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PCC 2016  
Prime Cost Building Contract 2016

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# 2016

## PRIME COST BUILDING CONTRACT

## Prime Cost Building Contract (PCC)

### Appropriate:

- for projects requiring an early start on site, where the works are designed by or on behalf of the Employer but where it is not possible to prepare full design information before the works commence;
- where detailed contract provisions are necessary and the Employer is to provide a specification describing and showing the work; drawings may also be provided; and
- where a Contract Administrator and Quantity Surveyor are to administer the conditions.

The work proceeds on the basis of a brief specification, drawings (if any) and an estimate of cost. The Contractor is paid his reasonable costs plus either a fixed sum or a percentage of the cost, as a fee.

### Can be used:

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

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# Agreement

## This Agreement

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

## Between

### The Employer

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

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

of/whose registered office is at

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

## And

### The Contractor

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

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

of/whose registered office is at

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

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

## Recitals

### Whereas

#### First

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

[ ]

at

[ ] ('the Site');

#### Second

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

a specification ('the Specification') and

the drawings numbered/listed in [ ] ('the Contract Drawings')<sup>[3][4]</sup>

which for identification have been signed or initialled by or on behalf of each Party and annexed to this Contract;

#### Third

there is listed in or identified by the Contract Particulars other work on the Site that it is intended should be carried out by the Employer or by Employer's Persons and which does not form part of this Contract ('Excluded Work');

#### Fourth

there is set out in the Contract Particulars an estimate of the Prime Cost of the work described in the Specification and shown upon the Contract Drawings (if any);

#### Fifth

the Contractor, acknowledging the estimate of the Prime Cost of the work so described and shown, is willing to carry out and complete that work and, subject to the Conditions, such other work as the Architect/Contract Administrator may instruct;

#### Sixth

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

[2] State nature and location of intended works.

[3] Delete as appropriate.

[4] If there are Contract Drawings, state their identifying numbers, or identify the schedule of drawings or other document listing them.

---

**Seventh**

---

the division of the Works into Sections is shown in the Specification and/or the Contract Drawings (if any) or in such other documents as are identified in the Contract Particulars<sup>[5]</sup>;

---

**Eighth**

---

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

---

**Ninth**

---

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

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[5] Delete the Seventh Recital if the Works are not divided into Sections.

## Articles

### Now it is hereby agreed as follows

---

#### Article 1 Contractor's obligations

The Contractor shall in accordance with the Contract Documents carry out and complete the work referred to in the Second Recital and, subject to the Conditions, such other work as the Architect/Contract Administrator may instruct.

---

#### Article 2 Payment by the Employer

Subject to the Conditions the Employer shall pay the Contractor:

- the Prime Cost;
- the Contract Fee; and
- any direct loss and/or expense to which the Contractor is entitled under clause 4.16.1

at the times and in the manner specified in the Conditions, together with any VAT properly chargeable.

---

#### Article 3 Architect/Contract Administrator

For the purposes of this Contract the Architect/Contract Administrator is

[ ]

of

[ ]

or, if he ceases to be the Architect/Contract Administrator, such other person as the Employer nominates in accordance with clause 3.5 of the Conditions.

---

#### Article 4 Quantity Surveyor

For the purposes of this Contract the Quantity Surveyor<sup>[6]</sup> is

[ ]

of

[ ]

or, if he ceases to be the Quantity Surveyor, such other person as the Employer nominates in accordance with clause 3.5 of the Conditions.

---

#### Article 5 Principal Designer

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

---

[6] If the Architect/Contract Administrator is to exercise the Quantity Surveyor's functions under the Conditions, his name should be inserted in Article 4.

(or)<sup>[7]</sup> [ ]

of

[ ]

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

---

## Article 6 Principal Contractor

---

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

(or)<sup>[7]</sup> [ ]

of

[ ]

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

---

## Article 7 Adjudication

---

If any dispute or difference arises under this Contract, either Party may refer it to adjudication in accordance with clause 8.2.<sup>[8]</sup>

---

## Article 8 Arbitration

---

Where Article 8 applies<sup>[9]</sup>, then, subject to Article 7 and the exceptions set out below, any dispute or difference between the Parties of any kind whatsoever arising out of or in connection with this Contract shall be referred to arbitration in accordance with clauses 8.3 to 8.8 and the JCT 2016 edition of the [Construction Industry Model Arbitration Rules](#) (CIMAR). The exceptions to this Article 8 are:

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

---

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

---

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

---

[7] Insert the name of the Principal Designer in Article 5 if the Architect/Contract Administrator is not to fulfil that role and that of the Principal Contractor in Article 6 if that is to be a person other than the Contractor.

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

[8] As to adjudication in cases where the Employer is a residential occupier within the meaning of section 106 of the Housing Grants, Construction and Regeneration Act 1996, see the Prime Cost Building Contract Guide.

[9] If it is intended, subject to the right of adjudication and exceptions stated in Article 8, that disputes or differences should be determined by arbitration and not by legal proceedings, the Contract Particulars **must** state that Article 8 and clauses 8.3 to 8.8 apply and the words "do not apply" **must** be deleted. If the Parties wish any dispute or difference to be determined by the courts of another jurisdiction the appropriate amendment should be made to Article 9 (see also clause 1.12).

## Contract Particulars

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

### Third Recital

Excluded Work

(Give particulars or state the reference number, date or other identifier of the document listing such work.)

[ ]

### Fourth Recital

Estimated Prime Cost

The estimated amount is

£[ ]

The composition of the amount

\* is as follows<sup>[10]</sup>

\* is set out in the following document<sup>[11]</sup>

[ ]

### Sixth Recital and clause 4.5

Construction Industry Scheme (CIS)

Employer at the Base Date

\* is a 'contractor'/is not a 'contractor'  
for the purposes of the CIS

### Seventh Recital

Description of Sections (if any)

(If not shown or described in the Specification or Contract Drawings, state the reference numbers and dates or other identifiers of documents in which they are shown.)<sup>[11]</sup>

[ ]

### Eighth Recital

Framework Agreement (if applicable)

(State date, title and parties.)

[ ]

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

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

## Ninth Recital and Schedule 7

### Supplemental Provisions<sup>[12]</sup>

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

- Supplemental Provision 1: Collaborative working
  - \* applies/does not apply
- Supplemental Provision 2: Health and safety
  - \* applies/does not apply
- Supplemental Provision 3: Cost savings and value improvements
  - \* applies/does not apply
- Supplemental Provision 4: Sustainable development and environmental considerations
  - \* applies/does not apply
- Supplemental Provision 5: Performance Indicators and monitoring
  - \* applies/does not apply
- Supplemental Provision 6: Notification and negotiation of disputes
  - \* applies/does not apply

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

Employer's nominee

[ ]

Contractor's nominee

[ ]

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

## Article 2 and clause 4.3.1

The Contract Fee is

*(Insert the percentage or the amount in both words and figures.)*

- \* a Percentage Fee equal to
  - [ ] per cent
  - ([ ] %) of the Prime Cost
- \* a Fixed Sum of [ ]
  - (£[ ]) <sup>[13]</sup>

## Article 8

Arbitration

*(If neither entry is deleted, Article 8 and clauses 8.3 to 8.8 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must be stated that Article 8 and clauses 8.3 to 8.8 apply.)<sup>[14]</sup>*

Article 8 and clauses 8.3 to 8.8 (Arbitration)

- \* apply/do not apply

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

[13] The Fixed Sum threshold for adjustment, if other than 10 per cent, is shown in the Contract Particulars for Schedule 2, Part 2.

[14] On factors to be taken into account by the Parties in considering whether disputes are to be determined by arbitration or by legal proceedings, see the Prime Cost Building Contract Guide. See also footnote [9].

## 1.1

---

Base Date

[ ]

BIM Protocol (where applicable)

(State title, edition, date or other identifiers of the relevant documents.)

[ ]

Date for Completion of the Works

(where completion by Sections does not apply)

[ ]

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

Section [ ] : [ ]

Scope of the Works

(Where shown or described in a document other than the Specification or Contract Drawings, state the identifiers of the relevant document.)<sup>[15]</sup>

[ ]

## 1.7

---

Addresses for service of notices by the Parties

(If none is stated, the address in each case, subject to clause 1.7.3, shall be that shown at the commencement of the Agreement.)<sup>[16]</sup>

Employer

[ ]

Contractor

[ ]

## 2.3

---

Date of Possession of the Site

(where possession by Sections does not apply)

[ ]

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

Section [ ] : [ ]

## 2.4

---

Deferment of possession of the Site

(where possession by Sections does not apply)

Clause 2.4

---

[15] It is essential to provide as clear a description as is practicable of the nature and scope of the work so that the Architect/Contract Administrator and the Contractor can readily identify whether an Architect/Contract Administrator's instruction changes the Scope of the Works, which may give rise to an objection by the Contractor to compliance with the instruction and/or to an application by him for revision of the Contract Fee (clause 4.3.1). It will generally be more practical if the description is that given in the Specification and/or Contract Drawings but, if there are no Contract Drawings and there is reason to limit the Specification to work and materials, the Scope of the Works should be set out in a separate document identified here.

[16] As to service of notices etc. outside the United Kingdom, see the Prime Cost Building Contract Guide.

\* applies/does not apply

Maximum period of deferment (if less than 6 weeks) is

[ ]

Sections: deferment of possession of Sections

Clause 2.4

\* applies/does not apply

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

Section [ ] : [ ]

## 2.24.2

Liquidated damages

(where completion by Sections does not apply)

at the rate of

£[ ] per [ ]

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

Section [ ] : £[ ] per [ ]

## 2.29

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

Section [ ] : £[ ]

## 2.30

Rectification Period

(where completion by Sections does not apply)

(If no other period is stated, the period is 6 months.)

[ ] months

from the date of practical completion of the Works

Sections: Rectification Periods<sup>[10]</sup>

(If no other period is stated, the period is 6 months.)

Section [ ] : [ ] months

from the date of practical completion of each Section

## 4.2 and Schedule 1, Part 1 – General (paragraph 1.2.7)

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

\* are as follows<sup>[10]</sup>

\* are set out in the following document<sup>[11]</sup>

[ ]

## 4.2 and Schedule 1, Part 2 – Contractor's Staff on Site (paragraph 2.1.1)

A list of management staff and relevant details of their terms and conditions of employment

are set out in the following document

[ ]

#### 4.2 and Schedule 1, Part 3 – Contractor's Direct Workforce (paragraphs 3.1 to 3.3)

The number, by trade, and relevant terms and conditions of employment of the Contractor's Direct Workforce, particulars of any relevant national wage negotiating bodies and the percentage additions for approved out of hours working

are set out in the following document

[ ]

#### 4.2 and Schedule 1

Prime Cost: variations of Schedule 1 – any additional variations to the provisions of the Schedule (as referred to in Part 1)

are set out in the following document

[ ]

#### 4.3 and Schedule 2, Part 2 – Adjustment of Contract Fee

Percentage threshold  
(The percentage is 10 per cent unless otherwise stated.)

[ ] per cent

#### 4.6

Interim payments – Interim Valuation Dates  
(If no date is stated, the first Interim Valuation Date is one month after the Date of Possession.)

The first Interim Valuation Date is

[ ]

and thereafter the same date in each month or the nearest Business Day in that month<sup>[17]</sup>

#### 4.13.4

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

\* For uniquely identified Listed Items a bond in respect of payment for such items is required for

£[ ]

#### 4.13.5

Listed Items – not uniquely identified  
(Delete the entry if clause 4.13.5 does not apply.)

\* For Listed Items that are not uniquely identified a bond in respect of payment for such items is required for

£[ ]

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

#### 4.15.1

Retention Percentage

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

[ ] per cent

#### 5.4.1

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

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

#### 5.5.1

Insurance – liability of Employer

*(Not required unless it is stated that it may be required and the minimum amount of indemnity is stated)*

Insurance  
\* may be required/is not required

Minimum amount of indemnity for any one occurrence or series of occurrences arising out of one event<sup>[18]</sup>

£[ ]

#### 5.7 and Schedule 3

Works insurance – Insurance Option applicable

Schedule 3:  
\* Insurance Option A applies  
\* Insurance Option B applies  
\* Insurance Option C applies

Percentage to cover professional fees

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

[ ] per cent

Where Insurance Option A applies and cover is to be provided under the Contractor's annual policy (paragraph A.2), the annual renewal date is  
*(as supplied by the Contractor)*

[ ]

Where Insurance Option C applies, paragraph C.1<sup>[19]</sup>

*(Unless otherwise stated, paragraph C.1 applies. If it is not to apply, state the reference number and date or other identifier of the replacement document(s).)*

\* applies

[18] If the indemnity is to be for an aggregate amount and not for any one occurrence or series of occurrences, the entry should be amended to make this clear.

[19] **Insurance Option C** is for use in the case of alterations of or extensions to Existing Structures. Under that option, the **Employer** is required to take out a Joint Names Policy for All Risks Insurance for the Works and also, if paragraph C.1 applies, a Joint Names Policy to insure the Existing Structures and their contents owned by him or for which he is responsible against loss or damage by the Specified Perils. Some Employers (e.g. tenants and some homeowners) may not be able readily to obtain the Joint Names cover required under paragraph C.1. Where that is the case, alternative arrangements and amendments will be necessary. See the Prime Cost Building Contract Guide.

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

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

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

### 5.10 and Schedule 3

Terrorism Cover – details of the required cover  
(Unless otherwise stated, Pool Re Cover is required.)<sup>[20]</sup>

are set out in the following document(s)

[ ]

### 5.12

The Joint Fire Code

\* applies/does not apply<sup>[21]</sup>

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

\* Yes/No<sup>[21]</sup>

### 6.2

Assignment/grant by Employer of rights under clause 6.2  
(If neither entry is deleted, clause 6.2 applies.)

Clause 6.2  
\* applies/does not apply

Sections: rights under clause 6.2  
(If clause 6.2 applies, amend the entry if rights under that clause are to apply to certain Sections only.)

\* Rights under clause 6.2 apply to each Section

### 6.3.1

Performance bond or guarantee from bank or other approved surety<sup>[22]</sup>  
(If this entry is not completed or the required form is not specified, a performance bond or guarantee is not required.)

\* is required/is not required

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

[ ]

Initial value

[ ] per cent of the estimated Prime Cost and Contract Fee

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

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

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

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

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

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

[ ] per cent

### 6.3.2

Guarantee from the Contractor's parent company

- \* is required/is not required

Parent company's name and registration number

[ ]

The required form of the guarantee is set out in

[ ]

### 6.4

Third Party Rights and Collateral Warranties – details of the requirements for the grant by the Contractor and sub-contractors of P&T Rights, Funder Rights and/or (in the case of sub-contractors) Employer Rights in respect of the Works, in the case of the Contractor either as third party rights or by collateral warranties and in the case of sub-contractors by collateral warranties only ('Rights Particulars') are set out in the following document<sup>[23]</sup>  
(State reference number and date or other identifier of the relevant document.)

[ ]

### 7.9.2

Period of suspension  
(If none is stated, the period is 2 months.)

[ ]

### 7.11.1.1 to 7.11.1.5

Period of suspension  
(If none is stated, the period is 2 months.)

[ ]

[23] The Contractor may be required to grant rights either as Third Party Rights or Collateral Warranties. In the case of sub-contractors, provision is made only for the grant of Collateral Warranties – see clause 6.11 and the Prime Cost Building Contract Guide. The relevant Rights Particulars should identify the beneficiaries (by name, class or description) and the sub-contractors who are also required to grant rights, specify whether (in the case of the Contractor) rights are to be granted as Third Party Rights or by way of Collateral Warranties, state in those cases where the default provision is not to apply which alternative provision is to apply in its place and give any other details required to complete the terms of the rights or warranties that are to be given. A Model Form for the Rights Particulars is included in the Prime Cost Building Contract Guide and is also available on the JCT website [www.jctltd.co.uk](http://www.jctltd.co.uk). In the case of third party rights to be given by the Contractor the relevant limits and details required for the purposes of the respective parts of Schedule 5 of this Contract are the same as those required for the purposes of the Warranty Particulars for the corresponding Collateral Warranty (CWa/P&T or CWa/F). Directions may be needed as to mode of execution of sub-contracts and/or collateral warranties by relevant sub-contractors. See also the Prime Cost Building Contract Guide.

### 8.2.1

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Adjudication<sup>[24]</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>[25]</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>[26]</sup>
- \* Chartered Institute of Arbitrators

### 8.4.1

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Arbitration<sup>[27]</sup> – appointor of Arbitrator (and of any replacement)<sup>[28]</sup>

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

President or a Vice-President:

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

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[24] 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.

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

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

[27] This only applies where the Contract Particulars state (against the reference to Article 8) that Article 8 and clauses 8.3 to 8.8 (*Arbitration*) apply.

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

## Attestation

### Note on Execution

This Agreement should be executed by both the Employer and the Contractor either under hand or as a deed. As to factors relevant to that choice, see the Prime Cost Building 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 Employer

in the presence of:

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

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

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

Signed by or on behalf of  
the Contractor

in the presence of:

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

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

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

## Notes on Execution as a Deed

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

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

*Execution as a Deed*

**Executed as a Deed by the Employer**

namely <sup>1</sup>

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

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

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

and

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

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

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

in the presence of

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

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

[Common seal of company]

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

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

in the presence of

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

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

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

\_\_\_\_\_  
Signature

in the presence of

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

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

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

*Execution as a Deed*

**Executed as a Deed by the Contractor**

namely <sup>1</sup>

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

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

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

and

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

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

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

in the presence of

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

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

[Common seal of company]

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

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

in the presence of

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

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

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

\_\_\_\_\_  
Signature

in the presence of

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

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

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

# Conditions

## Section 1 Definitions and Interpretation

### Definitions

#### 1.1 Definitions

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

**Adjudicator:** an individual appointed under **clause 8.2** as the Adjudicator.

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

**All Risks Insurance:** see **clause 5.8**.

**Arbitrator:** an individual appointed under **clause 8.4** as the Arbitrator.

**Architect/Contract Administrator:** the person named in **Article 3** or any successor nominated or otherwise agreed under **clause 3.5**.

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

**Base Date:** the date stated as such date in the **Contract Particulars** (against the reference to **clause 1.1**)<sup>[29]</sup>.

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

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

**C.1 Replacement Schedule:** (where applicable) the insurance schedule and/or other documents identified as such in the **Contract Particulars** (against the reference to **clause 5.7** and **Schedule 3**).

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

**Certificate of Making Good:** see **clause 2.31**.

**Completion Date:** the Date for Completion of the Works or of a Section as stated in the **Contract Particulars** or such other date as is fixed under **clause 2.20**.

**Conditions:** the clauses set out in sections 1 to 8 of these Conditions, together with and including the Schedules hereto.

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

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

**Consultants:** see **clause 6.4.3**.

**Contract Documents:** the Specification, the Contract Drawings (if any), the Agreement, these Conditions and (where applicable) the BIM Protocol.

[29] The Base Date is relevant (inter alia) to clauses 2.21.11 (Relevant Events) and 4.4.2 (VAT exemption).

**Contract Drawings:** the drawings, if any, referred to in the **Second Recital**.

**Contract Fee:** the fee referred to in **Article 2**, being either the Fixed Sum or Percentage Fee specified in the Contract Particulars.

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

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

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

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

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

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

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

**Employer's Persons:** all persons employed, engaged or authorised by the Employer, excluding the Contractor, Contractor's Persons, the Architect/Contract Administrator, the Quantity Surveyor and any Statutory Undertaker but including any such third party as is referred to in clause 3.22.2.

**Excepted Risks:** see **clause 5.8**.

**Excluded Work:** see the **Third Recital** and the **Contract Particulars** (against the reference to that Recital).

**Existing Structures:** any and all existing structures within which the Works or part of them are to be executed or to which they are to form an extension, together with any Section for which a Section Completion Certificate has been issued and, as from the Relevant Date, any Relevant Part taken into possession under clause 2.25.

**Final Certificate:** see **clauses 1.9** and **4.22**.

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

**Fixed Sum:** see Contract Fee and **clause 4.3.1**.

**Funder:** the person named or otherwise sufficiently identified as such (whether by class or description) in or by the Rights Particulars and in respect of whom the Employer gives notice under **clause 6.8.1**.

**Funder Rights:** the rights in favour of the Funder to be granted by the Contractor as third party rights under **Part 2 of Schedule 5** or by JCT collateral warranty CWa/F or those to be granted by sub-contractors in accordance with the Rights Particulars.

**Insolvent:** see **clause 7.1**.

**Insurance Options A, B and C:** the provisions relating to insurance of the Works and (where applicable) Existing Structures set out in **Schedule 3**.

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

**Interim Certificate:** any of the certificates to which **clause 4.7.1** refers.

**Interim Valuation Date:** each date as specified by the **Contract Particulars** (against the reference to **clause 4.6**).

**Joint Fire Code:** the Joint Fire Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Renovation, published by Construction Industry Publications Ltd and the Fire

Protection Association, current at the Base Date.

**Joint Names Policy:** see **clause 5.8**.

**Listed Items:** materials, goods and/or items prefabricated for inclusion in the Works which are listed as such items by the Employer in a list supplied to the Contractor and annexed to the Specification.

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

**Non-Completion Certificate:** see **clause 2.23**.

**P&T Rights:** the rights in favour of a Purchaser or Tenant to be granted by the Contractor as third party rights under **Part 1 of Schedule 5** or by JCT collateral warranty CWA/P&T or those to be granted by sub-contractors in accordance with the Rights Particulars.

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

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

**Pay Less Notice:** see **clauses 4.9.5** and **4.10.1**.

**Payment Application:** see **clause 4.8.1**.

**Payment Certificate:** an Interim Certificate or the Final Certificate.

**Payment Notice:** see **clause 4.8.2**.

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

**Percentage Fee:** see Contract Fee and **clause 4.3.1**.

**Practical Completion Certificate:** see **clause 2.22**.

**Prime Cost:** the cost of the Works ascertained in accordance with **Schedule 1**.

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

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

**Public Holiday:** Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.<sup>[30]</sup>

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

**Quantity Surveyor:** the person named in **Article 4** or any successor nominated or otherwise agreed under **clause 3.5**.

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

**Rectification Period:** the period stated as such period in the **Contract Particulars** (against the reference to **clause 2.30**) in relation to the Works or (where applicable) a Section.

**Relevant Date:** see **clause 2.25**.

**Relevant Event:** see **clause 2.21**.

**Relevant Matter:** see **clause 4.18**.

**Relevant Omission:** see **clause 2.18.2**.

**Relevant Part:** see **clause 2.25**.

**Retention:** see **clauses 4.14** and **4.15**.

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

**Retention Percentage:** the percentage stated in the **Contract Particulars** (against the reference to **clause 4.15.1**).

**Rights Particulars:** see **clause 6.4** and the **Contract Particulars** for that clause.

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

**Scope of the Works:** the nature and scope of the work initially described in and shown by the Specification, Contract Drawings (if any) or other document(s) identified for this purpose in the Contract Particulars.

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

**Section Completion Certificate:** see **clause 2.22.2**.

**Section Sum:** see **clause 2.29** and the **Contract Particulars**.

**Site:** see the **First Recital**.

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

**Specification:** see the **Second Recital**.

**Specified Perils:** see **clause 5.8**.

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

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

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

**Terrorism Cover:** see **clause 5.8**.

**VAT:** Value Added Tax.

**Works:** the works briefly described in the **First Recital**, as more particularly shown, described or referred to in the Contract Documents, including any changes made to those works in accordance with this Contract.

**Works Insurance Policy:** the Joint Names Policy or policies covering the Works and Site Materials to be effected and maintained under whichever of Insurance Options A, B or C applies under this Contract.

## Interpretation

### 1.2 Reference to clauses etc.

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

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

The Agreement and these Conditions are to be read as a whole. Nothing contained in any other Contract Document or any Framework Agreement, irrespective of their terms, shall override or modify the Agreement or these Conditions.

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

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

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

#### **1.5 Reckoning periods of days**

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

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

Other than such rights of any Purchasers, Tenants and/or Funder as take effect pursuant to clauses 6.7 and/or 6.8, nothing in this Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

#### **1.7 Notices and other communications**

- 1.7.1 Any notice or other communication between the Parties, or by or to the Architect/Contract Administrator or Quantity Surveyor, that is expressly referred to in the Agreement or these Conditions (including, without limitation, each application, approval, consent, confirmation, counter-notice, decision, instruction or other notification) shall be in writing.
- 1.7.2 Subject to clause 1.7.4, each such notice or other communication and any documents to be supplied may or (where so required) shall be sent or transmitted by the means (electronic or otherwise) and in such format as the Parties have agreed or may from time to time agree in writing for the purposes of this Contract.<sup>[31]</sup>
- 1.7.3 Subject to clauses 1.7.2 and 1.7.4, any notice, communication or document may be given or served by any effective means and shall be duly given or served if delivered by hand or sent by pre-paid post to:
  - 1.7.3.1 the recipient's address stated in the Contract Particulars, or to such other address as the recipient may from time to time notify to the sender; or
  - 1.7.3.2 if no such address is then current, the recipient's last known principal business address or (where a body corporate) its registered or principal office.
- 1.7.4 Any notice expressly required by this Contract to be given in accordance with this clause 1.7.4 shall be delivered by hand or sent by Recorded Signed for or Special Delivery post. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.
- 1.7.5 If in an emergency any communication is made orally with respect to health and safety, risk of damage to property or insurance matters, written confirmation of it shall be sent as soon thereafter as is reasonably practicable.

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**[31]** In cases where there is no BIM Protocol, the Parties should agree a communications protocol on or before entering into the Contract, or as soon thereafter as is practicable. See the Prime Cost Building Contract Guide.

## **1.8 Issue of Architect/Contract Administrator's certificates**

Each certificate to be issued by the Architect/Contract Administrator under these Conditions shall be issued to the Employer and the Contractor at the same time.

## **1.9 Effect of Final Certificate**

1.9.1 Subject to clause 1.9.2 (and save in respect of fraud), the Final Certificate shall have effect in any proceedings under or arising out of or in connection with this Contract (whether by adjudication, arbitration or legal proceedings) as conclusive evidence that:

1.9.1.1 where and to the extent that any particular quality of any materials or goods or any particular standard of an item of workmanship was expressly described in the Contract Documents, in any instruction issued by the Architect/Contract Administrator under these Conditions, or in any drawings or documents issued by him under clause 2.8 or 2.9, to be for his approval, the particular quality or standard was to his reasonable satisfaction, but the Final Certificate shall not be conclusive evidence that they or any other materials, goods or workmanship comply with any other requirement or term of this Contract;

1.9.1.2 necessary effect has been given to all the terms of this Contract with regard to payment save where there has been an erroneous inclusion or exclusion of any work, materials, goods or figure or an arithmetical error in any computation, in which event the Final Certificate shall have effect as conclusive evidence as to all other computations;

1.9.1.3 all and only such extensions of time, if any, as are due under clause 2.20 have been given; and

1.9.1.4 the reimbursement of direct loss and/or expense, if any, due to the Contractor as agreed, ascertained or valued in accordance with these Conditions is in final settlement of all and any claims which the Contractor has or may have arising out of the occurrence of any Relevant Matters, whether such claim be for breach of contract, duty of care, statutory duty or otherwise.

1.9.2 The effects of the Final Certificate specified in clause 1.9.1 shall in relation to the subject matter of any adjudication, arbitration or other proceedings be suspended pending the conclusion of such proceedings, and shall thereafter be subject to the terms of any decision, award or judgment in and any settlement of those proceedings:

1.9.2.1 where those proceedings are commenced before or within 28 days after the date of issue of the Final Certificate; or

1.9.2.2 in the case of an adjudication commenced within the period referred to in clause 1.9.2.1 in which the Adjudicator gives his decision after the date of issue of the Final Certificate, where arbitration or legal proceedings to determine the dispute or difference in question are commenced within 28 days of the date of that decision

but not otherwise.

1.9.3 For the purposes of clause 1.9.2 any proceedings shall be treated as concluded if during any period of 12 months commencing on or after the issue of the Final Certificate neither Party takes a further step in them.

## **1.10 Effect of certificates other than Final Certificate**

Save as stated in clause 1.9 no certificate of the Architect/Contract Administrator shall of itself be conclusive evidence that any works, any materials or goods to which the certificate relates are in accordance with this Contract.

## **1.11 Consents and approvals**

1.11.1 Where consent or approval of either Party or the Architect/Contract Administrator is expressly required under these Conditions and is requested, then, except as provided in clause 1.11.2, such consent or approval shall not be unreasonably delayed or withheld.

1.11.2 In the following cases the giving of consent or approval shall be at the sole discretion of the Party from whom it is sought and clause 1.11.1 shall not apply, namely the Employer's

consent under clause 2.8, 2.30 or 3.18.2 and either Party's consent under clause 6.1.

**1.12 Applicable law**

This Contract shall be governed by and construed in accordance with the law of England.<sup>[32]</sup>

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

## Section 2 Carrying out the Works

### Contractor's Obligations

#### 2.1 General obligations

The Contractor:

- 2.1.1 following the issue of the necessary instructions under clause 3.14, shall carry out and complete the Works in a proper and workmanlike manner and in compliance with the Contract Documents, the Construction Phase Plan and Statutory Requirements, and shall give all notices required by the Statutory Requirements;
- 2.1.2 shall carry out and complete the Works as economically as is possible, consistent with the Architect/Contract Administrator's instructions and having regard to all the circumstances, including the Scope of the Works, the Completion Date or Dates, the prices of materials and goods and labour rates current at the time that the relevant work is carried out; and
- 2.1.3 shall not at any time employ upon the Site a greater number of persons than is reasonably required to carry out and complete the Works in accordance with this Contract.

#### 2.2 Materials, goods and workmanship

- 2.2.1 All materials and goods for the Works shall, so far as procurable, be of the kinds and standards described in the Specification or, as the case may be, in any instruction of the Architect/Contract Administrator. The Contractor shall not substitute any materials or goods so described without the Architect/Contract Administrator's consent which, if given, shall not relieve the Contractor of his other obligations.
- 2.2.2 Workmanship for the Works shall be of the standards described in the Specification or, as the case may be, in any instruction of the Architect/Contract Administrator.
- 2.2.3 Insofar as the quality of materials and goods or standards of workmanship are in the Specification or any instruction stated to be a matter for the Architect/Contract Administrator's approval, such quality and standards shall be to his reasonable satisfaction. To the extent that the quality of materials and goods or standards of workmanship are neither described in the documents referred to in clause 2.2.1 or 2.2.2 nor stated to be a matter for such approval or satisfaction, they shall be of a standard appropriate to the Works.
- 2.2.4 The Contractor shall at the Architect/Contract Administrator's request provide him with reasonable proof that the materials and goods used comply with this clause 2.2.
- 2.2.5 The Contractor shall take all reasonable steps to encourage Contractor's Persons to be registered cardholders under the [Construction Skills Certification Scheme](#) (CSCS) or qualified under an equivalent recognised qualification scheme.

### Possession

#### 2.3 Date of Possession – progress

On the Date of Possession possession of the Site or, in the case of a Section, possession of the relevant part of the Site shall be given to the Contractor who shall thereupon, subject to the necessary instructions, begin the construction of the Works or Section and regularly and diligently proceed with and complete the same on or before the relevant Completion Date. For Works insurance purposes the Contractor shall retain possession:

- 2.3.1 of the Site and the Works up to and including the date of issue of the Practical Completion Certificate; or
- 2.3.2 of each Section and the relevant part of the Site up to and including the date of issue of the

Section Completion Certificate for that Section and, in respect of any balance of the Site, up to and including the date of issue of the Practical Completion Certificate

and, subject to clause 2.25 and section 7, the Employer shall not be entitled to take possession of any part or parts of the Works or Section until such date.

#### **2.4 Deferment of possession**

If the Contract Particulars state that clause 2.4 applies in respect of the Works or a Section, the Employer may defer the giving of possession of the Site or relevant part of it for a period not exceeding 6 weeks or lesser period stated in the Contract Particulars, calculated from the relevant Date of Possession.

#### **2.5 Early use by Employer**

2.5.1 Notwithstanding clause 2.3, the Employer may, with the Contractor's consent, use or occupy the Site or the Works or part of them, whether for storage or otherwise, before the date of issue of the Practical Completion Certificate or relevant Section Completion Certificate. Before the Contractor gives his consent to such use or occupation, the Party responsible for the Works Insurance Policy and/or, where there are Existing Structures, for any insurance cover relating to them shall notify the insurers and obtain confirmation that such use or occupation will not prejudice the insurance.

2.5.2 Where Insurance Option A applies and/or the Contractor is to cover his own or any other risks in relation to any Existing Structures and any insurers' confirmation is conditional on an additional premium being paid, the Contractor shall notify the Employer of its amount. If the Employer continues to require such use or occupation, any additional premium shall be included in the Prime Cost and the Contractor shall if requested produce the receipt for it to the Employer.

#### **2.6 Work not forming part of the Contract**

In regard to any Excluded Work or other work not forming part of this Contract which the Employer requires to be carried out by the Employer himself or by any Employer's Person:

2.6.1 where the Contract Documents provide the information necessary to enable the Contractor to carry out and complete the Works or each relevant Section in accordance with this Contract, the Contractor shall permit the execution of such work;

2.6.2 where the Contract Documents do not provide the information referred to in clause 2.6.1, the Employer may with the Contractor's consent arrange for the execution of that work.

### **Supply of Documents, Setting Out etc.**

#### **2.7 Contract Documents**

2.7.1 The Contract Documents shall remain in the custody of the Employer and shall be available at all reasonable times for inspection by the Contractor.

2.7.2 Immediately after the execution of this Contract the Architect/Contract Administrator, without charge to the Contractor, shall (unless previously provided or unless the BIM Protocol or other communications protocol requires otherwise) provide him with:

2.7.2.1 one copy, certified on behalf of the Employer, of the Contract Documents, together with any pre-construction information required to be provided to the Contractor under regulation 4 of the CDM Regulations;

2.7.2.2 two further copies of the Specification; and

2.7.2.3 (if applicable) two further copies of the Contract Drawings.

2.7.3 The Contractor shall keep on the Site or accessible there to the Architect/Contract Administrator or his representative at all reasonable times copies of the Contract Documents and the further documents and information referred to in clauses 2.8 and 2.9

2.7.4 None of the documents referred to in this clause 2.7 that are provided to the Contractor shall be used by him for any purpose other than this Contract, and (subject only to clause 2.7.5) the Employer, the Architect/Contract Administrator and the Quantity Surveyor shall

not divulge or use except for the purposes of this Contract the amount or details of the Contract Fee or of any other rates or prices.

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

## **2.8 Levels and setting out of the Works**

The Architect/Contract Administrator shall determine any levels required for the execution of the Works and shall provide the Contractor by way of accurately dimensioned drawings with such information as shall enable the Contractor to set out the Works. The Contractor shall be responsible for, and shall at no cost to the Employer amend, any errors arising from his own inaccurate setting out. With the Employer's consent, the Architect/Contract Administrator may instruct that such errors shall not be amended and an appropriate deduction, ascertained by the Quantity Surveyor, may be made from the Prime Cost for those that are not required to be amended.

## **2.9 Further drawings, details and instructions**

- 2.9.1 The Architect/Contract Administrator shall from time to time, without charge to the Contractor, provide him with such further drawings or details as are reasonably necessary to explain and amplify the Specification and any Contract Drawings and shall issue such instructions as are necessary to enable the Contractor to carry out and complete the Works in accordance with this Contract.
- 2.9.2 The further drawings, details and instructions shall be provided or given at the time the Contractor reasonably requires them, having regard to the progress of the Works, or, if in the Architect/Contract Administrator's opinion practical completion of the Works or relevant Section is likely to be achieved before the relevant Completion Date, having regard to that Completion Date.
- 2.9.3 Where the Contractor has reason to believe that the Architect/Contract Administrator is not aware of the time by which the Contractor needs to receive such further drawings, details or instructions, he shall, so far as reasonably practicable, give such advance notice to the Architect/Contract Administrator as should enable the Architect/Contract Administrator to comply with that requirement.

## **Discrepancies and Divergences**

### **2.10 Notice of discrepancies etc.**

If the Contractor becomes aware of any discrepancy or divergence in or between any of the following, namely:

- 2.10.1 the Specification;
- 2.10.2 any Contract Drawings;
- 2.10.3 any instruction issued by the Architect/Contract Administrator under these Conditions; and
- 2.10.4 any drawings or documents issued by the Architect/Contract Administrator under clause 2.8 or 2.9,

he shall immediately give notice with appropriate details to the Architect/Contract Administrator, who shall issue instructions in that regard.

### **2.11 Divergences from Statutory Requirements**

- 2.11.1 If the Contractor or Architect/Contract Administrator becomes aware of a divergence between the Statutory Requirements and a document referred to in clause 2.10, he shall immediately give the other notice specifying the divergence.
- 2.11.2 Within 7 days of becoming aware of such divergence, the Architect/Contract Administrator shall issue instructions in that regard.
- 2.11.3 Provided the Contractor is not in breach of clause 2.11.1, the Contractor shall not be liable under this Contract if the Works do not comply with the Statutory Requirements to the extent that the non-compliance results from the Contractor having carried out work in

accordance with the documents referred to in clause 2.10 or with any instruction issued by the Architect/Contract Administrator under these Conditions.

## **2.12 Emergency compliance with Statutory Requirements**

- 2.12.1 If in an emergency compliance with the Statutory Requirements necessitates the Contractor supplying materials and/or executing work before receiving instructions under clause 2.11.2, the Contractor shall supply such limited materials and execute such limited work as are reasonably necessary to secure immediate compliance.
- 2.12.2 The Contractor shall forthwith notify the Architect/Contract Administrator of the emergency and the steps that he is taking under clause 2.12.1.
- 2.12.3 Where the emergency arises from a divergence between the Statutory Requirements and any of the documents referred to in clause 2.10, then, provided that the Contractor has complied with clause 2.12.2, the execution and supply of work and materials under clause 2.12.1 shall be treated as an instruction under clause 3.14.

## **Fees, Royalties and Patent Rights**

### **2.13 Fees or charges legally demandable**

Without affecting his right to reimbursement under Part 6 of Schedule 1, the Contractor shall pay all fees or charges (including any rates or taxes) legally demandable under any Statutory Requirement and indemnify the Employer against any liability resulting from any failure to do so.

### **2.14 Patent rights and royalties – Contractor's indemnity**

Where the Specification describes or refers to any patented article, process or other invention, the Contractor (subject to paragraph 6.1.5 of Schedule 1) shall indemnify the Employer from and against all claims and proceedings which may be brought or made against the Employer, and all damages, costs and expense to which he may be put, by reason of the Contractor infringing or being held to have infringed any patent rights in relation to any such articles, processes or inventions.

### **2.15 Patent rights – Instructions**

- 2.15.1 Where in order to comply with the Architect/Contract Administrator's instructions it is necessary for the Contractor in carrying out the Works to supply and/or use any patented article, process or other invention, the Contractor (except where the relevant article, process or invention was described or referred to in the Specification) shall not be liable in respect of any infringement or alleged infringement of any patent rights relating to it.
- 2.15.2 If prior to the instructions being carried out the Architect/Contract Administrator or the Contractor is or becomes aware that such supply or use may infringe any patent rights, he shall promptly notify and consult the other and the instructions shall not take effect unless confirmed by the Architect/Contract Administrator.

## **Unfixed Materials and Goods – property, risk etc.**

### **2.16 Materials and goods – on site**

Site Materials shall not be removed from storage on or adjacent to the Works except for use on the Works without the Architect/Contract Administrator's consent. Where their value has in accordance with clause 4.6.2 been included in any Interim Certificate under which the amount properly due to the Contractor has been paid by the Employer, they shall upon such payment become the Employer's property, but, subject to Insurance Option B or C (if applicable), the Contractor shall remain responsible for loss or damage to them.

### **2.17 Materials and goods – off site**

Where the value of any Listed Items has in accordance with clause 4.13 been included in any Interim Certificate under which the amount properly due to the Contractor has been paid by the Employer, those items shall become the Employer's property and thereafter the Contractor shall not, except for use upon the Works, remove or cause or permit them to be moved or removed from the premises where they are. The Contractor shall be responsible for any loss of or damage to them and for the cost of their storage, handling and insurance until they are delivered to and placed on or adjacent to the Works. As from such delivery the provisions of clause 2.16 (except the words "Where their value"

to "Employer's property, but,") shall apply to such items.

## **Adjustment of Completion Date**

### **2.18 Related definitions and interpretation**

In clauses 2.19 to 2.21 and, so far as relevant, in the other clauses of these Conditions:

- 2.18.1 any reference to delay or extension of time includes any further delay or further extension of time;
- 2.18.2 'Relevant Omission' means the omission of any work or obligation through an instruction under clause 3.15.

### **2.19 Notice of delay – Review of progress**

- 2.19.1 If and whenever it becomes reasonably apparent that the progress of the Works or any Section is being or is likely to be delayed the Contractor shall forthwith give notice to the Architect/Contract Administrator of the material circumstances, including the cause or causes of the delay, and shall identify in the notice any event which in his opinion is a Relevant Event.
- 2.19.2 In respect of each event identified in the notice the Contractor shall, if practicable in such notice or otherwise in writing as soon as possible thereafter, give particulars of its expected effects, including an estimate of any expected delay in the completion of the Works or any Section beyond the relevant Completion Date.
- 2.19.3 The Contractor shall forthwith notify the Architect/Contract Administrator of any material change in the estimated delay or in any other particulars and supply such further information as the Architect/Contract Administrator may at any time reasonably require.
- 2.19.4 Whenever the Architect/Contract Administrator considers it reasonably necessary, whether or not a notice has been given under clause 2.19.1, the Contractor shall review the progress of the Works with him. The review may include consideration of the extent to which any additional resources are in the Architect/Contract Administrator's opinion required to maintain progress, the cost of which would be included in the Prime Cost.

### **2.20 Fixing Completion Date**

- 2.20.1 If, in the Architect/Contract Administrator's opinion, on receiving a notice and particulars under clause 2.19:
  - 2.20.1.1 any of the events which are stated to be a cause of delay is a Relevant Event; and
  - 2.20.1.2 completion of the Works or of any Section is likely to be delayed thereby beyond the relevant Completion Date,then, save where these Conditions expressly provide otherwise, the Architect/Contract Administrator shall give an extension of time by fixing such later date as the Completion Date for the Works or Section as he then estimates to be fair and reasonable.
- 2.20.2 Whether or not an extension is given, the Architect/Contract Administrator shall notify the Contractor of his decision in respect of any notice under clause 2.19 as soon as is reasonably practicable and in any event within 12 weeks of receipt of the required particulars. Where the period from receipt to the Completion Date is less than 12 weeks, he shall endeavour to do so prior to the Completion Date.
- 2.20.3 The Architect/Contract Administrator shall in his decision state:
  - 2.20.3.1 the extension of time that he has attributed to each Relevant Event; and
  - 2.20.3.2 (in the case of a decision under clause 2.20.4 or 2.20.5) the reduction in time that he has attributed to each Relevant Omission.
- 2.20.4 After the first fixing of a later Completion Date in respect of the Works or a Section under clause 2.20.1, but subject to clause 2.20.6.3, the Architect/Contract Administrator may by notice to the Contractor, giving the details referred to in clause 2.20.3, fix a Completion

Date for the Works or that Section earlier than that previously so fixed if in his opinion the fixing of such earlier Completion Date is fair and reasonable, having regard to any Relevant Omissions for which instructions have been issued after the last occasion on which a new Completion Date was fixed for the Works or for that Section.

2.20.5 After the Completion Date for the Works or for a Section, if this occurs before the date of practical completion, the Architect/Contract Administrator may, and not later than the expiry of 12 weeks after the date of practical completion shall, by notice to the Contractor, giving the details referred to in clause 2.20.3:

2.20.5.1 fix a Completion Date for the Works or for the Section later than that previously fixed if in his opinion that is fair and reasonable having regard to any Relevant Events, whether on reviewing a previous decision or otherwise and whether or not the Relevant Event has been specifically notified by the Contractor under clause 2.19.1; or

2.20.5.2 subject to clause 2.20.6.3, fix a Completion Date earlier than that previously fixed if in his opinion that is fair and reasonable having regard to any instructions for Relevant Omissions issued after the last occasion on which a new Completion Date was fixed for the Works or Section; or

2.20.5.3 confirm the Completion Date previously fixed.

2.20.6 Provided always that:

2.20.6.1 the Contractor shall constantly use his best endeavours to prevent delay in the progress of the Works or any Section, however caused, and to prevent the completion of the Works or Section being delayed or further delayed beyond the relevant Completion Date;

2.20.6.2 in the event of any delay the Contractor shall do all that may reasonably be required to the satisfaction of the Architect/Contract Administrator to proceed with the Works or Section;

2.20.6.3 no decision of the Architect/Contract Administrator under clause 2.20.4 or 2.20.5.2 shall fix a Completion Date for the Works or any Section earlier than the relevant Date for Completion unless the Employer and the Contractor otherwise agree in writing.

## 2.21 Relevant Events

The following are the Relevant Events referred to in clauses 2.19 and 2.20:

2.21.1 Architect/Contract Administrator's instructions:

2.21.1.1 under clause 3.14, except to the extent that the instructions are to carry out the work described in the Specification and/or shown upon any Contract Drawings; or

2.21.1.2 under any of clauses 2.10, 2.11.2, 3.15 or 3.16; or

2.21.1.3 for the opening up for inspection or testing of any work, materials or goods under clause 3.17 or 3.18.4 (including making good), unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract;

2.21.2 deferment of the giving of possession of the Site or any Section under clause 2.4;

2.21.3 compliance with clause 3.22.1 or with Architect/Contract Administrator's instructions under clause 3.22.2;

2.21.4 suspension by the Contractor under clause 4.11 of the performance of any or all of his obligations under this Contract;

2.21.5 any impediment, prevention or default, whether by act or omission, by the Employer, Architect/Contract Administrator, the Quantity Surveyor or any Employer's Person, except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or any Contractor's Person;

- 2.21.6 the carrying out by a Statutory Undertaker of work in pursuance of its statutory obligations in relation to the Works, or the failure to carry out such work;
- 2.21.7 exceptionally adverse weather conditions;
- 2.21.8 loss or damage occasioned by any Specified Peril;
- 2.21.9 civil commotion or the use or threat of terrorism and/or the activities of the relevant authorities in dealing with such event or threat;
- 2.21.10 strike, lock-out or local combination of workmen affecting any trade employed upon the Works or engaged in the preparation, manufacture or transportation of any of the goods or materials required for them;
- 2.21.11 the exercise after the Base Date by the United Kingdom Government or any Local or Public Authority of any statutory power that is not occasioned by a default of the Contractor or any Contractor's Person but which directly affects the execution of the Works;
- 2.21.12 force majeure.

## **Practical Completion, Lateness and Liquidated Damages**

### **2.22 Practical completion and certificates**

When in the Architect/Contract Administrator's opinion practical completion of the Works or a Section is achieved and the Contractor has complied sufficiently with clause 3.23 in respect of the supply of documents and information, then:

- 2.22.1 in the case of the Works, the Architect/Contract Administrator shall forthwith issue a certificate to that effect ('the Practical Completion Certificate');
- 2.22.2 in the case of a Section, he shall forthwith issue a certificate of practical completion of that Section (a 'Section Completion Certificate');

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

### **2.23 Non-Completion Certificates**

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

### **2.24 Payment or allowance of liquidated damages**

- 2.24.1 Provided:
  - 2.24.1.1 the Architect/Contract Administrator has issued a Non-Completion Certificate for the Works or a Section; and
  - 2.24.1.2 the Employer has notified the Contractor before the date of the Final Certificate that he may require payment of, or may withhold or deduct, liquidated damages,
- the Employer may, not later than 5 days before the final date for payment of the amount payable under clause 4.22, give notice to the Contractor in the terms set out in clause 2.24.2.
- 2.24.2 A notice from the Employer under clause 2.24.1 shall state that for the period between the Completion Date and the date of practical completion of the Works or that Section:
  - 2.24.2.1 he requires the Contractor to pay liquidated damages at the rate stated in the Contract Particulars, or lesser rate stated in the notice, in which event the Employer may recover the same as a debt; and/or
  - 2.24.2.2 that he will withhold or deduct liquidated damages at the rate stated in the Contract Particulars, or at such lesser stated rate, from sums due to the

Contractor.<sup>[33]</sup>

- 2.24.3 If the Architect/Contract Administrator fixes a later Completion Date for the Works or a Section, the Employer shall pay or repay to the Contractor any amounts recovered, allowed or paid under clause 2.24 for the period up to that later Completion Date.
- 2.24.4 If the Employer in relation to the Works or a Section has notified the Contractor in accordance with clause 2.24.1.2 that he may require payment of, or may withhold or deduct, liquidated damages, then, unless the Employer states otherwise in writing, clause 2.24.1.2 shall remain satisfied in relation to the Works or Section, notwithstanding the cancellation of the relevant Non-Completion Certificate and issue of any further Non-Completion Certificate.

## Partial Possession by Employer

### 2.25 Contractor's consent

If at any time or times before the date of issue by the Architect/Contract Administrator of the Practical Completion Certificate or relevant Section Completion Certificate the Employer wishes to take possession of any part or parts of the Works or a Section and the Contractor's consent has been obtained, then, notwithstanding anything expressed or implied elsewhere in this Contract, the Employer may take possession of such part or parts. The Architect/Contract Administrator shall thereupon give the Contractor notice on behalf of the Employer identifying the part or parts taken into possession and giving the date when the Employer took possession ('the Relevant Part' and 'the Relevant Date' respectively).

### 2.26 Practical completion date

For the purposes of clauses 2.30 and 4.15.2, practical completion of the Relevant Part shall be deemed to have occurred, and the Rectification Period in respect of the Relevant Part shall be deemed to have commenced, on the Relevant Date.

### 2.27 Defects etc. – Relevant Part

When in the Architect/Contract Administrator's opinion any defects, shrinkages or other faults in the Relevant Part which he has required to be made good under clause 2.30 have been made good, he shall issue a certificate to that effect.

### 2.28 Insurance – Relevant Part

As from the Relevant Date the Works insurance obligation under Insurance Option A, B or C.2, whichever applies, shall cease in respect of the Relevant Part (but not otherwise) and the Existing Structures (if any) shall from that date be deemed to include the Relevant Part.

### 2.29 Liquidated damages – Relevant Part

As from the Relevant Date, the amount of any liquidated damages payable in respect of the Works or Section containing the Relevant Part shall reduce by the same proportion as the value of the Relevant Part as estimated at the date of this Contract bears to the estimated Prime Cost of the Works or relevant Section Sum as shown in the Contract Particulars.

## Defects

### 2.30 Schedules of defects and instructions

If any defects, shrinkages or other faults in the Works or a Section appear within the relevant Rectification Period due to materials, goods or workmanship not in accordance with this Contract:

- 2.30.1 such defects, shrinkages or other faults shall be specified by the Architect/Contract Administrator in a schedule of defects which he shall deliver to the Contractor as an instruction not later than 14 days after the expiry of that Rectification Period; and
- 2.30.2 prior to issue of that schedule, the Architect/Contract Administrator may whenever he considers it necessary issue instructions requiring any such defect, shrinkage or other fault

[33] In addition to the notice under clause 2.24.2, the Employer, if he intends to withhold or deduct all or any of the liquidated damages payable, must give the appropriate Pay Less Notice under clause 4.9.5.

to be made good, provided no instructions under this clause 2.30.2 shall be issued after delivery of that schedule or more than 14 days after the expiry of the relevant Rectification Period.

Within a reasonable time after receipt of such schedule or instructions, the defects, shrinkages and other faults shall at no cost to the Employer be made good by the Contractor unless the Architect/Contract Administrator with the Employer's consent instructs otherwise. If he so instructs otherwise, an appropriate deduction, ascertained by the Quantity Surveyor, may be made from the Prime Cost in respect of the defects, shrinkages or other faults not made good.

### **2.31 Certificate of Making Good**

When in the Architect/Contract Administrator's opinion the defects, shrinkages or other faults in the Works or a Section which under clause 2.30 he has required to be made good have been made good, he shall issue a certificate to that effect (a 'Certificate of Making Good'), and completion of that making good shall for the purposes of this Contract be deemed to have taken place on the date stated in that certificate.

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## Section 3 Control of the Works

### Access and Representatives

#### 3.1 Access for Architect/Contract Administrator

The Architect/Contract Administrator and any person authorised by him shall at all reasonable times have access to the Works and to the workshops or other premises of the Contractor where work is being prepared for this Contract. When work is to be prepared in workshops or other premises of a sub-contractor the Contractor shall by a term in the sub-contract secure so far as possible a similar right of access to those workshops or premises for the Architect/Contract Administrator and any person authorised by him and take any steps reasonably necessary to make that right effective. Access under this clause 3.1 may be subject to such reasonable restrictions as are necessary to protect proprietary rights.

#### 3.2 Person-in-charge

The Contractor shall ensure that at all times he has on the Site a competent person-in-charge and any instructions given to that person by the Architect/Contract Administrator or directions given to him by the clerk of works in accordance with clause 3.4 shall be deemed to have been issued to the Contractor.

#### 3.3 Employer's representative

The Employer may appoint an individual to act as his representative by giving notice to the Contractor that from the date stated the individual identified in the notice will exercise all the functions ascribed to the Employer in these Conditions, subject to any exceptions stated in the notice. The Employer may by notice to the Contractor terminate any such appointment and/or appoint a replacement.<sup>[34]</sup>

#### 3.4 Clerk of works

The Employer shall be entitled to appoint a clerk of works whose duty shall solely be to act as inspector on behalf of the Employer under the Architect/Contract Administrator's directions and the Contractor shall afford every reasonable facility for the performance of that duty. Any direction given by the clerk of works shall be of no effect unless it relates to a matter on which these Conditions expressly empower the Architect/Contract Administrator to issue instructions and unless the latter confirms it by an instruction within 2 Business Days of the direction being given.

#### 3.5 Replacement of Architect/Contract Administrator or Quantity Surveyor

3.5.1 If the Architect/Contract Administrator or Quantity Surveyor at any time ceases to hold that post, the Employer shall as soon as reasonably practicable, and in any event within 21 days of the cessation, nominate a replacement and notify the Contractor. Except where the Employer is a Local or Public Authority and the nominated replacement is an official of it, the Contractor may within 7 days of the notice give a counter-notice objecting to that nomination; if the Contractor's objections are accepted by the Employer or considered sufficient by a person appointed under the dispute resolution procedures of this Contract, the Employer shall withdraw the nomination and nominate an acceptable replacement.

3.5.2 No replacement Architect/Contract Administrator appointed for this Contract shall be entitled to disregard or overrule any certificate, opinion, decision, consent, approval or instruction given or expressed by any predecessor in that post, save to the extent that that predecessor if still in the post would then have had power under this Contract to do so.

#### 3.6 Contractor's responsibility

Irrespective of the Architect/Contract Administrator's obligations to the Employer and any appointment of a clerk of works, the Contractor shall remain wholly responsible for carrying out and completing the

[34] To avoid confusion between the roles of the Architect/Contract Administrator and the Quantity Surveyor on the one hand and that of the Employer's representative on the other, neither the Architect/Contract Administrator nor the Quantity Surveyor should be appointed as the Employer's representative.

Works in all respects in accordance with these Conditions. That responsibility shall not be affected by the Architect/Contract Administrator or clerk of works at any time inspecting the Works, any workshop or other premises or any work in preparation there, by the inclusion of the value of any work, materials or goods in a Payment Certificate, subject to clause 1.9, or by the issue of any other certificate under this Contract.

## Sub-Contracting

### 3.7 Consent to sub-contracting

- 3.7.1 Save for any sub-contract entered into in accordance with clause 3.8, the Contractor shall not without the Architect/Contract Administrator's consent sub-contract the whole or any part of the Works. In no case shall any such consent or any sub-contracting in any way affect the Contractor's obligations under any other provision of this Contract.
- 3.7.2 Except to the extent that the Architect/Contract Administrator instructs otherwise, the Contractor, before entering into a sub-contract for work to be sub-contracted under this clause 3.7 or under clause 3.8, shall:
- 3.7.2.1 obtain the Architect/Contract Administrator's consent to the terms of his invitation to tender (including the proposed basis of payment);
  - 3.7.2.2 invite tenders from the number of sub-contractors notified to him by the Architect/Contract Administrator, provided that the Contractor may with the Architect/Contract Administrator's consent increase the number invited;
  - 3.7.2.3 ensure that the provisions of clauses 3.9.1 to 3.9.3 are incorporated into the sub-contract;
  - 3.7.2.4 obtain the Architect/Contract Administrator's consent to entry into the sub-contract.
- 3.7.3 The provisions of this clause 3.7 and of clauses 3.8 and 3.9 shall not apply to the execution of part of the Works by a Statutory Undertaker, who shall not in that capacity be a sub-contractor within the terms of this Contract.

### 3.8 List in Specification

Subject to clause 3.7.2, where the Specification provides that particular work described in it is to be carried out by one of the persons identified in a list in or annexed to that document, the selection of his sub-contractor from that list shall be made by the Contractor at his sole discretion. In relation to the list, the following provisions shall apply:

- 3.8.1 the list shall comprise not less than three persons; the Employer (or the Architect/Contract Administrator on his behalf) and the Contractor may each with the other's consent add persons to the list at any time prior to execution of the sub-contract for the work;<sup>[35]</sup>
- 3.8.2 if at any time prior to execution of the sub-contract there are less than three persons listed who are able and willing to carry out the work, then, unless there is agreement to add to the list so that it comprises three or more such persons, the work shall be carried out by the Contractor who may with consent under clause 3.7 sub-contract to any sub-contractor.

### 3.9 Conditions of sub-contracting

It shall be a condition of any sub-contract that:

- 3.9.1 the sub-contractor's employment under the sub-contract shall terminate immediately upon the termination (for any reason) of the Contractor's employment under this Contract;
- 3.9.2 the sub-contract shall provide:
- 3.9.2.1 that, except for use on the Works, no Site Materials delivered to the Works by or for the sub-contractor shall be removed without the Contractor's written consent (such consent not to be unreasonably delayed or withheld) and (in addition to any provision for earlier vesting in the Contractor of title to any Listed Items for the purposes of clause 4.13.2.1 of these Conditions) that:

[35] Any such addition should be confirmed in writing.

- 3.9.2.1.1 where, in accordance with clauses 4.7 and 4.12 of these Conditions, the value of any Site Materials has been included in any Interim Certificate under which the amount properly due to the Contractor has been paid to him, they shall upon such payment become, and the sub-contractor shall not deny that they have become the Employer's property;
- 3.9.2.1.2 if the Contractor pays the sub-contractor for any Site Materials before their value is included in an Interim Certificate, they shall upon such payment become the Contractor's property;
- 3.9.2.2 that the sub-contractor shall give access to workshops or other premises in accordance with clause 3.1 of these Conditions;
- 3.9.2.3 that each party to the sub-contract shall in relation to the Works and the Site comply with applicable CDM Regulations;
- 3.9.2.4 in terms equivalent to those of clause 4.9.6 of these Conditions, that if by a final date for payment under the sub-contract the Contractor fails to pay the sub-contractor any amount that should properly have been paid, the Contractor shall, in addition to that amount, pay simple interest on it at the Interest Rate for the period from the final date for payment until such payment is made;
- 3.9.2.5 that where the Rights Particulars provide for the execution and delivery of collateral warranties by the sub-contractor in favour of a Purchaser, Tenant or Funder and/or the Employer ('the beneficiaries'):
- 3.9.2.5.1 the sub-contract and, where applicable, those collateral warranties shall if those particulars require be executed as deeds;
- 3.9.2.5.2 any collateral warranty required shall be executed and delivered by the sub-contractor within 14 days of receipt of the Contractor's notice requiring execution (which shall identify the beneficiary, the nature of his interest in the Works and the JCT form of warranty required (SCWa/P&T, SCWa/F or SCWa/E, as the case may be)), which shall be completed in accordance with those particulars;
- 3.9.2.5.3 the term 'the consultants' shall in all collateral warranties to be granted have the same meaning as that set out in clause 6.4.3 of these Conditions, subject to any modifications to that term stated in the sub-contract;
- 3.9.3 where documents or information and/or the grant of licences are or may be required from the sub-contractor for the BIM Protocol, where applicable, and/or for the purposes of clause 3.23 of these Conditions, the sub-contract shall also provide for the supply and grant to and by the sub-contractor of all information and licences reasonably necessary for that purpose.

The Contractor shall not give such consent as is referred to in clause 3.9.2.1 without the Architect/Contract Administrator's prior consent under clause 2.16 of these Conditions.

## Architect/Contract Administrator's Instructions

### 3.10 Compliance with instructions

The Contractor shall forthwith comply with all instructions issued to him by the Architect/Contract Administrator on any matter on which these Conditions expressly empower the Architect/Contract Administrator to issue instructions, save that:

#### 3.10.1

- 3.10.1.1 if an instruction involves the imposition of, addition to or alteration or omission of any obligations or restrictions of the type referred to in clause 3.15.2; or
- 3.10.1.2 if an instruction alters the Scope of the Works,

the Contractor need not comply with such instruction if and to the extent that as soon as reasonably practicable he notifies a reasonable objection to doing so and/or, in the case of an alteration in the Scope of the Works, if he within 14 days from the issue of that

instruction makes a written application to the Employer, with a copy to the Architect/Contract Administrator, requesting a revision of the Contract Fee in accordance with Part 1 of Schedule 2;

- 3.10.2 in the case of a notification by the Contractor under clause 2.15.2, the Contractor need not comply pending confirmation of the instruction.

### **3.11 Non-compliance with instructions**

Subject to clause 3.10, if within 7 days after receipt of a notice from the Architect/Contract Administrator requiring compliance with an instruction the Contractor does not comply, the Employer may employ and pay other persons to execute work of any kind that may be necessary to give effect to that instruction. The costs incurred in connection with such employment shall be ascertained by the Quantity Surveyor and the difference between those costs and the Quantity Surveyor's assessment of the costs the Employer would have incurred if the Contractor had complied with the instruction may be deducted from the Prime Cost.

### **3.12 Instructions other than in writing**

Where the Architect/Contract Administrator gives an instruction otherwise than in writing, it may be confirmed in writing by the Architect/Contract Administrator to the Contractor or by the Contractor to the Architect/Contract Administrator within 7 days of issue. If not so confirmed it shall be of no effect.

### **3.13 Provisions empowering instructions**

On receipt of an instruction the Contractor may request the Architect/Contract Administrator to notify him which provision of these Conditions empowers its issue and the Architect/Contract Administrator shall forthwith comply with the request. If the Contractor thereafter complies with that instruction with neither Party then having invoked any dispute resolution procedure under this Contract to establish the Architect/Contract Administrator's powers in that regard, the instruction shall be deemed to have been duly given under the specified provision.

### **3.14 Instructions required for all work**

The Architect/Contract Administrator shall prior to the commencement of the Works issue to the Contractor instructions on the carrying out of the work described in the Specification and/or shown on any Contract Drawings and shall issue thereafter all other instructions reasonably necessary for the carrying out of the Works.

### **3.15 Changes in the Works**

The Architect/Contract Administrator may issue instructions in regard to:

- 3.15.1 the alteration or modification of the design, quality or quantity of the Works including:
- 3.15.1.1 the addition, omission or substitution of any work;
  - 3.15.1.2 the alteration of the kind or standard of any of the materials or goods to be used in the Works;
  - 3.15.1.3 the removal from the Site of any work executed or materials or goods brought thereon by the Contractor for the purposes of the Works other than work, materials or goods which are not in accordance with this Contract;
- 3.15.2 the imposition by the Employer of any obligations or restrictions in regard to the matters set out in this clause 3.15.2 or the addition to or alteration or omission of any such obligations or restrictions so imposed or imposed by the Employer in the Contract Documents in regard to:
- 3.15.2.1 access to the Site or use of any specific parts of the Site;
  - 3.15.2.2 limitations of working space;
  - 3.15.2.3 limitations of working hours; or
  - 3.15.2.4 the execution or completion of the work in any specific order.

### **3.16 Postponement of work**

The Architect/Contract Administrator may issue instructions in regard to the postponement of any work

to be executed under this Contract.

### **3.17 Inspection – tests**

The Architect/Contract Administrator may issue instructions requiring the Contractor to open up for inspection any work covered up or to arrange for or carry out any test of any materials or goods (whether or not already incorporated in the Works) or of any executed work. The cost of that opening up or testing (including the cost of making good) shall be included in the Prime Cost unless the inspection or test shows that the materials, goods or work are not in accordance with this Contract.

### **3.18 Work not in accordance with the Contract**

If any work, materials or goods are not in accordance with this Contract the Architect/Contract Administrator, in addition to his other powers, may:

- 3.18.1 issue instructions in regard to the removal from the Site of all or any of such work, materials or goods and no cost relating to them shall be included in the Prime Cost;
- 3.18.2 after consultation with the Contractor and with the Employer's consent, allow all or any such work, materials or goods to remain, in which event he shall notify the Contractor to that effect and an appropriate deduction, ascertained by the Quantity Surveyor, may be made from the Prime Cost;
- 3.18.3 after consultation with the Contractor, issue such instructions as are a reasonably necessary consequence of any instruction under clause 3.18.1 and/or notification under clause 3.18.2 (but to the extent that such instructions are reasonably necessary, compliance by the Contractor with such instructions shall be at no cost to the Employer and no extension of time shall be given); and/or
- 3.18.4 having due regard to the Code of Practice set out in Schedule 4, issue such instructions under clause 3.17 to open up for inspection or to test as are reasonable in all the circumstances to establish to his reasonable satisfaction the likelihood or extent, as appropriate to the circumstances, of any further similar non-compliance. To the extent that those instructions are reasonable, whatever the results of the opening up, compliance by the Contractor shall be at no cost to the Employer but clauses 2.20 and 2.21.1.3 shall apply unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract.

### **3.19 Workmanship not in accordance with the Contract**

Where there is any failure to comply with clause 2.1 in regard to the carrying out of work in a proper and workmanlike manner or in accordance with the Construction Phase Plan, the Architect/Contract Administrator, in addition to his other powers, may, after consultation with the Contractor, issue such instructions as are in consequence reasonably necessary. To the extent that such instructions are reasonably necessary, compliance by the Contractor with them shall be at no cost to the Employer and no extension of time shall be given.

### **3.20 Executed work**

In respect of any materials, goods or workmanship, as comprised in executed work, which under clause 2.2 are to be to his reasonable satisfaction, the Architect/Contract Administrator, if he is dissatisfied, shall give the reasons for such dissatisfaction to the Contractor within a reasonable time from the execution of the unsatisfactory work.

### **3.21 Exclusion of persons from the Works**

The Architect/Contract Administrator may (but shall not unreasonably or vexatiously) issue instructions requiring the exclusion from the Site of any person employed thereon. No instruction shall be issued under this clause 3.21 on the grounds that such employment is a breach of clause 2.1.2 or 2.1.3.

### **3.22 Antiquities**

- 3.22.1 All fossils, antiquities and other objects of interest or value which may be found on the Site or in excavating it during the progress of the Works shall become the Employer's property. Upon discovery of any such object the Contractor shall forthwith:
  - 3.22.1.1 use his best endeavours not to disturb the object and cease work if and insofar as its continuance would endanger the object or prevent or impede its excavation or removal;

- 3.22.1.2 take all steps necessary to preserve the object in the exact position and condition in which it was found; and
- 3.22.1.3 inform the Architect/Contract Administrator or the clerk of works of its discovery and precise location.
- 3.22.2 The Architect/Contract Administrator shall issue instructions as to action to be taken concerning any object reported under clause 3.22.1, which (without limiting his powers) may require the Contractor to permit the examination, excavation or removal of the object by a third party.

## CDM Regulations

### 3.23 CDM Regulations

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

- 3.23.1 the Employer shall ensure that the Principal Designer carries out his duties and, where the Contractor is not the Principal Contractor, shall ensure that the Principal Contractor carries out his duties under those regulations;
- 3.23.2 the Contractor shall comply with regulations 8 and 15 and, where he is the Principal Contractor, with regulations 12 to 14;<sup>[36]</sup>
- 3.23.3 whether or not the Contractor is the Principal Contractor, compliance by the Contractor with his duties under the regulations, including any such directions as are referred to in regulation 15(3), shall be at no cost to the Employer and shall not entitle the Contractor to an extension of time;
- 3.23.4 if the Employer appoints a replacement for the Principal Designer or Principal Contractor, the Employer shall immediately upon that appointment notify the Contractor with details of the new appointee.

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[36] Where the Employer is a domestic client, as defined in regulation 2, the Principal Contractor may also be responsible for carrying out certain of the client's duties under regulations 4, 6 and 8. (As to the CDM Regulations generally, see the Prime Cost Building Contract Guide.)

## Section 4 Payment

### Amounts and Calculation

#### 4.1 Amounts payable

The Employer shall pay the Contractor in accordance with the provisions of this section 4:

- 4.1.1 the Prime Cost<sup>[37]</sup>;
- 4.1.2 the Contract Fee; and
- 4.1.3 the amount of any loss and/or expense to which the Contractor is entitled under clause 4.16.1.

#### 4.2 Prime Cost – ascertainment, records and disallowance

The Prime Cost shall be ascertained in accordance with Schedule 1 and with the Contract Particulars for this clause 4.2 and that Schedule, subject to the following provisions of this clause:

- 4.2.1 For the purpose of ascertainment:
  - 4.2.1.1 the Contractor shall keep records, measurements and accounts in such form as is reasonably required in writing by the Architect/Contract Administrator or the Quantity Surveyor and shall provide such further information and explanations as either may reasonably require;
  - 4.2.1.2 the Contractor shall give the Architect/Contract Administrator and the Quantity Surveyor all reasonable facilities for the inspection and verification of all such records, measurements and accounts;
  - 4.2.1.3 to the extent the Contractor fails to comply with clauses 4.2.1.1 and/or 4.2.1.2, the Architect/Contract Administrator or, if so instructed by him, the Quantity Surveyor shall make a reasonable assessment of the Prime Cost.
- 4.2.2 If the Architect/Contract Administrator at any time considers that the Contractor has not or may not have complied or be complying with clauses 2.1.2 and/or 2.1.3:
  - 4.2.2.1 he shall as soon as reasonably practicable give notice to the Contractor specifying the actual or apparent non-compliance and that he proposes to act under this clause 4.2.2;
  - 4.2.2.2 following such notice, to the extent that in the Architect/Contract Administrator's opinion there has been or is non-compliance, he may, or if so instructed by him, the Quantity Surveyor shall, disallow any costs arising from the non-compliance.

#### 4.3 Contract Fee

- 4.3.1 The Contract Fee shall be the Fixed Sum or Percentage Fee specified in the Contract Particulars (by reference to Article 2 and this clause 4.3.1), subject in either case to any revision to be made in accordance with Part 1 of Schedule 2 and/or (where it is a Fixed Sum) to any adjustment in accordance with Part 2 of that Schedule.
- 4.3.2 The Contract Fee shall be deemed to include all items not included in, or expressly excluded from, the definition of Prime Cost in Schedule 1.

[37] See clauses 3.17 and 3.18.1 for amounts not to be included in, or to be excluded from, the Prime Cost.

## **Taxes**

### **4.4 VAT**

- 4.4.1 The amounts payable pursuant to clause 4.1 are exclusive of VAT and in relation to each payment to the Contractor under this Contract, the Employer shall in addition pay the amount of any VAT properly chargeable in respect of it.
- 4.4.2 If after the Base Date the supply of any goods or services to the Employer becomes exempt from VAT there shall be paid to the Contractor an amount equal to the input tax on the supply to the Contractor of goods and services that contribute to the Works which as a consequence of that exemption the Contractor cannot recover.

### **4.5 Construction Industry Scheme (CIS)**

If the Employer is or at any time up to the payment of the Final Certificate becomes a 'contractor' for the purposes of the CIS<sup>[38]</sup>, his obligation to make any payment under this Contract is subject to the provisions of the CIS.

## **Payments, Certificates and Notices – general provisions**

### **4.6 Interim payments – due dates**

During the period up to the due date for the final payment fixed under clause 4.22.3, the monthly due dates for interim payments by the Employer shall in each case be the date 7 days after the relevant Interim Valuation Date.

### **4.7 Interim Certificates and valuations**

- 4.7.1 The Architect/Contract Administrator shall not later than 5 days after each due date issue an Interim Certificate, stating:
- 4.7.1.1 the sum he considers to be or have been due to the Contractor at the due date, calculated in accordance with clause 4.12; and
- 4.7.1.2 the basis on which that sum has been calculated.
- 4.7.2 An interim valuation shall be made by the Quantity Surveyor for the purpose of ascertaining the sum due in each Interim Certificate.
- 4.7.3 The Contractor shall provide the Quantity Surveyor not later than each Interim Valuation Date with all details of expenditure on Prime Cost items reasonably required by the Quantity Surveyor for ascertaining the sum due in the Interim Certificate.

### **4.8 Contractor's Payment Applications and Payment Notices**

- 4.8.1 In relation to any interim payment the Contractor may not later than its Interim Valuation Date or, in the case of the final payment, may at any time prior to issue of the Final Certificate make an application to the Quantity Surveyor (a 'Payment Application'), stating the sum that the Contractor considers to be due to him at the relevant due date, as fixed in accordance with clause 4.6 or 4.22.3, and the basis on which that sum has been calculated.
- 4.8.2 If a Payment Certificate is not issued in accordance with clause 4.7.1 or 4.22.1, then:
- 4.8.2.1 where the Contractor has made a Payment Application in accordance with clause 4.8.1, that application is for the purposes of these Conditions a Payment Notice; or
- 4.8.2.2 where the Contractor has not made a Payment Application, he may at any time after the last date for issue of the Payment Certificate give a Payment Notice to the Quantity Surveyor, stating the sum that the Contractor considers to have become due to him under clause 4.12 or 4.22.2 at the relevant due date and the basis on which that sum has been calculated.

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[38] See the Contract Particulars (Sixth Recital and clause 4.5).

#### **4.9 Interim and final payments – final date and amount**

- 4.9.1 Subject to clause 4.9.4, the final date for payment of each interim payment and the final payment shall be 14 days from its due date.
- 4.9.2 Subject to any Pay Less Notice given by the paying Party under clause 4.9.5, the paying Party shall pay the sum stated as due in the Payment Certificate on or before the final date for payment.
- 4.9.3 If a Payment Certificate is not issued in accordance with clause 4.7.1 or 4.22.1, but a Payment Notice has been or is then given, the Employer shall, subject to any Pay Less Notice under clause 4.9.5, pay the Contractor the sum stated as due in the Payment Notice.
- 4.9.4 Where a Payment Notice is given under clause 4.8.2.2, the final date for payment of the sum specified in it shall for all purposes be regarded as postponed by the same number of days as the number of days after the last date for issue of the Payment Certificate that the Payment Notice is given.
- 4.9.5 Where:
- 4.9.5.1 the Employer intends to pay less than the sum stated as due from him in a Payment Certificate or Payment Notice; or
- 4.9.5.2 if the Final Certificate shows a balance due to the Employer, the Contractor intends to pay less than the sum stated as due,
- the Party by whom the payment is stated to be payable shall not later than 5 days before the final date for payment give the other Party notice of that intention in accordance with clause 4.10.1 (a 'Pay Less Notice'). Where a Pay Less Notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated in it as due.
- 4.9.6 If either Party fails to pay a sum, or any part of it, due to the other Party under these Conditions by its final date for payment, he shall, in addition to any unpaid amount that should properly have been paid, pay the other Party simple interest on that amount at the Interest Rate for the period from the final date for payment until payment is made.
- 4.9.7 Any such unpaid amount and any interest under clause 4.9.6 shall be recoverable as a debt. Acceptance of a payment of interest shall not in any circumstances be construed as a waiver either of the recipient's right to proper payment of the principal amount due or of the Contractor's rights to suspend performance under clause 4.11 or terminate his employment under section 7.

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

- 4.10.1 A Pay Less Notice given by either Party shall specify the sum he considers to be due to the other Party at the date the notice is given and the basis on which that sum has been calculated. Such notice:
- 4.10.1.1 (where it is to be given by the Employer) may be given on his behalf by the Architect/Contract Administrator, Quantity Surveyor or Employer's representative or by any other person who the Employer notifies the Contractor as being authorised to do so but, in the case of a payment for which a Payment Certificate is not issued in due time, may not be given until the Contractor has in respect of the payment given a Payment Notice;
- 4.10.1.2 (where it is to be given by the Contractor) shall be sent to the Employer, with a copy to the Architect/Contract Administrator.
- 4.10.2 In relation to the requirements for the issue of Payment Certificates and the giving of Pay Less Notices, it is immaterial that the amount then considered to be due may be zero.
- 4.10.3 The Employer's fiduciary interest in the Retention referred to in clause 4.14 shall not prevent him exercising any right under this Contract to withhold or deduct from a sum due to the Contractor, subject to clause 4.9.5, even if that sum includes any Retention due for release under clause 4.15.

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

- 4.11.1 If the Employer fails to pay a sum payable to the Contractor in accordance with clause 4.9 (together with any VAT properly chargeable in respect of that payment) by the final date for payment and the failure continues for 7 days after the Contractor has given notice to the Employer, with a copy to the Architect/Contract Administrator, of his intention to suspend the performance of his obligations under this Contract and the grounds for such suspension, the Contractor, without affecting his other rights and remedies, may suspend performance of any or all of those obligations until payment is made in full.
- 4.11.2 Where the Contractor exercises his right of suspension under clause 4.11.1, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of exercising the right.
- 4.11.3 Applications in respect of any such costs and expenses shall be made to the Architect/Contract Administrator and the Contractor shall with his application or on request submit such details of them as are reasonably necessary for ascertaining the amount in question.

### **Interim Payments – calculation of sums due**

#### **4.12 Interim Payments – calculation of sums due**

Subject to any agreement between the Parties as to stage payments, the sum due as an interim payment shall in each case be the total of the following (each calculated as at the Interim Valuation Date):

- 4.12.1 the total value of the following:
- 4.12.1.1 amounts ascertained in accordance with Schedule 1 in respect of work executed;
  - 4.12.1.2 Site Materials, provided they are adequately protected against weather and other casualties and are not on the Works prematurely; and
  - 4.12.1.3 Listed Items (if any) for which the conditions set out in clause 4.13 are satisfied, less Retention in respect of that total value at the rate applicable under clause 4.15;
- 4.12.2 an instalment of the Contract Fee, being:
- 4.12.2.1 (where the Contract Fee is a Fixed Sum) a proportion of the net amount ascertained under clause 4.12.1 that is equivalent to the ratio that the Contract Fee (as then revised and/or adjusted under Schedule 2) bears to the then estimated total of the Prime Cost; or
  - 4.12.2.2 (where the Contract Fee is a Percentage Fee) that percentage of the net amount ascertained under clause 4.12.1; and
- 4.12.3 the amount of any loss and/or expense to which the Contractor is entitled under clause 4.16.1 (which is not subject to Retention),

less the sums stated as due in previous Interim Certificates and any sum paid in respect of any Payment Notice given after the issue of the latest Interim Certificate.

### **Listed Items**

#### **4.13 Listed Items**

The conditions for inclusion of the value of a Listed Item in the amount of an interim payment to be certified under clause 4.7.1 before its delivery to or adjacent to the Works as referred to in clause 4.12.1.3 are:

- 4.13.1 the Listed Item is in accordance with this Contract;
- 4.13.2 the Contractor has provided the Architect/Contract Administrator with reasonable proof that:

- 4.13.2.1 property in the Listed Item is vested in the Contractor; and
- 4.13.2.2 the Listed Item is and will remain insured against loss or damage for its full value under a policy of insurance protecting the interests of the Employer and the Contractor in respect of the Specified Perils until delivered to, or adjacent to, the Works;
- 4.13.3 at the premises where the Listed Item is situated pending delivery, there is in relation to that item clear identification of:
  - 4.13.3.1 the Employer as the person to whose order it is held; and
  - 4.13.3.2 the Works as its destination,
- each item being either set apart or clearly and visibly marked, individually or as a set, by letters, figures or a pre-determined code; and
- 4.13.4 for uniquely identified Listed Items, the Contractor, if it is stated in the Contract Particulars as required, has provided a bond in favour of the Employer from a surety approved by the Employer in the terms set out in Schedule 6<sup>[39]</sup> ('the required bond') in the amount specified in the Contract Particulars for this clause 4.13.4; or
- 4.13.5 for Listed Items that are not uniquely identified, the Contractor has provided the required bond in the amount specified in the Contract Particulars for this clause 4.13.5.

## Retention

### 4.14 Rules on treatment of Retention

The Retention which the Employer may deduct and retain as referred to in clause 4.12.1 shall be subject to the following rules:

- 4.14.1 the Employer's interest in the Retention is fiduciary as trustee for the Contractor (but without obligation to invest);
- 4.14.2 prior to the date for issue of each Interim Certificate the Architect/Contract Administrator shall prepare, or instruct the Quantity Surveyor to prepare, and with that certificate shall issue to the Employer and the Contractor a statement specifying the amount of the Retention deducted (and, where relevant, the amount to be released in accordance with clause 4.15) in arriving at the sum stated as due;
- 4.14.3 except where the Employer is a Local or Public Authority, the Employer, to the extent that he exercises his right under clause 4.15 and if the Contractor so requests, shall at the date of payment place the Retention in a separate bank account (so designated as to identify the amount as the Retention held by the Employer on trust as provided in clause 4.14.1) and certify to the Architect/Contract Administrator and the Contractor that the amount has been so placed. The Employer shall be entitled to the full beneficial interest in any interest accruing in the separate bank account and under no duty to account for any such interest to the Contractor or any sub-contractor.

### 4.15 Retention – amounts and periods

The Retention which may be deducted under Interim Certificates issued prior to issue of the Certificate of Making Good (or last such certificate) and retained by the Employer shall be the following percentages of the total amount (or proportion of that amount) included under clause 4.12.1 in any Interim Certificate for work and (where applicable) Site Materials and Listed Items<sup>[40]</sup>:

- 4.15.1 the Retention Percentage may be deducted from the total amount where the Works have not reached practical completion or (where there are Sections) from that proportion of the total amount that relates to uncompleted Sections (in either case excluding from the total amount any proportion of it attributable to a Relevant Part);
- 4.15.2 half the Retention Percentage may be deducted:

[39] As to approval of sureties, see the Prime Cost Building Contract Guide.

[40] For the effect of clause 4.15.2, see the Prime Cost Building Contract Guide.

- 4.15.2.1 from the total amount where the Works as a whole have reached practical completion but the Certificate of Making Good has not been issued; or
- 4.15.2.2 from the proportion of the total amount that relates to each Section that has reached practical completion but for which such a certificate has not been issued or relates to a Relevant Part for which a certificate has not been issued under clause 2.27.

## Loss and Expense

### 4.16 Matters materially affecting regular progress

- 4.16.1 If in the execution of this Contract the Contractor incurs or is likely to incur any direct loss and/or expense as a result of any deferment of giving possession of the Site or part of it under clause 2.4 or because regular progress of the Works or any part of them has been or is likely to be materially affected by any Relevant Matter, he shall, subject to clause 4.16.2 and compliance with the provisions of clause 4.17 be entitled to reimbursement of that loss and/or expense.
- 4.16.2 No such entitlement arises where these Conditions provide that there shall be no addition to the Prime Cost or otherwise exclude the operation of this clause 4.16 or to the extent that the Contractor is reimbursed for such loss and/or expense under another provision of these Conditions.

### 4.17 Notification and ascertainment

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

### 4.18 Relevant Matters

The following are the Relevant Matters:

- 4.18.1 Architect/Contract Administrator's instructions:
  - 4.18.1.1 under clause 3.14, except to the extent that the instructions are to carry out the work described in the Specification and/or shown upon any Contract Drawings;
  - 4.18.1.2 under clause 2.10, 2.11.2, 3.15 or 3.16;
  - 4.18.1.3 for the opening up for inspection or testing of any work, materials or goods under clause 3.17 (including making good), unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract;
- 4.18.2 compliance with clause 3.22.1 or with Architect/Contract Administrator's instructions under clause 3.22.2;
- 4.18.3 any impediment, prevention or default, whether by act or omission, by the Employer, the

Architect/Contract Administrator, the Quantity Surveyor or any Employer's Person, except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or any Contractor's Person.

**4.19 Amounts ascertained – inclusion in Interim Certificates**

Amounts ascertained under clause 4.17 shall be included in the amount stated as due in Interim Certificates under clause 4.12.

**4.20 Reservation of Contractor's rights and remedies**

The provisions of clauses 4.17 to 4.19 shall not limit or affect any other rights and remedies of the Contractor.

## **Final Ascertainment and Final Payment**

**4.21 Final ascertainment**

4.21.1 Not later than 6 months after the issue of the Practical Completion Certificate or last Section Completion Certificate, the Contractor, to the extent he has not already done so, shall:

4.21.1.1 provide the Quantity Surveyor with all documents necessary for ascertainment of the Prime Cost; and

4.21.1.2 provide the Architect/Contract Administrator or (if so instructed) the Quantity Surveyor with all documents necessary for ascertainment of any direct loss and/or expense under clause 4.16.

4.21.2 Not later than 3 months after receipt of the documents referred to in clause 4.21.1:

4.21.2.1 the Architect/Contract Administrator, or, if he so instructs, the Quantity Surveyor, shall ascertain the amount of any loss and/or expense notified by the Contractor under clause 4.17 and not previously ascertained;

4.21.2.2 the Quantity Surveyor shall ascertain and deliver to the Architect/Contract Administrator a statement of the Prime Cost; and

4.21.2.3 where the Contract Fee is a Fixed Sum, then, where relevant, the Architect/Contract Administrator, or, if he so instructs, the Quantity Surveyor, shall prepare a statement of any adjustment of the Contract Fee under Part 2 of Schedule 2,

and the Architect/Contract Administrator shall within that 3 month period send to the Contractor a copy of each statement and any such ascertainment.

4.21.3 If in the ascertainment of Prime Cost any cost item put forward by the Contractor as part of the Prime Cost is disallowed, the statement of the Prime Cost shall include details of the amount disallowed and the reasons for disallowance.

4.21.4 If after expiry of the 6 month period referred to in clause 4.21.1 the Contractor has not supplied the necessary documents, the Architect/Contract Administrator may at any time give the Contractor one month's notice requiring their supply. Failing the supply of such documents, any ascertainment of loss and expense not then completed and any statements referred to in clause 4.21.2 may be completed on the basis of information in the Architect/Contract Administrator's or Quantity Surveyor's possession. Following preparation or completion of those documents, copies of them shall promptly be sent to the Contractor.

**4.22 Final Certificate and final payment<sup>[41]</sup>**

4.22.1 The Architect/Contract Administrator shall issue the Final Certificate not later than 2 months after whichever of the following occurs last:

4.22.1.1 the end of the Rectification Period in respect of the Works or (where there are Sections) the last such period to expire;

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[41] The effect of the Final Certificate is set out in clause 1.9.

- 4.22.1.2 the date of issue of the Certificate of Making Good or (where there are Sections) the last such certificate to be issued; or
  - 4.22.1.3 the date on which the Architect/Contract Administrator sends to the Contractor copies of the statements and any ascertainment under clause 4.21.2 or 4.21.4.
  - 4.22.2 The Final Certificate shall state:
    - 4.22.2.1 the Prime Cost;
    - 4.22.2.2 the Contract Fee, as revised and/or adjusted in accordance with Schedule 2;
    - 4.22.2.3 the amount in respect of any loss and/or expense to which the Contractor is entitled under clause 4.16.1;
    - 4.22.2.4 any deductions from the Prime Cost made under these Conditions<sup>[42]</sup>;
    - 4.22.2.5 the sum of amounts already stated as due in Interim Certificates; and
    - 4.22.2.6 (where relevant) any sums paid in respect of any such Payment Notice as is referred to in clause 4.12,
- and (without affecting the rights of the Contractor in respect of any interim payment not paid in full by the Employer by its final date for payment) the final payment shall be the difference (if any) between the sum of the amounts referred to in clauses 4.22.2.1 to 4.22.2.3 and the sum of the amounts referred to in clauses 4.22.2.4 to 4.22.2.6, which shall be shown in the Final Certificate as a balance due to the Contractor from the Employer or vice versa. The Final Certificate shall state the basis on which that amount has been calculated.
- 4.22.3 The due date for the final payment shall be the date of issue of the Final Certificate or, if that certificate is not issued within the 2 month period referred to in clause 4.22.1, the last day of that period.

**[42]** The deductions referred to are any that may be made in respect of specific defaults, e.g. under clause 2.8 (Levels and setting out), 2.30 (Defects), 3.11 (Non-compliance with instructions), 3.18.2 (Work not in accordance with the Contract) or 5.12 (for failure to insure), as distinct from those made within the calculation of the Prime Cost itself under Schedule 1 (e.g. the deduction of discounts, credits, etc. necessary to establish the true net cost of the relevant items) or costs disallowed, e.g. under clause 4.2.2 (see clause 4.21.3).

## Section 5 Injury, Damage and Insurance

### Personal Injury and Property Damage

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

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

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

Subject to clause 5.3, the Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the Works and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor or any Contractor's Person.

#### 5.3 Loss or damage to Existing Structures or their contents

5.3.1 Where paragraph C.1 of Insurance Option C applies, the Contractor's liability and indemnity under clause 5.2 excludes any loss or damage to Existing Structures or to any of their contents required to be insured under that option that is caused by any of the risks or perils required or agreed to be insured against under that option.

5.3.2 The exclusion in clause 5.3.1 shall apply notwithstanding that the loss or damage is or may be due in whole or in part to the negligence, breach of statutory duty, omission or default of the Contractor or any Contractor's Person.

5.3.3 Where Insurance Option C applies but a C.1 Replacement Schedule applies in lieu of paragraph C.1, the Contractor's liability and indemnity under clause 5.2 shall, in respect of loss, injury or damage to the Existing Structures and their contents due to the causes specified in that clause, be subject only to such limitations or exclusions as are specified in that schedule.

5.3.4 The reference in clause 5.2 to 'property real or personal' does not include the Works, work executed or Site Materials up to and including the date of issue of the Practical Completion Certificate or, if earlier, the date of termination of the Contractor's employment, except that:

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

5.3.4.2 if partial possession is taken under clause 2.25, the Relevant Part shall no longer be so regarded after the Relevant Date.

### Insurance against Personal Injury and Property Damage

#### 5.4 Contractor's insurance of his liability

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

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

5.4.1.2 for all other claims to which clause 5.4.1 applies<sup>[43]</sup>, shall indemnify the Employer in like manner to the Contractor (but only to the extent that the Contractor may be liable to indemnify the Employer under the terms of this Contract) and shall for any one occurrence or series of occurrences arising out of one event be in a sum not less than that stated in the Contract Particulars for clause 5.4.1.<sup>[44]</sup>

5.4.2 As to evidence that such insurances have been effected and are being maintained and the consequences of failure to comply, clause 5.12 shall apply.

## 5.5 Contractor's insurance of liability of Employer

5.5.1 If the Contract Particulars state that insurance under clause 5.5.1 may be required, the Contractor shall if instructed by the Architect/Contract Administrator effect and maintain a policy of insurance in the names of the Employer and the Contractor for the amount of indemnity there stated in respect of any expense, liability, loss, claim or proceedings which the Employer may incur or sustain by reason of injury or damage to any property caused by collapse, subsidence, heave, vibration, weakening or removal of support or lowering of ground water arising out of or in the course of or by reason of the carrying out of the Works, excluding injury or damage:

5.5.1.1 for which the Contractor is liable under clause 5.2; or

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

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

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

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

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

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

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

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

5.5.2 Any insurance under clause 5.5.1 shall be placed with insurers approved by the Employer, and the Contractor shall upon its issue deposit the policy with the Architect/Contract Administrator or, if so directed, the Employer.

5.5.3 Amounts expended by the Contractor to effect and maintain that insurance shall on production of receipts be included in the Prime Cost, and clause 5.12 shall apply.

[43] It should be noted that the cover granted under Public Liability policies taken out pursuant to clause 5.4.1 may not be co-extensive with the indemnity given to the Employer in clauses 5.1 and 5.2: for example, each claim may be subject to an excess and cover may not be available in respect of loss or damage due to gradual pollution.

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

## 5.6 Excepted Risks

Notwithstanding clauses 5.1, 5.2 and 5.4.1, the Contractor shall neither be liable to indemnify the Employer nor obliged to insure against any personal injury to or the death of any person or any damage, loss or injury to the Works, Site Materials, work executed, the Site or any other property, caused by the effect of an Excepted Risk.

## Insurance of the Works and Existing Structures

### 5.7 Insurance Options and period

- 5.7.1 Insurance Options A, B and C are set out in Schedule 3. The Insurance Option that applies to this Contract is that stated in the Contract Particulars.<sup>[45]</sup>
- 5.7.2 In each case the Party responsible for effecting a Joint Names Policy under the Insurance Option that applies (the 'Works Insurance Policy') shall maintain that policy up to and including the date of issue of the Practical Completion Certificate, or last Section Completion Certificate, or (if earlier) the date of termination of the Contractor's employment, except that the obligation to maintain a Works Insurance Policy:
- 5.7.2.1 shall not apply in relation to a Section after the date of issue of its Section Completion Certificate; and
- 5.7.2.2 if partial possession is taken under clause 2.25, shall not as from the Relevant Date apply in relation to the Relevant Part.

### 5.8 Related definitions

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

**All Risks Insurance**<sup>[46]</sup>: insurance which provides cover against any physical loss or damage to work executed and Site Materials and against the reasonable cost of the removal and disposal of debris and of any shoring and propping of the Works which results from such physical loss or damage but excluding the cost necessary to repair, replace or rectify:

- (a) property which is defective due to:
- (i) wear and tear,
  - (ii) obsolescence, or
  - (iii) deterioration, rust or mildew;
- (b) any work executed or any Site Materials lost or damaged as a result of its own defect in design, plan, specification, material or workmanship or any other work executed which is lost or damaged in consequence thereof where such work relied for its support or stability on such work which was defective<sup>[47]</sup>;

[45] Insurance Options A and B are for use in the case of new buildings. Insurance Option A is applicable to where the Contractor is required to take out a Joint Names Policy for All Risks Insurance of the Works or to include them on that basis within his Annual Construction policy; Insurance Option B is applicable where the Employer has elected to take out that Joint Names Policy. Insurance Option C is for use in the case of alterations of or extensions to Existing Structures. Under that option, the Employer is required to take out a Joint Names Policy for All Risks Insurance for the Works and also, if paragraph C.1 applies, a Joint Names Policy to insure the Existing Structures and their contents owned by him or for which he is responsible against loss or damage by the Specified Perils. Some Employers (e.g. tenants and some homeowners) may not be able readily to obtain the Joint Names cover required under paragraph C.1. Where that is the case, alternative arrangements through use of a C.1 Replacement Schedule or as otherwise described in the Prime Cost Building Contract Guide will be necessary. Where there are Existing Structures, it is vital that any prospective Employer who is not familiar with Insurance Option C – in particular any Employer who is a tenant or domestic homeowner – or an appropriate member of the Employer's professional team, should consult specialist insurance advisers prior to the tender stage. Any Employer who is a tenant should also consult his insuring landlord prior to that stage.

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

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

**Excepted Risks:** the risks comprise:

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

**Joint Names Policy:** a policy of insurance which includes the Employer and the Contractor as composite insured and under which the insurers have no right of recourse against any person named as an insured, or, pursuant to clause 5.9, recognised as an insured thereunder.

**Pool Re Cover:** such insurance against loss or damage to work executed and Site Materials caused by or resulting from terrorism as is from time to time generally available from insurers who are members of the Pool Reinsurance Company Limited scheme or of any similar successor scheme.<sup>[48]</sup>

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

**Terrorism Cover:** Pool Re Cover or other insurance against loss or damage to work executed and Site Materials (and/or, for the purposes of clause 5.11.1, to an Existing Structure and/or its contents) caused by or resulting from terrorism.<sup>[48]</sup>

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

5.9.1 The Contractor, where Insurance Option A applies, and the Employer, where Insurance Option B or C applies, shall ensure that the Works Insurance Policy either:

- 5.9.1.1 provides for recognition of each sub-contractor as an insured under the policy; or
- 5.9.1.2 includes a waiver by the insurers of any right of subrogation which they may have against any such sub-contractor

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

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

[48] As respects Terrorism Cover and the requirements of Insurance Options A, B and C, see footnote [46] and the Prime Cost Building Contract Guide.

certificate or other document for his work in that Section.

- 5.9.2 Clause 5.9.1 applies also in respect of any Works Insurance Policy taken out in default under clause 5.12.2.

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

- 5.10.1 To the extent that the Works Insurance Policy excludes (or would otherwise exclude) loss or damage caused by terrorism, the Contractor, where Insurance Option A applies, or the Employer, where Insurance Option B or C applies, shall unless otherwise agreed effect and maintain, either as an extension to the Works Insurance Policy or as a separate Joint Names Policy, in the same amount and for the same period as the Works Insurance Policy, such Terrorism Cover as is specified in or by the Contract Particulars, subject to clauses 5.10.4 and 5.11.
- 5.10.2 Where Insurance Option A applies and the Contractor is required to take out and maintain Pool Re Cover, the cost of that cover and its renewal shall be deemed to be included in the Contract Fee save that, if at any renewal of the cover there is a variation in the rate on which the premium is based, the net amount of the difference between the premium paid by the Contractor and the premium that would have been paid but for the change in rate shall be included in the Prime Cost.
- 5.10.3 Where Insurance Option A applies and Terrorism Cover other than Pool Re Cover is specified as required, the cost of such other cover and of its renewal shall be included in the Prime Cost.
- 5.10.4 Where Insurance Option A applies and the Employer is a Local or Public Authority, if at any renewal of the Terrorism Cover (of any type) there is an increase in the rate on which the premium is based, he may instruct the Contractor not to renew the Terrorism Cover. If he so instructs, clause 5.13.5.3 shall apply with effect from the renewal date.

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

- 5.11.1 If the insurers named in any Joint Names Policy notify either Party that, with effect from a specified date (the 'cessation date'), Terrorism Cover will cease and will no longer be available or will only continue to be available with a reduction in the scope or level of such cover, the recipient shall immediately notify the other Party.
- 5.11.2 The Employer, after receipt of such notification but before the cessation date, shall give notice to the Contractor either:
- 5.11.2.1 that, notwithstanding the cessation or reduction in scope or level of Terrorism Cover, the Employer requires that the Works continue to be carried out; or
- 5.11.2.2 that on the date stated in the Employer's notice (which shall be a date after the date of the insurers' notification but no later than the cessation date) the Contractor's employment under this Contract shall terminate.
- 5.11.3 Where Insurance Option A applies and the Employer gives notice under clause 5.11.2.1 requiring continuation of the Works, he may instruct the Contractor to effect and maintain any alternative or additional form of Terrorism Cover then reasonably obtainable by the Contractor; the net additional cost to the Contractor of any such cover and its renewal shall be included in the Prime Cost.
- 5.11.4 If the Employer gives notice of termination under clause 5.11.2.2, then upon and from such termination the provisions of clause 7.12 (excluding clause 7.12.3.5) shall apply.
- 5.11.5 If the Employer does not give notice of termination under clause 5.11.2.2, but work executed and/or Site Materials thereafter suffer physical loss or damage caused by terrorism, clauses 5.13 and 5.14 shall as appropriate apply.

#### **5.12 Evidence of insurance**

- 5.12.1 Where a Party is required by this Contract to effect and maintain an insurance policy or cover under any of clauses 5.4, 5.5, 5.7 and 5.10, or is responsible for ensuring that it is effected and maintained, that Party shall at the request of the other Party supply such documentary evidence as the other Party may reasonably require that the policy or cover has been effected and remains in force.

- 5.12.2 If a Party required to provide such documentary evidence fails to provide it within 7 days of a request being made, the other Party may assume that there has been a failure to insure, and may insure against any risk, liability or expense to which he may be exposed as a consequence, but shall not be obliged to do so. If the other Party insures, the defaulting Party shall be liable in the case of insurance under clause 5.4, 5.7 or 5.10 for the costs or, in the case of insurance required under clause 5.5, any additional cost that the other Party incurs in taking out and maintaining that insurance. Any costs payable to the Contractor shall be included in the Prime Cost; any costs payable to the Employer may be deducted from any sums due or to become due to the Contractor or shall be recoverable from the Contractor as a debt.

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

- 5.13.1 If during the carrying out of the Works any loss or damage affecting any executed work or Site Materials is occasioned by any of the risks covered by the Works Insurance Policy or an Excepted Risk or there is any loss of or damage of any kind to any of the Existing Structures or their contents, the Contractor shall forthwith upon it occurring or becoming apparent give notice both to the Architect/Contract Administrator and to the Employer of its nature, location and extent.
- 5.13.2 Subject to clauses 5.13.5.1 and 5.13.6, the occurrence of such loss or damage to executed work or Site Materials shall be disregarded in calculating any amounts payable to the Contractor under this Contract.
- 5.13.3 The Contractor, for himself and for all his sub-contractors recognised as an insured under the Works Insurance Policy, shall authorise the insurers to pay to the Employer all monies from such insurance, and from any policies covering Existing Structures or their contents that are effected by the Employer.
- 5.13.4 Where loss or damage affecting executed work or Site Materials is occasioned by any risk covered by the Works Insurance Policy, and subject to clause 5.14 where relevant, the Contractor shall after any inspection required by the insurers under the Works Insurance Policy and with due diligence restore the damaged work, replace or repair any lost or damaged Site Materials, remove and dispose of any debris (collectively 'reinstatement work') and proceed with the carrying out and completion of the Works.
- 5.13.5 Where Insurance Option A applies:
- 5.13.5.1 the Employer shall pay all monies from such insurance to the Contractor by instalments under separate reinstatement work certificates issued by the Architect/Contract Administrator at the same dates as those for Interim Certificates under clause 4.7 but without deduction of Retention and less only the amounts referred to in clause 5.13.5.2;
- 5.13.5.2 the Employer may retain from those monies any amounts properly incurred by the Employer and notified by him to insurers in respect of professional fees up to the aggregate amount of the percentage cover for those fees or (if less) the amount paid by insurers in respect of those fees;
- 5.13.5.3 in respect of reinstatement work, the Contractor shall not be entitled to any payment other than amounts received under the Works Insurance Policy except where there has been a cessation of or reduction in Terrorism Cover under clause 5.10.4 or 5.11 and loss or damage is then caused by or results from terrorism, in which case the reinstatement work shall, to the extent that its cost is no longer recoverable under the policy, be treated as an Architect/Contract Administrator's instruction and under clause 5.13.5.1 included in Interim Certificates. In neither case shall there be any reduction in any amount payable by reason of any act or neglect of the Contractor or of any sub-contractor which may have contributed to the physical loss or damage.
- 5.13.6 Where Insurance Option B or paragraph C.2 of Insurance Option C applies or where loss or damage is caused by an Excepted Risk, reinstatement work shall be treated as an Architect/Contract Administrator's instruction.

### **5.14 Loss or damage to Existing Structures – right of termination**

If there is material loss of or damage to any of the Existing Structures, the Employer shall be under no obligation to reinstate those structures, but either Party may, if it is just and equitable, terminate the Contractor's employment under this Contract by notice given to the other in accordance with clause

1.7.4 within 28 days of the occurrence of that loss or damage. If such notice is given, then:

- 5.14.1 unless within 7 days of receiving the notice (or such longer period as may be agreed) the Party to whom it is given invokes a dispute resolution procedure of this Contract to determine whether the termination is just and equitable, it shall be deemed to be so;
- 5.14.2 upon the giving of that notice or, where a dispute resolution procedure is invoked within that period, upon any final upholding of the notice, the provisions of clause 7.12 (except clause 7.12.3.5) shall apply.

## **Joint Fire Code – compliance**

### **5.15 Application of clauses**

Clauses 5.16 and 5.17 apply where the Contract Particulars state that the Joint Fire Code applies.

### **5.16 Compliance with Joint Fire Code**

The Parties shall comply with the Joint Fire Code and any amendments or revisions to it; the Employer shall ensure such compliance by all Employer's Persons and the Contractor shall ensure such compliance by all Contractor's Persons.

### **5.17 Breach of Joint Fire Code – Remedial Measures**

5.17.1 If a breach of the Joint Fire Code occurs and the insurers under the Works Insurance Policy specify by notice to the Employer or the Contractor the remedial measures they require (the 'Remedial Measures'), the Party receiving the notice shall send copies of it to the other and to the Architect/Contract Administrator, and then:

5.17.1.1 subject to clause 5.17.1.2, where the Remedial Measures relate to the obligation of the Contractor to carry out and complete the Works, the Contractor shall ensure that the Remedial Measures are carried out by such date as the insurers specify; and

5.17.1.2 to the extent that the Remedial Measures require an Architect/Contract Administrator's instruction, the Architect/Contract Administrator shall issue such instructions as are necessary to enable compliance. If, in an emergency, compliance with the Remedial Measures in whole or in part requires the Contractor to supply materials or execute work before receiving instructions under this clause 5.17.1.2, the Contractor shall supply the materials and execute the work reasonably necessary to secure immediate compliance. The Contractor shall forthwith notify the Architect/Contract Administrator of the emergency and of the steps he is taking. The work and materials reasonably necessary shall be treated as if executed and supplied under an Architect/Contract Administrator's instruction.

5.17.2 If the Contractor, within 7 days of receipt of a notice specifying Remedial Measures not requiring an Architect/Contract Administrator's instruction under clause 5.17.1.2, does not begin to carry out or thereafter fails without reasonable cause regularly and diligently to proceed with the Remedial Measures, then the Employer may employ and pay other persons to carry out those Remedial Measures. The Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and an appropriate deduction shall be made from the Prime Cost.

## Section 6 Assignment, Performance Bonds and Guarantees, Third Party Rights and Collateral Warranties

### Assignment

#### 6.1 General

Subject to clause 6.2, neither the Employer nor the Contractor shall without the consent of the other assign this Contract or any rights thereunder.

#### 6.2 Rights of enforcement

Where clause 6.2 is stated in the Contract Particulars to apply, then, in the event of transfer by the Employer of his freehold or leasehold interest in, or of a grant by the Employer of a leasehold interest in, the whole of the premises comprising the Works or (if the Contract Particulars so state) any Section, the Employer may at any time after practical completion of the Works or of the relevant Section grant or assign to any such transferee or lessee the right to bring proceedings in the name of the Employer (whether by arbitration or litigation, whichever applies under this Contract) to enforce any of the terms of this Contract made for the benefit of the Employer. The assignee shall be estopped from disputing any enforceable agreements reached between the Employer and the Contractor which arise out of and relate to this Contract (whether or not they are or appear to be a derogation from the right assigned) and which are made prior to the date of any grant or assignment.

### Performance Bonds and Guarantees

#### 6.3 Performance Bonds and Guarantees

The Contractor shall on the execution of this Contract provide to the Employer whichever of the following the Contract Particulars state as being required:

6.3.1 a performance bond or guarantee of the Contractor's due performance of the Contract from a bank or other surety approved by the Employer in an amount equal to the percentage of the estimated Prime Cost and Contract Fee and for the period stated in the Contract Particulars;

6.3.2 a guarantee by the Contractor's parent company identified in the Contract Particulars;

any such bond or guarantee, unless otherwise agreed by the Employer, being substantially in the form of the document identified by the Contract Particulars.

### Clauses 6.7 to 6.11 – Preliminary

#### 6.4 Rights Particulars

The requirements for the grant of P&T Rights and Funder Rights by the Contractor and sub-contractors and any requirement for the grant of Employer Rights by any sub-contractors (in the case of the Contractor either as third party rights or by collateral warranties and in the case of the sub-contractors by collateral warranties only) ('Rights Particulars') are set out in the document(s) identified in the Contract Particulars against the reference to clause 6.4.<sup>[49]</sup> As respects those requirements:

[49] The Contractor may be required to grant rights either as Third Party Rights or Collateral Warranties. In the case of sub-contractors, provision is made only for the grant of Collateral Warranties – see clause 6.11 and the Prime Cost Building Contract Guide. The relevant Rights Particulars should identify the beneficiaries (by name, class or description) and the sub-contractors who are also required to grant rights, specify whether (in the case of the Contractor) rights are to be granted as Third Party Rights or by way of Collateral Warranties, state in those cases where the default provision is not to apply which alternative provision is to apply in its place and give any other details required to complete the terms of the rights or warranties that are to be given. A Model Form for the Rights Particulars is included in the Prime Cost Building Contract Guide and is also available on the JCT website [www.jcttd.co.uk](http://www.jcttd.co.uk). In the case of third party rights to be given by the Contractor the relevant limits and details required for the purposes of the respective parts of Schedule 5 of this Contract are the same as those required for the purposes of the Warranty Particulars for the corresponding Collateral Warranty (CWa/P&T or CWa/F). Directions may be needed as to mode of execution of sub-contracts and/or collateral warranties by

- 6.4.1 such rights are conferred only on persons sufficiently identified (by name, class or description) in the Rights Particulars;
- 6.4.2 if in relation to an identified beneficiary the Rights Particulars fail to specify the method by which such rights are to be conferred, the Contractor in relation to rights to be granted by him may elect to do so either as third party rights or by collateral warranty;
- 6.4.3 unless otherwise stated in the Rights Particulars, the term 'the Consultants' shall in all third party rights and/or collateral warranties to be granted mean the Architect/Contract Administrator and the Quantity Surveyor (including any replacements), together with any other consultants providing design services to the Employer in connection with the Works.

## **6.5 Notices**

Each notice to the Contractor referred to in clauses 6.7 to 6.11 shall be given in accordance with clause 1.7.4.

## **6.6 Execution of Collateral Warranties**

Where this Contract is executed as a deed, any collateral warranty to be entered into by the Contractor pursuant to clause 6.9 or 6.10 shall be executed as a deed. Where this Contract is executed under hand, any such warranty may be executed under hand.<sup>[50]</sup>

## **Third Party Rights from Contractor**

### **6.7 Rights for Purchasers and Tenants**

- 6.7.1 Where the Rights Particulars state that the Contractor shall confer P&T Rights on a Purchaser or Tenant as third party rights, those rights shall vest in that Purchaser or Tenant on the date of receipt by the Contractor of the Employer's notice to that effect, stating the name of the Purchaser or Tenant and the nature of his interest in the Works.
- 6.7.2 Where P&T Rights have vested in any Purchaser or Tenant, the Employer and the Contractor shall not be entitled without the consent of that Purchaser or Tenant to amend or vary the express provisions of this clause 6.7 or of Part 1 of Schedule 5 (Third Party Rights for Purchasers and Tenants) but, subject thereto, the rights of the Employer and/or the Contractor:
  - 6.7.2.1 to terminate the Contractor's employment under this Contract (whether under section 7 or otherwise), or to agree to rescind this Contract;
  - 6.7.2.2 to agree to amend or otherwise vary or to waive any terms of this Contract;
  - 6.7.2.3 to agree to settle any dispute or other matter arising out of or in connection with this Contract, in each case in or on such terms as they shall in their absolute discretion think fit,shall not be subject to the consent of any Purchaser or Tenant.

### **6.8 Rights for a Funder**

- 6.8.1 Where the Rights Particulars state that the Contractor shall confer Funder Rights on a Funder as third party rights, those rights shall vest in the Funder on the date of receipt by the Contractor of the Employer's notice to that effect.
- 6.8.2 Where Funder Rights have been vested in the Funder pursuant to clause 6.8.1:
  - 6.8.2.1 no amendment or variation shall be made to the express terms of this clause 6.8, to Part 2 of Schedule 5 (Third Party Rights for a Funder) or to the relevant Rights Particulars without the prior written consent of the Funder; and
  - 6.8.2.2 neither the Employer nor the Contractor shall agree to rescind this Contract, and the rights of the Contractor to terminate his employment under this Contract or to treat it as repudiated shall in all respects be subject to the provisions of

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relevant sub-contractors. See also the Prime Cost Building Contract Guide.

[50] See the footnote to clause 6.4 above.

paragraph 6 of Part 2 of Schedule 5

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

## **Collateral Warranties from Contractor**

### **6.9 Contractor's Warranties – Purchasers and Tenants**

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

### **6.10 Contractor's Warranty – Funder**

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

## **Collateral Warranties from Sub-Contractors**

### **6.11 Collateral Warranties from Sub-Contractors**

Where the Rights Particulars state that a sub-contractor shall execute and deliver a Collateral Warranty in favour of a Purchaser, Tenant or Funder and/or the Employer:

- 6.11.1 the Contractor shall comply with the Contract Documents as to the obtaining of such warranties including:
  - 6.11.1.1 on receipt of notice from the Employer (or Architect/Contract Administrator on his behalf) identifying in each case the sub-contractor, type of warranty and beneficiary, promptly giving notice under the sub-contract to each sub-contractor identified in the Employer's notice; and
  - 6.11.1.2 in the case of each Collateral Warranty specified in the Employer's notice and within 21 days of receipt of that notice, taking such steps as are required to obtain each warranty, promptly forwarding the executed document to the Employer or as he may direct and, where Collateral Warranty SCWa/F is required, having himself also executed and delivered the document;
- 6.11.2 any amendment to the form of any collateral warranty proposed by a sub-contractor shall require approval by both the Contractor and the Employer.

## Section 7 Termination

### General

#### 7.1 Meaning of insolvency

For the purposes of these Conditions:

7.1.1 a company becomes Insolvent:

- 7.1.1.1 when it enters administration within the meaning of Schedule B1 to the Insolvency Act 1986;
- 7.1.1.2 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;
- 7.1.1.3 on the passing of a resolution for voluntary winding-up without a declaration of solvency under section 89 of that Act; or
- 7.1.1.4 on the making of a winding-up order under Part IV or V of that Act.

7.1.2 a partnership becomes Insolvent:

- 7.1.2.1 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
- 7.1.2.2 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.

7.1.3 an individual becomes Insolvent:

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

7.1.4 a person also becomes Insolvent if:

- 7.1.4.1 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
- 7.1.4.2 (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 7.1.

Each of clauses 7.1.1 to 7.1.4 also includes any analogous arrangement, event or proceedings in any other jurisdiction.

#### 7.2 Notices under section 7

- 7.2.1 Notice of termination of the Contractor's employment shall not be given unreasonably or vexatiously.
- 7.2.2 Such termination shall take effect on receipt of the relevant notice.
- 7.2.3 Each notice referred to in this section shall be given in accordance with clause 1.7.4.

#### 7.3 Other rights, reinstatement

- 7.3.1 The provisions of clauses 7.4 to 7.7 are without prejudice to any other rights and remedies

of the Employer. The provisions of clauses 7.9 and 7.10, and (in the case of termination under either of those clauses) the provisions of clause 7.12, are without prejudice to any other rights and remedies of the Contractor.

- 7.3.2 Irrespective of the grounds of termination, the Contractor's employment may at any time be reinstated if and on such terms as the Parties agree.

## Termination by Employer

### 7.4 Default by Contractor

- 7.4.1 If, before practical completion of the Works, the Contractor:
- 7.4.1.1 without reasonable cause wholly or substantially suspends the carrying out of the Works; or
  - 7.4.1.2 fails to proceed regularly and diligently with the Works; or
  - 7.4.1.3 refuses or neglects to comply with a notice or instruction from the Architect/Contract Administrator requiring him to remove any work, materials or goods not in accordance with this Contract and by such refusal or neglect the Works are materially affected; or
  - 7.4.1.4 fails to comply with clause 6.1 or with any of clauses 3.7 to 3.9; or
  - 7.4.1.5 fails to comply with clause 3.23,
- the Architect/Contract Administrator may give to the Contractor a notice specifying the default or defaults (a 'specified' default or defaults).
- 7.4.2 If the Contractor continues a specified default for 14 days from receipt of the notice under clause 7.4.1, the Employer may on, or within 21 days from, the expiry of that 14 day period by a further notice to the Contractor terminate the Contractor's employment under this Contract.
- 7.4.3 If the Employer does not give the further notice referred to in clause 7.4.2 (whether as a result of the ending of any specified default or otherwise) but the Contractor repeats a specified default (whether previously repeated or not), then, upon or within a reasonable time after such repetition, the Employer may by notice to the Contractor terminate that employment.

### 7.5 Insolvency of Contractor

- 7.5.1 If the Contractor is Insolvent, the Employer may at any time by notice to the Contractor terminate the Contractor's employment under this Contract.
- 7.5.2 The Contractor shall immediately notify the Employer if he makes any proposal, gives notice of any meeting or becomes the subject of any proceedings or appointment relating to any of the matters referred to in clause 7.1.
- 7.5.3 As from the date the Contractor becomes Insolvent, whether or not the Employer has given such notice of termination:
- 7.5.3.1 clauses 7.7.3 to 7.7.5 and (if relevant) clause 7.8 shall apply as if such notice had been given;
  - 7.5.3.2 the Contractor's obligations under Article 1 and these Conditions to carry out and complete the Works shall be suspended; and
  - 7.5.3.3 the Employer may take reasonable measures to ensure that the Site, the Works and Site Materials are adequately protected and that such Site Materials are retained on site; the Contractor shall allow and shall not hinder or delay the taking of those measures.

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

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

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

## **7.7 Consequences of termination under clauses 7.4 to 7.6**

If the Contractor's employment is terminated under clause 7.4, 7.5 or 7.6:

- 7.7.1 the Employer may employ and pay other persons to carry out and complete the Works and to make good any defects of the kind referred to in clause 2.30, and he and they may enter upon and take possession of the Site and the Works and (subject to obtaining any necessary third party consents) may use all temporary buildings, plant, tools, equipment and Site Materials for those purposes;
- 7.7.2 the Contractor shall:
  - 7.7.2.1 when required in writing by the Architect/Contract Administrator to do so (but not before), remove or procure the removal from the Works of any temporary buildings, plant, tools, equipment, goods and materials belonging to the Contractor or Contractor's Persons;
  - 7.7.2.2 if so required by the Employer (or by the Architect/Contract Administrator on his behalf) within 14 days of the date of termination, assign (so far as assignable and so far as he may lawfully be required to do so) to the Employer, without charge, the benefit of any agreement for the supply of materials or goods and/or for the execution of any work for the purposes of this Contract<sup>[51]</sup>;
- 7.7.3 no further sum shall become due to the Contractor under this Contract other than any amount that may become due to him under clause 7.7.5 or 7.8.2 and the Employer need not pay any sum that has already become due either:
  - 7.7.3.1 insofar as the Employer has given or gives a Pay Less Notice under clause 4.9.5; or
  - 7.7.3.2 if the Contractor, after the last date upon which such notice could have been given by the Employer in respect of that sum, has become insolvent within the meaning of clauses 7.1.1 to 7.1.3;
- 7.7.4 following the completion of the Works and the making good of defects in them (or of instructions otherwise, as referred to in clause 2.30), an account of the following shall within 3 months thereafter be set out in a certificate issued by the Architect/Contract Administrator or a statement prepared by the Employer:
  - 7.7.4.1 the amount of expenses properly incurred by the Employer, including those incurred pursuant to clause 7.7.1 and, where applicable, clause 7.5.3.3, and of any direct loss and/or damage caused to the Employer and for which the Contractor is liable, whether arising as a result of the termination or otherwise;
  - 7.7.4.2 the amount of payments made to the Contractor; and
  - 7.7.4.3 the total amount which would have been payable for the Works in accordance with this Contract;
- 7.7.5 if the sum of the amounts stated under clauses 7.7.4.1 and 7.7.4.2 exceeds the amount stated under clause 7.7.4.3, the difference shall be a debt payable by the Contractor to the Employer or, if that sum is less, by the Employer to the Contractor.

## **7.8 Employer's decision not to complete the Works**

- 7.8.1 If within the period of 6 months from the date of termination of the Contractor's employment the Employer decides not to have the Works carried out and completed, he shall forthwith notify the Contractor. Within a reasonable time from the date of such notification, or if no notification is given but within that 6 month period the Employer does not commence to make arrangements for such carrying out and completion, then within 2 months of the expiry of that 6 month period, the Employer shall send to the Contractor a statement setting

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[51] Clause 7.7.2.2 may not be effectual in cases of Contractor's insolvency.

out:

- 7.8.1.1 the total value of work properly executed at the date of termination or date on which the Contractor became Insolvent, ascertained in accordance with these Conditions as if that employment had not been terminated, together with any amounts due to the Contractor under these Conditions not included in such total value; and
  - 7.8.1.2 the aggregate amount of any expenses properly incurred by the Employer and of any direct loss and/or damage caused to the Employer and for which the Contractor is liable, whether arising as a result of the termination or otherwise.
- 7.8.2 After taking into account amounts previously paid to the Contractor under this Contract, if the amount stated under clause 7.8.1.2 exceeds the amount stated under clause 7.8.1.1, the difference shall be a debt payable by the Contractor to the Employer or, if the clause 7.8.1.2 amount is less, by the Employer to the Contractor.

## Termination by Contractor

### 7.9 Default by Employer

- 7.9.1 If the Employer:
- 7.9.1.1 does not pay by the final date for payment the amount due to the Contractor in accordance with clause 4.9 and/or any VAT properly chargeable on that amount; or
  - 7.9.1.2 interferes with or obstructs the issue of any certificate due under this Contract; or
  - 7.9.1.3 fails to comply with clause 6.1; or
  - 7.9.1.4 fails to comply with clause 3.23,
- the Contractor may give to the Employer a notice specifying the default or defaults (a 'specified' default or defaults).
- 7.9.2 If before practical completion of the Works the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for a continuous period of the length stated in the Contract Particulars by reason of:
- 7.9.2.1 Architect/Contract Administrator's instructions under clause 2.10, 3.14, 3.15 or 3.16; and/or
  - 7.9.2.2 any impediment, prevention or default, whether by act or omission, by the Employer, the Architect/Contract Administrator, the Quantity Surveyor or any Employer's Person
- (but in either case excluding such instructions as are referred to in clause 7.11.1.2), then, unless in either case that is caused by the negligence or default of the Contractor or any Contractor's Person, the Contractor may give to the Employer a notice specifying the event or events (a 'specified' suspension event or events).
- 7.9.3 If a specified default or a specified suspension event continues for 14 days from the receipt of notice under clause 7.9.1 or 7.9.2, the Contractor may on, or within 21 days from, the expiry of that 14 day period by a further notice to the Employer terminate the Contractor's employment under this Contract.
- 7.9.4 If the Contractor for any reason does not give the further notice referred to in clause 7.9.3, but (whether previously repeated or not):
- 7.9.4.1 the Employer repeats a specified default; or
  - 7.9.4.2 a specified suspension event is repeated for any period, such that the regular progress of the Works is or is likely to be materially affected thereby,
- then, upon or within a reasonable time after such repetition, the Contractor may by notice to the Employer terminate the Contractor's employment under this Contract.

## **7.10 Insolvency of Employer**

- 7.10.1 If the Employer is Insolvent, the Contractor may by notice to the Employer terminate the Contractor's employment under this Contract;
- 7.10.2 the Employer shall immediately notify the Contractor if he makes any proposal, gives notice of any meeting or becomes the subject of any proceedings or appointment relating to any of the matters referred to in clause 7.1;
- 7.10.3 as from the date the Employer becomes Insolvent, the Contractor's obligations under Article 1 and these Conditions to carry out and complete the Works shall be suspended.

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

### **7.11 Termination by either Party and regulations 73(1)(a) and 73(1)(c) of the PC Regulations**

- 7.11.1 If, before practical completion of the Works, the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for the relevant continuous period of the length stated in the Contract Particulars by reason of one or more of the following events:
  - 7.11.1.1 force majeure;
  - 7.11.1.2 Architect/Contract Administrator's instructions under clause 2.10, 3.14, 3.15 or 3.16 issued as a result of the negligence or default of any Statutory Undertaker;
  - 7.11.1.3 loss or damage to the Works occasioned by any risk covered by the Works Insurance Policy or by an Excepted Risk;
  - 7.11.1.4 civil commotion or the use or threat of terrorism and/or the activities of the relevant authorities in dealing with such event or threat; or
  - 7.11.1.5 the exercise by the United Kingdom Government or any Local or Public Authority of any statutory power that is not occasioned by a default of the Contractor or any Contractor's Person but which directly affects the execution of the Works,then either Party, subject to clause 7.11.2, may upon the expiry of that relevant period of suspension give notice to the other that, unless the suspension ceases within 7 days after the date of receipt of that notice, he may terminate the Contractor's employment under this Contract. Failing such cessation within that 7 day period, he may then by further notice terminate that employment.
- 7.11.2 The Contractor shall not be entitled to give notice under clause 7.11.1 in respect of the matter referred to in clause 7.11.1.3 where the loss or damage to the Works was caused by the negligence or default of the Contractor or any Contractor's Person.
- 7.11.3 Where this Contract is one to which regulation 73(1) of the PC Regulations applies the Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment under this Contract where the grounds set out in regulation 73(1)(a) or 73(1)(c) of the PC Regulations apply.

## **Consequences of Termination under clauses 7.9 to 7.11, etc.**

### **7.12 Consequences of Termination under clauses 7.9 to 7.11, etc.**

- If the Contractor's employment is terminated under any of clauses 7.9 to 7.11 or under clause 5.11.2.2 or 5.14:
- 7.12.1 no further sums shall become due to the Contractor otherwise than in accordance with this clause 7.12;
  - 7.12.2 the Contractor shall with all reasonable dispatch remove or procure the removal from the Site of any temporary buildings, plant, tools and equipment belonging to the Contractor and Contractor's Persons and, subject to the provisions of clause 7.12.5, all goods and materials (including Site Materials);
  - 7.12.3 where the Contractor's employment is terminated under clause 7.9 or 7.10, the Contractor

shall as soon as reasonably practicable prepare and submit an account or, where terminated under clause 7.11, 5.11.2.2 or 5.14, the Contractor shall at the Employer's option either prepare and submit that account or, not later than 2 months after the date of termination, provide the Employer with all documents necessary for the Employer to do so, which the Employer shall do with reasonable dispatch (and in any event within 3 months of receipt of such documents). The account shall set out the amounts referred to in clauses 7.12.3.1 to 7.12.3.4 and, if applicable, clause 7.12.3.5, namely:

- 7.12.3.1 the total value of work properly executed at the date of termination of the Contractor's employment, ascertained in accordance with these Conditions as if the employment had not been terminated, together with any other amounts due to the Contractor under these Conditions;
- 7.12.3.2 any sums ascertained in respect of direct loss and/or expense under clause 4.17 (whether ascertained before or after the date of termination);
- 7.12.3.3 the reasonable cost of removal under clause 7.12.2;
- 7.12.3.4 the cost of materials or goods (including Site Materials) properly ordered for the Works for which the Contractor then has paid or is legally bound to pay;
- 7.12.3.5 any direct loss and/or damage caused to the Contractor by the termination;
- 7.12.4 the account shall include the amount, if any, referred to in clause 7.12.3.5 only where the Contractor's employment is terminated either:
  - 7.12.4.1 under clause 7.9 or 7.10; or
  - 7.12.4.2 under clause 7.11.1.3, if the loss or damage to the Works was caused by the negligence or default of the Employer or any Employer's Person;
- 7.12.5 after taking into account amounts previously paid to the Contractor under this Contract, the Employer shall pay to the Contractor (or vice versa) the amount properly due in respect of the account within 28 days of its submission to the other Party, without deduction of any Retention. Payment by the Employer for any such materials and goods as are referred to in clause 7.12.3.4 shall be subject to those materials and goods thereupon becoming the Employer's property.

## Section 8 Settlement of Disputes

### Mediation

#### 8.1 Mediation

Subject to Article 7, if a dispute or difference arises under this Contract which cannot be resolved by direct negotiations, each Party shall give serious consideration to any request by the other to refer the matter to mediation.<sup>[52]</sup>

### Adjudication

#### 8.2 Adjudication

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

- 8.2.1 for the purposes of the Scheme the Adjudicator shall be the person (if any) and the nominating body shall be that stated in the Contract Particulars;
- 8.2.2 where the dispute or difference is or includes a dispute or difference relating to clause 3.18.4 and as to whether an instruction issued thereunder is reasonable in all the circumstances:
  - 8.2.2.1 the Adjudicator to decide such dispute or difference shall (where practicable) be an individual with appropriate expertise and experience in the specialist area or discipline relevant to the instruction or issue in dispute;
  - 8.2.2.2 if the Adjudicator does not have the appropriate expertise and experience, the Adjudicator shall appoint an independent expert with such expertise and experience to advise and report in writing on whether or not the instruction under clause 3.18.4 is reasonable in all the circumstances.

### Arbitration

#### 8.3 Conduct of arbitration

Any arbitration pursuant to Article 8 shall be conducted in accordance with the JCT 2016 edition of the [Construction Industry Model Arbitration Rules \(CIMAR\)](#), provided that if any amendments to that edition of the Rules have been issued by the JCT the Parties may, by a joint notice in writing to the Arbitrator, state that they wish the arbitration to be conducted in accordance with the Rules as so amended. References in clause 8.4 to a Rule or Rules are references to such Rule(s) as set out in the JCT 2016 edition of [CIMAR](#).<sup>[53]</sup>

#### 8.4 Notice of reference to arbitration

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

[52] See the Prime Cost Building Contract Guide.

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

arbitration agreements, Rules 2.6, 2.7 and 2.8 shall apply.

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

#### **8.5 Powers of Arbitrator**

Subject to the provisions of Article 8 and clause 1.9, the Arbitrator shall, without prejudice to the generality of his powers, have power to rectify this Contract so that it accurately reflects the true agreement made by the Parties, to direct such measurements and/or valuations as may in his opinion be desirable in order to determine the rights of the Parties and to ascertain and award any sum which ought to have been the subject of or included in any certificate and to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice had been given.

#### **8.6 Effect of award**

Subject to clause 8.7 the award of the Arbitrator shall be final and binding on the Parties.

#### **8.7 Appeal – questions of law**

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

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

#### **8.8 Arbitration Act 1996**

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

# Schedules

## Schedule 1 Definition of Prime Cost

(Clause 4.2.1)

### Part 1: General

1

- 1.1 The Prime Cost shall comprise the sum of the following VAT-exclusive costs insofar as reasonably and properly incurred in accordance with this Contract:

Contractor's staff on site, as defined in Part 2  
Contractor's direct workforce, as defined in Part 3  
Materials and goods provided by the Contractor, as referred to in Part 4  
Plant, services and consumable stores, as referred to in Part 5  
Sundry costs, as defined in Part 6  
Sub-contract work, as referred to in Part 7

subject in each case to any variations therein set out in the Contract Particulars, against the reference to clause 4.2 and this Schedule, or in any separate document there referred to (references in this Schedule to the Contract Particulars being deemed to include any such document).

- 1.2 In calculating the Prime Cost:

1.2.1 no cost included under an item or Part of this Schedule shall be included under any other item or Part;

1.2.2 no amount of any loss and/or expense payable under clause 4.16 shall be included;

1.2.3 no amount of any costs or expenses incurred under clause 4.11.2 shall be included;

1.2.4 there shall be no inclusion of any costs disallowed under clause 4.2.2;

1.2.5 for any period of default in the completion of the Works or a Section after the relevant Completion Date, the payments referred to in Part 2 to Part 7 in respect of the Works or Section (as the case may be) shall be limited to amounts calculated at the rates applicable immediately before the Completion Date, or (if less) their actual amount;

1.2.6 there shall be deducted:

1.2.6.1 any discounts received by the Contractor (or which ought to be received by him) in relation to the carrying out of the Works;

1.2.6.2 any payments to or credits received by the Contractor (or which ought to be received by him) for materials etc., recovered in the course of carrying out the Works;

1.2.7 where the Contract Particulars state that a lump sum shall be paid for, or a specific rate used to calculate, particular items set out in any of Part 2 to Part 7, the lump sum or the amount calculated by applying that rate shall be included in lieu of the prime cost of such items and any maximum amount there stated shall correspondingly apply. The basis on which a lump sum shall be adjusted as a result of compliance by the Contractor with instructions of the Architect/Contract Administrator shall be that stated or referred to in the Contract Particulars or,

where none is identified, a fair and reasonable basis.

## Part 2: Contractor's Staff on Site

2

- 2.1 This Part 2 applies to the following management staff directly employed and engaged on the Site by the Contractor<sup>[54]</sup> (including the person-in-charge referred to in clause 3.2), namely:
- 2.1.1 those persons whose identity and relevant terms and conditions of employment are identified in or by the Contract Particulars;
  - 2.1.2 where not so listed, management staff whose designation, numbers and relevant terms and conditions are at any time notified to the Architect/Contract Administrator and to whose employment or engagement he gives his written consent; and
  - 2.1.3 any replacement appointees approved by the Architect/Contract Administrator.
- 2.2 Subject to paragraphs 2.3 and 2.4, the Prime Cost shall include payments to or in respect of such management staff to the extent that they are working on the Site up to the date of practical completion of the Works or a Section and, subject to authorisation by the Architect/Contract Administrator, working on or off the Site after that date.
- 2.3 No period less than a whole working day shall be taken into account and periods less than a whole working day shall not be aggregated to amount to a whole working day.
- 2.4 The payments referred to in paragraph 2.2 shall be limited to:
- 2.4.1 salaries and other emoluments;
  - 2.4.2 subsistence or similar allowances;
  - 2.4.3 fares and travel allowances (including reasonable cost or allowances for the use of cars);
  - 2.4.4 employer's contributions in respect of approved pension schemes;
  - 2.4.5 the amount of any insurance contributions, levy, tax or other payments imposed by statute and payable in respect of the management staff by the Contractor in his capacity as an employer, excluding any redundancy payments and paid parental leave<sup>[55]</sup>,
- paid in accordance with the Contractor's normal terms and conditions of employment for such personnel and/or in order to comply with the Contractor's statutory obligations.

## Part 3: Contractor's Direct Workforce

3

- 3.1 This Part 3 applies to labour (excluding management staff referred to in Part 2) directly employed by the Contractor himself and directly and properly engaged upon the Works either on the Site or in the Contractor's workshops, yards or similar premises, particulars of whose numbers, trades and relevant terms and conditions of employment are identified in or by the Contract Particulars.<sup>[54]</sup>
- 3.2 Subject to paragraphs 3.3 and 3.4, the Prime Cost in respect of the Contractor's directly employed workforce shall be limited to:
- 3.2.1 salaries, wages and other emoluments;

[54] Part 2 and Part 3 of this Schedule refer only to direct employees of the Contractor. The use of 'agency personnel' management staff and labour who are not employees of the Contractor is intended in each case to be treated as sub-contracting within Part 7 and subject to the requirements for consent etc. under clause 3.7.

[55] Redundancy payments, paid parental leave and similar contingent liabilities are matters which the Contractor should treat as overheads and for which he should make provision in his Contract Fee.

- 3.2.2 subsistence or similar allowances;
  - 3.2.3 fares and travel allowances (including reasonable cost or allowances for the use of cars);
  - 3.2.4 employer's contributions in respect of approved pension schemes;
  - 3.2.5 other amounts paid in accordance with the Contractor's normal terms and conditions of employment for such directly employed labour and/or in order to comply with such rules, decisions, terms or agreements of the Construction Industry Joint Council or of such other recognised national wage negotiating bodies as are relevant to the types of labour involved at the time and in the area the work is to be executed and are identified in or by the Contract Particulars or approved by the Architect/Contract Administrator; and
  - 3.2.6 the amount of any insurance contributions, levy, tax or other payments imposed by statute and payable in respect of the directly employed labour by the Contractor in his capacity as an employer, excluding any redundancy payments and paid parental leave<sup>[55]</sup>.
- 3.3 Subject to the Architect/Contract Administrator's authorisation of payment for out of hours working, the Prime Cost shall include payments to directly employed labour in respect of such working at the basic rates listed in the Contract Particulars increased by the percentage additions (if any) there listed (by trades). Those percentage additions shall be deemed to be inclusive of all bonus payments and similar allowances.
- 3.4 In the case of salaries or wages for apprentices on a recognised apprenticeship scheme and subject to the approval of the Architect/Contract Administrator, a reasonable percentage may be added to cover pro-rata the time and cost of appropriate day or block release courses.

#### **Part 4: Materials and Goods provided by the Contractor**

4

- 4.1 Subject to allowance to the Employer of any cash, trade or other discounts, payments in respect of materials and goods (including reasonable wastage) shall be as follows:
- 4.1.1 materials and goods obtained by the Contractor from manufacturers or stockists: the invoice cost, including the cost of delivery to the Site;
  - 4.1.2 materials and goods supplied from the Contractor's stock or worked upon in the Contractor's workshops: the market price current at the date of their supply to the Works, together with any appropriate handling charges.

#### **Part 5: Plant, Services and Consumable Stores provided by the Contractor**

5

- 5.1 The Prime Cost shall include:
- 5.1.1 for plant as referred to in paragraph 5.2:
    - 5.1.1.1 the net cost to the Contractor, whether by hire charges or otherwise; or
    - 5.1.1.2 where provided by the Contractor, hire rates agreed from time to time with the Architect/Contract Administrator or, if he so instructs, the Quantity Surveyor or, in the absence of prior agreement, rates not exceeding those normally applied in the locality at the time the plant is used or, where applicable, on a use and waste basis; and
  - 5.1.2 for the services and consumable stores referred to in paragraph 5.2 the net cost to the Contractor.
- 5.2 Plant, services and consumable stores shall for the purposes of this Part 5 mean and

include:

- 5.2.1 mechanical plant and power-operated tools;
- 5.2.2 non-mechanical plant, including hand tools;
- 5.2.3 scaffolding and scaffold boards (including reasonable losses where hired);
- 5.2.4 temporary roadways, shoring, planking and strutting, centering, formwork, hoardings, temporary fans, temporary fencing, barriers, footways, temporary partitions and the like;
- 5.2.5 temporary buildings;
- 5.2.6 canteens, sanitary accommodation, protective clothing and other health and safety and welfare provisions for persons engaged on the work and authorised visitors that are required by law or the rules or decisions of any relevant national wage negotiating body;
- 5.2.7 temporary protection, weatherproofing and fire precaution measures;
- 5.2.8 transport (including collection and disposal of rubbish, waste disposal site charges and plant transportation charges);
- 5.2.9 equipment for drying out the Works and for testing and commissioning services installations (including any cost of using equipment incorporated into the Works);
- 5.2.10 installations for temporary utility services and supplies;
- 5.2.11 security arrangements for the Site and Works;
- 5.2.12 erection, installation, adaptation and resiting (where necessary), cleaning, maintenance and repair, dismantling and removal of temporary buildings, plant and equipment;
- 5.2.13 fuel and other consumable stores required for the operation of plant, equipment and the provision of the facilities and services referred to above.

## Part 6: Sundry Costs incurred by the Contractor

6

- 6.1 The net cost to the Contractor of the following:
  - 6.1.1 charges arising from work carried out by Statutory Undertakers;
  - 6.1.2 charges for water, electricity and gas used on the Site;
  - 6.1.3 rates or other similar statutory charges on temporary buildings for the Contractor's and sub-contractors' on-site staff and those of the Employer and his consultants;
  - 6.1.4 payments for hoardings and similar licences, less any payments for advertising received by the Contractor;
  - 6.1.5 fees, royalties and similar charges;
  - 6.1.6 furniture, furnishings, office equipment, stationery and office consumables for on-site staff, including telephone, e-mail and fax equipment, computers, electronic data interchange and their programs, together with any related charges authorised by the Architect/Contract Administrator (such authorisation not to be unreasonably delayed or withheld), less any credits obtained on the disposal of such items;
  - 6.1.7 postage and other delivery charges for correspondence, etc. sent from the Site;
  - 6.1.8 reproduction of drawings and other documents generated on or necessary for use on the Site;

- 6.1.9 travelling and subsistence incurred in off-site inspection of materials and work;
- 6.1.10 premiums for any performance bond or guarantee required by the Employer pursuant to clause 6.3.1 and provided by the Contractor;
- 6.1.11 the premium for any insurance required by the Employer under clause 5.5 or costs incurred by the Contractor under clause 5.12.2, but not the premiums for the Contractor's employer's liability and public liability insurance referred to in clause 5.4.1 nor, subject to clauses 2.5.2, 4.16, 5.10.2 or 5.10.3 and 5.11.3, any Works insurance to be provided by the Contractor where Insurance Option A applies;
- 6.1.12 any costs and expenses which the Contractor is entitled to recover under clause 4.11.2;
- 6.1.13 where the Contractor is and while he remains the Principal Contractor, any updates and revisions of the Construction Phase Plan;
- 6.1.14 progress photographs;
- 6.1.15 (unless expressly excluded under these Conditions) any costs incurred by the Contractor that are not referred to elsewhere in this Schedule but are stated in these Conditions to be payable by the Contractor.

## Part 7: Sub-Contract Work

7

- 7.1 In the case of work sub-contracted in accordance with clause 3.7, the Prime Cost shall include amounts due and payable by the Contractor in accordance with the relevant sub-contract, excluding any amounts payable to the sub-contractor by reason of any default of the Contractor, whether by act or omission, and, where Insurance Option A applies, excluding in the case of repair or replacement of loss or damage by any of the Specified Perils the amount of any excess under the Joint Names Policy.

## Schedule 2 Revision and Adjustment of Contract Fee

(Clause 4.3)

### Part 1: Instructions – alteration in the Scope of the Works

1

- 1.1 In the case of an instruction that alters the Scope of the Works, if upon receipt of an application by the Contractor under clause 3.10 the Architect/Contract Administrator considers it fair and reasonable to revise the Contract Fee and the Employer confirms in writing to the Contractor his agreement to such revision, the Architect/Contract Administrator, or, if the Architect/Contract Administrator so instructs, the Quantity Surveyor, shall after consultation with the Contractor make an appropriate revision to the Contract Fee and decide the date from which the revised fee shall apply.
- 1.2 Where the Contractor applies for such a revision, the Contractor's right under clause 3.10 not to comply with the relevant instruction shall cease upon the Architect/Contract Administrator's decision under paragraph 1.1 or (if relevant and if later) upon confirmation of the Employer's agreement to the revision.

### Part 2: Adjustment of Contract Fee (Fixed Sum only)

2

- 2.1 Where the Contract Fee is a Fixed Sum:
- 2.1.1 No adjustment of the Contract Fee (or of such Fee as revised pursuant to clause 3.10 and Part 1 of this Schedule) shall be made except in accordance with paragraph 2.1.2 or 2.1.3.
- 2.1.2 If, in an interim valuation for an Interim Certificate, the Prime Cost exceeds the total estimated amount of Prime Cost stated in the Contract Particulars by more than 10% (or such other percentage stated in the Contract Particulars), the Contract Fee shall be adjusted in accordance with the formula set out in paragraph 2.1.4.
- 2.1.3 If the Prime Cost given in the Quantity Surveyor's statement referred to in clause 4.21.2.2 (*Final Ascertainment*) exceeds or is less than the total estimated amount of Prime Cost stated in the Contract Particulars by more than 10% (or such other percentage stated in the Contract Particulars), the Contract Fee shall be adjusted in accordance with the formula set out in paragraph 2.1.4.
- 2.1.4 The formula to be used for any adjustment under paragraph 2.1.2 or 2.1.3 is:

$$ACF = CF \times \frac{100 \pm (D - T)}{100}$$

where

ACF is the adjusted Contract Fee;

CF is the Contract Fee stated in the Contract Particulars (as revised, where applicable, pursuant to Part 1 of this Schedule);

D	is the increase or decrease of the total Prime Cost when compared with the estimated Prime Cost stated in the Contract Particulars expressed as a percentage of the estimated amount;
T	is 10 (or such other number as is stated as the percentage in the Contract Particulars);
±	shall be + (plus) if the total Prime Cost exceeds the estimated amount of Prime Cost stated in the Contract Particulars or – (minus) if the total Prime Cost is less than that estimated Prime Cost;

'total Prime Cost' is the Prime Cost after any disallowances and deductions made pursuant to these Conditions.

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## Schedule 3 Insurance Options

(Clause 5.7)

### Insurance Option A

(New Buildings – All Risks Insurance of the Works by the Contractor)<sup>[56]</sup>

#### Contractor to effect and maintain a Joint Names Policy

- A.1** The Contractor shall effect and for the period specified in clause 5.7.2 maintain with insurers approved by the Employer a Joint Names Policy for All Risks Insurance with cover no less than that specified in clause 5.8 for the full reinstatement value of the Works or (where applicable) Sections (plus the percentage, if any, stated in the Contract Particulars to cover professional fees).

#### Use of Contractor's annual policy – as alternative

- A.2** If and so long as the Contractor independently of this Contract maintains an annual insurance policy which in respect of the Works or Sections:

A.2.1 provides (inter alia) All Risks Insurance with cover and in amounts no less than those specified in paragraph A.1; and

A.2.2 is a Joint Names Policy,

that policy shall satisfy the Contractor's obligations under paragraph A.1. The annual renewal date of the policy, as supplied by the Contractor, is stated in the Contract Particulars.

#### Loss or damage

- A.3** Where there is loss or damage affecting any executed work and/or Site Materials, the provisions of clause 5.13 shall as relevant apply.

**[56]** Insurance Options A and B are for use in the case of new buildings. Insurance Option A is applicable where the Contractor is required to take out a Joint Names Policy for All Risks Insurance of the Works or to include them on that basis within his Annual Construction policy; Insurance Option B is applicable where the Employer has elected to take out that Joint Names Policy. Insurance Option C is for use in the case of alterations of or extensions to Existing Structures. Under that option, the Employer is required to take out a Joint Names Policy for All Risks Insurance for the Works and also, if paragraph C.1 applies, a Joint Names Policy to insure the Existing Structures and their contents owned by him or for which he is responsible against loss or damage by the Specified Perils. Some Employers (e.g. tenants and some homeowners) may not be able readily to obtain the Joint Names cover required under paragraph C.1. Where that is the case, alternative arrangements through use of a C.1 Replacement Schedule or as otherwise described in the Prime Cost Building Contract Guide will be necessary. Where there are Existing Structures, it is vital that any prospective Employer who is not familiar with Insurance Option C – in particular any Employer who is a tenant or domestic homeowner – or an appropriate member of the Employer's professional team, should consult specialist insurance advisers prior to the tender stage. Any Employer who is a tenant should also consult his insuring landlord prior to that stage.

## **Insurance Option B**

(New Buildings – All Risks Insurance of the Works by the Employer)<sup>[56]</sup>

### **Employer to effect and maintain a Joint Names Policy**

- B.1** The Employer shall effect and for the period specified in clause 5.7.2 maintain a Joint Names Policy for All Risks Insurance with cover no less than that specified in clause 5.8 for the full reinstatement value of the Works or (where applicable) Sections (plus the percentage, if any, stated in the Contract Particulars to cover professional fees).

### **Loss or damage**

- B.2** Where there is loss or damage affecting any executed work and/or Site Materials, the provisions of clause 5.13 shall as relevant apply.

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## Insurance Option C

(Joint Names Insurance by the Employer of Existing Structures and Works in or Extensions to them)<sup>[57]</sup>

### Existing Structures and contents – Joint Names Policy for Specified Perils

- C.1** The Employer shall unless otherwise stated by the Contract Particulars for clause 5.7 and this Schedule effect and for the period specified in clause 5.7.2 maintain a Joint Names Policy in respect of the Existing Structures together with the contents of them owned by him or for which he is responsible, for the full cost of reinstatement, repair or replacement of loss or damage due to any of the Specified Perils.

### The Works – Joint Names Policy for All Risks

- C.2** The Employer shall effect and for the period specified in clause 5.7.2 maintain a Joint Names Policy for All Risks Insurance with cover no less than that specified in clause 5.8 for the full reinstatement value of the Works or (where applicable) Sections (plus the percentage, if any, stated in the Contract Particulars to cover professional fees).

### Loss or damage

- C.3** If during the carrying out of the Works there is any loss of or damage of any kind to any executed work, Site Materials and/or to any Existing Structures or their contents the provisions of clauses 5.13 and 5.14 shall as relevant apply.

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**[57]** **Insurance Option C** is for use where there are Existing Structures. It can be used in its existing printed form by those Employers who are able to effect the Joint Names, Specified Perils cover for the Contractor in respect of the Existing Structures and those contents that are owned by the Employer or for which he is responsible.

However, the Joint Names Policy required by paragraph C.1 or the extension of a subsisting structure and contents policy to being a Joint Names Policy may not be readily available – and that provision is often not now appropriate for – refurbishment projects or alterations by tenant Employers where Existing Structures insurance is the landlord's responsibility.

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

The Contract Particulars for clause 5.7 and Schedule 3 therefore expressly allow the Parties in those circumstances to disapply paragraph C.1 and, by means of a C.1 Replacement Schedule, to include in place of that paragraph provisions that are tailored to their particular requirements.

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

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

## Schedule 4 Code of Practice

(Clause 3.18.4)

The purpose of the Code is to assist in the fair and reasonable operation of the requirements of clause 3.18.4.

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

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

## Schedule 5 Third Party Rights

(Clauses 6.7 and 6.8)

### Part 1: Third Party Rights for Purchasers and Tenants

#### ('P&T Rights')

1

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

2 The Contractor further warrants that unless required by this Contract or unless otherwise authorised in writing by the Employer or by the Architect/Contract Administrator named in or appointed pursuant to this Contract (or, where such authorisation is given orally, confirmed in writing by the Contractor to the Employer and/or the Architect/Contract Administrator), he has not used and will not use materials in the Works other than in accordance with the guidelines contained in the edition of 'Good Practice in Selection of Construction Materials' (British Council for Offices) current at the date of this Contract. In the event of any breach of this warranty the provisions of paragraph 1 shall apply.

3 The Purchaser or Tenant has no authority to issue any direction or instruction to the Contractor in relation to this Contract.

4 P&T Rights may be assigned without the Contractor's consent by a Purchaser or Tenant, by way of

absolute legal assignment, to another person (P1) taking an assignment of the Purchaser's or Tenant's interest in the Works and by P1, by way of absolute legal assignment, to another person (P2) taking an assignment of P1's interest in the Works. In such cases the assignment shall only be effective upon written notice of it being given to the Contractor. No further or other assignment of a Purchaser's or Tenant's rights under this Schedule will be permitted and in particular P2 shall not be entitled to assign these rights.

- 5 Any notice to be given by the Purchaser or Tenant to the Contractor or by the Contractor to the Purchaser or Tenant shall be duly given if delivered by hand or sent by Recorded Signed for or Special Delivery post to the recipient at such address as he may from time to time notify to the sender or (if no such address is then current) his last known principal business address or (where a body corporate) its registered or principal office. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.
- 6 No action or proceedings for any breach of P&T Rights shall be commenced against the Contractor after the expiry of the relevant period from the date of practical completion of the Works. Where there are Sections, no action or proceedings shall be commenced against the Contractor in respect of any Section after the expiry of the relevant period from the date of practical completion of such Section. For the purposes of this paragraph, the relevant period shall be:
  - 6.1 where this Contract is executed under hand, 6 years; and
  - 6.2 where this Contract is executed as a deed, 12 years.
- 7 For the avoidance of doubt, the Contractor shall have no liability to the Purchaser or Tenant under this Schedule for delay in completion of the Works.
- 8 This Schedule shall be governed by and construed in accordance with the law of England and the English courts shall have jurisdiction over any dispute or difference between the Contractor and any Purchaser or Tenant which arises out of or in connection with the P&T Rights of that Purchaser or Tenant.

## Part 2: Third Party Rights for a Funder

### ('Funder Rights')

- 1 The Contractor warrants that he has complied and will continue to comply with this Contract. In the event of any breach of this warranty:
  - 1.1 the Contractor's liability to the Funder for costs under this Schedule shall be limited to the proportion of the Funder's losses which it would be just and equitable to require the Contractor to pay having regard to the extent of the Contractor's responsibility for the same, on the assumptions that the Consultant(s):
    - 1.1.1 has or have provided contractual undertakings to or conferred third party rights on the Funder that he or they has or have and will perform his or their services in connection with the Works in accordance with the terms of his or their respective consultancy agreements and that there are no limitations on liability as between the Consultant and the Employer in the consultancy agreement(s); and
    - 1.1.2 has or have paid to the Funder such proportion of the Funder's losses as it would be just and equitable for them to pay having regard to the extent of their responsibility for the Funder's losses;
  - 1.2 the Contractor shall be entitled in any action or proceedings by the Funder to rely on any term in this Contract and to raise the equivalent rights in defence of liability as he would have against the Employer under this Contract;
  - 1.3 the obligations of the Contractor under or pursuant to this paragraph 1 shall not be released or diminished by the appointment of any person by the Funder to carry out any independent enquiry into any relevant matter.
- 2 The Contractor further warrants that unless required by this Contract or unless otherwise authorised in writing by the Employer or by the Architect/Contract Administrator named in or appointed pursuant to this Contract (or, where such authorisation is given orally, confirmed in writing by the Contractor to the Employer and/or the Architect/Contract Administrator), he has not used and will not use materials in the Works other than in accordance with the guidelines contained in the edition of 'Good Practice in

Selection of Construction Materials' (British Council for Offices) current at the date of this Contract. In the event of any breach of this warranty the provisions of paragraph 1 shall apply.

- 3 The Funder has no authority to issue any direction or instruction to the Contractor in relation to this Contract unless and until the Funder has given notice under paragraph 5 or 6.4.
- 4 The Funder has no liability to the Contractor in respect of amounts due under this Contract unless and until the Funder has given notice under paragraph 5 or 6.4.
- 5 The Contractor agrees that, in the event of the termination of the Finance Agreement by the Funder, the Contractor shall, if so required by written notice given by the Funder and subject to paragraph 7, accept the instructions of the Funder or its appointee to the exclusion of the Employer in respect of the Works upon the terms and conditions of this Contract. The Employer acknowledges that the Contractor shall be entitled to rely on a notice given to the Contractor by the Funder under this paragraph 5 as conclusive evidence for the purposes of this Contract of the termination of the Finance Agreement by the Funder; and further acknowledges that such acceptance of the instructions of the Funder to the exclusion of the Employer shall not constitute any breach of the Contractor's obligations to the Employer under this Contract.
- 6
- 6.1 The Contractor shall not exercise any right of termination of his employment under this Contract without having first:
- 6.1.1 copied to the Funder any notices required by this Contract to be sent to the Architect/Contract Administrator or to the Employer prior to the Contractor being entitled to give notice under this Contract that his employment under this Contract is terminated; and
- 6.1.2 given to the Funder written notice that he has the right under this Contract forthwith to notify the Employer that his employment under this Contract is terminated.
- 6.2 The Contractor shall not treat this Contract as having been repudiated by the Employer without having first given to the Funder written notice that he intends so to notify the Employer.
- 6.3 The Contractor shall not:
- 6.3.1 issue a notice to the Employer to which paragraph 6.1.2 refers; or
- 6.3.2 notify the Employer that he is treating this Contract as having been repudiated by the Employer as referred to in paragraph 6.2
- before the lapse of 14 days from receipt by the Funder of the notice by the Contractor which the Contractor is required to give under paragraph 6.1.2 or 6.2.
- 6.4 The Funder may, not later than the expiry of the period referred to in paragraph 6.3, require the Contractor by written notice and subject to paragraph 7 to accept the instructions of the Funder or its appointee to the exclusion of the Employer in respect of the Works upon the terms and conditions of this Contract. The Employer acknowledges that the Contractor shall be entitled to rely on a notice given to the Contractor by the Funder under this paragraph 6.4 and that acceptance by the Contractor of the instructions of the Funder to the exclusion of the Employer shall not constitute any breach of the Contractor's obligations to the Employer under this Contract. Provided that nothing in this paragraph 6.4 shall relieve the Contractor of any liability he may have to the Employer for any breach by the Contractor of this Contract.
- 7 It shall be a condition of any notice given by the Funder under paragraph 5 or 6.4 that the Funder or its appointee accepts liability for payment of the sums due and payable to the Contractor under this Contract and for performance of the Employer's obligations including payment of any sums outstanding at the date of such notice. Upon the issue of any notice by the Funder under paragraph 5 or 6.4, this Contract shall continue in full force and effect as if no right of termination of the Contractor's employment under this Contract, nor any right of the Contractor to treat this Contract as having been repudiated by the Employer, had arisen and the Contractor shall be liable to the Funder and its appointee under this Contract in lieu of his liability to the Employer. If any notice given by the Funder under paragraph 5 or 6.4 requires the Contractor to accept the instructions of the Funder's appointee, the Funder shall be liable to the Contractor as guarantor for the payment of all sums from time to time due to the Contractor from the Funder's appointee.

- 8** The rights contained in this Schedule may be assigned without the Contractor's consent by the Funder, by way of absolute legal assignment, to another person (P1) providing finance or re-finance in connection with the carrying out of the Works and by P1, by way of absolute legal assignment, to another person (P2) providing finance or re-finance in connection with the carrying out of the Works. In such cases the assignment shall only be effective upon written notice of it being given to the Contractor. No further or other assignment of Funder Rights will be permitted and in particular P2 shall not be entitled to assign these rights.
- 9** Any notice to be given by the Contractor to the Funder or by the Funder to the Contractor shall be duly given if delivered by hand or sent by Recorded Signed for or Special Delivery post to the recipient at such address as he may from time to time notify to the sender or (if no such address is then current) his last known principal business address or (where a body corporate) its registered or principal office. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.
- 10** No action or proceedings for any breach of the rights contained in this Schedule shall be commenced against the Contractor after the expiry of the relevant period from the date of practical completion of the Works. Where there are Sections, no action or proceedings shall be commenced against the Contractor in respect of any Section after the expiry of the relevant period from the date of practical completion of such Section. For the purposes of this paragraph, the relevant period shall be:
- 10.1 where this Contract is executed under hand, 6 years; and
- 10.2 where this Contract is executed as a deed, 12 years.
- 11** Notwithstanding the rights contained in this Schedule, the Contractor shall have no liability to the Funder for delay under this Contract unless and until the Funder serves notice pursuant to paragraph 5 or 6.4. For the avoidance of doubt the Contractor shall not be required to pay damages in respect of the period of delay where the same has been paid to or deducted by the Employer.
- 12**
- 12.1 This Schedule shall be governed by and construed in accordance with the law of England and subject to paragraph 12.2 the English courts shall have jurisdiction over any dispute or difference between the Contractor and the Funder which arises out of or in connection with this Schedule.
- 12.2 Following the giving of any notice by the Funder pursuant to paragraph 5 or 6.4, any dispute or difference which shall arise between the Contractor and the Funder (including any appointee or permitted assignee) shall be subject to the provisions of Article 7 and (where they apply) Article 8 and clauses 8.3 to 8.8.

## Schedule 6 Form of Bond

(Clause 4.13)

(Agreed between the JCT and the British Bankers' Association)

### Bond in respect of payment for off-site materials and/or goods

1 THE parties to this Bond are:

\_\_\_\_\_

whose registered office is at \_\_\_\_\_

\_\_\_\_\_ ('the Surety'), and

\_\_\_\_\_ of \_\_\_\_\_

\_\_\_\_\_ ('the Employer').

2 The Employer and \_\_\_\_\_ ('the Contractor')

have agreed to enter into a contract ('the Contract') for building works ('the Works') at \_\_\_\_\_

3 Subject to the relevant provisions of the Contract as summarised below but with which the Surety shall not at all be concerned:

3.1 the Employer has agreed to include the amount stated as due in Interim Certificates (as defined in the Contract) for payment by the Employer the value of those materials or goods or items pre-fabricated for inclusion in the Works listed by the Employer in a list which has been included as part of the Contract ('the Listed Items'), before their delivery to or adjacent to the Works; and

3.2 the Contractor has agreed to insure the Listed Items against loss or damage for their full value under a policy of insurance protecting the interests of the Employer and the Contractor during the period commencing with the transfer of the property in the items to the Contractor until they are delivered to or adjacent to the Works; and

3.3 this Bond shall exclusively relate to the amount paid to the Contractor in respect of the Listed Items which have not been delivered to or adjacent to the Works.

4 The Employer shall in making any demand provide to the Surety a Notice of Demand in the form of the **Schedule** attached hereto which shall be accepted as conclusive evidence for all purposes under this Bond. The signatures on any such demand must be authenticated by the Employer's bankers.

5 The Surety shall within 5 Business Days after receiving the demand pay to the Employer the sum so demanded. 'Business Day' means the day (other than a Saturday or a Sunday) on which commercial banks are open for business in London.

6 Payments due under this Bond shall be made notwithstanding any dispute between the Employer and the Contractor and whether or not the Employer and the Contractor are or might be under any liability one to the other. Payment by the Surety under this Bond shall be deemed a valid payment for all purposes of this Bond and shall discharge the Surety from liability to the extent of such payment.

\*The value stated in the Contract which the Employer considers will be sufficient to cover him for maximum payments to the Contractor for the Listed Items that will have been made and not delivered to the site at any one time.

Date: \_\_\_\_\_

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## Schedule to Bond

(clause 4 of the Bond)

## Notice of Demand

Date of Notice: \_\_\_\_\_

Date of Bond: \_\_\_\_\_

Employer: \_\_\_\_\_

Surety: \_\_\_\_\_

We hereby demand payment of the sum of £ \_\_\_\_\_  
being the amount stated as due in respect of Listed Items included in the amount stated as due in an  
Interim Certificate(s) for payment which has been duly made to the Contractor by the Employer but  
such Listed Items have not been delivered to or adjacent to the Works.

Address for payment: \_\_\_\_\_

This Notice is signed by the following persons who are authorised by the Employer to act for and on  
his behalf:

Signed by \_\_\_\_\_

Name: \_\_\_\_\_

Official Position: \_\_\_\_\_

Signed by \_\_\_\_\_

Name: \_\_\_\_\_

Official Position: \_\_\_\_\_

**The above signatures to be authenticated by the Employer's bankers**

## Schedule 7 Supplemental Provisions

(Ninth Recital)

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

### Collaborative working

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

### Health and safety

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

### Cost savings and value improvements

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

Works.

#### **Sustainable development and environmental considerations**

**4**

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

#### **Performance Indicators and monitoring**

**5**

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

#### **Notification and negotiation of disputes**

**6**

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

#### **Transparency**

**7**

Where the Employer is a Local or Public Authority or other body to whom the provisions of the Freedom of Information Act 2000 ('FOIA') apply, the Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of this Contract is not confidential. The Employer shall be responsible for determining in his absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding clause 2.7.4 or any other term of this Contract:

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

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

**8**

Where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations<sup>[58]</sup>:

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

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**[58]** An explanatory summary of those provisions in the PC Regulations that are reflected in this Contract is contained in the Prime Cost Building Contract Guide. Provisions relating to the PC Regulations are also set out in section 7 (Termination) of this Contract.

- 8.2.1 to supply and notify to the Contractor the information required (as applicable) under regulations 71(3), 71(4) and 71(5) of the PC Regulations; and
- 8.2.2 to include in any sub-subcontract he in turn enters into provisions to the same effect as required under paragraph 8.2.1 of Supplemental Provision 8;

8.3

- 8.3.1 the Contractor shall include in any sub-contract entered into by him provisions that shall entitle him to terminate the sub-contractor's employment where there are grounds for excluding the sub-contractor under regulation 57;
- 8.3.2 in the event the Employer requires the Contractor to terminate a sub-contractor's employment pursuant to regulation 71(9) the Contractor shall take the appropriate steps to terminate that employment and where required by the Employer under regulation 71(9) shall, or in circumstances where there is no such requirement may, appoint a replacement sub-contractor.

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