultant.

\* Yes/No

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

[3] If Services are to be provided in stages, the 'key dates' for specified Services should be set out in the General description of the Services in Part 1 and Part 3 of the Contract Particulars.

*(Where the Supplier is engaged to provide professional consultancy services only, the provisions of clauses 3.6, 3.7, 4.3.2, 4.7, 4.12, 4.21<sup>[4]</sup>, 5.5, 5.6, 7.29, 7.30, 7.31 and 10.4 will not apply.)*

## 1.5

### Framework Agreement

This Contract is supplemented by the Framework Agreement identified below<sup>[5]</sup>:

[ ]

## 1.7

### Address for notices

Addresses for service of notices by the Parties

*(If none is stated, the address in each case, subject to clause 1.7.2, shall be that shown at the beginning of this Agreement.)<sup>[6]</sup>*

Supplier [ ]

Purchaser [ ]

## 2.2 and 2.3

### Project Team

Details of the Project Team are set out in Table C of Part 4.

## 3.1

### Purchaser's Contract (if any)

Date: [ ]

Parties: [ ]

Form/nature of the contract: [ ]

### Time for provision of further information

The period for the supply of further information shall be [ ] days from the date of the relevant request.  
*(If no period is stated, a period of 7 days shall apply.)*

## 3.2

### Time for giving of approvals and decisions

The period within which the Purchaser shall respond to reasonable requests for approvals and decisions shall be [ ] days from the date of the relevant request.  
*(If no period is stated, a period of 7 days shall apply.)*

## 4.1

### Time for provision of further information

The period within which the Supplier shall respond to reasonable requests for further information shall be [ ] days from the date of the relevant request.  
*(If no period is stated, a period of 7 days shall apply.)*

[4] Where the Supplier is engaged as a professional sub-consultant, consideration should be given as to whether it is appropriate for clause 4.21 not to apply.

[5] State date, title and parties.

[6] As to service of notices etc. outside the United Kingdom, see the JCT - Constructing Excellence Contract Guide.

## 4.2

### Timescale

#### For completion of the Project:

[ ] \*weeks/months/years from [ ]

#### Commencement date for the provision of the Services:

[ ]

#### Date or Dates for Completion of the Services:

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

[ ]

Sections: Dates for Completion of the Services<sup>[2]</sup>

Section [ ] : [ ]

*(If no date is inserted for completion of the Services, the Supplier shall complete the Services as soon as reasonably practicable, taking into account the time required to properly perform the Services.)*

## 4.3.2

### Rectification Period

A Rectification Period will apply.

\* Yes/No

The Rectification Period will be [ ] months commencing on the later of:

- the Completion Date
- (where the Purchaser is not the Client) the completion date identified in the Purchaser's Contract.

*(If a Rectification Period is stated to be applicable but no period is completed, the Rectification Period will be 12 months commencing on the Completion Date. Where the Purchaser is not the Client, the Rectification Period will commence on the "Completion Date" as defined and calculated under the Purchaser's Contract.)*

## 4.4 and 4.5

### Professional services – duty of care<sup>[7]</sup>

The duty of care that will apply in relation to professional services provided by the Supplier, including carrying out the design and/or other professional services for which he is responsible, is that set out in:

- \* Clause 4.4 (reasonable skill and care)
- \* Clause 4.5 (reasonable skill and care of an appropriately qualified and competent designer)

## 4.6

### Lead Designer

The Supplier shall perform the role of the Lead Designer.

\* Yes/No

Where not the Supplier, and where known at the date of this Contract, the Lead Designer is

[ ]

[7] See the JCT - Constructing Excellence Contract Guide on duty of care and a further alternative standard. Delete the alternative that does not apply.

#### 4.7

---

##### **Lead Supplier**

The Supplier shall perform the role of the Lead Supplier.

\* Yes/No

Where not the Supplier, and where known at the date of this Contract, the Lead Supplier is

[ ]

#### 4.15 and 4.17

---

##### **The Supplier's key personnel and Supply Chain (if applicable)**

Details of the Supplier's key personnel and Supply Chain are set out in Tables A and B (respectively) of Part 4.

#### 4.18.2

---

##### **Principal designer and/or principal contractor**

The Supplier shall perform the role of the principal designer in accordance with the Construction (Design and Management) Regulations 2015.

\* Yes/No

The Supplier shall perform the role of the principal contractor in accordance with the Construction (Design and Management) Regulations 2015.

\* Yes/No

#### 4.19

---

##### **Obligations in relation to the Project Programme**

The Supplier shall be responsible for preparation, monitoring and updating of the Project Programme.

\* Yes/No

#### 4.20

---

##### **Obligations in relation to Progress Meetings**

The Supplier shall be responsible for arranging regular progress meetings.

\* Yes/No

#### 5.1

---

##### **Risk Register**

The Supplier shall be responsible for preparation of the Risk Register.

\* Yes/No

#### 5.2

---

##### **Risk Register**

The Supplier shall be responsible for updating and amendment of the Risk Register.

\* Yes/No

### 5.3

#### Risk Allocation Schedule

The Risk Allocation Schedule will apply.<sup>[8]</sup>

\* Yes/No

*(If the Risk Allocation Schedule is stated not to apply, clauses 5.3, 5.4 and 5.7.4 shall not apply, and in the opening line of clause 5.7.5 the words "is not referred to in the Risk Allocation Schedule," shall be deemed not to apply.)*

The adjustment for those items identified in the Risk Allocation Schedule will be carried out in accordance with clause 5.3.2 and on the following basis:<sup>[9]</sup>

In relation to cost, by reference to<sup>[10]</sup>:

- \* each individual item of risk using the specific percentage stated for that item (Risk Allocation Schedule A)
- \* the total of risk items using the single percentage stated (Risk Allocation Schedule B)

In relation to time, by reference to<sup>[10]</sup>:

- \* each individual item of risk using the specific period stated for that item (Risk Allocation Schedule A)
- \* the total of risk items using the single period stated (Risk Allocation Schedule B)

### 5.7.5

#### Relief Events

In clause 5.7.5 an event (namely the occurrence of any risk which is not referred to in the Risk Allocation Schedule and which is not reasonably foreseeable and is beyond the control of the Supplier, excluding any act, omission or insolvency of the Supplier, any member of the Supply Chain or any sub-supplier of the Supplier) shall constitute a Relief Event to the following extent:

To the extent of [ ]%<sup>[11]</sup> of the financial consequences of the relevant risk

To the extent of [ ]%<sup>[11]</sup> of the time consequences of the relevant risk

*(If no insertion is made the financial and time consequences will be shared equally between the Parties.)*

### 6

#### Key Performance Indicators

The performance of the Supplier and/or the Purchaser shall be measured against Key Performance Indicators.

\* Yes/No

The Key Performance Indicators applicable to the performance of the Supplier and the Purchaser are set out or referred to in Part 6.

### 7

#### Payment terms

The Supplier shall be entitled to payment on the following basis<sup>[10]</sup>:

- \* Target Cost Option – on the basis of a Target Cost and Guaranteed Maximum Cost
- \* Contract Sum Option – by reference to a Contract Sum

- 
- [8] The format of the Risk Allocation Schedule to be used is shown in Part 5 of the Contract Particulars and the completed Schedule should be attached to this Contract.
- [9] The Risk Allocation Schedule referred to in Part 5 of the Contract Particulars should be completed so as to enable this adjustment to be performed.
- [10] Delete the alternative that does not apply.
- [11] Complete as appropriate.

The detailed payment terms applicable to the performance of the Services (including where Target Cost applies details of any records required to be kept in order to demonstrate the required breakdown of Allowable Costs) are set out or referred to in Part 7.

## 7.6 and 7.19

### Application Date

The Application Date is the [ ] day of each month, commencing with the date next following the commencement of the Services under this Contract.<sup>[12]</sup>

## 7.29

### Liquidated damages

Liquidated damages will apply.<sup>[13]</sup>

\* Yes/No

*(If liquidated damages are stated to apply but no amount is stated, damages will be unliquidated.)*

Liquidated damages

*(where completion by Sections does not apply)*

at the rate of

£[ ] per [ ]

Sections: rate of liquidated damages<sup>[2]</sup>

Section [ ] : £[ ] per [ ]

## 7.30

### Bonus for early completion

A bonus or bonuses for early completion will apply.

\* Yes/No

*(If a bonus for early completion is stated to apply but no amount is stated, no bonus will be applicable.)*

Bonus for early completion

*(where completion by Sections does not apply)*

at the rate of

£[ ] per [ ]

Sections: bonus for early completion<sup>[2]</sup>

Section [ ] : £[ ] per [ ]

## 8.1

### Risks to be covered by insurance

The Supplier shall maintain the following insurance cover:

| Policy Cover                                     | Minimum amount of cover | Minimum period of cover |
|--|-------------------------|-------------------------|
| Professional Indemnity Insurance <sup>[14]</sup> |                         |                         |

[12] Where the Purchaser is not the Client but is a Tier 1 or Tier 2 Supplier, the monthly date to be inserted is the date that applies under the contract between the Client and his Tier 1 Supplier.

[13] Note that liquidated damages will not usually be applicable where the Supplier is a sub-supplier.

| Level of cover   | Amount of indemnity required  |  |
|--|---|--|
| <i>(If an alternative is not selected the amount shall be the aggregate amount for any one period of insurance. A period of insurance for these purposes shall be one year unless otherwise stated.)</i>   | relates to claims or series of claims arising out of one event <sup>[15]</sup><br>is the aggregate amount for any one period of insurance <sup>[15]</sup><br><br>and is |  |
| <i>(If no amount is stated, Professional Indemnity Insurance shall not be required.)</i>   | £[ ]  |  |
| Cover for pollution and contamination claims<br><i>(If no amount is stated, such cover shall not be required; unless otherwise stated, the required limit of indemnity is an annual aggregate amount.)</i> | is required, with a sub-limit of indemnity of <sup>[15]</sup><br>£[ ]<br><br>is not required <sup>[15]</sup>  |  |
| Cover for asbestos claims <sup>[16]</sup><br><i>(If no amount is stated, such cover shall not be required; unless otherwise stated, the required limit of indemnity is an annual aggregate amount.)</i>    | is required, with a sub-limit of indemnity of <sup>[15]</sup><br>£[ ]<br><br>is not required <sup>[15]</sup>  |  |
| Cover for toxic mould claims <sup>[16]</sup>   | is required <sup>[15]</sup><br><br>is not required <sup>[15]</sup>  |  |
| Public Liability Insurance   | £[ ]<br>for each and every claim  |  |
| Contractor's All Risks Insurance   | £[ ]<br>for each and every claim  |  |
| Employer's Liability Insurance   | £[ ]<br>for each and every claim  |  |
| Project Insurance <sup>[17]</sup>  | £[ ]  |  |

The Purchaser shall maintain the following insurance cover:

| Policy Cover       | Minimum amount of cover | Minimum period of cover |
|--------------------|-------------------------|-------------------------|
| Property Insurance | £[ ]                    |                         |
|                    | £[ ]                    |                         |
|                    | £[ ]                    |                         |
|                    | £[ ]                    |                         |

**[14]** In the absence of professional indemnity insurance, the Parties may agree to refer to alternative insurance if applicable.

**[15]** Delete as appropriate.

**[16]** Applicable only where the Supplier is engaged as a professional consultant.

**[17]** It is recommended that where comprehensive project insurance is available consideration is given to effecting such insurance. Where such insurance is to be effected the appropriate amendments should be made to section 8.

## 8.6

### Limitation on liability of Supplier

The maximum liability of the Supplier under this Contract shall not exceed the sum of

£ [ ]<sup>[18]</sup>

## 9.4

### Rights granted by Supplier and sub-suppliers

Any third party rights and/or collateral warranties are set out in Part 8 of these Contract Particulars.

## 11.2

### Negotiation between senior executives

For the purposes of clause 11.2, if agreed, the respective senior executives to whom disputes will be referred will be the individuals named, or the persons holding the offices, as set out below:

| Party     | Nominated senior executive | Person holding the following office |
|-----------|----------------------------|-------------------------------------|
| Purchaser | [ ]                        | [ ]                                 |
| Supplier  | [ ]                        | [ ]                                 |

## 11.3

### Adjudication<sup>[19]</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>[20]</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>[21]</sup>
- \* Chartered Institute of Arbitrators

## 12.1 and 12.2

### Supplementary Conditions<sup>[22]</sup>

*(Where neither entry against an item below is deleted, the relevant clause applies.)*

Clause 12.1: Health and safety

[18] Complete if a limit on liability has been agreed.

[19] 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.

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

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

[22] Clause 12.3 (Transparency) applies only where the Purchaser is a Local or Public Authority or other body to whom the Freedom of Information Act 2000 applies; clause 12.4 (The Public Contracts Regulations 2015) only applies where stated in those provisions.

\* Yes/No

Clause 12.2: Sustainable development and environmental considerations

\* Yes/No

DRAFT

## Part 2: Brief

The Brief comprises the following documents:

| Date | Document title |
|------|----------------|
|      |                |
|      |                |
|      |                |
|      |                |
|      |                |
|      |                |
|      |                |

BIM Protocol

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

\* applies as set out in the following document(s) included in the Brief

---

---

\* does not apply

Copies of the above document(s) are attached to this Contract.

### Part 3: Services

The Services are set out below and/or described in the document(s) listed below:

#### Details of the Services:

Document(s) describing the Services:

| Date | Document title |
|------|----------------|
|      |                |
|      |                |
|      |                |

Copies of the above document(s) are attached to this Contract.

## Part 4: Supplier's Key Personnel, Key Members of the Supply Chain and the Project Team

Table A: The Supplier's key personnel

| Relevant key personnel | Job title | Area(s) of expertise |
|------------------------|-----------|----------------------|
|                        |           |                      |
|                        |           |                      |
|                        |           |                      |
|                        |           |                      |
|                        |           |                      |
|                        |           |                      |
|                        |           |                      |
|                        |           |                      |
|                        |           |                      |
|                        |           |                      |
|                        |           |                      |
|                        |           |                      |

Table B: Details of the key members of the Supply Chain (if applicable)

| Name and address of Supply Chain member                 | Individuals involved on behalf of Supply Chain member and their position               | Role of Supply Chain member in relation to the Project |
|---|--|--|
| Name:<br><br>Address:<br><br><br>Telephone:<br><br>Fax: | Name:<br><br>Position:<br><br>E-mail:<br><br><br>Name:<br><br>Position:<br><br>E-mail: | Role:<br><br><br><br><br><br>Role:                     |
| Name:<br><br>Address:<br><br><br>Telephone:<br><br>Fax: | Name:<br><br>Position:<br><br>E-mail:<br><br><br>Name:<br><br>Position:<br><br>E-mail: | Role:<br><br><br><br><br><br>Role:                     |
| Name:<br><br>Address:<br><br><br>Telephone:<br><br>Fax: | Name:<br><br>Position:<br><br>E-mail:<br><br><br>Name:<br><br>Position:<br><br>E-mail: | Role:<br><br><br><br><br><br>Role:                     |
| Name:<br><br>Address:<br><br><br>Telephone:<br><br>Fax: | Name:<br><br>Position:<br><br>E-mail:<br><br><br>Name:<br><br>Position:<br><br>E-mail: | Role:<br><br><br><br><br><br>Role:                     |

**Table C: The Project Team**

The Project Team comprises the following members:

| <b>Organisation</b> | <b>Representative(s)</b> | <b>Address, telephone, fax and e-mail address</b> |
|---------------------|--------------------------|---|
|                     |                          |   |
|                     |                          |   |
|                     |                          |   |
|                     |                          |   |

DRAFT

## Part 5: Risk Allocation Schedule

### Risk Allocation Schedule A

Where the method of adjustment is on the basis of each risk<sup>[23]</sup>, the Risk Allocation Schedule shall be in the following or similar form and shall be **attached**:

| (Column 1)<br>Description of risk | (Column 2)<br>Amount (if any)<br>included in Target<br>Cost/Contract Sum to<br>meet the risk | (Column 3)<br>Time consequences of<br>the occurrence of the<br>risk (if any) for which<br>the Supplier will be<br>responsible | (Column 4)<br>Allocation of costs<br>incurred in excess of<br>column 2 allowance |               | (Column 5)<br>Allocation of time<br>consequences of<br>occurrence of the risk<br>in excess of the period<br>(if any) in column 3 <sup>[24]</sup> |               |
|-----------------------------------|--|---|--|---------------|--|---------------|
|                                   |  |   | Purchaser<br>%   | Supplier<br>% | Purchaser<br>%   | Supplier<br>% |
|                                   | £  | Period (days)   |  |               |  |               |
|                                   |  |   |  |               |  |               |
|                                   |  |   |  |               |  |               |
|                                   |  |   |  |               |  |               |
|                                   |  |   |  |               |  |               |
|                                   |  |   |  |               |  |               |
|                                   |  |   |  |               |  |               |
|                                   |  |   |  |               |  |               |

**Column 1** contains a description of the risk. To the extent that there is any disagreement on whether the relevant risk has occurred, it will be resolved in accordance with Dispute Resolution Procedure.

**Column 2** contains the amount (if any) included in the Target Cost/Contract Sum (whichever is applicable) relating to the relevant risk. If this amount is spent in full by the Supplier in meeting the risk, the extent to which the Purchaser is liable to contribute to any additional costs incurred by the Supplier in meeting the consequences of the risk is shown in column 4. If none, or only part of, the amount in column 2 is spent, there will be no adjustment to the Target Cost or Contract Sum (unless otherwise agreed in this Contract).

**Column 3** contains the time consequences (if any) for which the Supplier will be responsible. If this period is exceeded, the extent to which the Purchaser is liable to contribute to any further period during which the Supplier is delayed is set out in column 5.

**Column 4** allocates responsibility for the allowable cost incurred by the Supplier in relation to the risk as between Purchaser and Supplier after the amount (if any) shown in column 2 has been expended.

**Column 5** shows how the time consequences of a relevant risk over and above the period of time (if

**[23]** See the selection made against the reference to clause 5.3 in Part 1 of the Contract Particulars. Any amount or days inserted shall be the aggregate for each described risk unless otherwise stated in the description.

**[24]** In relation to any time consequences for which the Purchaser is responsible (and for which the Supplier will be entitled to an extension of time) which are less than a day, the total of all extensions of time of parts of a day should be rounded up to the nearest whole day in relation to each Date or Dates for Completion.

any) for which the Supplier is responsible (as set out in column 3) are allocated between Purchaser and Supplier. To the extent that the Purchaser is responsible, an appropriate extension of time will be granted to the Supplier provided that the delay will affect the relevant Date or Dates for Completion.

DRAFT

## Risk Allocation Schedule B

Where the method of adjustment is on the basis of the total amount and/or total period of all the risks<sup>[25]</sup>, the Risk Allocation Schedule shall be in the following or similar form and shall be **attached**:

| (Column 1)<br>Description of risk | (Column 2)<br>Amount (if any)<br>included in Target<br>Cost/Contract Sum to<br>meet all the risks | (Column 3)<br>Time consequences of<br>the occurrence of the<br>risks (if any) for which<br>the Supplier will be<br>responsible | (Column 4)<br>Allocation of costs<br>incurred in excess of<br>column 2 allowance |               | (Column 5)<br>Allocation of time<br>consequences of<br>occurrence of the<br>risks in excess of the<br>period (if any) in<br>column 3 <sup>[26]</sup> |               |
|-----------------------------------|---|--|--|---------------|--|---------------|
|                                   | £   | Period (days)  | Purchaser<br>%   | Supplier<br>% | Purchaser<br>%   | Supplier<br>% |
|                                   |   |  |  |               |  |               |
|                                   |   |  |  |               |  |               |
|                                   |   |  |  |               |  |               |
|                                   |   |  |  |               |  |               |
|                                   |   |  |  |               |  |               |
|                                   |   |  |  |               |  |               |
|                                   |   |  |  |               |  |               |
|                                   |   |  |  |               |  |               |
| <b>Total for all risk items</b>   |   |  |  |               |  |               |

**Column 1** contains a description of the risk. To the extent that there is any disagreement on whether the relevant risk has occurred, it will be resolved in accordance with Dispute Resolution Procedure.

**Column 2** contains the amount (if any) included in the Target Cost/Contract Sum (whichever is applicable) relating to all the risks described. If this amount is spent in full by the Supplier in meeting the risks, the extent to which the Purchaser is liable to contribute to any additional costs incurred by the Supplier in meeting the consequences of the risks is shown in column 4. If none, or only part of, the amount in column 2 is spent, there will be no adjustment to the Target Cost or Contract Sum (unless otherwise agreed in this Contract).

**Column 3** contains the time consequences (if any) for which the Supplier will be responsible. If this period is exceeded, the extent to which the Purchaser is liable to contribute to any further period during which the Supplier is delayed is set out in column 5.

**Column 4** allocates responsibility for the allowable cost incurred by the Supplier in relation to the risks as between Purchaser and Supplier after the amount (if any) shown in column 2 has been expended.

**Column 5** shows how the time consequences of the risks over and above the period of time (if any) for which the Supplier is responsible (as set out in column 3) is allocated between Purchaser and Supplier. To the extent that the Purchaser is responsible, an appropriate extension of time will be

**[25]** See the selection made against the reference to clause 5.3 in Part 1 of the Contract Particulars. Any amount or days inserted shall be for total of all risks described.

**[26]** In relation to any time consequences for which the Purchaser is responsible (and for which the Supplier will be entitled to an extension of time) which are less than a day, the total of all extensions of time of parts of a day should be rounded up to the nearest whole day in relation to each Date or Dates for Completion.

granted to the Supplier provided that the delay will affect the relevant Date or Dates for Completion.

DRAFT

## Part 6: Key Performance Indicators

The Key Performance Indicators applicable to the Supplier's performance are attached and/or are set out in the following document(s):

| Date | Document title |
|------|----------------|
|      |                |
|      |                |
|      |                |

The Key Performance Indicators applicable to the Purchaser's performance are attached and/or are set out in the following document(s):

| Date | Document title |
|------|----------------|
|      |                |
|      |                |
|      |                |

## Part 7: Payment Terms

The payment terms applicable to the performance of the Services are either set out below or set out in the documents listed below and attached<sup>[27]</sup>.

| Date | Document title |
|------|----------------|
|      |                |
|      |                |
|      |                |

### Target Cost Option

The minimum **records** that the Supplier is required to keep and the form of the **breakdown of Allowable Costs** required to be provided by the Supplier are set out below<sup>[27]</sup> or detailed in the document(s) listed below and attached:

**Details of the minimum records and the form of the breakdown of Allowable Costs:**

Document(s) describing the minimum records and the form of the breakdown of Allowable Costs:

| Date | Document title |
|------|----------------|
|      |                |
|      |                |

**[27]** Either complete the appropriate Option or attach the listed documents that contain the payment terms that will apply.

|  |  |
|--|--|
|  |  |
|--|--|

The **Target Cost** for the performance of the Services is:

£ \_\_\_\_\_

The Guaranteed Maximum Cost (if any) is:

£ \_\_\_\_\_

The Supplier's Margin will be<sup>[28]</sup>:

\* £ \_\_\_\_\_

\* \_\_\_\_\_ % of the Target Cost

**Instalments of Supplier's Margin**

Instalments of the Supplier's Margin will be due on the dates, or the occurrence of the events, either set out below or as attached:<sup>[29]</sup>

| Date/event | Amount/percentage of Supplier's Margin payable | Cumulative total |
|------------|--|------------------|
| 1          |  |                  |
| 2          |  |                  |
| 3          |  |                  |
| 4          |  |                  |
| 5          |  |                  |
| 6          |  |                  |
| 7          |  |                  |
| 8          |  |                  |

**Sharing differences where Allowable Cost is less than Target Cost**

If the total of the Allowable Cost of completing the Services is less than the Target Cost, the difference will be shared between the Purchaser and the Supplier in the following percentages:

| Difference <sup>[30]</sup> | Percentage retained by Purchaser | Percentage due to Supplier |
|----------------------------|----------------------------------|----------------------------|
|----------------------------|----------------------------------|----------------------------|

**[28]** It is recommended that, however the Supplier's Margin is calculated initially, it should be expressed as a fixed sum. See the JCT - Constructing Excellence Contract Guide. However, the Supplier's Margin may be expressed as a fixed or variable fee or percentage of the Target Cost or any other variation that may be agreed between the parties.

**[29]** Either complete or attach the necessary information.

**[30]** As an alternative the Parties may wish to express the bands using percentages, i.e. the difference between the Actual Cost and Target Cost being expressed as a percentage. If so, the appropriate amendments should be made.

|                  |  |  |
|------------------|--|--|
| £_____ to £_____ |  |  |
| £_____ to £_____ |  |  |
| £_____ to £_____ |  |  |
| £_____ to £_____ |  |  |

**Sharing differences between Target Cost and Guaranteed Maximum Cost**

If the total of the Allowable Cost of completing the Services exceeds the Target Cost but is less than or equal to the Guaranteed Maximum Cost (if any), the difference will be borne by the Purchaser and the Supplier in the following percentages:

| Difference <sup>[30]</sup> | Percentage borne by Purchaser | Percentage borne by Supplier |
|----------------------------|-------------------------------|------------------------------|
| £_____ to £_____           |                               |                              |
| £_____ to £_____           |                               |                              |
| £_____ to £_____           |                               |                              |
| £_____ to £_____           |                               |                              |

**Contract Sum Option**

The **Contract Sum** for the performance of the Services is:

£\_\_\_\_\_

**The Contract Sum will be subject to re-measurement.**

\* Yes/No

**Payment by reference to a Payment Schedule**

The Payment Schedule or Schedules comprise the document(s) listed below and attached:

| Date | Document title |
|------|----------------|
|      |                |
|      |                |
|      |                |

## Part 8: Third Party Rights and Collateral Warranties

The Supplier shall procure rights/deeds of collateral warranty in favour of third parties as set out in this Part 8.

*(Part 8.A/8.B/8.C should be completed or deleted as appropriate.)*

### 8.A Third Party Rights granted by Supplier

1

| The Beneficiaries <sup>[31]</sup> are: | purchaser/tenant, Client or Funder <sup>[32]</sup> |
|--|--|
|  |  |
|  |  |
|  |  |
|  |  |

2

The Supplier warrants to each of the Beneficiaries identified above that he will comply (and has complied) with his obligations under this Contract, which includes but is not limited to the following clauses:

Clause 4.2 Delivery of Services

Clause 4.3 Carrying out Services

Clause 4.4/4.5<sup>[33]</sup> Duty of care

Clause 4.10 Copyright

Clause 4.13 Deleterious materials

Clause 8.1 Insurance, insofar as the Supplier is obliged to maintain professional indemnity insurance, for the amount and duration specified in Part 1.

3

Where the Beneficiary is a purchaser or tenant, the rights granted by the Supplier are subject to paragraphs 3.1 to 3.3:

3.1 The Supplier shall have no liability to any Beneficiary for delay in completing the Services.

3.2

3.2.1 The Supplier shall be liable for the reasonable costs of repair, renewal and/or reinstatement of any part or parts of the Services to the extent that the purchaser or tenant incurs such costs and/or the purchaser or tenant is or becomes liable either directly or by way of financial contribution for such costs; and

3.2.2 <sup>[34]</sup>the Supplier shall in addition to the costs referred to in paragraph 3.2.1 be liable for any other losses incurred by the purchaser or tenant up to the maximum liability stated in paragraph 3.3.

[31] The name, class or description of the organisation should be inserted.

[32] Where the Beneficiary is named, insert here whether as a purchaser/tenant, Client or Funder.

[33] Delete as applicable, see Part 1 of the Contract Particulars.

[34] Delete this sub-paragraph if liability is to be restricted to the reasonable costs of repair, renewal and/or reinstatement.

3.3 <sup>[35]</sup>The liability of the Supplier to each Beneficiary shall under no circumstances exceed  
£ \_\_\_\_\_ in respect of each breach/in the aggregate\*.

4 <sup>[36]</sup>The Supplier's liability arising in relation to the rights granted to a Beneficiary shall be limited to the proportion of the losses which it would be just and equitable to require the Supplier to pay having regard to the extent of the Supplier's responsibility for the same on the basis that the organisations set out in paragraph 9 below are deemed to have entered into contractual obligations on terms no less onerous than those of the Supplier referred to in this Part 8.A and to have paid the relevant Beneficiary of those contractual obligations the proportion it would be just and equitable for them to pay having regard to the extent of their liability.

5 The Supplier shall be entitled in any action or proceedings by the Beneficiary to rely on any term in this Contract and to raise the equivalent rights in defence of liability as he would have against the Purchaser under this Contract.

6 The rights of each Beneficiary shall commence:

6.1 where the Beneficiary is a purchaser or tenant – on the later of the date of completion of the Services or the date on which the Beneficiary acquires an interest in the Project;

6.2 where the Beneficiary is the Client or a Funder – on the date of execution of this Contract or, in the case of a Funder, on the date of execution of a relevant financing agreement with the Client, if that occurs later.

7 The Beneficiary has no authority to issue any direction or instruction to the Supplier in relation to this Contract except where step-in rights are exercised under paragraph 12.2.

8 The rights contained in this Schedule may be assigned without the Supplier's consent by the Beneficiary, by way of absolute legal assignment, to another person (P1) and by P1, by way of absolute legal assignment, to another person (P2). In such cases the assignment shall only be effective upon written notice of the assignment being given to the Supplier. No further or other assignment of the rights will be permitted and in particular P2 shall not be entitled to assign these rights.

9 The organisations referred to in paragraph 4 of this Part 8.A are<sup>[37]</sup>:

Architect: \_\_\_\_\_

Quantity surveyor: \_\_\_\_\_

Structural engineer: \_\_\_\_\_

Building services engineer: \_\_\_\_\_

Civil engineer: \_\_\_\_\_

Other suppliers: \_\_\_\_\_

\_\_\_\_\_ :

*Paragraphs 10 to 12 only apply where the Beneficiary is a Client or Funder.*

10 The Beneficiary has no liability to the Supplier in respect of amounts due under this Contract unless and until the Beneficiary has given notice under paragraph 12.2.

11 Where the Beneficiary is a Funder he will have step-in rights.

\* Yes/No

Where the Beneficiary is the Client he will have step-in rights.

\* Yes/No

[35] Delete or complete as required, see Part 1 of the Contract Particulars as to maximum liability, if any.

[36] Delete as appropriate.

[37] Where the Purchaser is not the Client, the Purchaser should be included in respect of Services other than those to be performed under this Contract.

**12** Where the Beneficiary has step-in rights, the following will apply:

- 12.1 The Supplier, if he wishes to terminate this Contract, must give at least 14 days' notice to the Beneficiary of his intention to terminate.
- 12.2 If within that period the Beneficiary to whom the notice was given requires the Supplier to accept his instructions to the exclusion of the Purchaser, the Purchaser and Supplier shall comply with that requirement on the condition that the Beneficiary accepts liability for all payments outstanding at the date of the exercise of the step-in rights and all payments subsequently becoming due to the Supplier under this Contract. This Contract will then continue as if the termination right had not arisen and the Supplier's liability shall be to the Beneficiary instead of to the Purchaser and the Beneficiary shall take over the obligations of the Purchaser.
- 12.3 If the Supplier serves a notice under paragraph 12.1 on both the Client and the Funder, the Funder's notice (if any) under paragraph 12.2 will have priority over any notice served under paragraph 12.2 by the Client.

**8.B Collateral Warranties**

**1**

|  |  |
|--|--|
| The Beneficiaries <sup>[31]</sup> are: | purchaser/tenant, Client or Funder <sup>[32]</sup> |
|  |  |
|  |  |
|  |  |
|  |  |

- 2** The Supplier shall enter into a collateral warranty in favour of each of the Beneficiaries identified in this Part 8.B in the relevant annexed form of collateral warranty.

**8.C Third Party Rights to be granted by sub-suppliers of the Supplier**

**1**

|                        |
|------------------------|
| The sub-suppliers are: |
|                        |
|                        |
|                        |
|                        |

**2**

|  |  |
|--|--|
| The Beneficiaries <sup>[31]</sup> are: | purchaser/tenant, Client or Funder <sup>[32]</sup> |
|--|--|

|  |  |
|--|--|
|  |  |
|  |  |
|  |  |
|  |  |

- 3** The Supplier shall procure that each sub-supplier carrying out design shall grant to each of the Beneficiaries respectively identified in this Part 8.C the benefit of the same rights in the Supplier – sub-supplier Subcontract as those referred to in Part 8.A and the rights granted by the sub-supplier to each Beneficiary will be subject to the same provisions as are referred to in Part 8.A.

Or

The Supplier shall procure that each sub-supplier carrying out design shall enter into a collateral warranty in favour of each of the Beneficiaries respectively identified in this Part 8.C, in the relevant annexed form of collateral warranty as amended by any amendments proposed by the sub-supplier and approved by the Supplier and the Client.

DRAFT

## **Part 9: Details of any Supplementary Conditions**

The other supplementary conditions referred to in clause 12.5 are those set out and/or referred to below.

DRAFT

## Attestation

### Note on Execution

This Agreement should be executed by both the Purchaser and the Supplier either under hand or as a deed. As to factors relevant to that choice, see the JCT - Constructing Excellence Contract Guide.

#### Execution under hand

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

#### Execution as a Deed

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

#### Other forms of Attestation

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

*Execution under hand*

## As witness

the hands of the Parties  
or their duly authorised representatives

Signed by or on behalf of  
the Purchaser

in the presence of:

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

\_\_\_\_\_  
*witness' name*

\_\_\_\_\_  
*witness' address*

Signed by or on behalf of  
the Supplier

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 Purchaser and the other for the Supplier. Each form provides four methods of execution, **(A)** to **(D)**, for use as appropriate. The full name of the Purchaser or Supplier (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 Purchaser or Supplier 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 Purchaser**

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 Supplier**

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:

**Allowable Cost:** the actual cost incurred by the Supplier in carrying out the Services net of all discounts, rebates and taxes which can be recovered by the Supplier, ascertained on an open book basis in accordance with clauses 7.2 to 7.15 including any additional sums payable in accordance with section 5 but excluding:

- the Supplier's Margin; and
- any Excluded Costs.

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

**Application Date:** the monthly date specified in Part 1 of the Contract Particulars (against the reference to clauses 7.6 and 7.19).

**Beneficiaries:** the beneficiaries set out in Part 8 of the Contract Particulars.

**BIM Protocol:** (where applicable) the document identified as such in Part 2 of the Contract Particulars.

**Brief:** the document or documents (if any) describing the requirements which the Supplier is to satisfy by the performance of the Services, as referred to in Part 2 of the Contract Particulars.

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

**Client:** the person identified in the Agreement as the Client who is procuring the Project (who may also be the Purchaser).

**Completion Date:** the date or dates on which the Purchaser certifies that the Services or Services within any relevant Section are complete in accordance with clause 3.7.

**Conditions:** the clauses set out in sections 1 to 12 of these Conditions, together with and including any other supplementary conditions set out or referred to in Part 9 of the Contract Particulars.

**Contract:** the agreement between the Purchaser and the Supplier relating to the provision of the Services comprising the Agreement, these Conditions and any other documents referred to in the Contract Particulars.

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

**Contract Sum:** the amount payable to the Supplier for performing the Services.

**Date or Dates for Completion:** the date or dates stated in Part 1 of the Contract Particulars for completion of the Services subject to any revisions in accordance with section 5.

**Dispute Resolution Procedure:** the procedure for resolving disputes, as set out in clauses 11.1 to 11.4.

**Excluded Cost:** cost which the Purchaser does not permit the Supplier to recover because it:

- is not properly incurred for the performance of the Services; or
- is not substantiated by the Supplier's records; or
- falls within the Supplier's Margin.

**Funder:** the person named or otherwise sufficiently identified as such in Part 8 of the Contract Particulars.

**Guaranteed Maximum Cost:** the maximum payment (excluding the amount of the Supplier's Margin) for the performance of the Services that the Supplier shall be entitled to receive under this Contract as recorded in Part 7 of the Contract Particulars (subject to any revision in accordance with section 5).

**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.

**Key Performance Indicators:** as appropriate to the context, the Key Performance Indicators of the Supplier's performance and the Key Performance Indicators of the Purchaser's performance as set out or referred to in Part 6 of the Contract Particulars.

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

**Other Party:** the party which entered into the Purchaser's Contract with the Purchaser.

**Overriding Principle:** the principle set out in clause 2.1.

**Parties:** the Purchaser and the Supplier together.

**Party:** either the Purchaser or the Supplier.

**Pay Less Notice:** see clause 7.9 or 7.22, as applicable.

**Payment Schedule:** the Payment Schedule (if any) showing the payments due to the Supplier by reference to completed activities or milestones or progress against the Project Programme or other programme applicable to the provision of the Services which is agreed between the Supplier and the Purchaser and referred to in Part 7 of the Contract Particulars, as revised in accordance with clause 7.24.

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

**Project:** the Client's project (brief details of which are set out in Part 1 of the Contract Particulars) for which the Services are to be provided.

**Project Participants:** the parties engaged by the Client or by any supplier to provide work and/or services in relation to the Project from time to time.

**Project Programme:** the programme showing the proposed sequence of events for the delivery of the Services and the Project.

**Project Team:** the integrated team involved in managing the delivery of the Project comprising the Client and the persons listed in Table C of Part 4 of the Contract Particulars and any additional persons who may become members of the Project Team from time to time in accordance with clause 2.3 or any Project Team Agreement.

**Project Team Agreement:** the agreement (if any) entitled 'Project Team Agreement' entered into between the members of the Project Team.

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

**Purchaser:** the Party to this Contract who is identified as such in the Agreement (who may also be the Client).

**Purchaser's Contract:** the contract under which the Purchaser is engaged in relation to the Project.

**Purchaser's Representative:** the representative appointed by the Purchaser in accordance with clause 3.5 or any replacement.

**Rectification Period:** see clause 4.3.2.

**Relief Event:** any one or more of the events described in clauses 5.7 and 5.8.

**Risk Allocation Schedule:** the document of the same name referred to in Part 5 of the Contract Particulars setting out the allocation of the risks specified between the Purchaser and the Supplier.

**Risk Register:** the register of risks identified in relation to the Project in accordance with clause 5.1 as updated and amended from time to time in accordance with clause 5.2.

**Sections:** (where applicable) the sections into which the Project has been divided, as set out in Part 1 of the Contract Particulars.

**Services:** the services, works and/or goods to be supplied by the Supplier in accordance with this Contract as set out in Part 1 and Part 3 of the Contract Particulars.

**Site:** the place or places where the Project is to be constructed, as set out in Part 1 of the Contract Particulars.

**Supplier:** the Party to this Contract who is identified as such in the Agreement.

**Supplier's Margin:** the amount or percentage set out in Part 7 of the Contract Particulars as representing the Supplier's profit, central office overheads and administrative costs and including:

- head office costs and other central costs of the Supplier including accounting, human resources, legal, marketing, administration and commercial services;
- insurances (other than insurances taken out for the purposes of this Contract);
- rent, and utilities and other costs attributable to property (except for costs which are site related and incurred only for the purposes of this Contract);
- finance costs;
- licences, royalties and other fees payable to third parties for the use of intellectual property (unless these are obtained solely for the purposes of this Contract).

**Supply Chain:** those members of the Supplier's supply chain identified in Table B of Part 4 of the Contract Particulars who will be responsible for the delivery of important elements of the Services together with any additional individuals or organisations engaged by the Supplier during the period of this Contract to assist the Supplier in providing the Services.

**Target Cost:** the sum so identified in Part 7 of the Contract Particulars in relation to the performance of the Services (subject to any revision in accordance with section 5 and clauses 7.14 and 7.15).

**Tier 1 Supplier:** a person directly contracted to the Client in relation to the Project.

**Tier 2 Supplier:** a person subcontracted to a Tier 1 Supplier.

## 1.2 Reference to clauses

Unless otherwise stated, a reference in the Agreement or these Conditions to a clause is to that clause in 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 Contract to be read as a whole**

This Contract is to be read as a whole. Except for any supplementary conditions set out or referred to in Part 9 of the Contract Particulars (which shall override any other provisions in this Contract with which they are inconsistent), nothing contained in any document referred to in the Agreement, nor anything in any Framework Agreement, shall override or modify these Conditions or the Agreement.

**1.6 Contracts (Rights of Third Parties) Act 1999**

Except as provided in clause 9.4, nothing in this Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

**1.7 Giving of notices<sup>[38]</sup>**

- 1.7.1 Any notice must be in writing and shall be deemed to be duly given or served if addressed and given by hand or sent by Recorded Signed for or Special Delivery post to the Party to be served at the address stated in Part 1 of the Contract Particulars or such other address as may from time to time be agreed. Notice sent by post shall be deemed to have been delivered 2 Business Days after posting.
- 1.7.2 If there is then no current agreed address for the Party to be served, the notice or other document shall be effectively served if given by hand or sent by Recorded Signed for or Special Delivery post to the Party's last known principal business address, or, if a body corporate, its registered or principal office.
- 1.7.3 Where necessary to prevent or mitigate any immediate risk to health and safety, a notice may be given orally, in which case it must be confirmed in writing by either Party within 3 Business Days.

**1.8 Consents and approvals**

Where consent or approval of either Party is expressly required under these Conditions and is requested, such consent or approval shall not be unreasonably delayed or withheld, except in the case of either Party's consent under clause 9.1 the giving of which shall be at the sole discretion of the Party from whom it is sought.

**1.9 Applicable law**

This Contract shall be governed by and construed in accordance with the law of England.<sup>[39]</sup>

**[38]** If e-mail is intended to be included as a means for the service of notices, a protocol for the service of notices by e-mail should be added as a supplementary condition in Part 9 of the Contract Particulars.

**[39]** 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 Working Together

### 2.1 Overriding Principle

The Overriding Principle guiding the Purchaser and the Supplier in the operation of this Contract is that of collaboration. It is their intention to work together with each other and with all other Project Participants in a co-operative and collaborative manner in good faith and in the spirit of trust and respect. To that end the Purchaser and the Supplier agree they shall each give to, and welcome from, the other, and the other Project Participants, feedback on performance and shall draw each other's attention to any difficulties and shall share information openly, at the earliest practicable time. They shall support collaborative behaviour and address behaviour that does not comply with the Overriding Principle.

### 2.2 Entry into a Project Team Agreement

The provisions of clauses 2.3, 2.4 and 2.6 shall be superseded by any contrary provisions set out in any Project Team Agreement that the members of the Project Team may enter into.

### 2.3 Composition of Project Team

The initial members of the Project Team shall comprise the Client, the Lead Designer, the Lead Supplier and those suppliers who are considered by the Client to be of key importance for the successful design, construction and management of the delivery of the Project. The Project Team members may, from time to time, invite other Project Participants to join the Project Team and/or to change the composition of the Project Team, in each case following consultation with the other Project Team members at that time. If the individual members are unable to reach agreement on any proposed changes in the composition of the Project Team, the Client shall decide after taking account of the views of the Project Team.

### 2.4 Role of Project Team

The role of the Project Team is to guide the successful delivery of the Project through its design and construction. The Project Team will meet at regular intervals to share information relating to the Project, to consider the risks and opportunities affecting the Project, to consider how best to co-ordinate and manage the Project, to review progress and to make any decisions necessary for the successful delivery of the Project which are then communicated to all relevant Project Participants.

### 2.5 Progress meetings

The Purchaser shall give reasonable notice to the Supplier of any progress meetings at which his attendance is required.

### 2.6 Drawing up of a project protocol

If engaged as a member of the Project Team, the Supplier, together with the other members of the Project Team, shall give serious consideration to drawing up and adopting a project protocol setting out the aims and objectives of the Project Team with regard to the delivery of the Project and the development of their working relationships.

### 2.7 Signatories to and display of project protocol

Any project protocol shall be signed by a senior representative of each member of the Project Team and copies of the signed project protocol shall be prominently displayed at the places for work of all the members of the Project Team, on the Site and in accommodation on, or serving, the Site.

### 2.8 Status of project protocol

The provisions of any project protocol shall not create any contractual obligation and any failure to adhere to its terms shall not of itself constitute any breach of this Contract.

### 2.9 Effect of Overriding Principle

In the event of any dispute between the Parties and/or the members of the Project Team, it is the intention that any court or adjudicator or other forum to which the dispute is referred shall take

account of the Overriding Principle and of the Parties' adherence to it when making any award.

**2.10 Provision of information**

The Purchaser and the Supplier shall co-operate with the other members of the Project Team in the provision of information with a view to ensuring that relevant information is provided to all Project Participants needing this information in a timely fashion and with a view to ensuring that all relevant dates in the Project Programme will be met.

**2.11 Identification of ambiguities and discrepancies**

If the Supplier identifies any ambiguities or discrepancies in any information provided by the Purchaser or any other member of the Project Team, the Supplier shall agree how to resolve them after consultation, if appropriate, with the Project Team. If no agreement is reached, the Purchaser shall issue an instruction.

DRAFT

## Section 3 Primary Obligations of the Purchaser

### 3.1 Provision of information and a copy of any Purchaser's Contract

The Purchaser shall provide the Supplier with all information in his possession regarding the Project which is necessary for, and which the Purchaser reasonably considers to be relevant to, the delivery of the Services. The Purchaser shall respond to all reasonable requests for further information received from the Supplier within the period referred to in Part 1 of the Contract Particulars or any other period that the Parties may agree. Where the Purchaser is engaged under any Purchaser's Contract which relates to the performance of the Services, the Purchaser shall provide a copy to the Supplier (which may omit details of any rates or prices and any information that is not relevant to the performance of the Services).

### 3.2 Responses to requests for approval and decisions

The Purchaser shall respond to all reasonable requests for approvals and decisions within the period referred to in Part 1 of the Contract Particulars or any other period that the Parties may agree and shall ensure that his contracts with other members of the Project Team contain similar provisions.

### 3.3 Access to Site

The Purchaser shall give the Supplier access to the Site necessary to enable the Supplier to perform his obligations.

### 3.4 Payment

The Purchaser shall make payment of all sums due to the Supplier in accordance with this Contract.

### 3.5 Purchaser's Representative

The Purchaser shall engage the Purchaser's Representative who will have the authority to act on the Purchaser's behalf in relation to the Project and who shall be the point of first contact for the Supplier. The Purchaser shall only remove the Purchaser's Representative for good reason after notifying the Supplier, and shall appoint a replacement.

### 3.6 Consultation with Supplier

Where the Supplier is a sub-supplier and the Purchaser's Contract provides for any matters to be decided by, or with the agreement of, the Other Party, the Purchaser shall, whenever any of those matters concern the Supplier under this Contract, use reasonable endeavours to consult with the Supplier before the decision falls to be determined or agreed under the Purchaser's Contract. The Purchaser shall also use reasonable endeavours to involve the Supplier in any discussions or negotiations with the Other Party under the Purchaser's Contract relating to any such matters.

### 3.7 Certifying completion

After satisfactory inspection and completion of any commissioning or other completion tests, the Purchaser shall certify the Completion Date, being the date when in the reasonable opinion of the Purchaser, the Services or Services within any relevant Section were completed. The Supplier shall give to the Purchaser at least 7 days' notice of his intention to request a certificate from the Purchaser certifying the Completion Date.

## Section 4 Primary Obligations of the Supplier

### 4.1 Provision of information

The Supplier shall provide to the Purchaser and other members of the Project Team all information in his possession regarding the performance of the Services which the Purchaser or any other members of the Project Team reasonably considers relevant to the delivery of the Project. The Supplier shall respond to all reasonable requests for further information received from the Purchaser within the period referred to in Part 1 of the Contract Particulars or any other period that the Parties may agree.

### 4.2 Delivery of Services and responsibility for Supply Chain

The Supplier shall be responsible to the Purchaser for the delivery of the Services in accordance with this Contract and shall be responsible to the Purchaser for the performance of his Supply Chain (if any) in relation to the delivery of the Services.

### 4.3 Carrying out Services

4.3.1 The Supplier shall carry out, or procure the carrying out by his Supply Chain of, the Services in accordance with this Contract to the reasonable satisfaction of the Purchaser, with all personnel, materials and plant necessary for the safe, efficient and timely completion of the Services.

4.3.2 The Rectification Period is 12 months (unless otherwise stated in Part 1 of the Contract Particulars) commencing on the relevant Completion Date (unless otherwise stated in Part 1 of the Contract Particulars) and any defects that appear during the Rectification Period and which have been notified not later than 14 days after the expiry of such period shall be remedied by the Supplier at his expense.

### 4.4 Duty of care

If Part 1 of the Contract Particulars states that clause 4.4 applies, the Supplier shall exercise reasonable skill and care in carrying out the design and/or other professional services for which he is responsible.

### 4.5 Extended duty of care

If Part 1 of the Contract Particulars states that clause 4.5 applies, the Supplier shall, in carrying out the design and/or other professional services for which he is responsible, exercise the level of skill and care reasonably to be expected of an appropriately qualified and competent professional designer providing those services in relation to projects of a similar size and scope to the Project.

### 4.6 Lead Designer

If appointed as the Lead Designer under Part 1 of the Contract Particulars, the Supplier shall (exercising the level of skill and care referred to in clause 4.4 or 4.5 whichever is stated in Part 1 of the Contract Particulars to apply) be responsible for co-ordinating and integrating the input of all suppliers in relation to the design of the Project (but will not be liable for the design of other suppliers).

### 4.7 Lead Supplier

If appointed as the Lead Supplier under Part 1 of the Contract Particulars, the Supplier shall be responsible for co-ordinating and integrating the input of all suppliers in relation to the construction of the Project.

### 4.8 Support for Lead Designer and/or Lead Supplier

If the Supplier is not appointed as the Lead Designer and/or the Lead Supplier, the Supplier shall provide all reasonable assistance to the Lead Designer and/or to the Lead Supplier to co-ordinate the design and/or construction of the Services.

### 4.9 Copies of designs

The Supplier shall ensure that copies of all designs having, or likely to have, an effect on the

appearance, standard or functionality of the Project are supplied to the Purchaser in a form that the Purchaser can readily understand (accompanied by any additional explanation by the Supplier that may be necessary, or as may be reasonably requested by the Purchaser in the particular circumstances). The Supplier shall allow the Purchaser a reasonable time for commenting on any designs.

#### **4.10 Copyright**

The Supplier grants (and shall procure that any relevant member of his Supply Chain grants) to the Purchaser an irrevocable, assignable, royalty free licence to use, copy and reproduce all designs and related documents prepared in connection with the Services for any purpose relating to the Project including, without limitation, the construction, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Project. That licence shall enable the Purchaser to copy and use the designs and related documents for an extension of the Project but shall not include any right or licence to reproduce the designs contained in them for any such extension. All rights including (without limitation) copyright will remain with the Supplier or the relevant member of the Supply Chain. The Supplier shall not be liable for any use by the Purchaser of any of the above documents for any purpose other than that for which they were prepared.

#### **4.11 Payment of royalties**

Any royalties payable in respect of any patents, processes or inventions shall be the sole responsibility of the Supplier. Further, the Supplier shall make good to the Purchaser all claims, proceedings, costs and damages incurred by the Purchaser on account of any intellectual property right infringed by the Supplier, any sub-suppliers of the Supplier or other person for whom the Supplier is responsible.

#### **4.12 Goods and materials**

Goods and materials provided by the Supplier shall be of good quality and conform to the requirements of this Contract. In selecting materials the Supplier shall give consideration to environmental and sustainability considerations where appropriate.

#### **4.13 Deleterious materials**

Unless expressly instructed by the Purchaser, the Supplier will not specify for use and will not use, or knowingly allow to be used, in the performance of the Services, any materials generally known to be deleterious to health and safety or to the durability of the Project in the particular circumstances in which they are used.

#### **4.14 Compliance with instructions of Purchaser**

The Supplier shall comply with all reasonable instructions in writing from the Purchaser or the Purchaser's Representative relating to the Project.

#### **4.15 Key personnel**

The Supplier shall engage the key personnel named in Table A of Part 4 of the Contract Particulars (who will be suitably qualified to perform their relevant roles) in the performance of the Services and will not replace any of the persons named without the approval of the Purchaser. Any replacement will be suitably qualified to perform the relevant role.

#### **4.16 Involvement of Supply Chain**

The Supplier shall endeavour to work together with, and fully involve, his Supply Chain (if any) in the delivery of the Services, and shall organise or take part in project planning, risk and value engineering workshops involving all or relevant members of his Supply Chain and other Project Participants as necessary or appropriate to the stage of the Project.

#### **4.17 Engagement of Supply Chain**

The Supplier shall use reasonable endeavours to engage all members of his Supply Chain using the JCT - Constructing Excellence Contract (CE) or otherwise on terms that fully reflect the terms of this Contract. In the latter case, the Supplier shall provide to the Purchaser a copy of the terms proposed and shall advise of any change to these terms. The Supplier acknowledges that terms imposing more onerous obligations on members of the Supply Chain are to be avoided except as provided by clauses 7.6 and 7.7 or 7.19 and 7.20, whichever apply. The Supplier will not replace any of the members of the Supply Chain identified in Table B of Part 4 of the Contract Particulars without the approval of the Purchaser. Any replacement will be suitably qualified to perform the relevant role.

#### **4.18 Statutory requirements**

- 4.18.1 The Supplier shall comply with all statutory requirements and have regard to codes of practice relevant to the performance of the Services.
- 4.18.2 If identified in Part 1 of the Contract Particulars, the Supplier shall perform the role of principal designer and/or principal contractor in accordance with the Construction (Design and Management) Regulations 2015.

#### **4.19 Project Programme**

- 4.19.1 If Part 1 of the Contract Particulars states that the Supplier shall be responsible for the preparation of the Project Programme, the Supplier shall:
  - 4.19.1.1 prepare the Project Programme and monitor and update it as necessary to show any amendments to the sequencing of events or the likely time for any events occurring prior to the delivery of the completed Project and, in particular, identify key decision events which are likely to involve the Purchaser or the Purchaser's Representative during the Project; and
  - 4.19.1.2 co-ordinate any proposed changes to the Project Programme by members of the Supply Chain and by any other Project Participants, discuss with and, if appropriate or requested, meet with the Purchaser to provide an explanation of any proposed changes and discuss how best to achieve any necessary reprogramming so as not to affect the Date or Dates for Completion or, with the written agreement of the Client, to extend the Date or Dates for Completion.
- 4.19.2 All amendments to the Project Programme shall be circulated promptly to all other members of the Project Team and by them to all Project Participants who have still to carry out work and/or services. An actual or proposed amendment to the Project Programme showing a period for completion of the Project extending beyond the Date or Dates for Completion will not, without the Client's written agreement, be treated as expressly or impliedly extending the Date or Dates for Completion.

#### **4.20 Progress meetings**

If Part 1 of the Contract Particulars states that the Supplier shall be responsible for arranging regular progress meetings, the Supplier shall arrange, attend and minute regular progress meetings of the Project Team. If not responsible for arranging regular progress meetings, the Supplier shall nevertheless attend all meetings to which he is invited.

#### **4.21 Where Supplier is a sub-supplier<sup>[4]</sup>**

If Part 1 of the Contract Particulars provides details of any Purchaser's Contract, the Supplier shall (provided the Purchaser has complied with his obligations under clause 3.1) comply with the Purchaser's Contract insofar as it relates to the performance of the Services and is not contrary to the terms of this Contract.

## Section 5 Allocation of Risks

### Risk Register

#### 5.1 Risk assessment

- 5.1.1 If Part 1 of the Contract Particulars states that the Supplier is responsible for the preparation of the Risk Register, the Supplier shall be responsible for carrying out (with assistance from relevant members of the Supply Chain and Project Participants) an initial risk assessment to identify:
- 5.1.1.1 potential risks relating to the performance of the Services and/or the delivery of the Project, the occurrence of which are capable of adversely affecting the time for completion, cost or quality of the Project;
  - 5.1.1.2 the probability of these risks occurring;
  - 5.1.1.3 a financial estimate of the most likely consequences of each risk occurring (the 'risk allowance'); and
  - 5.1.1.4 the actions agreed to be taken to mitigate, manage or remove each risk and the individual responsible for reporting on the progress of the actions agreed.
- The results of this risk assessment shall be set out in the Risk Register.
- 5.1.2 Where the Supplier is not responsible for the preparation of the Risk Register, the Supplier shall nevertheless provide all reasonable assistance in this process where he considers he may have relevant input and/or is requested to provide assistance.

#### 5.2 Updating Risk Register

- 5.2.1 If Part 1 of the Contract Particulars states that the Supplier is responsible for the updating and amendment of the Risk Register, the Supplier shall carry out these tasks (seeking the assistance of other Project Participants as considered appropriate) and shall arrange regular meetings with the Client and other Project Participants to review and update the Risk Register and to consider:
- 5.2.1.1 any new risks that have arisen since the date of the last review;
  - 5.2.1.2 the steps taken to prevent/mitigate previously identified risks;
  - 5.2.1.3 risks which have been successfully prevented/mitigated (which can be removed from the Risk Register); and
  - 5.2.1.4 the prioritisation of all continuing risks and agreement of an action plan in respect of, and risk owners for, all risks prioritised as serious risks.
- 5.2.2 Where the Supplier is not responsible for the preparation, updating and amendment of the Risk Register, the Supplier shall nevertheless provide all reasonable assistance in this process where he considers he may have relevant input and/or is requested to provide assistance.

### Risk Allocation Schedule

#### 5.3 Completion and effect of Risk Allocation Schedule

- 5.3.1 The forms of Risk Allocation Schedule referred to in Part 5 of the Contract Particulars set out:
- 5.3.1.1 the allocation (as between the Purchaser and the Supplier) of any cost and time consequences of risks referred to in the Risk Allocation Schedule; and

- 5.3.1.2 the amount (if any) for risks for which the Supplier shall be responsible which is also included in the Target Cost or Contract Sum to deal with the occurrence of risks and the allocation of any costs in excess of this amount; and
  - 5.3.1.3 the period of time (if any) resulting from the occurrence of risks that the Supplier has accepted as being his responsibility and the allocation of responsibility for any time consequences in excess of this period.
  - 5.3.2 The Purchaser's liability to contribute to the cost consequences of, or grant any extension of time in respect of, risks shown in the Risk Allocation Schedule shall only apply:
    - 5.3.2.1 as to cost, after the relevant amount (if any) shown in the column 2 of Risk Allocation Schedule as having been included in the Target Cost or Contract Sum has been spent in full;
    - 5.3.2.2 as to time, after any relevant time period shown in column 3 of the Risk Allocation Schedule as being the Supplier's responsibility has expired and the Purchaser shall not be required to consider any extension of time to the Date or Dates for Completion in respect of risks shown in the Risk Allocation Schedule until such expiry.
- Subject to these conditions, the cost and time consequences of the occurrence of risks in excess of the amount or time period that are the responsibility of the Supplier will be apportioned in accordance with the allocation set out in the Risk Allocation Schedule.
- 5.3.3 The Risk Allocation Schedule shall remain fixed throughout the period of this Contract unless both Parties agree otherwise and record the agreed changes in writing.

#### **5.4 Notification of occurrence of risks identified in the Risk Allocation Schedule**

If a risk identified in the Risk Allocation Schedule occurs, whichever of the Purchaser or the Supplier becomes aware of the occurrence of the relevant risk shall immediately notify the other and both shall co-operate to agree the best means of dealing with any adverse consequences of the occurrence of the risk and to mitigate its effects, whether or not the occurrence of the risk also constitutes a Relief Event.

### **Ownership of and risk in materials**

#### **5.5 Risk in materials**

Where the Purchaser is the Client, the risk of loss or damage to any materials provided by the Supplier (and to any free issue materials provided by the Purchaser) shall remain with the Supplier until the Completion Date. Where the Purchaser is not the Client, the risk of loss or damage to any materials provided by the Supplier (and to any free issue materials provided by the Purchaser) shall remain with the Supplier until the earlier of the date they become incorporated into the permanent works comprised in the Project or the relevant completion date.

#### **5.6 Property in materials**

Materials for inclusion in the Supplier's work shall become the property of the Purchaser when their value is included in any payment by the Purchaser to the Supplier or (if earlier) when they become incorporated into the permanent works comprised in the Project.

### **Relief Events**

#### **5.7 Relief Events**

The following are Relief Events:

- 5.7.1 any instruction issued by the Purchaser to change the Services or the Project; or
- 5.7.2 any act or omission of the Purchaser or anyone for whom the Purchaser is responsible; or
- 5.7.3 suspension under clause 7.28.1, but (subject to clause 7.28.2) only to the extent such suspension affects the Date or Dates for Completion; or
- 5.7.4 the occurrence of any risk referred to in the Risk Allocation Schedule to the extent that the

Risk Allocation Schedule does not apportion responsibility for the consequences of the risk to the Supplier. However, the Supplier will only be entitled to:

- 5.7.4.1 recover additional costs if the cost consequences of the risk exceed the amount (if any) shown in the Risk Allocation Schedule as having been included in the Target Cost or Contract Sum; and
- 5.7.4.2 seek an extension of time to the Date or Dates for Completion if the time consequences of the risk exceed the period (if any) shown in the Risk Allocation Schedule as being the Supplier's responsibility; or
- 5.7.5 the occurrence of any risk which is not referred to in the Risk Allocation Schedule, is not reasonably foreseeable at the date of this Contract and is beyond the control of the Supplier (excluding any act, omission, or insolvency of the Supplier, any member of the Supply Chain or any sub-supplier of the Supplier) to the extent set out in Part 1 of the Contract Particulars,

that has, or is likely to have, any effect on the cost of performing the Services and/or the Date or Dates for Completion.

## **5.8 Testing and compliance**

If the Purchaser instructs the Supplier to open up for inspection or to carry out a test on any of the Services, the instruction shall be a Relief Event except to the extent that:

- 5.8.1 the inspection or test is already provided for in this Contract; or
- 5.8.2 the inspection or test discloses that work or materials do not comply with the requirements of this Contract.

## **5.9 Notification of Relief Events**

If a Relief Event occurs, or is likely to occur, whichever of the Purchaser or the Supplier becomes aware of it shall immediately notify the other of its occurrence or likely occurrence, and both shall co-operate in agreeing the best means of dealing with any adverse consequences resulting from its occurrence and in mitigating its effect.

## **5.10 Involvement of Project Team**

Where either the Purchaser or the Supplier is a member of the Project Team and a Relief Event notified under clause 5.9 may affect any other Project Participant, that Party shall:

- 5.10.1 promptly inform the Project Team of the relevant Relief Event; and
- 5.10.2 make available to the Project Team any information received in accordance with clauses 5.11 and 5.12,

so that the Project Team has an opportunity of considering the Relief Event and its potential impact on other Project Participants. The Purchaser and the Supplier shall give serious consideration to any recommendation of the Project Team in relation to the Relief Event.

## **5.11 Provision of a statement of the likely effect of a Relief Event**

As soon as reasonably practicable, and in any event not later than 14 days after notification in accordance with clause 5.9 (or within any other period that the Parties may agree), the Supplier shall provide a statement setting out (in as much detail as is reasonably practicable) the effect that the Supplier considers the Relief Event shall have on the cost of performing the Services and/or the Date or Dates for Completion.

## **5.12 Provision of further information**

The Supplier shall provide any additional information and/or explanation reasonably requested by the Purchaser in support of any statement given under clause 5.11.

## **5.13 Agreement of the effect of a Relief Event**

The Purchaser and the Supplier shall use reasonable endeavours to agree the effect of any Relief Event referred to in the Supplier's statement under clause 5.11 and shall co-operate to agree any action that reduces or minimises any adverse effect of the Relief Event. If considered appropriate by either the Purchaser or the Supplier, they shall meet to discuss any differences between them. Once

the effects of a Relief Event are agreed or decided, the Parties shall confirm in writing any change to the Target Cost and Guaranteed Maximum Cost (if any), or to the Contract Sum and/or the Date or Dates for Completion. Where the Relief Event is a change to the Services, the Parties may also agree to alter the Risk Allocation Schedule if appropriate.

**5.14 Effects of Relief Event too uncertain**

If the Purchaser decides that the effect of any Relief Event is too uncertain to be forecast with reasonable accuracy, he shall agree with the Supplier the assumptions to be made to enable an estimate of the effect of the Relief Event to be made. If these assumptions subsequently prove to have been wrong, the Purchaser and the Supplier shall agree the corrections needed to be made to the original estimate.

**5.15 Purchaser's assessment of the effect of Relief Events in the absence of notification**

If the Supplier fails to notify the Purchaser in accordance with clause 5.9 or fails to provide a statement in accordance with clause 5.11, the Purchaser shall (insofar as is possible) carry out his own assessment of the effect of any Relief Event and shall notify the Supplier accordingly. The Purchaser and the Supplier shall use reasonable endeavours to agree the effect of the relevant Relief Event and, if considered appropriate by either Party, shall meet to discuss any differences between them.

**5.16 Delay in notification of any Relief Event**

In considering the effect of any Relief Event which the Purchaser was not aware of, the Parties shall take into account any delay on the part of the Supplier in notifying the occurrence of a Relief Event after the date he became aware, or should reasonably have become aware, of the relevant Relief Event and any additional effect due to such delay (in terms of additional cost or greater disruption to the Supplier) shall be ignored.

## Section 6 Measurement of Performance

### 6.1 Monitoring of performance

Throughout the period of this Contract, the performance of the Supplier shall be monitored by the Purchaser and the performance of the Purchaser shall be monitored by the Supplier against the Key Performance Indicators relevant to their respective performance as set out or referred to in Part 6 of the Contract Particulars.

### 6.2 Regular reviews

At regular monthly, or other agreed, intervals the Purchaser and the Supplier shall undertake formal reviews of each other's performance against their respective Key Performance Indicators and shall discuss any ways in which each other's performance may be improved.

### 6.3 Collective reviews

Where the Purchaser and the Supplier are parties to any Project Team Agreement, monitoring of their performance against their respective Key Performance Indicators may be carried out collectively by the members of the Project Team.

### 6.4 Written record

The Supplier shall keep a written record of all performance monitoring carried out under this Contract in a form reasonably requested by the Purchaser and shall supply the Purchaser with copies of these reports without additional charge.

## Section 7 Payment

### Payment Option

#### 7.1 Payment Option

The payment option which applies is that stated in Part 1 of the Contract Particulars.

### Target Cost Option

#### 7.2 Open book recording of costs

The Supplier shall keep detailed records of the Allowable Cost incurred in performing the Services on an 'open book' basis (i.e. on the basis that the records of Allowable Cost are maintained in a fully auditable manner and are made available to the Purchaser whenever reasonably required for purposes of verification in connection with the Project). Unless already specified in Part 7 of the Contract Particulars, the Purchaser and the Supplier shall agree what records need to be kept by the Supplier in respect of the Allowable Costs and what form the breakdown referred to in clause 7.4 shall take before the Supplier commences the Services.

#### 7.3 Access to original vouchers and books of account

The Supplier shall provide to the Purchaser, or his representatives or agents, full access to and/or details of all original vouchers and books of account necessary to demonstrate his Allowable Cost if and when reasonably requested to do so by the Purchaser.

#### 7.4 Regular breakdowns of Allowable Cost and Supplier's Margin

7.4.1 Commencing on the date agreed by the Purchaser and the Supplier (or, failing agreement, on the date one month after the Supplier's commencement of the Services), the Supplier shall provide the Purchaser at monthly intervals with a statement of the Allowable Cost and any Supplier's Margin due calculated as at the Application Date. Each statement shall set out the sum the Supplier considers to be or have been due to him at the due date, and include a breakdown showing the basis on which that calculation has been made, together with any additional information reasonably requested.

7.4.2 Immediately following completion of the Services, the Allowable Cost of completing the Services and any Supplier's Margin, the final Target Cost and the final Guaranteed Maximum Cost (if any) shall be calculated and any balance payable by either Party under clauses 7.11 to 7.13 shall be included in the next breakdown to be issued by the Supplier under clause 7.4.1.

#### 7.5 Purchaser's objection to any Allowable Cost

7.5.1 The Purchaser may (acting reasonably) object to any cost incurred by the Supplier on the basis that the cost:

7.5.1.1 constitutes Excluded Costs; or

7.5.1.2 exceeds the amount that the Supplier is entitled to receive, on account of the cumulative Allowable Cost exceeding the Target Cost (in which case only the proportion of the excess set out or referred to in Part 7 of the Contract Particulars shall be payable) or exceeding the Guaranteed Maximum Cost (in which case any additional Allowable Cost shall not be recoverable).

7.5.2 In the event of any objection, the Parties shall seek to agree the amount of the Allowable Cost and shall, if considered appropriate by either Party, meet to discuss any differences between them.

## **7.6 Date when payment due**

- 7.6.1 Where the Purchaser is the Client, if the Supplier's statement under clause 7.4.1 is received by the Purchaser on or before the Application Date, the due date for the relevant payment shall be 7 days after the Application Date.
- 7.6.2 Where the Purchaser is a Tier 1 Supplier, if the Supplier's statement under clause 7.4.1 is received by the Purchaser not later than 4 days prior to the Application Date, the due date for the relevant payment shall be 12 days after the Application Date.
- 7.6.3 Where the Purchaser is a Tier 2 Supplier, if the Supplier's statement under clause 7.4.1 is received by the Purchaser not later than 8 days prior to the Application Date, the due date for the relevant payment shall be 17 days after the Application Date.

If the Supplier's statement is not received at the required time, the due date shall be regarded as postponed by the same number of days as the number of days after the last such date for receipt that the statement is received.

## **7.7 Final date for payment**

The final date for payment shall be:

- 7.7.1 where the Purchaser is the Client or a Tier 1 Supplier, 14 days after the due date;
- 7.7.2 where the Purchaser is a Tier 2 Supplier, 13 days after the due date.

## **7.8 Notice of payment due**

- 7.8.1 Not later than 5 days after the due date for a payment, the Purchaser shall give notice to the Supplier of the sum the Purchaser considers to have been due at the due date and the basis on which that sum was calculated. Subject to clause 7.9, that sum shall be paid by the paying Party to the other by the final date for payment referred to in clause 7.7.
- 7.8.2 If the Purchaser does not give notice to the Supplier under clause 7.8.1, the amount to be paid by the paying Party to the other by the final date for payment referred to in clause 7.7 shall, subject to any Pay Less Notice under clause 7.9, be the sum stated as due in the Supplier's breakdown.

## **7.9 Pay Less Notice**

If a Party intends to pay less than the sum stated as due from him in the notice of payment or Supplier's breakdown (as applicable), he shall give notice (a 'Pay Less Notice') to the other Party of his intention to do so:

- 7.9.1 where the Purchaser is the Client or a Tier 1 Supplier, at least 5 days before the final date for payment;
- 7.9.2 where the Purchaser is a Tier 2 Supplier, at least 4 days before the final date for payment.

A Pay Less Notice given by either Party shall specify the sum that he considers to be due to the other Party at the date the notice is given and the basis on which that sum has been calculated. Where a Pay Less Notice is given, the payment to be made by the final date for payment shall not be less than the amount stated as due in the notice.

## **7.10 Change to Supplier's Margin**

If any change to the amount of the Supplier's Margin is agreed by the Parties the change and the amended payments shall be recorded in writing and the relevant provisions of the Contract Particulars shall be amended, or be deemed to be amended, accordingly. Unless the Supplier's Margin is expressed as a percentage of the Target Cost, increases or decreases in the Target Cost shall not automatically produce any change in the Supplier's Margin<sup>[40]</sup>.

## **7.11 Allowable Cost less than Target Cost**

If the Allowable Cost of completing the Services is less than the relevant Target Cost, the difference between the two figures shall be shared between the Parties in the relevant proportions set out in Part

---

**[40]** If the scope of the Services substantially changes, the Parties should consider whether a change in the Supplier's Margin may be appropriate.

7 of the Contract Particulars.

**7.12 Allowable Cost greater than Target Cost but less than Guaranteed Maximum Cost**

If the Allowable Cost of completing the Services exceeds the relevant Target Cost but is equal to or less than the relevant Guaranteed Maximum Cost (if any), the Supplier shall only be entitled to receive the proportion of the amount of the excess set out in Part 7 of the Contract Particulars. If the Supplier has already received payment in excess of his entitlement in accordance with this clause, he shall immediately repay to the Purchaser the amount of the overpayment.

**7.13 Allowable Cost greater than Guaranteed Maximum Cost**

If the Allowable Cost of completing the Services exceeds the relevant Guaranteed Maximum Cost (if any), the amount of the excess shall be borne by the Supplier alone and the amount between the Target Cost and the Guaranteed Maximum Cost shall be shared in accordance with clause 7.12.

**7.14 Additions to Target Cost and Guaranteed Maximum Cost**

If any additional sums are properly due to the Supplier in accordance with section 5, the amount of those additional sums shall be added to the Target Cost and the Guaranteed Maximum Cost (if any) and both sums shall be deemed to be amended accordingly.

**7.15 Reductions from Target Cost and Guaranteed Maximum Cost**

If changes to the Project or the Brief initiated by the Purchaser or the Client are made that reduce the cost to the Supplier of carrying out the Services, the Target Cost and the Guaranteed Maximum Cost for the Services or the relevant stages of the Services shall both be reduced by an appropriate amount.

**Contract Sum Option**

**7.16 Applications for payment**

At monthly intervals or, where the Payment Schedule provides for payment on completion of activities or milestones shown in the Payment Schedule, upon completion of an activity or milestone, the Supplier shall provide the Purchaser with:

- 7.16.1 an application for payment showing the sum the Supplier considers to be due and the basis on which that sum has been calculated, together with a summary of the total amount previously paid; and
- 7.16.2 a statement confirming the activity or milestone the Supplier considers to have been completed or the progress the Supplier has made against the relevant programme for the provision of the Services

in both cases calculated as at the Application Date.

**7.17 Additional information**

The Supplier shall provide any additional information and explanation that the Purchaser may reasonably request.

**7.18 Disagreement as to completion of activities/milestones or payments due**

The Purchaser may (acting reasonably) question the completion of any activities or milestones or the payments due as referred to in the Supplier's application for payment in accordance with clause 7.16. In the event of any question being raised, the Purchaser and the Supplier shall seek to agree the issues in question and shall, if considered appropriate by either, meet to discuss any differences between them.

**7.19 Date when payment due**

- 7.19.1 Where the Purchaser is the Client, if the Supplier's application and statement under clause 7.16 are received by the Purchaser on or before the Application Date, the due date for the relevant payment shall be 7 days after the Application Date.
- 7.19.2 Where the Purchaser is a Tier 1 Supplier, if the Supplier's application and statement under clause 7.16 are received by the Purchaser not later than 4 days prior to the Application

Date, the due date for the relevant payment shall be 12 days after the Application Date.

- 7.19.3 Where the Purchaser is a Tier 2 Supplier, if the Supplier's application and statement under clause 7.16 are received by the Purchaser not later than 8 days prior to the Application Date, the due date for the relevant payment shall be 17 days after the Application Date.

If the Supplier's application and statement are not received at the required time, the due date shall be regarded as postponed by the same number of days as the number of days after the last such date for receipt that the application and statement are received.

## **7.20 Final date for payment**

The final date for payment shall be:

- 7.20.1 where the Purchaser is the Client or a Tier 1 Supplier, 14 days after the due date;
- 7.20.2 where the Purchaser is a Tier 2 Supplier, 13 days after the due date.

## **7.21 Notice of payment due to Supplier**

- 7.21.1 Not later than 5 days after the due date for a payment, the Purchaser shall give notice to the Supplier of the sum he considers to have been due to the Supplier at the due date, and the basis on which that sum has been calculated, being:

- 7.21.1.1 the amount claimed in the Supplier's application for payment; or
- 7.21.1.2 (if different) the amount agreed in accordance with clause 7.18 or (in the absence of agreement) the amount the Purchaser (acting reasonably) considers is due to the Supplier.

- 7.21.2 Subject to any Pay Less Notice given by the Purchaser under clause 7.22, the Purchaser shall pay the sum stated as due in the notice of payment by the final date for payment.
- 7.21.3 If the Purchaser does not give notice to the Supplier under clause 7.21.1, the Purchaser shall, subject to any Pay Less Notice under clause 7.22, pay the Supplier the sum stated as due in the Supplier's application for payment.

## **7.22 Pay Less Notice**

If the Purchaser intends to pay less than the sum stated as due from him in the notice of payment or the Supplier's application for payment (as applicable), he shall give notice (a 'Pay Less Notice') to the Supplier of his intention to do so:

- 7.22.1 where the Purchaser is the Client or a Tier 1 Supplier, at least 5 days before the final date for payment;
- 7.22.2 where the Purchaser is a Tier 2 Supplier, at least 4 days before the final date for payment.

The Pay Less Notice shall specify the sum that the Purchaser considers to be due at the date the notice is given and the basis on which that sum has been calculated. Where a Pay Less Notice is given, the payment to be made by the final date for payment shall not be less than the amount stated as due in the notice.

## **7.23 Adjustments to Payment Schedule and Contract Sum**

Whenever there is any adjustment to the amounts due to the Supplier (either upwards or downwards) in accordance with section 5, the Parties shall endeavour to agree an appropriate adjustment to the Payment Schedule, failing which, the Purchaser shall make any adjustments that, acting reasonably, he considers to be appropriate. The Contract Sum shall then be adjusted accordingly.

## **7.24 Payment Schedule revision**

If the Services do not progress in accordance with the programme applicable to their performance or the activities or milestones set out in the Payment Schedule, either the Purchaser or the Supplier may give notice to the other requesting a revision to the Payment Schedule. If the Parties cannot agree on a revision to the Payment Schedule, the Purchaser shall make any revision that is, in his reasonable opinion, appropriate. The revised Schedule shall become the Payment Schedule.

## **General**

### **7.25 VAT**

All sums payable by or to the Supplier are exclusive of VAT. Where VAT is chargeable on any sums, the paying Party shall, upon production of a valid VAT invoice from the other, or from the date of any invoice prepared under any self-billing arrangement in accordance with HM Customs and Excise Notice 700/69, pay the amount of the VAT.

### **7.26 Issuing notices**

In relation to the requirements for the issuing of notices, statements and/or applications for payment under section 7, it is immaterial that the amount then considered to be due may be zero.

### **7.27 Interest on late payments**

If either Party is late in making any payment due to the other Party in accordance with this Contract, he shall pay simple interest on the amount of the late payment at the Interest Rate from the final date for payment of that amount until the date on which the relevant payment is received by the other Party.

### **7.28 Suspension**

7.28.1 If the Purchaser fails to pay a sum payable to the Supplier in accordance with section 7 (together with any VAT properly chargeable) by the final date for payment and the failure to pay continues for 7 days after the Supplier has given notice to the Purchaser of his intention to suspend the performance of his obligations under this Contract and the grounds for such suspension, the Supplier, without affecting his other rights and remedies, may suspend performance of any or all of his obligations until payment is made in full.

7.28.2 Where the Supplier exercises his right of suspension under clause 7.28.1, 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.

7.28.3 Applications in respect of any such costs and expenses shall be made to the Purchaser and the Supplier shall submit such details of them as are reasonably necessary for ascertaining the amount in question.

7.28.4 The Purchaser shall pay the Supplier any costs and expenses which the Supplier is entitled to recover under clause 7.28.2 within 20 days of the date of the Supplier's application under clause 7.28.3.

### **7.29 Liquidated damages**

Where a rate for liquidated damages for any delay in the completion of the Services or Services in a Section is stated in Part 1 of the Contract Particulars, the Supplier shall be liable for liquidated damages for delay at the rate or rates stated if he fails to complete the Services or Services in any relevant Section by the relevant Date for Completion.

### **7.30 Bonus for early completion**

Where a bonus for early completion of the Services or Services in a Section is stated in Part 1 of the Contract Particulars, the Purchaser shall pay the bonus to the Supplier if the Services or Services in any relevant Section are completed in accordance with clause 3.7 before the relevant Date for Completion.

### **7.31 Payment of liquidated damages and bonuses**

The Supplier shall pay the Purchaser any liquidated damages due to the Purchaser within 20 days of the amount being notified to the Supplier, and the Purchaser shall be entitled to deduct any unpaid liquidated damages from amounts owing to the Supplier. The Purchaser shall pay the Supplier any bonus due to the Supplier within 20 days of the Date for Completion by reference to which the bonus is calculated.

## Section 8 Insurance

### 8.1 Duty to insure<sup>[41]</sup>

8.1.1 The Purchaser and the Supplier shall each maintain the respective insurance cover in accordance with Part 1 of the Contract Particulars and shall each be responsible for applying all money recovered, or that should have been recovered (but for any act or omission of the insuring Party), under the relevant insurance cover against the relevant loss or damage suffered and, unless otherwise agreed, each insuring Party shall be responsible for any excesses and/or deductibles under insurance that he takes out.

8.1.2 Insofar as the Supplier is obliged to take out professional indemnity insurance, provided it is available at commercially reasonable rates, he shall maintain such insurance until the expiry of the minimum period of cover stated in Part 1 of the Contract Particulars from the Completion Date.

### 8.2 Approval of insurance

The Supplier shall provide details of the:

8.2.1 insurers; and

8.2.2 terms, including details of any excesses or deductibles, of each insurance policy (for the avoidance of doubt, this shall not include an obligation to produce a copy of the insurance policy itself)

for the approval of the Purchaser.

### 8.3 Evidence of insurance

Evidence that the above insurances remain in force and that the appropriate premiums have been paid shall be provided by either Party to the other whenever reasonably requested within 14 days of such request.

### 8.4 Liability of Supplier – personal injury or death

The Supplier shall be liable for, and shall indemnify the Purchaser against, any expense, liability, loss, claim or proceedings whatsoever in respect of personal injury to or the death of any person arising out of or in the course of or caused by the carrying out of the Services, except to the extent that the same is due to any act or neglect of the Purchaser or of any person for whom the Purchaser is responsible.

### 8.5 Liability of Supplier – injury or damage to property

The Supplier shall be liable for, and shall indemnify the Purchaser against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal (other than loss, injury or damage to the Project and/or site materials to the extent that they are required to be insured in accordance with clause 8.1) insofar as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the Services and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Supplier or of any person employed or engaged by the Supplier in connection with the Services.

### 8.6 Limitation on liability

Where Part 1 of the Contract Particulars provides for a limit on the liability of the Supplier, the aggregate liability of the Supplier arising under or in relation to this Contract (including any liability with respect to statutory duty or tort) will not exceed that limit except in relation to liability for death or personal injury.

[41] See footnote [17] if comprehensive project insurance is applicable.

## Section 9      **Assignment, Subletting, Third Party Rights and Collateral Warranties**

### **9.1      Assignment or novation<sup>[42]</sup>**

Where the Purchaser is also the Client, he shall be entitled without the consent of the Supplier to assign the benefit and burden of this Contract to any other organisation lawfully carrying on the whole or part of the functions of the Client to which this Contract relates and in that event the Supplier agrees to enter into a deed of novation if so requested by the Purchaser. In any other case, neither the Purchaser nor the Supplier may assign any right or obligation under this Contract without the prior written consent of the other.

### **9.2      Subletting**

The Supplier shall not sublet the whole of the Services. The Supplier may sublet parts of the Services with the prior written consent of the Purchaser. The Supplier acknowledges that terms imposing more onerous obligations on members of the Supply Chain are to be avoided and, unless otherwise agreed by the Purchaser, these Conditions shall be used for the appointment of all sub-suppliers.

### **9.3      Liability of Supplier following subletting**

Notwithstanding the subletting of any part or parts of the Services, the Supplier shall remain solely responsible to the Purchaser for the performance of the Services.

### **9.4      Rights granted by Supplier and sub-suppliers**

The Supplier shall procure the grant of rights and/or execution of deeds of collateral warranty in favour of the Beneficiaries as provided in Part 8 of the Contract Particulars.

**[42]** If the Client may need to assign to a Funder by way of a charge and without consent, this provision will require amendment.

## Section 10 Termination

### 10.1 Meaning of insolvency

For the purposes of these Conditions:

#### 10.1.1 a company becomes Insolvent:

- 10.1.1.1 when it enters administration within the meaning of Schedule B1 to the Insolvency Act 1986;
- 10.1.1.2 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;
- 10.1.1.3 on the passing of a resolution for voluntary winding-up without a declaration of solvency under section 89 of that Act; or
- 10.1.1.4 on the making of a winding-up order under Part IV or V of that Act.

#### 10.1.2 a partnership becomes Insolvent:

- 10.1.2.1 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
- 10.1.2.2 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.

#### 10.1.3 an individual becomes Insolvent:

- 10.1.3.1 on the making of a bankruptcy order against him under Part IX of the Insolvency Act 1986; or
- 10.1.3.2 on the sequestration of his estate under the Bankruptcy (Scotland) Act 1985 or when he grants a trust deed for his creditors.

#### 10.1.4 a person also becomes Insolvent if:

- 10.1.4.1 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
- 10.1.4.2 (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 10.1.

Each of clauses 10.1.1 to 10.1.4 also includes any analogous arrangement, event or proceedings in any other jurisdiction.

### 10.2 Termination by Purchaser

The Purchaser may give notice to the Supplier to terminate this Contract:

- 10.2.1 if the Purchaser has given notice to the Supplier of a breach of this Contract and the Supplier has failed to remedy the breach within 14 days from the date of that notice; or
- 10.2.2 if the Supplier is Insolvent; or
- 10.2.3 (where the Supplier is a sub-supplier) if the Purchaser's Contract is terminated.

### 10.3 Termination by Supplier

The Supplier may give notice to the Purchaser to terminate this Contract:

- 10.3.1 if the Purchaser is overdue in making any payment by more than 28 days after a written

demand for payment has been made by the Supplier following the final date for payment in accordance with section 7; or

10.3.2 if the Supplier has given notice to the Purchaser of any other breach of this Contract by the Purchaser and the Purchaser has failed to remedy the breach within 14 days from the date of that notice; or

10.3.3 if the Purchaser is Insolvent.

#### **10.4 Purchaser's instructions following termination**

Upon termination of this Contract by the Purchaser, the Supplier shall promptly comply with all the Purchaser's instructions relating to the protecting, securing and vacating of the Site and the transferring to the Purchaser of any goods or materials in the course of preparation or ready for delivery to the Site.

#### **10.5 Payment following termination by Purchaser**

If this Contract is terminated on account of the Supplier's default or insolvency:

10.5.1 the Purchaser may retain all equipment and goods on the Site (subject to any existing third party rights) and withhold any payments due to the Supplier until the extra costs of completing the Services have been ascertained. Those extra costs may be deducted from any further payments due to the Supplier;

10.5.2 no further sum shall become due to the Supplier under this Contract and the Purchaser need not pay any sum that has already become due either:

10.5.2.1 insofar as the Purchaser has given or gives a Pay Less Notice under clause 7.9 or 7.22; or

10.5.2.2 if the Supplier, after the last date upon which such notice could have been given by the Purchaser in respect of that sum, has become insolvent within the meaning of clauses 10.1.1 to 10.1.3.

#### **10.6 Payment following termination by Supplier**

Upon termination of this Contract by the Supplier, the Purchaser shall promptly make payment of all amounts properly due to the Supplier in respect of the Supplier's performance up to the date of termination, including payment in respect of any additional work carried out by the Supplier, at the Purchaser's request, following termination.

## Section 11      **Dispute Resolution**

### **11.1      Notification of anticipated disputes**

The Purchaser and the Supplier shall endeavour to notify each other of any anticipated dispute so that it can be avoided by negotiation between them.

### **11.2      Negotiation between senior executives, mediation and involvement of Project Team**

The Purchaser and the Supplier shall endeavour to resolve any dispute which does arise by direct negotiations in good faith between the senior executives nominated in Part 1 of the Contract Particulars or such other senior executives as are available. Subject to Article 3 each Party shall give serious consideration to any request by the other to refer the dispute to mediation if it cannot be resolved by direct negotiation. Where either the Purchaser or the Supplier is a member of the Project Team, that Party shall notify the Project Team of any dispute that is not swiftly resolved by negotiation and shall keep the Project Team informed of the progress and/or settlement of the dispute. The Purchaser and the Supplier shall give serious consideration to any recommendation of the Project Team for the resolution of the dispute.

### **11.3      Adjudication**

Either Party may at any time refer any dispute or difference arising under this Contract to adjudication in accordance with the provisions of Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998 except that the Adjudicator shall be the person (if any) and the adjudicator nominating body shall be that stated in Part 1 of the Contract Particulars. Where a dispute raises issues which are substantially the same as those in a dispute under another contract entered into by one of the Parties relating to the Project, that Party may require that the same person is appointed as adjudicator to decide both disputes (unless the adjudicator would have a conflict of interest or is unwilling to act).

### **11.4      Litigation**

The decision of any adjudicator will be binding on, and implemented by, the Purchaser and the Supplier pending final determination of the relevant dispute by agreement or by the English courts.

### **11.5      Failure to reach agreement under this Contract**

For the avoidance of doubt, any failure by the Parties to reach agreement on any matters upon which they are required to reach agreement under this Contract shall be resolved in accordance with the Dispute Resolution Procedure.

## Section 12 Supplementary Conditions

Clauses 12.1 and 12.2 apply unless otherwise stated in the Contract Particulars. Clause 12.3 applies where the Purchaser is a Local or Public Authority or other body of the type mentioned in that clause; clause 12.4 applies where the Client is a Local or Public Authority and the contract entered into by the Client as Purchaser is subject to the PC Regulations.

### 12.1 Health and safety

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

### 12.2 Sustainable development and environmental considerations

- 12.2.1 The Supplier is encouraged to suggest economically viable amendments to the Project which, if instructed as a change to the Services or the Project, may result in an improvement in environmental performance in the carrying out of the Project or of the completed Project.
- 12.2.2 The Supplier shall provide to the Purchaser all information that he reasonably requests regarding the environmental impact of the supply and use of materials and goods which the Supplier selects.

### 12.3 Transparency

Where the Purchaser is the Client and 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 Purchaser 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:

- 12.3.1 the Supplier consents to the Purchaser 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;
- 12.3.2 the Purchaser shall promptly inform the Supplier of any request for disclosure that he receives in relation to this Contract.

## **12.4 The Public Contracts Regulations 2015<sup>[43]</sup>**

- 12.4.1 Each Party confirms to the other that he is familiar with the PC Regulations and shall comply with them to the extent that they may be applicable to this Contract. In particular the Supplier undertakes to the Purchaser:
- 12.4.1.1 to keep the Purchaser informed of the details of his sub-suppliers and of any changes in those details in accordance with regulation 71 and to take appropriate steps to ensure that these obligations are included in subcontracts entered into by members of the Supplier's Supply Chain; and
- 12.4.1.2 where regulation 113 applies to this Contract, to take appropriate steps to ensure that the payment terms in all contracts entered into by the Supplier with members of his Supply Chain include suitable provisions to impose the relevant requirements of regulation 113.
- 12.4.2 Where the Purchaser is the Client and regulation 73 applies to this Contract, the Purchaser may give notice to the Supplier to terminate this Contract where any of the grounds for termination in that regulation apply. In such a case where that termination is under regulation 73(1)(b) this Contract shall be treated as terminated on account of the Supplier's default and clause 10.5 shall apply but otherwise the consequences of termination set out in clause 10.6 shall apply, in each case in addition to any other relevant provisions of section 10.
- 12.4.3 Where the Client requires that the Supplier be replaced under regulation 71(9), the Purchaser may give notice to the Supplier to terminate this Contract in which case the provisions of clauses 10.4 and 10.5 of this Contract shall apply on termination.

## **12.5 Other Conditions**

The other supplementary conditions, if any, are set out and/or referred to in Part 9 of the Contract Particulars.

---

**[43]** An explanatory summary of those provisions in the PC Regulations that are reflected in this Contract is contained in the JCT - Constructing Excellence Contract Guide.



All parties must rely exclusively upon their own skill and judgment or upon those of their advisers when using this document and neither Thomson Reuters (Professional) UK Limited nor its associated companies assume any liability to any user or any third party in connection with such use.

DRAFT

SWEET & MAXWELL

