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DB 2016

Design and Build Contract 2016

2016

DESIGN AND BUILD CONTRACT

Design and Build Contract (DB)

Appropriate:

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

Can be used:

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

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

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For details of 2016 Edition changes, see the Design and Build Contract Guide (DB/G) and the Tracked Change Document.

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Agreement

This Agreement

is made the _____ 20_____

Between

The Employer

Real Estate Investment (Thomas Street) Ltd

Place of incorporation: England and Wales

(Company No. 10247328)^[1]

whose registered office is at 9th Floor, 80 Mosley Street, Manchester, M2 3FX

And

The Contractor

Mountain Earth Developments Limited

Place of incorporation: England and Wales

(Company No. 12687107)^[1]

whose registered office is at 228 Prescott Road, Aughton, West Lancs, L39 5AQ

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

Recitals

Whereas

First

the Employer wishes to have the design and construction of the following work carried out^[2]:

The retention, repair and construction of a Grade 2 listed building to create 3 homes plus the demolition then new build construction to provide retail units and 17 apartments

at

Thomas Street, Manchester ('the Works')
and the Employer has supplied to the Contractor documents showing and describing or otherwise stating his requirements ('the Employer's Requirements');

Second

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

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

Third

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

Fourth

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

Fifth

the Works are not divided into Sections;

Sixth

the Contract is not supplemented by a Framework Agreement;

Seventh

whether any of Supplemental Provisions 1 to 10 apply is stated in the Contract Particulars;

[2] State nature and location of intended works.

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

Articles

Now it is hereby agreed as follows

Article 1 Contractor's obligations

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

Article 2 Contract Sum

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

[REDACTED] ('the Contract Sum')

or such other sum as becomes payable under this Contract.

Article 3 Employer's Agent

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

Zerum PDM Limited

of

4 Jordan Street, Manchester, M15 4PY

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

Article 4 Employer's Requirements and Contractor's Proposals

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

Article 5 Principal Designer

The Principal Designer for the purposes of the CDM Regulations is

Jon Matthews Architects

of

Union, 2-10 Albert Square, Manchester, M2 6LW

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 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 9.2.^[4]

Article 8 Arbitration

Not applicable

Article 9 Legal proceedings^[5]

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.

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

[5] 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 9.3 to 9.8 apply and the words "do not apply" **must** be deleted. If the Parties wish any dispute or difference to be determined by the courts of another jurisdiction the appropriate amendment should be made to Article 9 (see also clause 1.11 and Schedule 5 Part 1 and Part 2).

Contract Particulars

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

Fourth Recital and clause 4.5

Construction Industry Scheme (CIS)

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

Seventh Recital and Part 1 of Schedule 2

Supplemental Provisions – Part 1

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

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

Seventh Recital and Part 2 of Schedule 2

Supplemental Provisions^[6] – Part 2

(Where neither entry against one of Supplemental Provisions 4 to 10 below is deleted, that Supplemental Provision applies.)

- Supplemental Provision 4: Acceleration Quotation
- * does not apply
- Supplemental Provision 5: Collaborative working
- * applies
- Supplemental Provision 6: Health and safety
- * applies
- Supplemental Provision 7: Cost savings and value improvements
- * applies
- Supplemental Provision 8: Sustainable development and environmental considerations
- * applies
- Supplemental Provision 9: Performance Indicators and monitoring
- * applies
- Supplemental Provision 10: Notification and negotiation of disputes
- * applies

Where Supplemental Provision 10 applies, the respective nominees of the Parties are

[6] Supplemental Provision 11 (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 12 (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.

Employer's nominee

Steve Slater

Contractor's nominee

Sam Heyes

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

Article 4

Employer's Requirements

(State reference numbers and dates or other identifiers of the relevant documents.)^[7]

Zerum PDM Limited - Employer's Requirements dated June 2022

Contractor's Proposals

(State reference numbers and dates or other identifiers of the relevant documents.)^[7]

Mountain Earth Contractor's Proposals dated July 2022

Contract Sum Analysis

(State reference numbers and dates or other identifiers of the relevant documents.)^[7]

Mountain Earth Contractor's Proposals dated July 2022

Article 8

Arbitration

(If neither entry is deleted, Article 8 and clauses 9.3 to 9.8 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must be stated that Article 8 and clauses 9.3 to 9.8 apply.)^[8]

Article 8 and clauses 9.3 to 9.8 (Arbitration)

* do not apply

1.1

Base Date

10 days prior to date of tender

BIM Protocol (where applicable)

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

Not applicable

Date for Completion of the Works

(where completion by Sections does not apply)

29th November 2024

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.)^[9]

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

[8] On factors to be taken into account by the Parties in considering whether disputes are to be determined by arbitration or by legal proceedings, see the Design and Build Contract Guide. See also footnote [5].

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

Employer

80 Mosley Street, Manchester, M2 3FX

Contractor

228 Prescott Road, Aughton, West Lancs, L39 5AQ

2.3

Date of Possession of the site
(where possession by Sections does not apply)

25th July 2022

2.4

Deferment of possession of the site
(where possession by Sections does not apply)

Clause 2.4
* applies

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

3 months

2.17.3

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

£N/A

2.29.2

Liquidated damages
(where completion by Sections does not apply)

at the rate of

£5,000 per week

2.35

Rectification Period
(where completion by Sections does not apply)
(If no other period is stated, the period is 6 months.)

12 months
from the date of practical completion of the Works

4.2, 4.12 and 4.13

Fluctuations Provision^[10]
(Unless another option or entry is selected, JCT Fluctuations Option A applies.)

* no Fluctuations Provision applies

[10] Unless the Fluctuations Provision is to be JCT Fluctuations Option A (set out in Schedule 7), delete all but one of the asterisked choices. JCT Fluctuations Options B and C are no longer included in JCT contract documents but continue to be available on the JCT website www.jctltd.co.uk. If an alternative fluctuation or cost adjustment formula is to be used, the document(s) in which it is contained should be identified here.

4.6

Advance payment
(Not applicable where the Employer is a Local or Public Authority)

Clause 4.6
* does not apply

4.7.1

Method of payment – alternatives^[11]
(If no Alternative is selected, Alternative B applies.)

* periodically in accordance with Alternative B (clause 4.13)

4.7.2

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

The first Interim Valuation Date is

The date of possession plus 30 days
and thereafter the same date in each month or the nearest Business Day in that month^[12]

4.15.4

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

No bond is required for Listed Items uniquely identified.

4.15.5

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

No bond is required for Listed Items not uniquely identified.

4.17

Contractor's Retention Bond
(Not applicable where the Employer is a Local or Public Authority and, in other cases, not applicable unless stated to apply, with relevant particulars given below)

Clause 4.17
* does not apply

4.18.1

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

3 per cent

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

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

5.5

Daywork

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

N/A

6.4.1

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

£10,000,000

for any one occurrence or series of occurrences arising out of one event

6.5.1

Insurance – liability of Employer

Minimum amount of indemnity for any one occurrence or series of occurrences arising out of one event^[13]

£10,000,000

6.7 and Schedule 3

Works insurance – Insurance Option applicable

Schedule 3:

* Insurance Option B applies

Percentage to cover professional fees

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

15 per cent

6.10 and Schedule 3

Terrorism Cover – details of the required cover

(Unless otherwise stated, Pool Re Cover is required.)^[14]

are set out in the following document(s)

6.15

Professional Indemnity insurance

Level of cover

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

Amount of indemnity required

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

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

* relates to claims or series of claims arising out of one event

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

and is

£5,000,000

Cover for pollution and contamination claims

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

* is not required

Expiry of required period of Professional Indemnity insurance is

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

* 12 years

6.17

The Joint Fire Code

* applies^[15]

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':

* No^[15]

6.20

Joint Fire Code – amendments/revisions

(The cost shall be borne by the Contractor unless otherwise stated.)

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

* the Employer

7.2

Assignment/grant by Employer of rights under clause 7.2

(If neither entry is deleted, clause 7.2 applies.)

Clause 7.2

* does not apply

7.3.1

Performance bond or guarantee from bank or other approved surety^[16]

(If this entry is not completed or the required form is not specified, a performance bond or guarantee is not required.)

* is not required

7.3.2

Guarantee from the Contractor's parent company

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

[16] 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.

* is not required

7.4

Third Party Rights and Collateral Warranties – details of the requirements for the grant by the Contractor and sub-contractors of P&T Rights, Funder Rights and/or (in the case of sub-contractors) Employer Rights in respect of the Works, either as third party rights or by collateral warranties ('Rights Particulars') are set out in the following document^[17]
(State reference number and date or other identifier of the relevant document.)

As set out in the Schedule of Amendments

8.9.2

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

2 months

8.11.1.1 to 8.11.1.6

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

2 months

9.2.1

Adjudication^[18]

Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)^[19]
(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.)

* The Royal Institution of Chartered Surveyors

-
- [17] 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 rights are to be granted at each level as Third Party Rights or by way of Collateral Warranties, state in those cases where the default provision is not to apply which alternative provision is to apply in its place and give any other details required to complete the terms of the rights or warranties that are to be given. A Model Form for the Rights Particulars is included in the Design and Build Contract Guide and is also available on the JCT website www.jctltd.co.uk.
In the case of third party rights the relevant limits and details required for the purposes of the respective parts of Schedule 5 of this Contract and Schedule 6 of the Design and Build Sub-Contract are the same as those required for the purposes of the Warranty Particulars for the corresponding Collateral Warranty (CWa/P&T, CWa/F, SCWa/P&T, SCWa/F or SCWa/E). Directions may be needed as to mode of execution of sub-contracts and/or collateral warranties by relevant sub-contractors. See also the Design and Build Contract Guide.
- [18] 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.
- [19] Delete all but one of the nominating 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 Design and Build Contract Guide.

Execution under hand

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

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 ¹ Real Estate Investment (Thomas Street) Ltd

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

 STEPHEN SCATER
Signature Director

in the presence of

Witness' signature  (Print name) ANDREW DUFF

Witness' address 4 Jordan Street, Manchester, M15 4PN

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

Execution as a Deed

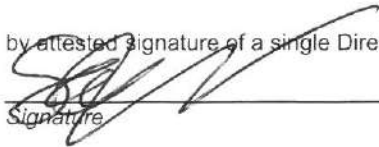
Executed as a Deed by the Contractor

namely ¹ Mountain Earth Developments Limited

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

Signature

Director

 SAMUEL HAYES.

in the presence of

Witness' signature



(Print name)

Andrew Duffin

Witness' address

4 Jordan Street, Manchester, M15 4PN

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:

Acceleration Quotation: a quotation by the Contractor for an acceleration in the carrying out of the Works or a Section made under **Supplemental Provision 4**.

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

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

All Risks Insurance: see **clause 6.8**.

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

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

Base Date: the date stated as such date in the **Contract Particulars** (against the reference to **clause 1.1**)^[20].

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 6.7** and **Schedule 3**).

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

Change: see **clause 5.1**.

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 either under **clause 2.25** or by a Pre-agreed Adjustment.

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

Confirmed Acceptance: the Employer's instruction under **Supplemental Provision 4** confirming acceptance of an Acceleration Quotation.

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

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

[20] The Base Date is relevant (inter alia) to clause 2.15.2.1 (changes in Statutory Requirements) and the JCT Fluctuations Options and it helps to determine the edition/issue and/or version of documents relevant to this Contract, e.g. definitions of the prime cost of daywork (clause 5.5).

Consultants: see **clause 7.4**.

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

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

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

Contract Sum Analysis: see the **Second Recital** and the **Contract Particulars**.

Contractor: the person named as Contractor in the Agreement.

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

Contractor's Persons: the Contractor's employees and agents, all other persons employed or engaged on or in connection with the Works or any part of them and any other person properly on the site in connection therewith, excluding the Employer, Employer's Persons and any Statutory Undertaker.

Contractor's Proposals: see the **Second Recital** and the **Contract Particulars**.

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

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

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

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

Employer: the person named as Employer in the Agreement.

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

Employer's Agent: see **Article 3**.

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

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

Employer's Requirements: see the **First Recital** and the **Contract Particulars**.

Excepted Risks: see **clause 6.8**.

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

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

Final Statement: see **clauses 1.8** and **4.24**.

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

finance for the Works.

Fluctuations Provision: the provision (if any) specified by the **Contract Particulars** (against the reference to **clauses 4.2, 4.12 and 4.13**).

Funder: the person named or otherwise sufficiently identified as such (whether by class or description) in or by the Rights Particulars and in respect of whom the Employer gives notice under **clause 7.8.1**.

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.

Gross Valuation: see **clauses 4.12 and 4.13**.

Insolvent: see **clause 8.1**.

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 Payment: any of the payments to which **clause 4.7** and the **Contract Particulars** refer.

Interim Payment Application: see **clause 4.7**.

Interim Valuation Date: each date as specified by the **Contract Particulars** (against the reference to **clause 4.7.2**).

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

Joint Names Policy: see **clause 6.8**.

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 Employer's Requirements.

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

Named Sub-Contractor: see **Supplemental Provision 1**.

Non-Completion Notice: see **clause 2.28**.

Notice of Completion of Making Good: see **clause 2.36**.

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 Notice: see **clause 4.7.5**.

PC Regulations: the Public Contracts Regulations 2015.

Practical Completion Statement: see **clause 2.27**.

Pre-agreed Adjustment: see **clause 2.23.2**.

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

Principal Designer: the Contractor or other person named in **Article 5** or any successor appointed

by the Employer.

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

Public Holiday: Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.^[21]

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.

Recitals: the recitals in the Agreement.

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

Relevant Date: see **clause 2.30**.

Relevant Event: see **clause 2.26**.

Relevant Matter: see **clause 4.21**.

Relevant Omission: see **clause 2.23.3**.

Relevant Part: see **clause 2.30**.

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

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

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

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

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

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

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

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

Specified Perils: see **clause 6.8**.

Statutory 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, including Development Control Requirements.

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 6.8**.

Valuation: a valuation in accordance with the Valuation Rules, pursuant to **clause 5.2**.

Valuation Rules: see **clauses 5.4** to **5.7**.

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

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 7.7 and/or 7.8, 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 Employer (or Employer's Agent) and the Contractor 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.^[22]

- 1.7.3 Subject to clauses 1.7.2 and 1.7.4, any notice, communication or document may be given or served by any effective means and shall be duly given or served if delivered by hand or sent by pre-paid post to:
 - 1.7.3.1 the recipient's address stated in the Contract Particulars, or to such other address as the recipient may from time to time notify to the sender; or
 - 1.7.3.2 if no such address is then current, the recipient's last known principal business address or (where a body corporate) its registered or principal office.
- 1.7.4 Any notice expressly required by this Contract to be given in accordance with this clause 1.7.4 shall be delivered by hand or sent by Recorded Signed for or Special Delivery post. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.
- 1.7.5 If in an emergency any communication is made orally with respect to health and safety, risk of damage to property or insurance matters, written confirmation of it shall be sent as soon thereafter as is reasonably practicable.

1.8 Effect of Final Statement

- 1.8.1 As from the due date for the final payment specified in clause 4.24.5 and in addition to the effects referred to in clause 4.24.6, the Final Statement or, as the case may be, the Employer's Final Statement ('the relevant statement') shall, except as provided in clauses 1.8.2 and 4.24.6 (and save in respect of fraud), have effect in any proceedings under or arising out of or in connection with this Contract (whether by adjudication, arbitration or legal proceedings) as conclusive evidence that:
 - 1.8.1.1 where and to the extent that any particular quality of any materials or goods or any particular standard of an item of workmanship was expressly described in the Employer's Requirements, or in any instruction issued by the Employer under these Conditions, to be for his approval, the particular quality or standard was to his reasonable satisfaction, but the relevant statement shall not be conclusive evidence that they or any other materials, goods or workmanship comply with any other requirement or term of this Contract;
 - 1.8.1.2 all and only such extensions of time, if any, as are due under clause 2.25 have been given; and
 - 1.8.1.3 the reimbursement of direct loss and/or expense, if any, due to the Contractor as agreed, ascertained or valued in accordance with these Conditions is in final settlement of all and any claims which the Contractor has or may have arising out of the occurrence of any Relevant Matters, whether such claim be for breach of contract, duty of care, statutory duty or otherwise.
- 1.8.2 The effects of the relevant statement specified in clauses 1.8.1 and 4.24.6 shall 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:
 - 1.8.2.1 where those proceedings are commenced before or within 28 days after the date of issue of the relevant statement; or
 - 1.8.2.2 in the case of an adjudication commenced within the period referred to in clause 1.8.2.1 in which the Adjudicator gives his decision after the date of issue of the relevant statement, where arbitration or legal proceedings to determine the dispute or difference in question are commenced within 28 days of the date of that decisionbut not otherwise.
- 1.8.3 For the purposes of clause 1.8.2 any proceedings shall be treated as concluded if during any period of 12 months commencing on or after the issue of the relevant statement neither

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

Party takes a further step in them.

1.9 Effect of payments other than payment of Final Statement

Save as stated in clause 1.8, no payment by the Employer shall of itself be conclusive evidence that any works, any materials or goods or any design to which it relates are in accordance with this Contract.

1.10 Consents and approvals

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

1.11 Applicable law

This Contract shall be governed by and construed in accordance with the law of England.^[23]

[23] 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

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

2.2 Materials, goods and workmanship

- 2.2.1 All materials and goods for the Works shall, so far as procurable, be of the kinds and standards described in the Employer's Requirements or, if not there specifically described, as described in the Contractor's Proposals or other Contractor's Design Documents. The Contractor shall not substitute any materials or goods so described without the Employer's consent which, if given, shall not relieve the Contractor of his other obligations.
- 2.2.2 Workmanship for the Works shall be of the standards described in the Employer's Requirements or, if not there specifically described, as described in the Contractor's Proposals or other Contractor's Design Documents.
- 2.2.3 The Contractor shall before carrying out the relevant work and/or ordering the relevant goods or materials provide the Employer with such samples of the standard of workmanship or the quality of the goods or materials which the Contractor intends to provide as are specifically referred to in the Employer's Requirements or in the Contractor's Proposals.
- 2.2.4 The Contractor shall at the Employer'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 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 Statement; 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 Statement for that Section and, in respect of any balance of the site, up to and including the date of issue of the Practical Completion Statement

and, subject to clause 2.30 and section 8, 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 Statement or relevant Section Completion Statement. 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 added to the Contract Sum 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 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 Employer, without charge to the Contractor, shall (unless previously provided or unless the BIM Protocol or other communications protocol requires otherwise) provide him with one copy, certified on behalf of the Employer, of the Contract Documents, together with any pre-construction information required to be provided to the Contractor under regulation 4 of the CDM Regulations.
- 2.7.3 The Contractor shall keep on the site or accessible there to the Employer's Agent at all reasonable times copies of the Contract Documents and the Contractor's Design Documents.
- 2.7.4 Neither Party shall divulge or use except for the purposes of this Contract:
 - 2.7.4.1 the Contract Documents and the Contractor's Design Documents; or
 - 2.7.4.2 any confidential information of the other Party,

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

- 2.7.5 Where the Employer is a Local or Public Authority or other body of the type mentioned in Supplemental Provision 11, his obligations of confidentiality shall be subject to that Supplemental Provision.

2.8 Construction information

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

2.9 Site boundaries

The Employer shall define the boundaries of the site.

Discrepancies and Divergences

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

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

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

2.11 Preparation of Employer's Requirements

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

2.12 Employer's Requirements – inadequacy

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

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

2.13 Notice of discrepancies etc.

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

- 2.13.1 the Employer's Requirements;
- 2.13.2 the Contractor's Proposals and other Contractor's Design Documents; and
- 2.13.3 any instruction issued by the Employer under these Conditions;

he shall immediately give notice with appropriate details to the Employer, who shall issue instructions in that regard.

2.14 Discrepancies in documents

2.14.1 Where the discrepancy or divergence to be notified under clause 2.13 is within or between the Contractor's Proposals and/or other Contractor's Design Documents, the Contractor shall notify the Employer of his proposed amendment to remove it and (subject to compliance with Statutory Requirements) the Employer shall decide between the discrepant items or otherwise may accept the Contractor's proposed amendment; the Contractor shall be obliged to comply with the decision or acceptance by the Employer without cost to the Employer.

- 2.14.2 Where the discrepancy is within the Employer's Requirements (including any Change to them) the Contractor's Proposals shall prevail (subject to compliance with Statutory Requirements), without any adjustment of the Contract Sum. Where the Contractor's Proposals do not deal with the discrepancy, the Contractor shall notify the Employer of his proposed amendment to deal with it and the Employer shall either agree the proposed amendment or decide how the discrepancy is to be dealt with; that agreement or decision shall be notified to the Contractor and treated as a Change.

2.15 Divergences from Statutory Requirements

- 2.15.1 If the Contractor or Employer becomes aware of a divergence between the Statutory Requirements and

2.15.1.1 the Employer's Requirements (including any Change); or

2.15.1.2 the Contractor's Proposals or other Contractor's Design Documents,

he shall immediately give the other notice specifying the divergence and the Contractor shall notify the Employer of his proposed amendment for removing it. With the Employer's consent, the Contractor shall entirely at his own cost, save as provided in clause 2.15.2, complete the design and construction of the Works in accordance with the amendment and the Employer shall note the amendment on the Contract Documents.

2.15.2

2.15.2.1 If after the Base Date there is a change in the Statutory Requirements which necessitates an alteration or modification to the Works, such alteration or modification shall be treated as a Change.

2.15.2.2 If any amendment to the Contractor's Proposals becomes necessary for conformity with the terms of any permission or approval made by a decision of the relevant authority after the Base Date for the purposes of Development Control Requirements, such amendment shall be treated as a Change provided that such treatment is not precluded in the Employer's Requirements.^[24]

2.15.2.3 If any amendment to the part or parts of the Employer's Requirements to which clause 2.1.2 refers becomes necessary for conformity with Statutory Requirements the Employer shall issue an instruction requiring a Change.

2.16 Emergency compliance with Statutory Requirements

2.16.1 If in an emergency compliance with the Statutory Requirements necessitates the Contractor supplying materials and/or executing work before receiving the Employer's consent under clause 2.15.1, the Contractor shall supply such limited materials and execute such limited work as are reasonably necessary to secure immediate compliance.

2.16.2 The Contractor shall forthwith notify the Employer of the emergency and the steps that he is taking under clause 2.16.1.

Design Work – liabilities and limitation

2.17 Design Work – liabilities and limitation

2.17.1 Insofar as his design of the Works is comprised in the Contractor's Proposals and in what he is to complete in accordance with the Employer's Requirements and these Conditions (including any further design that he is required to carry out as a result of a Change), the Contractor shall in respect of any inadequacy in such design have the same liability to the Employer, whether under statute or otherwise, as would an architect or other appropriate professional designer who holds himself out as competent to take on work for such design and who, acting independently under a separate contract with the Employer, has supplied such design for or in connection with works to be carried out and completed by a building contractor who is not the supplier of the design.

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

[24] See the Design and Build Contract Guide.

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

Fees, Royalties and Patent Rights

2.18 Fees or charges legally demandable

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

2.19 Patent rights and royalties – Contractor's indemnity

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

2.20 Patent rights – Instructions

- 2.20.1 Where in order to comply with the Employer's instructions, it is necessary for the Contractor in carrying out the Works to supply and/or use any patented article, process or invention, the Contractor shall not be liable in respect of any infringement or alleged infringement of any patent rights relating to it and all royalties, damages or other sums which the Contractor may be liable to pay to the persons entitled to such rights shall be added to the Contract Sum.
- 2.20.2 If prior to the instructions being carried out the Employer or the Contractor is or becomes aware that such supply or use may infringe any patent rights, he shall promptly notify and consult the other and the instructions shall not take effect unless confirmed by the Employer.

Unfixed Materials and Goods – property, risk etc.

2.21 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 Employer's consent. Where their value has been included in any Interim Payment, 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.

2.22 Materials and goods – off site

Where the value of any Listed Items has in accordance with clause 4.15 been included in any Interim Payment, 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 2.21 (except the words "Where their value" to "Employer's property, but,") shall apply to such items.

Adjustment of Completion Date

2.23 Related definitions and interpretation

In clauses 2.24 to 2.26 and, so far as relevant, in the other clauses of these Conditions:

- 2.23.1 any reference to delay or extension of time includes any further delay or further extension of time;
- 2.23.2 'Pre-agreed Adjustment' means the fixing of a revised Completion Date for the Works or a Section under Supplemental Provision 2 or by the Confirmed Acceptance of an Acceleration Quotation;
- 2.23.3 'Relevant Omission' means the omission of any work or obligation through an instruction for a Change under clause 3.9.

2.24 Notice by Contractor of delay to progress

- 2.24.1 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 Employer 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.
- 2.24.2 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.
- 2.24.3 The Contractor shall forthwith notify the Employer of any material change in the estimated delay or in any other particulars and supply such further information as the Employer may at any time reasonably require.

2.25 Fixing Completion Date

- 2.25.1 If on receiving a notice and particulars under clause 2.24:
 - 2.25.1.1 any of the events which are stated to be a cause of delay is a Relevant Event; and
 - 2.25.1.2 completion of the Works or of any Section is likely to be delayed thereby beyond the relevant Completion Date,then, save where these Conditions expressly provide otherwise, the Employer shall give an extension of time by fixing such later date as the Completion Date for the Works or Section as he then estimates to be fair and reasonable.
- 2.25.2 Whether or not an extension is given, the Employer shall notify the Contractor of his decision in respect of any notice under clause 2.24 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.
- 2.25.3 The Employer shall in his decision state:
 - 2.25.3.1 the extension of time that he has attributed to each Relevant Event; and
 - 2.25.3.2 (in the case of a decision under clause 2.25.4 or 2.25.5) the reduction in time that he has attributed to each Relevant Omission.
- 2.25.4 After the first fixing of a later Completion Date in respect of the Works or a Section, either under clause 2.25.1 or by a Pre-agreed Adjustment, but subject to clauses 2.25.6.3 and 2.25.6.4, the Employer may by notice to the Contractor, giving the details referred to in clause 2.25.3, fix a Completion Date for the Works or that Section earlier than that previously so fixed if the fixing of such earlier Completion Date is fair and reasonable, having regard to any Relevant Omissions for which instructions have been issued after the last occasion on which a new Completion Date was fixed for the Works or for that Section.
- 2.25.5 After the Completion Date for the Works or for a Section, if this occurs before the date of practical completion, the Employer may, and not later than the expiry of 12 weeks after the

date of practical completion shall, by notice to the Contractor, giving the details referred to in clause 2.25.3:

- 2.25.5.1 fix a Completion Date for the Works or for the Section later than that previously fixed if it is fair and reasonable having regard to any Relevant Events, whether on reviewing a previous decision or otherwise and whether or not the Relevant Event has been specifically notified by the Contractor under clause 2.24.1; or
- 2.25.5.2 subject to clauses 2.25.6.3 and 2.25.6.4, fix a Completion Date earlier than that previously fixed if that is fair and reasonable having regard to any instructions for Relevant Omissions issued after the last occasion on which a new Completion Date was fixed for the Works or Section; or
- 2.25.5.3 confirm the Completion Date previously fixed.

2.25.6 Provided always that:

- 2.25.6.1 the Contractor shall constantly use 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;
- 2.25.6.2 in the event of any delay the Contractor shall do all that may reasonably be required to the satisfaction of the Employer to proceed with the Works or Section;
- 2.25.6.3 no decision of the Employer under clause 2.25.4 or 2.25.5.2 shall fix a Completion Date for the Works or any Section earlier than the relevant Date for Completion; and
- 2.25.6.4 no decision under clause 2.25.4 or 2.25.5.2 shall alter the length of any Pre-agreed Adjustment except where that adjustment relates to a Change and that Change is itself the subject of a Relevant Omission.

2.26 Relevant Events

The following are the Relevant Events referred to in clauses 2.24 and 2.25:

- 2.26.1 Changes and any other matters or instructions which under these Conditions are to be treated as, or as requiring, a Change;
- 2.26.2 Employer's instructions:
 - 2.26.2.1 under clause 2.13, except for any instructions relating to a discrepancy or divergence in or between the Contractor's Proposals and/or other Contractor's Design Documents;
 - 2.26.2.2 under clause 3.10 or 3.11; or
 - 2.26.2.3 for the opening up for inspection or testing of any work, materials or goods under clause 3.12 or 3.13.3 (including making good), unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract;
- 2.26.3 deferment of the giving of possession of the site or any Section under clause 2.4;
- 2.26.4 compliance with clause 3.15.1 or with the Employer's instructions under clause 3.15.2;
- 2.26.5 suspension by the Contractor under clause 4.11 of the performance of any or all of his obligations under this Contract;
- 2.26.6 any impediment, prevention or default, whether by act or omission, by the Employer or any Employer's Person, except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or any Contractor's Person;
- 2.26.7 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;
- 2.26.8 exceptionally adverse weather conditions;

- 2.26.9 loss or damage occasioned by any Specified Peril;
- 2.26.10 civil commotion or the use or threat of terrorism and/or the activities of the relevant authorities in dealing with such event or threat;
- 2.26.11 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 or any persons engaged in design work for the Works;
- 2.26.12 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;
- 2.26.13 delay in receipt of any necessary permission or approval of any statutory body which the Contractor has taken all practicable steps to avoid or reduce;
- 2.26.14 force majeure.

Practical Completion, Lateness and Liquidated Damages

2.27 Practical completion

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

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

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

2.28 Non-Completion Notice

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

2.29 Payment or allowance of liquidated damages

- 2.29.1 Provided:
 - 2.29.1.1 the Employer has issued a Non-Completion Notice for the Works or a Section; and
 - 2.29.1.2 the Employer has notified the Contractor before the due date for the final payment under clause 4.24.5 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 4.24, give notice to the Contractor in the terms set out in clause 2.29.2.
- 2.29.2 A notice from the Employer under clause 2.29.1 shall state that for the period between the Completion Date and the date of practical completion of the Works or that Section:
 - 2.29.2.1 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
 - 2.29.2.2 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.^[25]

[25] In addition to the notice under clause 2.29.2, the Employer, if he intends to withhold or deduct all or any of the liquidated damages payable,

- 2.29.3 If the Employer 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 2.29 for the period up to that later Completion Date.
- 2.29.4 If the Employer in relation to the Works or a Section has notified the Contractor in accordance with clause 2.29.1.2 that he may require payment of, or may withhold or deduct, liquidated damages, then, unless the Employer states otherwise in writing, clause 2.29.1.2 shall remain satisfied in relation to the Works or Section, notwithstanding the cancellation of the relevant Non-Completion Notice and issue of any further Non-Completion Notice.

Partial Possession by Employer

2.30 Contractor's consent

If at any time or times before the Practical Completion Statement or relevant Section Completion Statement 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 Contractor shall thereupon give the Employer notice 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).

2.31 Practical completion date

For the purposes of clauses 2.35 and 4.18.2, 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.

2.32 Defects etc. – Relevant Part

When any defects, shrinkages or other faults in the Relevant Part which the Employer has required to be made good under clause 2.35 have been made good, he shall issue a notice to that effect.

2.33 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.

2.34 Liquidated damages – Relevant Part

As from the Relevant Date, the rate of liquidated damages stated in the Contract Particulars in respect of the Works or Section containing the Relevant Part shall reduce by the same proportion as the value of the Relevant Part bears to the Contract Sum or to the relevant Section Sum, as shown in the Contract Particulars.

Defects

2.35 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 any failure of the Contractor to comply with his obligations under this Contract:

- 2.35.1 such defects, shrinkages and other faults shall be specified by the Employer 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
- 2.35.2 prior to issue of that schedule, the Employer may whenever he considers it necessary issue instructions requiring any such defect, shrinkage or other fault to be made good, provided no instructions under this clause 2.35.2 shall be issued after delivery of that schedule or more than 14 days after the expiry of the relevant Rectification Period.

Within a reasonable time after receipt of such schedule or instructions, the defects, shrinkages and

must give the appropriate Pay Less Notice under clause 4.9.5.

other faults shall at no cost to the Employer be made good by the Contractor unless the Employer shall otherwise instruct. If he so instructs otherwise, an appropriate deduction may be made from the Contract Sum in respect of the defects, shrinkages or other faults not made good.

2.36 Notice of Completion of Making Good

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

Contractor's Design Documents

2.37 As-built Drawings

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

2.38 Copyright and use

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

Section 3 Control of the Works

Access and Representatives

3.1 Access for Employer's Agent

The Employer's Agent and any person authorised by him or the Employer 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 Employer 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 Site Manager

The Contractor shall prior to the commencement of work on site appoint a full-time Site Manager, approved by the Employer, to act as the Contractor's representative there, in charge of the Works. The Contractor shall ensure that the appointee, or a competent deputy, is on site at all material times and, if the appointee ceases to hold the post, shall promptly appoint a replacement approved by the Employer. Any instructions issued to the Site Manager or his deputy shall be treated as issued to the Contractor.

Sub-Contracting

3.3 Consent to sub-contracting

3.3.1 Save for any sub-contract entered into in accordance with Supplemental Provision 1, where it applies:

3.3.1.1 the Contractor shall not without the Employer's consent sub-contract the whole or any part of the Works;

3.3.1.2 the Contractor shall not without the Employer's consent sub-contract the design for the Works or any part of them.

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.

3.3.2 The provisions of this clause 3.3 and of clause 3.4 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.

3.4 Conditions of sub-contracting

Where considered appropriate, the Contractor shall engage the sub-contractor using the JCT Design and Build Sub-Contract. It shall be a condition of any sub-contract that^[26]:

3.4.1 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;

3.4.2 the sub-contract shall provide:

3.4.2.1 that, except for use on the Works, no Site Materials delivered to the Works by or for the sub-contractor shall be removed without the Contractor's written consent (such consent not to be unreasonably delayed or withheld) and (in addition to any provision for earlier vesting in the Contractor of title to any Listed Items for the purposes of clause 4.15.2.1 of these Conditions) that:

[26] The JCT Design and Build Sub-Contract (DBSub) meets the requirements of clause 3.4 and also those of paragraphs A.3 and B.4 respectively of JCT Fluctuations Options A and B.

- 3.4.2.1.1 where, in accordance with clause 4.12 or 4.13 and clause 4.14 of these Conditions, the value of any Site Materials has been included in any Interim Payment and that Interim Payment has been paid by the Employer to the Contractor, they shall upon such payment become, and the sub-contractor shall not deny that they have become, the Employer's property;
 - 3.4.2.1.2 if the Contractor pays the sub-contractor for any Site Materials before their value is included in an Interim Payment, they shall upon such payment become the Contractor's property;
- 3.4.2.2 that the sub-contractor shall give access to workshops or other premises in accordance with clause 3.1 of these Conditions;
- 3.4.2.3 that each party to the sub-contract shall in relation to the Works and the site comply with applicable CDM Regulations;
- 3.4.2.4 in terms equivalent to those of clause 4.9.6 of these Conditions, that if by a final date for payment under the sub-contract the Contractor fails to pay the sub-contractor any amount that should properly have been paid, the Contractor shall, in addition to that amount, pay simple interest on it at the Interest Rate for the period from the final date for payment until such payment is made;
- 3.4.2.5 that where the Rights Particulars provide for the grant of third party rights from and/or for the execution and delivery of collateral warranties by the sub-contractor:
 - 3.4.2.5.1 the sub-contract and, where applicable, those collateral warranties shall if those particulars require be executed as deeds;
 - 3.4.2.5.2 any third party rights required shall vest on receipt of notice from the Contractor to that effect and any collateral warranty required shall be executed and delivered by the sub-contractor within 14 days of receipt of the Contractor's notice requiring execution;
 - 3.4.2.5.3 the terms of and those governing such third party rights or collateral warranties shall in each case be consistent with those of clauses 2.26 and 2.27 and Schedule 6 of the JCT Design and Build Sub-Contract Conditions;
- 3.4.3 where documents or information and/or the grant of licences are or may be required from the sub-contractor for the BIM Protocol, where applicable, and/or for the purposes of clauses 2.37 and 3.16 of these Conditions, the sub-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 3.4.2.1 without the Employer's prior consent under clause 2.21 of these Conditions.

Employer's Instructions

3.5 Compliance with instructions

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

- 3.5.1 where an instruction requires a Change of the type referred to in clause 5.1.2, the Contractor need not comply to the extent that he notifies a reasonable objection to it to the Employer;
- 3.5.2 in the case of a notification by the Contractor under clause 2.20.2, the Contractor need not comply pending confirmation of the instruction.

3.6 Non-compliance with instructions

Subject to clauses 3.5 and 3.9, if within 7 days after receipt of a notice from the Employer 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

Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and an appropriate deduction may be made from the Contract Sum.

3.7 Instructions other than in writing

- 3.7.1 Where the Employer gives an instruction otherwise than in writing, it shall be of no immediate effect but the Contractor shall confirm its terms in writing to the Employer within 7 days, and, if he does not dissent by notice to the Contractor within 7 days from receipt of the Contractor's confirmation, it shall take effect as from the expiry of the latter 7 day period.
- 3.7.2 If prior to or within 7 days from receipt of the Contractor's confirmation the Employer confirms the terms of the instruction in writing, it shall take effect from the date and in the terms of the Employer's confirmation.
- 3.7.3 If neither the Contractor nor the Employer confirms such an instruction in the manner and time stated but the Contractor nevertheless complies with it, the Employer may at any time prior to the due date for the final payment under clause 4.24.5 confirm it with retrospective effect.

3.8 Provisions empowering instructions

On receipt of an instruction the Contractor may request the Employer to notify him which provision of these Conditions empowers its issue and the Employer 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 Employer's powers in that regard, the instruction shall be deemed to have been duly given under the specified provision.

3.9 Instructions requiring Changes

- 3.9.1 The Employer may issue instructions requiring a Change, subject to clause 3.9.4 and provided that the Employer may not effect a Change which is, or which makes necessary, an alteration or modification in the design of the Works without the Contractor's consent.
- 3.9.2 Any instruction of the type referred to in clause 5.1.2 shall be subject to the Contractor's right of reasonable objection set out in clause 3.5.1.
- 3.9.3 No Change required or sanctioned by the Employer shall vitiate this Contract.
- 3.9.4 The Contractor shall, within a reasonable time after receipt of an instruction effecting a Change or of an instruction in regard to the expenditure of a Provisional Sum included in the Employer's Requirements, notify the Employer whether in his capacity as Principal Designer and/or Principal Contractor he has any objection to such instruction. If the Contractor has any reasonable objection the Employer shall, to the reasonable satisfaction of the Contractor, vary the terms of the instruction so as to remove that objection; and, until the Employer has so varied the terms of the instruction, the Contractor shall not be required pursuant to clause 2.1 to comply with such instruction.

3.10 Postponement of work

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

3.11 Instructions on Provisional Sums

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

3.12 Inspection – tests

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

3.13 Work not in accordance with the Contract

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

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

3.14 Workmanship not in accordance with the Contract

Where there is any failure to comply with 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 Employer, in addition to his other powers, may, after consultation with the Contractor, issue such instructions (whether requiring a Change or otherwise) as are in consequence reasonably necessary. To the extent that such instructions are reasonably necessary, no addition shall be made to the Contract Sum and no extension of time shall be given.

3.15 Antiquities

- 3.15.1 All fossils, antiquities and other objects of interest or value which may be found on the site or in excavating it during the progress of the Works shall become the Employer's property. Upon discovery of any such object the Contractor shall forthwith:
 - 3.15.1.1 use 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;
 - 3.15.1.2 take all steps necessary to preserve the object in the exact position and condition in which it was found; and
 - 3.15.1.3 inform the Employer of its discovery and precise location.
- 3.15.2 The Employer shall issue instructions as to action to be taken concerning any object reported under clause 3.15.1, 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

3.16 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:

- 3.16.1 where the Contractor is not the Principal Designer, 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;
- 3.16.2 where the Contractor is and while he remains the Principal Designer, he shall comply with the duties of a Principal Designer and shall without charge prepare, and deliver to the Employer, the health and safety file;
- 3.16.3 the Contractor shall comply with regulations 8 to 10 and 15 and, where he is the Principal

Contractor, with regulations 12 to 14,^[27]

- 3.16.4 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;
- 3.16.5 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.

[27] 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 Design and Build Contract Guide.)

Section 4 Payment

Contract Sum and Adjustments

4.1 Adjustment only under the Conditions

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

4.2 Items included in adjustments

The Contract Sum shall be adjusted by:

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

4.3 Taking adjustments into account

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

Taxes

4.4 VAT

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

4.5 Construction Industry Scheme (CIS)

If the Employer is or at any time up to the final payment under clause 4.9 becomes a 'contractor' for the purposes of the CIS^[28], his obligation to make any payment under this Contract is subject to the provisions of the CIS.

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

Payments and Notices – general provisions

4.6 Advance payment

Where the Contract Particulars state that clause 4.6 applies, and an advance payment is to be made, it shall be paid to the Contractor on the date and reimbursed to the Employer on the terms stated in the Contract Particulars, save that, if the Contract Particulars state that an advance payment bond is required, payment shall only be made if the Contractor has provided to the Employer a bond in the terms set out in Part 1 of Schedule 6 from a surety approved by the Employer.^[29]

4.7 Interim Payments – Contractor's Interim Payment Applications, due dates and Payment Notices

- 4.7.1 Interim Payments shall be made by the Employer to the Contractor in accordance with section 4 and whichever of Alternative A (Stage Payments) or Alternative B (Periodic Payments) is stated in the Contract Particulars to apply.
- 4.7.2 During the period up to the due date for the final payment fixed under clause 4.24.5 and subject to clause 4.7.3, 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.
- 4.7.3 In relation to each Interim Payment, the Contractor shall make an application to the Employer (an 'Interim Payment Application'), stating the sum that the Contractor considers to be due to him at the due date and the basis on which that sum has been calculated. Where the Interim Payment Application is received no later than the relevant Interim Valuation Date, the due date shall be the date that would apply under clause 4.7.2; if the Interim Payment Application is received later, the due date shall be 7 days after the date of receipt by the Employer.
- 4.7.4 Each Interim Payment Application shall be accompanied by such further information as may be specified in the Employer's Requirements.
- 4.7.5 Not later than 5 days after each due date the Employer shall give a notice (a 'Payment Notice') to the Contractor, stating the sum that he considers to be or have been due to the Contractor at the due date, calculated in accordance with clause 4.12 or 4.13 and clause 4.14, and the basis on which that sum has been calculated.

4.8 Relevant statement and Final Payment Notice

Not later than 5 days after the due date for the final payment fixed under clause 4.24.5 and notwithstanding any dispute regarding the relevant statement (as defined in clause 4.24.5.3), the Party by whom the statement shows the final payment as payable ('the paying Party') shall give a notice (a 'Final Payment Notice') to the other Party, stating the sum that the paying Party considers to be or have been due under clause 4.24.2 at the due date and the basis on which that sum has been calculated.

4.9 Interim and final payments – final date and amount

- 4.9.1 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 Employer under clause 4.9.5, the Employer shall pay the sum stated as due in the Payment Notice on or before the final date for payment.
- 4.9.3 If a Payment Notice is not given in accordance with clause 4.7.5, the Employer shall, subject to any Pay Less Notice under clause 4.9.5, pay the Contractor the sum stated as due in the Interim Payment Application.
- 4.9.4 In the case of the final payment, subject to any Pay Less Notice under clause 4.9.5, the paying Party shall pay the sum stated as due in the Final Payment Notice or, if such notice is not given, the balance stated in the relevant statement on or before the final date for payment.
- 4.9.5 Where:
 - 4.9.5.1 the Employer intends to pay less than the sum stated as due from him in a

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

Payment Notice or Interim Payment Application; or

- 4.9.5.2 the paying Party intends to pay less than the sum so stated as due in the Final Payment Notice or, in default of such notice, less than the amount stated as due in the relevant statement,

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 8.

4.10 Pay Less Notices and other general provisions

- 4.10.1 A Pay Less Notice given by either Party shall specify the sum he considers to be due to the other Party at the date the notice is given and the basis on which that sum has been calculated.
- 4.10.2 A Payment Notice, a Final Payment Notice or a Pay Less Notice to be given by the Employer may be given on his behalf by the Employer's Agent or by any other person who the Employer notifies the Contractor as being authorised to do so.
- 4.10.3 In relation to the requirements for the giving of Payment Notices, the Final Payment Notice, Pay Less Notices and the submission of a Final Statement, it is immaterial that the amount then considered to be due may be zero.
- 4.10.4 The Employer's fiduciary interest in the Retention referred to in clause 4.16 shall not prevent 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 4.18.

4.11 Contractor's right of suspension

- 4.11.1 If the Employer fails to pay a sum payable to the Contractor in accordance with clause 4.9 (together with any VAT properly chargeable in respect of that payment) by the final date for payment and the failure continues for 7 days after the Contractor has given notice to the Employer of 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 his 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 Employer 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 Gross Valuation – Alternative A

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

- 4.12.1 the total of the following, which are subject to Retention:
- 4.12.1.1 the cumulative value of stages completed;
 - 4.12.1.2 the value of any Changes or other work referred to in clause 5.2 that are relevant to the Interim Payment (whether agreed pursuant to clause 5.2 or valued under the Valuation Rules) but excluding any amounts referred to in clause 4.12.2.4;
 - 4.12.1.3 the value of any Listed Items for which the conditions set out in clause 4.15 are satisfied; and
 - 4.12.1.4 where JCT Fluctuations Option C is applicable and where in accordance with the Formula Rules amounts in the Value of Work are to be allocated to lift installations, structural steelwork installations or catering equipment installations, the total value of Site Materials of those descriptions, provided that their value shall only be included if they are adequately protected against weather and other casualties and they are not on the Works prematurely;
- those values shall be adjusted, where appropriate, in accordance with any applicable Fluctuations Provision or any Acceleration Quotation for which there has been Confirmed Acceptance;
- 4.12.2 the total of the following, which are not subject to Retention:
- 4.12.2.1 any amounts to be included in accordance with clause 4.3 by the Employer as a result of payments made or costs incurred by the Contractor under clause 2.5.2, 2.20, 3.12, 6.10.2 or 6.10.3, 6.11.3, 6.12.2 or 6.20;
 - 4.12.2.2 any amounts payable under clause 4.11.2;
 - 4.12.2.3 the amount of any loss and/or expense to which the Contractor is entitled under clause 4.19.1 or by a Confirmed Acceptance;
 - 4.12.2.4 where Insurance Option B or C applies or to the extent that the work is under clause 6.13.5.3 to be treated as a Change, any amounts in respect of reinstatement work under clause 6.13.4; and
 - 4.12.2.5 any amount payable to the Contractor under any applicable Fluctuations Provision, other than by means of an adjustment made under clause 4.12.1;
- 4.12.3 the following deductions:
- 4.12.3.1 any amounts deductible under clause 2.35, 3.6, 6.12.2 or 6.19.2; and
 - 4.12.3.2 any amount allowable by the Contractor under clause 6.10.2 or under any applicable Fluctuations Provision, other than by means of an adjustment made under clause 4.12.1.

4.13 Gross Valuation – Alternative B

The Gross Valuation for each Interim Payment shall be the total of the amounts referred to in clauses 4.13.1 and 4.13.2, less the deductions referred to in clause 4.13.3, each calculated as at the Interim Valuation Date:

- 4.13.1 the total values of the following, which are subject to Retention:
- 4.13.1.1 work properly executed including any design work carried out by the Contractor and work so executed for which a value has been agreed pursuant to clause 5.2 or which has been valued under the Valuation Rules, but excluding any amounts referred to in clause 4.13.2.4;
 - 4.13.1.2 Site Materials provided they are adequately protected against weather and other casualties and they are not on the Works prematurely; and
 - 4.13.1.3 Listed Items (if any) for which the conditions set out in clause 4.15 are satisfied;

those values shall be adjusted, where appropriate, in accordance with any applicable Fluctuations Provision or any Acceleration Quotation for which there has been Confirmed Acceptance;

- 4.13.2 the total of the following, which are not subject to Retention:
 - 4.13.2.1 any amounts to be included in accordance with clause 4.3 by the Employer as a result of payments made or costs incurred by the Contractor under clause 2.5.2, 2.20, 3.12, 6.10.2 or 6.10.3, 6.11.3, 6.12.2 or 6.20;
 - 4.13.2.2 any amounts payable under clause 4.11.2;
 - 4.13.2.3 the amount of any loss and/or expense to which the Contractor is entitled under clause 4.19.1 or by a Confirmed Acceptance;
 - 4.13.2.4 where Insurance Option B or C applies or to the extent that the work is under clause 6.13.5.3 to be treated as a Change, any amounts in respect of reinstatement work under clause 6.13.4; and
 - 4.13.2.5 any amount payable to the Contractor under any applicable Fluctuations Provision, other than by means of an adjustment made under clause 4.13.1;
- 4.13.3 the following deductions:
 - 4.13.3.1 any amounts deductible under clause 2.35, 3.6, 6.12.2 or 6.19.2; and
 - 4.13.3.2 any amount allowable by the Contractor under clause 6.10.2 or under any applicable Fluctuations Provision, other than by means of an adjustment made under clause 4.13.1.

4.14 Sums due as Interim Payments

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

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

Listed Items

4.15 Listed Items

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

- 4.15.1 the Listed Item is in accordance with this Contract;
 - 4.15.2 the Contractor has provided the Employer with reasonable proof that:
 - 4.15.2.1 property in the Listed Item is vested in the Contractor; and
 - 4.15.2.2 the Listed Item is and will remain insured against loss or damage for its full value under a policy of insurance protecting the interests of the Employer and the Contractor in respect of the Specified Perils until delivered to, or adjacent to, the Works;
 - 4.15.3 at the premises where the Listed Item is situated pending delivery, there is in relation to that item clear identification of:
 - 4.15.3.1 the Employer as the person to whose order it is held; and
 - 4.15.3.2 the Works as its destination,
- each item being either set apart or clearly and visibly marked, individually or as a set, by letters, figures or a pre-determined code; and

- 4.15.4 for uniquely identified Listed Items, the Contractor, if it is stated in the Contract Particulars as required, has provided a bond in favour of the Employer from a surety approved by the Employer in the terms set out in Part 2 of Schedule 6^[29] ('the required bond') in the amount specified in the Contract Particulars for this clause 4.15.4; or
- 4.15.5 for Listed Items that are not uniquely identified, the Contractor has provided the required bond in the amount specified in the Contract Particulars or this clause 4.15.5.

Retention

4.16 Rules on treatment of Retention

The Retention which the Employer may deduct and retain as referred to in clause 4.14 shall be subject to the following rules:

- 4.16.1 the Employer's interest in the Retention is fiduciary as trustee for the Contractor (but without obligation to invest);
- 4.16.2 except where the Employer is a Local or Public Authority, the Employer, to the extent that he exercises his right under clause 4.18 and if the Contractor so requests, shall at the time of each Interim 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 4.16.1) and notify the Contractor that the amount has been so placed. The Employer shall be entitled to the full beneficial interest in any interest accruing on the separate bank account and under no duty to account for any such interest to the Contractor.

4.17 Not applicable

4.18 Retention – amounts and periods

During the period prior to issue of the Notice of Completion of Making Good (or last such notice) the Retention which may be deducted and retained by the Employer shall be the following percentages of the total amount (or proportion of that amount) included in the Gross Valuation for any Interim Payment under clause 4.12.1 or 4.13.1, whichever is applicable, for work and (where applicable) Site Materials and Listed Items^[30]:

- 4.18.1 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);
- 4.18.2 half the Retention Percentage may be deducted:
 - 4.18.2.1 from the total amount where the Works as a whole have reached practical completion but the Notice of Completion of Making Good has not been issued; or
 - 4.18.2.2 from the proportion of the total amount that relates to each Section that has reached practical completion but for which such a notice has not been issued or relates to a Relevant Part for which a notice has not been issued under clause 2.32.

Loss and Expense

4.19 Matters materially affecting regular progress

- 4.19.1 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 4.19.2 and compliance with the provisions of clause 4.20 be entitled to reimbursement of that loss and/or expense.
- 4.19.2 No such entitlement arises where these Conditions provide that there shall be no addition

[30] For the effect of clause 4.18.2, see the Design and Build Contract Guide.