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# DB 2024
# Design and Build Contract 2024

# 2024
## DESIGN AND BUILD CONTRACT



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**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 (such an agent 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 the Contractor 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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# Agreement

## This Agreement

is made the 19th June 2025

## Between

### The Employer

AIG 1 LTD
C/O Residential Management Group

Place of incorporation: England and Wales

(Company No. 15099397)[1]

whose registered office is at RMG House,Essex Road,Hoddesdon , EN11 0DR

## And

### The Contractor

Reactive FM

Place of incorporation: England and Wales

(Company No. 9785927)[1]

whose registered office is at 48 Mount Pleasant,Bentham,Lancaster,England, LA2 7LA

[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.


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# Recitals

## Whereas

**First**

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

Replace existing combustible cladding with a compliant, non-combustible alternative in line with fire safety regulations and BSR requirements .

at

Oldham Rd,Ancoats , Manchester M4 5FE ('the Works')
and the Employer has supplied to the Contractor documents showing and describing or otherwise stating its 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 7 apply is stated in the Contract Particulars;

[2] State nature and location of intended works.

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


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# 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

Four million, fifty-three thousand five hundred and eighteen pounds sixty-three pence (£4,053,518.63) ('the Contract Sum')

or such other sum as becomes payable under this Contract.

### Article 3 — Collaborative working

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

### Article 4 — Employer's Agent

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

Edmond Shipway Ltd

of

Units 5&6,Middle Warehouse,Castle Quay,Chester Road,Manchester,M15 4NJ

or such other person as the Employer nominates in its 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 5 — 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 6 — CDM Regulations – Principal Designer and Principal Contractor

For the purposes of the CDM Regulations:

the Principal Designer is the Contractor or such replacement as the Employer at any time appoints to fulfil that role;

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


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**Article 7** **Building Regulations – Principal Designer and Principal Contractor**

For the purposes of the Building Regulations:

the Principal Designer is

R5 Consultants

of

37 Sudbury Drive,Heald Green,Cheadle,England,SK8 3BT

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

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

**Article 8** **Adjudication**

If any dispute or difference arises under this Contract, either Party may refer it to adjudication in accordance with clause 9.3.[4]

**Article 9** **Arbitration**

Where Article 9 applies[5], then, subject to Article 8 and the exceptions set out below, any dispute or difference between the Parties of any kind whatsoever arising out of or in connection with this Contract shall be referred to arbitration in accordance with clauses 9.4 to 9.9 and the JCT 2024 edition of the Construction Industry Model Arbitration Rules (CIMAR). The exceptions to this Article 9 are:

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

**Article 10** **Legal proceedings[5]**

Subject to Article 8 and (where it applies) to Article 9, 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 9, that disputes or differences should be determined by arbitration and not by legal proceedings, the Contract Particulars **must** state that Article 9 and clauses 9.4 to 9.9 apply and the words "do not apply" **must** be deleted. If the Parties wish any dispute or difference to be determined by the courts of another jurisdiction the appropriate amendment should be made to Article 10 (see also clause 1.11 and Schedule 5 Part 1 and Part 2).


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# 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 not 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 7 below is deleted, that Supplemental Provision applies.)*

* Supplemental Provision 4: Acceleration Quotation applies

* Supplemental Provision 5: Health and safety applies

* Supplemental Provision 6: Cost savings and value improvements applies

* Supplemental Provision 7: Performance Indicators and monitoring does not apply

## Article 5

Employer's Requirements
*(State reference numbers and dates or other identifiers of the relevant documents.)*[7]

Employer's Requirements as set out in the Tender pack, including the Scope of Works,specifications,and associated Drawings

[6] Supplemental Provision 8 (Transparency) applies only where the Employer is a Local or Public Authority or other body to which the Freedom of Information Act 2000 applies; Supplemental Provision 9 (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.

[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.


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Contractor's Proposals
*(State reference numbers and dates or other identifiers of the relevant documents.)*[7]

Contractor's Proposals dated TBC,submitted with the Tender pack

Contract Sum Analysis
*(State reference numbers and dates or other identifiers of the relevant documents.)*[7]

Contract Sum Analysis dated TBC submitted with Tender Clarifications

**Article 9**

Arbitration
*(If neither entry is deleted, Article 9 and clauses 9.4 to 9.9 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must be stated that Article 9 and clauses 9.4 to 9.9 apply.)*[8]

Article 9 and clauses 9.4 to 9.9 *(Arbitration)*
* apply

**1.1**

Base Date

18th October 2024

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)*

21st August 2026

**1.7.3**

Addresses for service of notices by the Parties
*(If a Party's address is not stated, it shall, subject to clause 1.7.3, be that shown at the commencement of the Agreement.)*[9]

Employer

AIG Ltd 'C/O' RMG Ltd,RMG House,Essex Road, Hoddesdob ,EN11 0DR

Contractor

48 Mount Pleasant,Bentham,Lancaster,England,LA2 7LA

The respective email addresses for the Parties are

Employer's email

[redacted]

Contractor's email

[redacted]

or, subject to clause 1.7.3, such other email address as each Party may notify to the other from time to time

[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.


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**1.7.4.2**

Service of notices by email
*(If neither entry is deleted or an email address for each Party is not specified, clause 1.7.4.2 shall not apply.)*

* Clause 1.7.4.2 applies

Employer's email

[redacted]

Contractor's email

[redacted]

**2.3**

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

27th October 2025

**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

6 weeks

**2.17.3**

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

£5million

**2.29.2**

Liquidated damages
*(where completion by Sections does not apply)*

at the rate of

£10,000 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


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**4.2, 4.12 and 4.13**

Fluctuations Provision[10]
*(Unless another option or entry is selected, JCT Fluctuations Option A applies. References in this Contract to the JCT Fluctuations Options A, B and C (or any provision as set out in such Option(s)) and in the case of Fluctuations Option C the JCT Formula Rules referred to in paragraph C.1.1.1 of Option C are references to the JCT 2024 edition of those Options or Rules.)*

* JCT Fluctuations Option A *(Contribution, levy and tax fluctuations)* applies

JCT Fluctuations Option A (paragraph A.12) – percentage addition

1 per cent

**4.6**

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

Clause 4.6
* applies

the advance payment will be[11]

* £200,000

and will be paid to the Contractor on

Drawn down through interim monthly valuations commencing from the date of the LOI,continuing until completion of the Gateway 2 submission, in accordance with clause4.13:;

it will be reimbursed to the Employer in the following amount(s) and at the following time(s)

Advance Payment Bond
*(Not applicable where the Employer is a Local or Public Authority)*
*(Where an advance payment is to be made, an advance payment bond is required unless stated that it is not required.)*

An advance payment bond
* is required

**4.7.1**

Method of payment – alternatives[12]
*(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.)*

---

[10] Unless the Fluctuations Provision is to be JCT Fluctuations Option A, delete all but one of the asterisked choices. The printed text of the JCT Fluctuations Options is no longer included in JCT contract documents but continues to be available on the JCT website www.jctltd.co.uk. JCT Fluctuations Option A provides for increases or decreases in contributions, levies and taxes. JCT Fluctuations Option B should be used where the Parties have agreed to allow the labour and materials cost and tax fluctuations to which paragraphs B.1 to B.3 of that Option refer. JCT Fluctuations Option C should be used where the Parties have agreed that fluctuations should be dealt with by adjustment of the Contract Sum under the JCT Formula Rules. If an alternative fluctuation or cost adjustment formula is to be used, the document(s) in which it is contained should be identified here.

[11] Insert either a monetary amount or a percentage figure, delete the alternative and complete the other required details.

[12] 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.


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The first Interim Valuation Date is

The last working day of each month, with the first valuation to occur at the end of the month in which the Date of Possession falls
and thereafter the same date in each month or the nearest Business Day in that month[13]

**4.15.4**

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

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

£100% of the value of each uniquely identified Listed Item to be paid for off-site

**4.15.5**

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

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

£100% of the total value of ll such listed items paid for off-site

**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 per cent

**4.21.6 and 4.21.7**

Relevant Matters
*(In the case of each clause referred to below, where neither entry against the clause is deleted, that clause does not apply.)*

Clause 4.21.6 *(the effects of an epidemic on the execution of the Works etc.)*
* applies

Clause 4.21.7 *(exercise of a statutory power etc.)*
* applies

**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[1]

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


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Refer to the Contractor's Daywork Schedule submitted as part of their tender response ,detailing percentage additions and all-inclusive rates for labour, plant,subcontract costs, and materials .Email dated 30th April 2025

Daywork Schedule:

Skilled Operatives: £45 per hour

General Operatives:£35 per hour

Site Agent : £55 per hour

Project Manager :£75 per hour

Plant:At hire costs plus 20%
Subcontract Costs: As per invoices plus 20%
Materials : Invoiced costs plus 20%

**6.4.1**

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

£5,000,000
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[14]

£10,000,000

**6.7 and Schedule 3**

Works insurance – Insurance Option applicable

Schedule 3:
* Insurance Option C applies

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

15 per cent

Where Insurance Option C applies, paragraph C.1[15]
*(Unless otherwise stated, paragraph C.1 applies. If it is not to apply, state the reference number and date or other identifier of the replacement document(s).)*

* applies

---

[14] 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.

[15] **Insurance Option C** is for use in the case of alterations of or extensions to Existing Structures. Under that option, the **Employer** is required to take out a Joint Names Policy for All Risks Insurance for the Works and also, if paragraph C.1 applies, a Joint Names Policy to insure the Existing Structures and their contents owned by it or for which it is responsible against loss or damage by the Specified Perils. Some Employers (e.g. tenants and some homeowners) may not be able readily to obtain the Joint Names cover required under paragraph C.1. Where that is the case, alternative arrangements and amendments will be necessary. See the Design and Build Contract Guide. **Where there are Existing Structures, it is vital that any prospective Employer which is not familiar with Insurance Option C – in particular any Employer which is a tenant or domestic homeowner – or an appropriate member of the Employer's professional team, should consult specialist insurance advisers prior to the tender stage. Any Employer which is a tenant should also consult its insuring landlord prior to that stage.**


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**6.10 and Schedule 3**

Terrorism Cover – details of the required cover
*(Unless otherwise stated, Pool Re Cover is required.)*[16]

are set out in the following document(s)

Pool Re cover is required

**6.15**

Professional Indemnity insurance[17]

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
* is for any one claim 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

Sub-limits within the overall level of cover

Cover is subject to aggregate limits. Cladding and fire safety claims are sub-limited to actual direct rectification costs only, excluding consequential losses

Specific exclusions listed in the relevant schedule(s) (or other policy document(s)) to the relevant policy

TO BE CHECKED BY LEGAL ADVISOR:

Cladding and Fire Safety Exclusion(write back limited to direct costs only)
Cyber Risks Exclusion
EWS1 Exclusion
Non-Compliant Building Products Exclusion
Sub-consultants must hold £2m PI cover and rights of recourse must be retained

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[18]

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

* Yes[18]

---

[16] 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.

[17] See the Design and Build Contract Guide.

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


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**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 Contractor

**7.2**

Assignment/grant by Employer of rights under clause 7.2
*(If neither entry is deleted, clause 7.2 applies.)*

Clause 7.2
* applies

**7.3.1**

Performance bond or guarantee from bank or other approved surety[19]
*(If this entry is not completed or the required form is not specified, a performance bond or guarantee is not required.)*

* is required

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

Performance Bond in ABI format, subject to Employer review and approval prior to contact execution

Initial value

10% of Contract Value-Terminates at PC per cent of the Contract Sum per cent of the Contract Sum

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

* 2 weeks after the date of expiry of the Rectification Period for the Works

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

0% (no reduction)- full bond value held until expiry per cent

**7.3.2**

Guarantee from the Contractor's parent company

* is not required

[19] 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.


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**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[20]
*(State reference number and date or other identifier of the relevant document.)*

Collateral Warranties and/or Third Party Rights are to be provided by the contractor and relevant sub-contractors in favour of the Employer,any funder, Purchaser,and Tenant(where applicable/),in accordance with the Employer's standard requirements.Details,including forms and recipients are to be confirmed in the Schedule of Rights Particulars or as otherwise agreed between the parties prior to contract execution

**8.9.2**

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

4

**8.11.1.1 to 8.11.1.7**

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

4

**9.1**

Notification and negotiation of disputes

The respective nominees of the Parties are

Employer's nominee

Ken Latham

Contractor's nominee

Tim Kay

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

**9.3.1**

Adjudication[21]

Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established) the nominating body is

---

[20] The relevant Rights Particulars should identify the beneficiaries (by name, class or description) and the sub-contractors which 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 5 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.

[21] 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.


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*(Delete all but one of the asterisked choices. If the body is to be other than one of those listed, insert the name here.)*
*(If a body has not been selected from those listed below or another body chosen and inserted, 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

**9.5.1**

Arbitration[22]: appointor of Arbitrator (and of any replacement) – the appointor is
*(Delete all but one of the asterisked choices. If the body is to be other than one of those listed, insert the name here.)*
*(If no body is selected from those listed below or another body chosen and inserted, the appointor shall be the President or a Vice-President of the body listed below selected by the Party serving the first notice of arbitration under clause 9.5. For any subsequently served notice of arbitration from any Party under clause 9.5, the appointor shall be the President or a Vice-President of the same body that was selected for the first notice of arbitration.)*

President or a Vice-President:
* The Royal Institution of Chartered Surveyors

[22] This only applies where the Contract Particulars state (against the reference to Article 9) that Article 9 and clauses 9.4 to 9.9 (*Arbitration*) apply.


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# 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 its authorised representative should sign where indicated in the presence of a witness who should then sign and set out their 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 its behalf, the appropriate form(s) may be inserted in the vacant space opposite and/or below.

**Electronic execution**

In 2019, the Law Commission published a report on "Electronic execution of documents" to assist in clarifying the legal status of electronic signatures. It reached the general conclusion that: "An electronic signature is capable in law of being used to validly execute a document (including a deed) provided that (i) the person signing the document intends to authenticate the document and (ii) any formalities relating to execution of that document are satisfied."[23] The practice of electronic execution has been growing in recent years and JCT understands that this is now commonplace. E-signature platforms are understood to be widely available, but JCT does not endorse any particular software company.

[23] See Statement of Law paragraph (1) at page 2 of the report. The full text of the report is available at www.lawcom.gov.uk/project/electronic-execution-of-documents.


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## 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 their name and address.

6 Where the Employer or Contractor is an individual, they should use method **(D)** and sign where indicated in the presence of a witness who should then sign and set out their name and address.


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*Execution as a Deed*

## Executed as a Deed by the Employer

namely [1] AIG 1 LTD
C/O Residential Management Group

**(C)** by attested signature of a single Director **of the company** [2,3]

*Sig* [redacted] Director

in the presence of

*Witness' signature* [redacted] *(Print name)* JAMES McGOVERN

*Witness's address* [redacted]

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


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*Execution as a Deed*

## Executed as a Deed by the Contractor

namely [1] Reactive FM

**(C)** by attested signature of a single Director **of the company** [2,3]

[redacted]

*Signature* Director

in the presence of

*Witness' signature* [redacted] *(Print name)* JAMES MCQUEEN

*Witness's address* [redacted]

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


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# 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 9.3** 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 9.5** as the Arbitrator.

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

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

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

**Building Regulations:** the Building Regulations 2010.

**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

[24] 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).


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updates and revisions.

**Consultants:** see **clause 7.4.3**.

**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** (against the reference to **Article 5**).

**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 the Contractor 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 Provider.

**Contractor's Proposals:** see the **Second Recital** and the **Contract Particulars** (against the reference to **Article 5**).

**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 4**.

**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 Provider but including any such third party as is referred to in clause 3.15.2 or 3.15.4.

**Employer's Requirements:** see the **First Recital** and the **Contract Particulars** (against the reference to **Article 5**).

**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**.


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**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 which 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**, **4.10.1**, **8.13.3** and **8.13.5**.

**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 **Article 7** or any


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successor appointed by the Employer.

**Principal Designer:** the Contractor or other person named in **Article 6** or **Article 7** 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.[25]

**Purchaser:** any person named or otherwise sufficiently identified as such (whether by class or description) in or by the Rights Particulars to which the Employer transfers or agrees to transfer its 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 Provider:** any person executing work solely in pursuance of its statutory obligations, including any persons employed, engaged or authorised by such person upon or in connection with that work.

**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 person 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.

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

**Termination Payment:** a payment to which **clauses 8.7.6, 8.8.3, 8.12.5** and **8.13** refer.

**Terrorism Cover:** see **clause 6.8**.

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


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

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

**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 which 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.


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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.[26]

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:

1.7.3.1 delivered by hand or sent by pre-paid post to the recipient's address stated in the Contract Particulars against clause 1.7.3, or to such other address as the recipient may from time to time notify to the sender, or 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; or

1.7.3.2 sent by email to the recipient's email address stated in the Contract Particulars against clause 1.7.3, or to such other email address as the recipient may from time to time notify to the sender.

1.7.4 Any notice expressly required by this Contract to be given in accordance with this clause 1.7.4:

1.7.4.1 shall be delivered by hand or sent by Signed For 1st class or Special Delivery Guaranteed post (or any method of posting as has replaced either method and is then current) and, where sent by post in that manner, shall be deemed to have been received on the second Business Day after the date of posting; or

1.7.4.2 (where clause 1.7.4.2 is stated in the Contract Particulars to apply) shall be sent by email to the recipient's email address stated in the Contract Particulars against clause 1.7.4.2, or to such other email address as the recipient may from time to time notify to the sender (provided that such notification states that it is a notice of change under this clause 1.7.4.2), and shall be deemed to have been received on the next Business Day after the day on which it was sent.

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 the Employer's approval, the particular quality or standard was to the Employer's 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 be

[26] 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.


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suspended pending the conclusion of any adjudication, arbitration or other 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 due date for the final payment; 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 their decision after the due date for the final payment, where arbitration or legal proceedings to determine the dispute or difference in question are commenced within 28 days of the date of that decision

but not otherwise.

1.8.3 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 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 where the giving of such consent shall be at the sole discretion of the Party from which it is sought.

**1.11 Applicable law**

This Contract shall be governed by and construed in accordance with the law of England.[27]

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


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# Section 2 Carrying out the Works

## Contractor's Obligations

### 2.1 General obligations[28]

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.

2.1.5 The Contractor is encouraged to suggest economically viable amendments to the Works which, if instructed as a Change, may result in an improvement in environmental performance and sustainability in the carrying out of the Works or of the completed Works and a reduction in environmental impact, provided that no such instruction shall extend the Contractor's obligations in relation to design under 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 its other obligations.

2.2.2 The Contractor shall provide to the Employer all information that the Employer reasonably requests regarding the environmental impact of the supply and use of materials and goods which the Contractor selects.

2.2.3 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.

2.2.4 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.

2.2.5 The Contractor shall at the Employer's request provide the Employer with reasonable proof that the materials and goods used comply with this clause 2.2.

2.2.6 The Contractor shall take all reasonable steps to encourage Contractor's Persons to be

[28] The Parties may wish to agree an overall cap on the Contractor's liabilities. See the Design and Build Contract Guide which provides guidance regarding the use of such a cap including a model provision.


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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 and the Contractor 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 its 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 its 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 the amount of such additional premium. 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 itself 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


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Contractor, shall (unless previously provided or unless the BIM Protocol or other communications protocol requires otherwise) provide the Contractor 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(4) of the CDM Regulations and any building information required to be provided to the Contractor under regulation 11A(4) of the Building 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 8, its 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 it 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;


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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;

it shall immediately give notice with appropriate details to the Employer, and the Employer 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 its proposed amendment to remove the discrepancy or divergence 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 its proposed amendment to deal with the discrepancy 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,

it shall immediately give the other notice specifying the divergence and the Contractor shall notify the Employer of its proposed amendment for removing the divergence. With the Employer's consent, the Contractor shall entirely at its 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.[29]

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 it is taking under clause 2.16.1.

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[29] See the Design and Build Contract Guide.


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## Design Work – liabilities and limitation

**2.17 Design Work – liabilities and limitation**

2.17.1

2.17.1.1 Insofar as its design of the Works is comprised in the Contractor's Proposals and in what it is to complete in accordance with the Employer's Requirements and these Conditions (including any further design that it is required to carry out as a result of a Change), the Contractor warrants, subject to clause 2.17.1.2, that it shall use the reasonable skill and care in such design to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in scope and character to such design of the Works.

2.17.1.2 To the extent permitted by the Statutory Requirements, the Contractor shall have no greater duty, obligation or liability than to exercise reasonable skill and care as provided in clause 2.17.1.1 in respect of such design and under no circumstances shall the Contractor be subject to any duty, obligation or liability which requires that any such design shall be fit for its purpose.

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 or work in relation to a dwelling or dwellings, clause 2.17.1 includes the Contractor's liability under the Defective Premises Act 1972.

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 or work in relation to 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 Contractor's liability under 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 it 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 such article, process or invention 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, it shall promptly notify and


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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 its 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.

2.24.4 If, on receiving the particulars under clause 2.24.2, or any notification under clause 2.24.3, the Employer requires such further information as is reasonably necessary to enable it to reach a decision under clause 2.25.1, then, not later than 14 days from receipt of the particulars or notification, it shall notify the Contractor stating the further information required, and the Contractor shall supply such further information.

**2.25 Fixing Completion Date**

2.25.1 If on receiving a notice and particulars under clauses 2.24.1 and 2.24.2 or (where applicable) a notification under clause 2.24.3:

2.25.1.1 any of the events which are stated to be a cause of delay is a Relevant Event; and


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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 it then estimates to be fair and reasonable.

2.25.2 The Employer shall notify the Contractor of its decision in respect of each notice and particulars under clauses 2.24.1 and 2.24.2 and each notification (if any) under clause 2.24.3, whether or not an extension is given, as soon as is reasonably practicable and in any event not later than 8 weeks from the later of:

2.25.2.1 the date of receipt of the particulars or notification; or

2.25.2.2 the date of receipt of the further information required under clause 2.24.4.

Where the period from receipt to the Completion Date is less than 8 weeks, it shall endeavour to do so prior to the Completion Date.

2.25.3 The Employer shall in its decision state:

2.25.3.1 the extension of time that it 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 it 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 that is fair and reasonable having regard to any Relevant Events, whether on reviewing a previous decision or otherwise and whether or not the Relevant Event has been specifically notified by the Contractor under clause 2.24; 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 its 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


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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 or (except to the extent that the presence of asbestos or contaminated material has been identified in the Contract Documents and/or any such material has been brought on to the site by the Contractor or any Contractor's Person) compliance with clause 3.15.3 or with Employer's instructions under clause 3.15.4;

2.26.5 suspension by the Contractor under clause 4.11 of the performance of any or all of its 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 an epidemic:

2.26.7.1 first occurring after the Base Date which affects the execution of the Works; or

2.26.7.2 first occurring before the Base Date whose effects change after the Base Date and any such change affects the execution of the Works

by limiting the availability or use of labour or the availability of persons engaged in providing services for the Works where such labour and/or persons are necessary for the proper carrying out of the Works, or preventing the Contractor from, or delaying the Contractor in, securing such goods or materials or such services as are necessary for the proper carrying out of the Works;

2.26.8 the occurrence after the Base Date of any of the following which affects the execution of the Works:

2.26.8.1 the passing into law of any statute, statutory instrument or other subordinate legislation, regulation or bye-law, whether to make a new law or change or repeal an existing law;

2.26.8.2 the exercise of any statutory power, except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or any Contractor's Person; or

2.26.8.3 the publication of any guidance,

by the United Kingdom Government or any of the devolved administrations, or any Local or Public Authority or any equivalent authority governed by public law in any of the devolved administrations, or in the case of guidance by the Construction Leadership Council or its successor;

2.26.9 the carrying out by a Statutory Provider of work in pursuance of its statutory obligations in relation to the Works, or the failure to carry out such work;


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2.26.10 exceptionally adverse weather conditions;

2.26.11 loss or damage occasioned by any Specified Peril;

2.26.12 civil commotion or the use or threat of terrorism and/or the activities of the relevant authorities in dealing with such event or threat;

2.26.13 strike, lock-out or local combination of any trades 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;

2.26.14 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;

2.26.15 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, it 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 or (if applicable) the Termination Payment under clause 8.7.5, 8.8.2 or 8.12.4 that it 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 or (if applicable) 8.7.6, 8.8.3 or 8.12.5, 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 it 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 it 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.[30]

[30] In addition to the notice under clause 2.29.2, the Employer, if it intends to withhold or deduct all or any of the liquidated damages payable, must give the appropriate Pay Less Notice under clause 4.9.5 or (if applicable) 8.13.3 or 8.13.5.


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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 it 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.

2.29.5 If the Contractor's employment is terminated under this Contract:

2.29.5.1 where the date of termination occurs prior to the date of practical completion of the Works, the provisions of clauses 2.28 and 2.29 shall apply in respect of the period between the Completion Date and the date of termination, and the reference to practical completion of the Works or Section in clause 2.29.2 shall be deemed to be a reference to the date of termination;

2.29.5.2 in respect of the period after the date of termination, subject to clause 2.29.5.1, the Employer shall not be empowered to require the payment of or to withhold or deduct liquidated damages under clause 2.29 but the provisions of this clause 2.29.5.2 shall be without prejudice to and not in substitution of any other rights and remedies of the Employer.

## 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, it 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 its obligations under this Contract:


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2.35.1 such defects, shrinkages and other faults shall be specified by the Employer in a schedule of defects which it 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 it 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 other faults shall at no cost to the Employer be made good by the Contractor unless the Employer shall otherwise instruct. If the Employer 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, it 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 its 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.


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# 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 it 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 the Employer 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 its 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 Provider, which 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[31]:

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 unless prior to the date of termination of the Contractor's employment the sub-contractor has conferred third party rights on a Funder and/or the Employer and/or executed and delivered any collateral warranty or warranties in favour of a Funder and/or the Employer which entitle the beneficiary, in the event of such termination, to issue a written notice to the sub-contractor to accept the instructions of the beneficiary or its appointee to the exclusion of the Contractor, in which case:

[31] 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.


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3.4.1.1 the sub-contractor may suspend the performance of its obligations under the sub-contract with effect from the date of termination of the Contractor's employment until receipt of any such written notice (if one is served), or if no such notice is served the sub-contractor's employment under the sub-contract shall immediately terminate on the day after the last date on which such written notice may be served;

3.4.1.2 any such suspension shall be deemed to be a suspension as a result of an instruction of the Employer under this Contract passed on to the sub-contractor as a direction by the Contractor under the sub-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:

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 (without limiting either party's statutory and/or regulatory duties) each party to the sub-contract shall in relation to the Works and the site comply with applicable CDM Regulations and as applicable Part 2A of the Building Regulations[32];

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 5 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.

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[32] See footnote [33] to clause 3.16 below.


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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 it 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 it notifies a reasonable objection to the instruction 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 the terms of the instruction in writing to the Employer within 7 days, and, if the Employer does not dissent by notice to the Contractor within 7 days from receipt of the Contractor's confirmation, the instruction 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 it which provision of these Conditions empowers issue of the instruction 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 its capacity as Principal Designer and/or Principal Contractor it 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


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pursuant to clauses 2.1.1 to 2.1.4 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 its 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 its 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 clauses 2.1.1 to 2.1.4 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 its 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, asbestos, contaminated material and unexploded ordnance**

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 its best endeavours not to disturb the object and cease work if and insofar as continuing work would endanger the object or prevent or impede the object's 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 the object's discovery and precise location.

3.15.2 The Employer shall issue instructions as to action to be taken concerning any object


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reported under clause 3.15.1, which (without limiting its powers) may require the Contractor to permit the examination, excavation or removal of the object by a third party.

3.15.3 Upon discovery of any asbestos, contaminated material or unexploded ordnance on the site or in excavating it during the progress of the Works the Contractor shall forthwith:

3.15.3.1 use its best endeavours not to disturb the material or item and cease work if and insofar as continuing work would endanger health and safety and/or life and property or prevent or impede the disposal or removal of the material or item; and

3.15.3.2 report the discovery of such material or item and the steps it is taking under clause 3.15.3.1 to the Employer.

3.15.4 The Employer shall issue instructions with respect to any material or item reported under clause 3.15.3, which (without limiting its powers) may require the Contractor to permit the investigation, disposal or removal of such material or item by a third party.

## CDM Regulations and Part 2A of the Building Regulations

**3.16 CDM Regulations and Part 2A of the Building Regulations**

Without limiting either Party's statutory and regulatory duties and responsibilities, each Party undertakes to the other that in relation to the Works and site it will duly comply with applicable CDM Regulations and as applicable Part 2A of the Building Regulations[33], and 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 its duties and, where the Contractor is not the Principal Contractor, shall ensure that the Principal Contractor carries out its duties under those regulations;

3.16.2 where the Contractor is and while it remains the Principal Designer, it shall comply with the duties of a Principal Designer and (where it is the Principal Designer for the purposes of the CDM Regulations) it shall without charge prepare, and deliver to the Employer, the health and safety file;

3.16.3 the Contractor shall comply with:[34]

3.16.3.1 regulations 8 to 10 and 15 of the CDM Regulations and, where it is the Principal Contractor for the purposes of the CDM Regulations, with regulations 12 to 14 of those regulations; and

3.16.3.2 regulations 11F, 11J, 11K and 11L of the Building Regulations and, where it is the Principal Contractor for the purposes of the Building Regulations, with regulation 11N of those regulations;

3.16.4 if the Employer appoints a replacement for any Principal Designer or Principal Contractor, the Employer shall immediately upon that appointment notify the Contractor with details of the new appointee.

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[33] Part 2A of the Building Regulations, introduced by the Building Regulations etc. (Amendment) (England) Regulations 2023 pursuant to the Building Safety Act 2022, sets out a framework of safety duties and competence requirements for those persons involved in the procurement, design and undertaking of building work to which building regulations apply (including higher-risk building work for which additional duties apply).
If any project involves higher-risk building work, see the Design and Build Contract Guide.

[34] Under the CDM Regulations and the Building Regulations, where the Employer is a domestic client (as defined in regulation 2(1) in both sets of regulations), the Principal Contractor may also be responsible for carrying out certain of the client's duties.


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# 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[35], its obligation to make any payment under this Contract is subject to the provisions of the CIS.

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


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## 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.[36]

**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 it 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 it 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 which 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 it in a

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


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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 which 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 the final date for payment, it 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 its 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 it 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 its behalf by the Employer's Agent or by any other person which 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 the Employer from 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 its intention to suspend the performance of its obligations under this Contract and the grounds for such suspension, the Contractor, without affecting its other rights and remedies, may suspend performance of any or all of its obligations until payment is made in full.

4.11.2 Where the Contractor exercises its right of suspension under clause 4.11.1, it shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by it 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 its 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:


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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 JCT 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;


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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


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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[36] ('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 for 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 it exercises its 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[37]:

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, it 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

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


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to the Contract Sum or otherwise exclude the operation of this clause 4.19 or to the extent that the Contractor is reimbursed for such loss and/or expense under another provision of these Conditions.

**4.20 Notification and ascertainment**

4.20.1 The Contractor shall notify the Employer as soon as the likely effect of a Relevant Matter on regular progress or the likely nature and extent of any loss and/or expense arising from a deferment of possession becomes (or should have become) reasonably apparent to it.

4.20.2 That notification shall be accompanied or, as soon as reasonably practicable, followed by the Contractor's initial assessment of the loss and/or expense incurred and any further amounts likely to be incurred, together with such information as is reasonably necessary to enable the Employer to ascertain the loss and/or expense incurred.

4.20.3 The Contractor shall thereafter, in such form and manner as the Employer may reasonably require, update that assessment and information at monthly intervals until all information reasonably necessary to allow ascertainment of the total amount of such loss and expense has been supplied.

4.20.4 Within 28 days of receipt of the initial assessment and information and 14 days of each subsequent update of them the Employer shall notify the Contractor of the ascertained amount of the loss and/or expense incurred, each ascertainment being made by reference to the information supplied by the Contractor and in sufficient detail to enable the Contractor to identify differences between it and the Contractor's assessment.

**4.21 Relevant Matters**

The following are the Relevant Matters:

4.21.1 Changes and any other matters or instructions which under these Conditions are to be treated as a Change;

4.21.2 Employer's instructions:

4.21.2.1 under clause 3.10 or 3.11; or

4.21.2.2 for the opening up for inspection or testing of any work, materials or goods under clause 3.12 (including making good), unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract;

4.21.3 compliance with clause 3.15.1 or with Employer's instructions under clause 3.15.2 or (except to the extent that the presence of asbestos or contaminated material has been identified in the Contract Documents and/or any such material has been brought on to the site by the Contractor or any Contractor's Person) compliance with clause 3.15.3 or with Employer's instructions under clause 3.15.4;

4.21.4 delay in receipt of any permission or approval for the purposes of Development Control Requirements necessary for the Works to be carried out or proceed, which delay the Contractor has taken all practicable steps to avoid or reduce;

4.21.5 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;

4.21.6 (where the Contract Particulars state that clause 4.21.6 applies) an epidemic:

4.21.6.1 first occurring after the Base Date which affects the execution of the Works; or

4.21.6.2 first occurring before the Base Date whose effects change after the Base Date and any such change affects the execution of the Works

by limiting the availability or use of labour or the availability of persons engaged in providing services for the Works where such labour and/or persons are necessary for the proper carrying out of the Works, or preventing the Contractor from, or delaying the Contractor in, securing such goods or materials or such services as are necessary for the proper carrying out of the Works;

4.21.7 (where the Contract Particulars state that clause 4.21.7 applies) the occurrence after the


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Base Date of any of the following which affects the execution of the Works:

4.21.7.1 the passing into law of any statute, statutory instrument or other subordinate legislation, regulation or bye-law, whether to make a new law or change or repeal an existing law;

4.21.7.2 the exercise of any statutory power, except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or any Contractor's Person; or

4.21.7.3 the publication of any guidance,

by the United Kingdom Government or any of the devolved administrations, or any Local or Public Authority or any equivalent authority governed by public law in any of the devolved administrations, or in the case of guidance by the Construction Leadership Council or its successor.

**4.22 Amounts ascertained – addition to Contract Sum**

Amounts ascertained under clause 4.20 shall be added to the Contract Sum.

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

The provisions of clauses 4.19 to 4.22 shall not limit or affect any other rights and remedies of the Contractor.

## Final Statement and Final Payment

**4.24 Final Statement and Final Payment[38]**

4.24.1 Following practical completion of the Works the Contractor shall submit the Final Statement to the Employer and supply such supporting documents as the Employer may reasonably require.

4.24.2 The Final Statement shall set out the adjustments to the Contract Sum to be made in accordance with clause 4.2 and shall state:

4.24.2.1 the Contract Sum, as so adjusted; and

4.24.2.2 the sum of amounts already paid by the Employer to the Contractor,

and the final payment shall be the difference (if any) between the two sums, which shall be shown as a balance due to the Contractor from the Employer or to the Employer from the Contractor, as the case may be. The Final Statement shall state the basis on which that amount has been calculated, including details of all such adjustments.

4.24.3 If the Contractor does not submit the Final Statement within 3 months of practical completion of the Works, the Employer may on or after the expiry of that period give the Contractor notice that unless that statement is submitted within 2 months from the date of the notice the Employer may itself issue a final statement in lieu of that from the Contractor.

4.24.4 Unless the Contractor submits the Final Statement prior to the Employer exercising that right, the Employer may at any time after the 2 month notice period issue a final statement to the Contractor ('the Employer's Final Statement') in the form and with the details required by clause 4.24.2, so far as the Employer, on the information in its possession, is reasonably able to do so.

4.24.5 The due date for the final payment shall be the date one month after whichever of the following occurs last:

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

4.24.5.2 the date stated in the Notice of Completion of Making Good under clause 2.36 or (where there are Sections) in the last such notice to be issued; or

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[38] The effect of the Final Statement is set out in clause 1.8.


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4.24.5.3 the date of submission to the other Party of the Final Statement or, if issued first, the Employer's Final Statement ('the relevant statement').

4.24.6 Except to the extent that prior to the due date for the final payment the Employer gives notice to the Contractor disputing anything in the Final Statement or the Contractor gives notice to the Employer disputing anything in the Employer's Final Statement, and subject to clause 1.8.2, the relevant statement shall upon the due date become conclusive as to the sum due under clause 4.24.2 and have the further effects stated in clause 1.8.


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# Section 5 Changes

## General

**5.1 Definition of Changes**

The term 'Change' means:

5.1.1 a change in the Employer's Requirements which makes necessary the alteration or modification of the design, quality or quantity of the Works, otherwise than such as may be reasonably necessary for the purposes of rectification pursuant to clause 3.13, including:

5.1.1.1 the addition, omission or substitution of any work;

5.1.1.2 the alteration of the kind or standard of any of the materials or goods to be used in the Works;

5.1.1.3 the removal from the site of any work executed or Site Materials other than work, materials or goods which are not in accordance with this Contract;

5.1.2 the imposition by the Employer of any obligations or restrictions in regard to the following matters or any addition to or alteration or omission of any such obligations or restrictions that are so imposed or are imposed in the Employer's Requirements in regard to:

5.1.2.1 access to the site or use of any specific parts of the site;

5.1.2.2 limitations of working space;

5.1.2.3 limitations of working hours; or

5.1.2.4 the execution or completion of the work in any specific order.[38]

**5.2 Valuation of Changes and provisional sum work**

The value of:

5.2.1 all Changes required by Employer's instructions;

5.2.2 all work which under these Conditions is to be treated as a Change; and

5.2.3 all work executed by the Contractor in accordance with Employer's instructions as to the expenditure of Provisional Sums included in the Employer's Requirements

shall be such amount as is agreed by the Employer and the Contractor or, where not agreed, the amount valued (a 'Valuation') in accordance with clauses 5.4 to 5.7 ('the Valuation Rules').

**5.3 Giving effect to Valuations, agreements etc.**

The Contract Sum shall be adjusted for each agreement by the Employer and the Contractor under clause 5.2 and for each Valuation.

## The Valuation Rules

**5.4 Measurable Work**

Valuations shall be made in accordance with this clause 5.4 and, so far as is relevant, clauses 5.5 to 5.7.

5.4.1 Allowance shall be made in such Valuations for the addition or omission of the relevant design work.

[38] See clause 3.5.1 for the Contractor's right of reasonable objection to Changes.


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5.4.2 The valuation of additional or substituted work shall be consistent with the values of work of a similar character set out in the Contract Sum Analysis, making due allowance for any change in the conditions under which work is carried out and/or any significant change in the quantity of the work so set out. Where there is no work of a similar character set out in the Contract Sum Analysis a fair valuation shall be made.

5.4.3 The valuation of the omission of work set out in the Contract Sum Analysis shall be in accordance with the values therein for such work.

5.4.4 Any valuation of work under clauses 5.4.2 and 5.4.3 shall include allowance for any necessary addition to or reduction of the provision of site administration, site facilities and temporary works.

5.4.5 Allowance shall be made for any percentage or lump sum adjustments in the Contract Sum Analysis.

**5.5 Daywork**

Where the execution of additional or substituted work cannot be valued in accordance with clause 5.4, the Valuation shall comprise:

5.5.1 the prime cost of such work (calculated in accordance with the 'Definition of Prime Cost of Daywork carried out under a Building Contract' issued by The Royal Institution of Chartered Surveyors (RICS) and Construction Industry Publications Ltd as current at the Base Date) together with Percentage Additions to each section of the prime cost at the rates stated in the document identified in the Contract Particulars or, if they apply in respect of labour, at the All-Inclusive Rates stated in such document; or

5.5.2 where the work is within the province of any specialist trade and the RICS and the appropriate body representing the employers in that trade have agreed and issued a definition of prime cost of daywork[40], the prime cost of such work calculated in accordance with that definition current at the Base Date, together with Percentage Additions on the prime cost at the rates stated in the document identified in the Contract Particulars or, if they apply in respect of labour, at the All-Inclusive Rates stated in such document.

Provided that in any case vouchers specifying the time daily spent upon the work, the operatives' names, the plant and the materials employed shall be delivered for verification to the Employer not later than 7 Business Days after the work has been executed.

**5.6 Change of conditions for other work**

If as a result of:

5.6.1 compliance with any instruction requiring a Change; or

5.6.2 compliance with any instruction as to the expenditure of a Provisional Sum,

there is a substantial change in the conditions under which any other work is executed, that other work shall be treated as a Change and shall be valued in accordance with the provisions of this section 5.

**5.7 Additional provisions**

5.7.1 To the extent that a Valuation does not relate to the execution of additional or substituted work or the omission of work or to the extent that the valuation of any work or liabilities directly associated with a Change cannot reasonably be effected in the Valuation by the application of clauses 5.4 to 5.6, a fair valuation shall be made.

5.7.2 No allowance shall be made under the Valuation Rules for any effect upon the regular progress of the Works or of any part of them or for any other direct loss and/or expense for which the Contractor would be reimbursed by payment under any other provision in these Conditions.

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[40] There are currently three definitions to which clause 5.5.2 refers, namely those agreed between the RICS and The Electrical Contractors' Association and SELECT, the RICS and The Building and Engineering Services Association, and the RICS and The Association of Plumbing and Heating Contractors and The Scottish and Northern Ireland Plumbing Employers' Federation.


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# Section 6 Injury, Damage and Insurance

## Personal Injury and Property Damage

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

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

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

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

**6.3 Loss or damage to Existing Structures or their contents**

6.3.1 Where paragraph C.1 of Insurance Option C applies, the Contractor's liability and indemnity under clause 6.2 excludes any loss or damage to Existing Structures or to any of their contents required to be insured under that option that is caused by any of the risks or perils required or agreed to be insured against under that option.

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

6.3.3 Where Insurance Option C applies but a C.1 Replacement Schedule applies in lieu of paragraph C.1, the Contractor's liability and indemnity under clause 6.2 shall, in respect of loss, injury or damage to the Existing Structures and their contents due to the causes specified in that clause, be subject only to such limitations or exclusions as are specified in that schedule.

6.3.4 The reference in clause 6.2 to 'property real or personal' does not include the Works, work executed or Site Materials up to and including the date of issue of the Practical Completion Statement or, if earlier, the date of termination of the Contractor's employment, except that:

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

6.3.4.2 if partial possession is taken under clause 2.30, the Relevant Part shall no longer be so regarded after the Relevant Date.

## Insurance against Personal Injury and Property Damage

**6.4 Contractor's insurance of its liability**

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

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


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6.4.1.2 for all other claims to which clause 6.4.1 applies[41], shall indemnify the Employer in like manner to the Contractor (but only to the extent that the Contractor may be liable to indemnify the Employer under the terms of this Contract) and shall for any one occurrence or series of occurrences arising out of one event be in a sum not less than that stated in the Contract Particulars for clause 6.4.1.[42]

6.4.2 As to evidence that such insurances have been effected and are being maintained and the consequences of failure to comply, clause 6.12 shall apply.

**6.5 Contractor's insurance of liability of Employer**

6.5.1 If the Employer's Requirements state that insurance under clause 6.5.1 is required, the Contractor shall effect and maintain a policy of insurance in the names of the Employer and the Contractor for the amount of indemnity stated in the Contract Particulars in respect of any expense, liability, loss, claim or proceedings which the Employer may incur or sustain by reason of injury or damage to any property caused by collapse, subsidence, heave, vibration, weakening or removal of support or lowering of ground water arising out of or in the course of or by reason of the carrying out of the Works, excluding injury or damage:

6.5.1.1 for which the Contractor is liable under clause 6.2;

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

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

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

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

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

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

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

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

6.5.2 Any insurance under clause 6.5.1 shall be placed with insurers approved by the Employer, and the Contractor shall upon its issue deposit the policy with the Employer.

6.5.3 As to evidence that such insurance has been effected and is being maintained and the consequences of failure to comply, clause 6.12 shall apply.

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

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


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**6.6 Excepted Risks**

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

## Insurance of the Works and Existing Structures

**6.7 Insurance Options and period**

6.7.1 Insurance Options A, B and C are set out in Schedule 3. The Insurance Option that applies to this Contract is that stated in the Contract Particulars.[43]

6.7.2 In each case the Party responsible for effecting a Joint Names Policy under the Insurance Option that applies (the 'Works Insurance Policy') shall maintain that policy up to and including the date of issue of the Practical Completion Statement, or last Section Completion Statement, or (if earlier) the date of termination of the Contractor's employment, except that the obligation to maintain a Works Insurance Policy:

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

6.7.2.2 if partial possession is taken under clause 2.30, shall not as from the Relevant Date apply in relation to the Relevant Part.

**6.8 Related definitions**

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

**All Risks Insurance**[44]: insurance which provides cover against any physical loss or damage to work executed and Site Materials and against the reasonable cost of the removal and disposal of debris and of any shoring and propping of the Works which results from such physical loss or damage but excluding the cost necessary to repair, replace or rectify:

(a) property which is defective due to:

(i) wear and tear,

(ii) obsolescence, or

(iii) deterioration, rust or mildew;

(b) any work executed or any Site Materials lost or damaged as a result of its own defect in design, plan, specification, material or workmanship or any other work executed which is lost or damaged in consequence thereof where such work relied for its support or stability on such work which was defective[45];

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

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


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(c) loss or damage caused by or arising from:

(i) any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation, commandeering, nationalisation or requisition or loss or destruction of or damage to any property by or under the order of any government *de jure or de facto* or public, municipal or local authority,

(ii) disappearance or shortage if such disappearance or shortage is only revealed when an inventory is made or is not traceable to an identifiable event, or

(iii) an Excepted Risk.

**Excepted Risks:** the risks comprise:

(a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof (other than such risk insofar, but only insofar, as it is included in the Terrorism Cover from time to time required to be taken out and maintained under this Contract);

(b) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; and

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

**Joint Names Policy:** a policy of insurance which includes the Employer and the Contractor as composite insured and under which the insurers have no right of recourse against any person named as an insured, or, pursuant to clause 6.9, recognised as an insured thereunder.

**Pool Re Cover:** such insurance against loss or damage to work executed and Site Materials caused by or resulting from terrorism as is from time to time generally available from insurers which are members of the Pool Reinsurance Company Limited scheme or of any similar successor scheme.[46]

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

**Terrorism Cover:** Pool Re Cover or other insurance against loss or damage to work executed and Site Materials (and/or, for the purposes of clause 6.11.1, to an Existing Structure and/or its contents) caused by or resulting from terrorism.[46]

**6.9 Sub-contractors – Specified Perils cover under Works Insurance Policies**

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

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

6.9.1.2 includes a waiver by the insurers of any right of subrogation which they may have against any such sub-contractor

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

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

[46] As respects Terrorism Cover and the requirements of Insurance Options A, B and C, see footnote [44] and the Design and Build Contract Guide.


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statement or other document for the sub-contractor's work in that Section.

6.9.2 Clause 6.9.1 applies also in respect of any Works Insurance Policy taken out in default under clause 6.12.2.

**6.10 Terrorism Cover – policy extensions and premiums**

6.10.1 To the extent that the Works Insurance Policy excludes (or would otherwise exclude) loss or damage caused by terrorism, the Contractor, where Insurance Option A applies, or the Employer, where Insurance Option B or C applies, shall unless otherwise agreed effect and maintain, either as an extension to the Works Insurance Policy or as a separate Joint Names Policy, in the same amount and for the same period as the Works Insurance Policy, such Terrorism Cover as is specified in or by the Contract Particulars, subject to clauses 6.10.4 and 6.11.

6.10.2 Where Insurance Option A applies and the Contractor is required to take out and maintain Pool Re Cover, the cost of that cover and its renewal shall be deemed to be included in the Contract Sum save that, if at any renewal of the cover there is a variation in the rate on which the premium is based, the Contract Sum shall be adjusted by the net amount of the difference between the premium paid by the Contractor and the premium that would have been paid but for the change in rate.

6.10.3 Where Insurance Option A applies and Terrorism Cover other than Pool Re Cover is specified as required, the cost of such other cover and of its renewal shall be added to the Contract Sum.

6.10.4 Where Insurance Option A applies and the Employer is a Local or Public Authority, if at any renewal of the Terrorism Cover (of any type) there is an increase in the rate on which the premium is based, the Employer may instruct the Contractor not to renew the Terrorism Cover. If it so instructs, clause 6.13.5.3 shall apply with effect from the renewal date.

**6.11 Terrorism Cover – non-availability – Employer's options**

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

6.11.2 The Employer, after receipt of such notification but before the cessation date, shall give notice to the Contractor either:

6.11.2.1 that, notwithstanding the cessation or reduction in scope or level of Terrorism Cover, the Employer requires that the Works continue to be carried out; or

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

6.11.3 Where Insurance Option A applies and the Employer gives notice under clause 6.11.2.1 requiring continuation of the Works, the Employer may instruct the Contractor to effect and maintain any alternative or additional form of Terrorism Cover then reasonably obtainable by the Contractor; the net additional cost to the Contractor of any such cover and its renewal shall be added to the Contract Sum.

6.11.4 If the Employer gives notice of termination under clause 6.11.2.2, then upon and from such termination the provisions of clause 6.12 shall apply.

6.11.5 If the Employer does not give notice of termination under clause 6.11.2.2, but work executed and/or Site Materials thereafter suffer physical loss or damage caused by terrorism, clauses 6.13 and 6.14 shall as appropriate apply.

**6.12 Evidence of insurance**

6.12.1 Where a Party is required by this Contract to effect and maintain an insurance policy or cover under any of clauses 6.4, 6.5, 6.7 and 6.10, or is responsible for ensuring that it is effected and maintained, that Party shall at the request of the other Party supply such documentary evidence as the other Party may reasonably require that the policy or cover has been effected and remains in force.


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6.12.2 If a Party required to provide such documentary evidence fails to provide it within 7 days of a request being made, the other Party may assume that there has been a failure to insure, and may insure against any risk, liability or expense to which it may be exposed as a consequence, but shall not be obliged to do so. If the other Party insures, the defaulting Party shall be liable for the costs that the other Party incurs in taking out and maintaining that insurance. Any costs payable to the Contractor shall be added to the Contract Sum; any costs payable to the Employer may be deducted from any sums due or to become due to the Contractor or shall be recoverable from the Contractor as a debt.

**6.13 Loss or damage – insurance claims and reinstatement**

6.13.1 If during the carrying out of the Works any loss or damage affecting any executed work or Site Materials is occasioned by any of the risks covered by the Works Insurance Policy or an Excepted Risk or there is any loss of or damage of any kind to any of the Existing Structures or their contents, the Contractor shall forthwith upon it occurring or becoming apparent give notice to the Employer of its nature, location and extent.

6.13.2 Subject to clauses 6.13.5.1 and 6.13.6, the occurrence of such loss or damage to executed work or Site Materials shall be disregarded in calculating any amounts payable to the Contractor under this Contract.

6.13.3 The Contractor, for itself and for all its sub-contractors recognised as an insured under the Works Insurance Policy, shall authorise the insurers to pay to the Employer all monies from such insurance, and from any policies covering Existing Structures or their contents that are effected by the Employer.

6.13.4 Where loss or damage affecting executed work or Site Materials is occasioned by any risk covered by the Works Insurance Policy, and subject to clause 6.14 where relevant, the Contractor shall after any inspection required by the insurers under the Works Insurance Policy and with due diligence restore the damaged work, replace or repair any lost or damaged Site Materials, remove and dispose of any debris (collectively 'reinstatement work') and proceed with the carrying out and completion of the Works.

6.13.5 Where Insurance Option A applies:

6.13.5.1 the Employer shall pay all monies from such insurance to the Contractor by instalments under separate reinstatement work statements issued by the Employer at the same dates as those for Payment Notices under clause 4.7.5 but without deduction of Retention and less only the amounts referred to in clause 6.13.5.2;

6.13.5.2 the Employer may retain from those monies any amounts properly incurred by the Employer and notified by it to insurers in respect of professional fees up to the aggregate amount of the percentage cover for those fees or (if less) the amount paid by insurers in respect of those fees;

6.13.5.3 in respect of reinstatement work, the Contractor shall not be entitled to any payment other than amounts received under the Works Insurance Policy except where there has been a cessation of or reduction in Terrorism Cover under clause 6.10.4 or 6.11 and loss or damage is then caused by or results from terrorism, in which case the reinstatement work shall, to the extent that its cost is no longer recoverable under the policy, be treated as a Change and under clause 4.12.2.4, 4.13.2.4 or 6.13.5.1 included in Payment Notices. In neither case shall there be any reduction in any amount payable by reason of any act or neglect of the Contractor or of any sub-contractor which may have contributed to the physical loss or damage;

6.13.5.4 for the purposes of clause 2.26.1 (but not otherwise under these Conditions except as referred to in clause 6.13.5.3) reinstatement work shall be treated as a Change.

6.13.6 Where Insurance Option B or paragraph C.2 of Insurance Option C applies or where loss or damage is caused by an Excepted Risk, reinstatement work shall be treated as a Change.

**6.14 Loss or damage to Existing Structures – right of termination**

If there is material loss of or damage to any of the Existing Structures, the Employer shall be under no obligation to reinstate those structures, but either Party may, if it is just and equitable, terminate the


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

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

6.14.2 upon the giving of that notice or, where a dispute resolution procedure is invoked within that period, upon any final upholding of the notice, the provisions of clause 8.12 shall apply.

## Professional Indemnity Insurance

**6.15 Obligation to insure**

The Contractor shall:

6.15.1 forthwith after this Contract has been entered into, take out (unless it has already done so) a Professional Indemnity insurance policy with limits of indemnity of the types and in amounts not less than those stated in the Contract Particulars[47];

6.15.2 thereafter, provided it is available at commercially reasonable rates and terms, maintain such insurance until the expiry of the period stated in the Contract Particulars from the date of practical completion of the Works; and

6.15.3 as and when reasonably requested to do so by the Employer, produce for inspection documentary evidence that such insurance has been effected and/or is being maintained.

**6.16 Increased cost and non-availability**

If the insurance referred to in clause 6.15 ceases to be available at commercially reasonable rates or terms, the Contractor shall immediately give notice to the Employer so that the Contractor and the Employer can discuss the means of best protecting their respective positions in the absence of such insurance.

## Joint Fire Code – compliance

**6.17 Application of clauses**

Clauses 6.18 to 6.20 apply where the Contract Particulars state that the Joint Fire Code applies.

**6.18 Compliance with Joint Fire Code**

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

**6.19 Breach of Joint Fire Code – Remedial Measures**

6.19.1 If a breach of the Joint Fire Code occurs and the insurers under the Works Insurance Policy specify by notice to the Employer or the Contractor the remedial measures they require (the 'Remedial Measures'), the Party receiving the notice shall copy it to the other and the Contractor shall ensure that the Remedial Measures are carried out.

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

[47] See the Design and Build Contract Guide.


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**6.20 Joint Fire Code – amendments/revisions**

Where the Joint Fire Code is, under a Joint Names Policy, applicable to the Works and amendments or revisions are made to it after the Base Date, any cost of compliance by the Contractor with amendments or revisions made after that date shall be borne as stated in the Contract Particulars. If the cost is to be borne by the Employer, it shall be added to the Contract Sum.


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# Section 7 Assignment, Performance Bonds and Guarantees, Third Party Rights and Collateral Warranties

## Assignment

**7.1 General**

Subject to clause 7.2, neither the Employer nor the Contractor shall without the consent of the other assign this Contract or any rights thereunder.

**7.2 Rights of enforcement**

Where clause 7.2 is stated in the Contract Particulars to apply, then, in the event of transfer by the Employer of its freehold or leasehold interest in, or of a grant by the Employer of a leasehold interest in, the whole of the premises comprising the Works or (if the Contract Particulars so state) any Section, the Employer may at any time after practical completion of the Works or of the relevant Section grant or assign to any such transferee or lessee the right to bring proceedings in the name of the Employer (whether by arbitration or litigation, whichever applies under this Contract) to enforce any of the terms of this Contract made for the benefit of the Employer. The assignee shall be estopped from disputing any enforceable agreements reached between the Employer and the Contractor which arise out of and relate to this Contract (whether or not they are or appear to be a derogation from the right assigned) and which are made prior to the date of any grant or assignment.

## Performance Bonds and Guarantees

**7.3 Performance Bonds and Guarantees**

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

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

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

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

## Clauses 7.7 to 7.11 – Preliminary

**7.4 Rights Particulars**

The requirements for the grant of P&T Rights and Funder Rights by the Contractor and sub-contractors and any requirement for the grant of Employer Rights by any sub-contractors ('Rights Particulars') are set out in the document(s) identified in the Contract Particulars against the reference to clause 7.4.[48] As respects those requirements:

7.4.1 such rights are conferred only on persons sufficiently identified (by name, class or

[48] The relevant Rights Particulars should identify the beneficiaries (by name, class or description) and the sub-contractors which 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 5 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.


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description) in the Rights Particulars;

7.4.2 if in relation to an identified beneficiary the Rights Particulars fail to specify the method by which such rights are to be conferred, the Contractor in relation to rights to be granted by it may elect to do so either as third party rights or by collateral warranty;

7.4.3 unless otherwise stated in the Rights Particulars, the term 'the Consultants' shall in all third party rights and/or collateral warranties to be granted mean the Employer's Agent (including any replacements) and any other consultants providing design services to the Employer in connection with the Works.

**7.5 Notices**

Each notice to the Contractor referred to in clauses 7.7 to 7.11 shall be given in accordance with clause 1.7.4.

**7.6 Execution of Collateral Warranties**

Where this Contract is executed as a deed, any collateral warranty to be entered into by the Contractor pursuant to clause 7.9 or 7.10 shall be executed as a deed. Where this Contract is executed under hand, any such warranty may be executed under hand.[48]

## Third Party Rights from Contractor

**7.7 Rights for Purchasers and Tenants**

7.7.1 Where the Rights Particulars state that the Contractor shall confer P&T Rights on a Purchaser or Tenant as third party rights, those rights shall vest in that Purchaser or Tenant on the date of receipt by the Contractor of the Employer's notice to that effect, stating the name of the Purchaser or Tenant and the nature of its interest in the Works, and (where paragraph 7.2, Part 1 of Schedule 5 (Third Party Rights for Purchasers and Tenants) is to apply) an email address for that Purchaser or Tenant.

7.7.2 Where P&T Rights have vested in any Purchaser or Tenant, the Employer and the Contractor shall not be entitled without the consent of that Purchaser or Tenant to amend or vary the express provisions of this clause 7.7 or of Part 1 of Schedule 5 (Third Party Rights for Purchasers and Tenants) but, subject thereto, the rights of the Employer and/or the Contractor:

7.7.2.1 to terminate the Contractor's employment under this Contract (whether under section 8 or otherwise), or to agree to rescind this Contract;

7.7.2.2 to agree to amend or otherwise vary or to waive any terms of this Contract;

7.7.2.3 to agree to settle any dispute or other matter arising out of or in connection with this Contract, in each case in or on such terms as they shall in their absolute discretion think fit,

shall not be subject to the consent of any Purchaser or Tenant.

**7.8 Rights for a Funder**

7.8.1 Where the Rights Particulars state that the Contractor shall confer Funder Rights on a Funder as third party rights, those rights shall vest in the Funder on the date of receipt by the Contractor of the Employer's notice to that effect, which (where paragraph 11.2, Part 2 of Schedule 5 (Third Party Rights for a Funder) is to apply) shall state an email address for the Funder.

7.8.2 Where Funder Rights have been vested in the Funder pursuant to clause 7.8.1:

7.8.2.1 no amendment or variation shall be made to the express terms of this clause 7.8, to Part 2 of Schedule 5 (Third Party Rights for a Funder) or to the relevant Rights Particulars without the prior written consent of the Funder; and

7.8.2.2 neither the Employer nor the Contractor shall agree to rescind this Contract, and the rights of the Contractor to terminate its employment under this Contract or to

[49] See the footnote to clause 7.4 above.


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treat this Contract as repudiated shall in all respects be subject to the provisions of paragraph 6 of Part 2 of Schedule 5

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

## Collateral Warranties from Contractor

**7.9 Contractor's Warranties – Purchasers and Tenants**

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

**7.10 Contractor's Warranty – Funder**

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

## Third Party Rights and Collateral Warranties from Sub-Contractors

**7.11 Third Party Rights and Collateral Warranties from Sub-Contractors**

Where the Rights Particulars state that a sub-contractor shall confer third party rights on a Purchaser, Tenant or Funder and/or the Employer or execute and deliver a Collateral Warranty in favour of such person:

7.11.1 the Contractor shall comply with the Contract Documents as to the obtaining of such rights or warranties including:

7.11.1.1 on receipt of notice from the Employer identifying in each case the sub-contractor, type of right or warranty and beneficiary, promptly giving notice under clause 2.26.3 or, where appropriate, 2.26.4 of the JCT Design and Build Sub-Contract Conditions or other equivalent sub-contract condition to each sub-contractor identified in the Employer's notice; and

7.11.1.2 in the case of each Collateral Warranty specified in the Employer's notice and within 21 days of receipt of that notice, taking such steps as are required to obtain each warranty, promptly forwarding the executed document to the Employer or as the Employer may direct and, where Collateral Warranty SCWa/F is required, having itself also executed and delivered the document;

7.11.2 any amendment to the form of any third party rights or collateral warranty proposed by a sub-contractor shall require approval by both the Contractor and the Employer;

7.11.3 in the case of vested third party rights, the Contractor shall not without the consent of each beneficiary in which those rights have been vested:

7.11.3.1 agree any amendment or variation to the express terms of clause 2.26, clause 2.27 or Schedule 5 (Third Party Rights) of the JCT Design and Build Sub-Contract Conditions or other equivalent conditions of the sub-contract; or

7.11.3.2 where such beneficiary is the Employer or a Funder, agree to rescind the sub-contract.


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# Section 8 Termination

## General

**8.1 Meaning of insolvency**

For the purposes of these Conditions:

8.1.1 a company becomes Insolvent:

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

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

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

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

8.1.2 a partnership becomes Insolvent:

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

8.1.2.2 when sequestration is awarded on the estate of the partnership under section 22 of the Bankruptcy (Scotland) Act 2016 or the partnership grants a trust deed for its creditors.

8.1.3 an individual becomes Insolvent:

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

8.1.3.2 on the sequestration of their estate under the Bankruptcy (Scotland) Act 2016 or when they grant a trust deed for their creditors.

8.1.4 a person also becomes Insolvent if:

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

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

8.1.4.3 (in the case of a company) a moratorium pursuant to Part A1 of the Insolvency Act 1986 comes into force with respect to it; or

8.1.4.4 (in the case of a company) an order is made sanctioning a compromise or arrangement pursuant to Part 26A of the Companies Act 2006 with respect to it.

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

**8.2 Notices under section 8**

8.2.1 Notice of termination of the Contractor's employment shall not be given unreasonably or vexatiously.

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


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8.2.3 Each notice referred to in this section, except for the notices referred to in clause 8.13, shall be given in accordance with clause 1.7.4.

**8.3 Other rights, reinstatement**

8.3.1 The provisions of clauses 8.4 to 8.7 are without prejudice to any other rights and remedies of the Employer. The provisions of clauses 8.9 and 8.10, and (in the case of termination under either of those clauses) the provisions of clause 8.12, are without prejudice to any other rights and remedies of the Contractor.

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

## Termination by Employer

**8.4 Default by Contractor**

8.4.1 If, before practical completion of the Works, the Contractor:

8.4.1.1 without reasonable cause wholly or substantially suspends the carrying out of the Works; or

8.4.1.2 fails to proceed regularly and diligently with the performance of its obligations under this Contract; or

8.4.1.3 refuses or neglects to comply with a notice or instruction from the Employer requiring it to remove any work, materials or goods not in accordance with this Contract and by such refusal or neglect the Works are materially affected; or

8.4.1.4 fails to comply with clause 3.3 or 7.1; or

8.4.1.5 fails to comply with clause 3.16,

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

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

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

**8.5 Insolvency of Contractor**

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

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

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

8.5.3.1 clauses 8.7.3 to 8.7.6 and (if relevant) clause 8.8 shall apply as if such notice had been given;

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

8.5.3.3 the Employer may take reasonable measures to ensure that the site, the Works and Site Materials are adequately protected and that such Site Materials are retained on site; the Contractor shall allow and shall not hinder or delay the


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taking of those measures.

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

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

**8.7 Consequences of termination under clauses 8.4 to 8.6**

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

8.7.1 the Employer may employ and pay other persons to carry out and complete the Works and to make good any defects of the kind referred to in clause 2.35, or may do so itself, and the Employer and such other persons may enter upon and take possession of the site and the Works and (subject to obtaining any necessary third party consents) may use all temporary buildings, plant, tools, equipment and Site Materials for those purposes;

8.7.2 the Contractor shall:

8.7.2.1 when required in writing by the Employer to do so (but not before), remove or procure the removal from the Works of any temporary buildings, plant, tools, equipment, goods and materials belonging to the Contractor or Contractor's Persons;

8.7.2.2 provide the Employer with copies of all Contractor's Design Documents then prepared, whether or not previously provided;

8.7.2.3 if so required by the Employer within 14 days of the date of termination, assign (so far as assignable and so far as it may lawfully be required to do so) to the Employer, without charge, the benefit of any agreement for the supply of materials or goods and/or for the execution of any work for the purposes of this Contract[50];

8.7.3 no further sum shall become due to the Contractor under this Contract other than any amount that may become due to it under clause 8.7.6 or 8.8.3 and the Employer need not pay any sum that has already become due either:

8.7.3.1 insofar as the Employer has given or gives a Pay Less Notice under clause 4.9.5; or

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

8.7.4 upon completion of the Works and the making good of defects in them (or of instructions otherwise, as referred to in clause 2.35) ('completion'), the Employer shall forthwith notify the Contractor of the date of completion and such completion shall be deemed for the purposes of this clause 8.7 to have taken place on the date so notified;

8.7.5 the due date for the Termination Payment under clause 8.7.6 shall be 2 months after the date of completion as referred to in clause 8.7.4;

8.7.6 the amount due on termination shall be calculated in accordance with the following amounts:

8.7.6.1 the amount of expenses properly incurred by the Employer, including those incurred pursuant to clause 8.7.1 and, where applicable, clause 8.5.3.3, and of any direct loss and/or damage caused to the Employer and for which the Contractor is liable, whether arising as a result of the termination or otherwise;

8.7.6.2 the amount of payments made to the Contractor; and

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[50] Clause 8.7.2.3 may not be effectual in cases of Contractor's insolvency.


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8.7.6.3 the total amount which would have been payable for the Works in accordance with this Contract,

and if the sum of the amounts referred to in clauses 8.7.6.1 and 8.7.6.2 exceeds the amount referred to in clause 8.7.6.3, the difference shall be an amount payable by the Contractor to the Employer or, if that sum is less, by the Employer to the Contractor (the 'Termination Payment').

**8.8 Employer's decision not to complete the Works**

8.8.1 If within the period of 6 months from the date of termination of the Contractor's employment the Employer decides not to have the Works carried out and completed, it shall forthwith notify the Contractor. If no such notification is given but within that 6 month period the Employer does not commence to make arrangements for such carrying out and completion, for the purposes of this clause 8.8 the Employer shall on and after the expiry of that 6 month period be treated as having decided not to have the Works completed.

8.8.2 The due date for the Termination Payment under clause 8.8.3 shall be 2 months after the last day of the 6 month period referred to in clause 8.8.1 whether or not the Employer has given a notification under clause 8.8.1.

8.8.3 The amount due on termination shall be calculated in accordance with the following amounts:

8.8.3.1 the total value of work properly executed at the date of termination or date on which the Contractor became Insolvent, ascertained in accordance with these Conditions as if that employment had not been terminated, together with any amounts due to the Contractor under these Conditions not included in such total value; and

8.8.3.2 the aggregate amount of any expenses properly incurred by the Employer and of any direct loss and/or damage caused to the Employer and for which the Contractor is liable, whether arising as a result of the termination or otherwise,

and after taking into account amounts previously paid to the Contractor under this Contract, if the amount referred to in clause 8.8.3.2 exceeds the amount referred to in clause 8.8.3.1, the difference shall be an amount payable by the Contractor to the Employer or, if the clause 8.8.3.2 amount is less, by the Employer to the Contractor (the 'Termination Payment').

## Termination by Contractor

**8.9 Default by Employer**

8.9.1 If the Employer:

8.9.1.1 does not pay by the final date for payment the amount due to the Contractor in accordance with clause 4.9 and/or any VAT properly chargeable on that amount; or

8.9.1.2 fails to comply with clause 7.1; or

8.9.1.3 fails to comply with clause 3.16,

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

8.9.2 If after the Date of Possession (or after any deferred Date of Possession pursuant to clause 2.4) but before practical completion of the Works the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for a continuous period of the length stated in the Contract Particulars by reason of any impediment, prevention or default, whether by act or omission, by the Employer or any Employer's Person, then, unless it is caused by the negligence or default of the Contractor or any Contractor's Person, the Contractor may give to the Employer a notice specifying the event or events (a 'specified' suspension event or events).

8.9.3 If a specified default or a specified suspension event continues for 14 days from the receipt of notice under clause 8.9.1 or 8.9.2, the Contractor may on, or within 21 days from, the


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expiry of that 14 day period by a further notice to the Employer terminate the Contractor's employment under this Contract.

8.9.4 If the Contractor for any reason does not give the further notice referred to in clause 8.9.3, but (whether previously repeated or not):

8.9.4.1 the Employer repeats a specified default; or

8.9.4.2 a specified suspension event is repeated for any period, such that the regular progress of the Works is or is likely to be materially affected thereby,

then, upon or within a reasonable time after such repetition, the Contractor may by notice to the Employer terminate the Contractor's employment under this Contract.

**8.10 Insolvency of Employer**

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

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

8.10.3 as from the date the Employer becomes Insolvent, the Contractor's obligations under Article 1 and these Conditions to carry out and complete the Works shall be suspended.

## Termination by either Party and regulation 73(1)(a) of the PC Regulations

**8.11 Termination by either Party and regulation 73(1)(a) of the PC Regulations**

8.11.1 If, before practical completion of the Works, the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for the relevant continuous period of the length stated in the Contract Particulars by reason of one or more of the following events:

8.11.1.1 force majeure;

8.11.1.2 Employer's instructions under clause 2.13, 3.9 or 3.10 issued as a result of the negligence or default of any Statutory Provider;

8.11.1.3 loss or damage to the Works occasioned by any risk covered by the Works Insurance Policy or by an Excepted Risk;

8.11.1.4 civil commotion or the use or threat of terrorism and/or the activities of the relevant authorities in dealing with such event or threat;

8.11.1.5 an epidemic:

8.11.1.5.1 first occurring after the Base Date which affects the execution of the Works; or

8.11.1.5.2 first occurring before the Base Date whose effects change after the Base Date and any such change affects the execution of the Works

by limiting the availability or use of labour or the availability of persons engaged in providing services for the Works where such labour and/or persons are necessary for the proper carrying out of the Works, or preventing the Contractor from, or delaying the Contractor in, securing such goods or materials or such services as are necessary for the proper carrying out of the Works;

8.11.1.6 the occurrence after the Base Date of any of the following which affects the execution of the Works:

8.11.1.6.1 the passing into law of any statute, statutory instrument or other subordinate legislation, regulation or bye-law, whether to make a new law or change or repeal an existing law;

8.11.1.6.2 the exercise of any statutory power, except to the extent caused or


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contributed to by any default, whether by act or omission, of the Contractor or any Contractor's Person; or

8.11.1.6.3 the publication of any guidance,

by the United Kingdom Government or any of the devolved administrations, or any Local or Public Authority or any equivalent authority governed by public law in any of the devolved administrations, or in the case of guidance by the Construction Leadership Council or its successor; or

8.11.1.7 delay in receipt of any permission or approval for the purposes of Development Control Requirements necessary for the Works to be carried out or proceed, which delay the Contractor has taken all practicable steps to avoid or reduce.

then either Party, subject to clause 8.11.2, may upon the expiry of that relevant period of suspension give notice to the other that, unless the suspension ceases within 7 days after the date of receipt of that notice, it may terminate the Contractor's employment under this Contract. Failing such cessation within that 7 day period, it may then by further notice terminate that employment.

8.11.2 The Contractor shall not be entitled to give notice under clause 8.11.1 in respect of the matter referred to in clause 8.11.1.3 where the loss or damage to the Works was caused by the negligence or default of the Contractor or any Contractor's Person.

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

## Consequences of Termination under clauses 8.9 to 8.11, etc.

8.12 **Consequences of Termination under clauses 8.9 to 8.11, etc.**

If the Contractor's employment is terminated under any of clauses 8.9 to 8.11 or under clause 6.11.2.2 or 6.14:

8.12.1 no further sums shall become due to the Contractor otherwise than in accordance with this clause 8.12;

8.12.2 the Contractor shall:

8.12.2.1 with all reasonable dispatch remove or procure the removal from the site of any temporary buildings, plant, tools and equipment belonging to the Contractor and Contractor's Persons and, subject to the provisions of clause 8.12.5, all goods and materials (including Site Materials); and

8.12.2.2 provide to the Employer copies of the documents referred to in clause 2.37 then prepared;

8.12.3 the Contractor shall not later than 2 months after the date of termination provide the Employer with all documents necessary for calculating the amounts referred to in clause 8.12.5. Not later than 3 months after receipt of those documents, the Employer shall prepare and send to the Contractor an account which shall set out the amounts referred to in clause 8.12.5;

8.12.4 the due date for the Termination Payment under clause 8.12.5 shall be the last date for issue of the Employer's account under clause 8.12.3;

8.12.5 the amount due on termination from the Employer to the Contractor or (if a negative amount) from the Contractor to the Employer shall be the aggregate of:

8.12.5.1 the total value of work properly executed at, and of any design work properly carried out before, the date of termination of the Contractor's employment, ascertained in accordance with these Conditions as if the employment had not been terminated, together with any other amounts due to the Contractor under these Conditions;

8.12.5.2 any sums ascertained in respect of direct loss and/or expense under clause 4.20


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(whether ascertained before or after the date of termination);

8.12.5.3 the reasonable cost of removal under clause 8.12.2;

8.12.5.4 the cost of materials or goods (including Site Materials) properly ordered for the Works for which the Contractor then has paid or is legally bound to pay;

8.12.5.5 (only where the Contractor's employment is terminated either under clause 8.9 or 8.10, or under clause 8.11.1.3 if the loss or damage to the Works was caused by the negligence or default of the Employer or any Employer's Person) any direct loss and/or damage caused to the Contractor by the termination,

less amounts previously paid to the Contractor under this Contract, but without deduction of any Retention (the 'Termination Payment'). Payment by the Employer for any such materials and goods as are referred to in clause 8.12.5.4 shall be subject to those materials and goods thereupon becoming the Employer's property.

## Termination Payment – final date, notices and amount

**8.13 Termination Payment – final date, notices and amount**

8.13.1 Subject to clause 8.13.5, the final date for payment of the Termination Payment shall be 14 days from its due date, as fixed in accordance with clause 8.7.5, 8.8.2 or 8.12.4.

8.13.2 Not later than 5 days after the due date for the Termination Payment the Employer shall give a notice to the Contractor, stating the sum that it considers to be or have been due at the due date, calculated in accordance with clause 8.7.6, 8.8.3 or 8.12.5, and the basis on which that sum has been calculated (the 'Employer's Termination Payment Notice'). Such notice shall show the difference or amount referred to in clause 8.7.6, 8.8.3 or 8.12.5 as a balance due to the Contractor from the Employer or vice versa.

8.13.3 If the Party by which the Termination Payment is stated to be payable ('the payer') intends to pay less than the stated balance, it shall not later than 5 days before the final date for payment give the other Party a Pay Less Notice in accordance with clause 4.10.1.

8.13.4 Where a Pay Less Notice is given under clause 8.13.3, 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.

8.13.5 If an Employer's Termination Payment Notice is not given in accordance with clause 8.13.2:

8.13.5.1 the Contractor may at any time after the 5 day period referred to in clause 8.13.2 give a notice to the Employer, stating the sum that the Contractor considers to have become due under clause 8.7.6, 8.8.3 or 8.12.5 at the due date and the basis on which that sum has been calculated (the 'Contractor's Termination Payment Notice') and, subject to any Pay Less Notice given under clause 8.13.5.3, the Termination Payment shall be the sum stated as due in the Contractor's Termination Payment Notice;

8.13.5.2 if the Contractor gives a Contractor's Termination Payment Notice, the final date for payment of the sum specified in it shall for all purposes be regarded as postponed by the same number of days as the number of days after expiry of the 5 day period referred to in clause 8.13.2 that the Contractor's Termination Payment Notice is given;

8.13.5.3 following the Contractor's Termination Payment Notice the Employer may not later than 5 days before the final date for payment give a Pay Less Notice in accordance with clause 4.10.1 and, if it gives such notice, the provisions of clause 8.13.4 shall correspondingly apply.

8.13.6 If the payer fails to pay the Termination Payment, or any part of it, by the final date for its payment, the payer 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. Acceptance of a payment of any such interest shall not in any circumstances be construed as a waiver of any right to proper payment of the principal amount due. Any such unpaid amount and any interest under this clause 8.13.6 shall be recoverable as a debt.

8.13.7 In relation to the requirements in this clause 8.13 for the giving of Employer's Termination


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Payment Notices, and Pay Less Notices, it is immaterial that the amount then considered to be due may be zero.


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# Section 9 Settlement of Disputes

## Notification and negotiation of disputes

**9.1 Notification and negotiation of disputes**

With a view to avoidance or early resolution of disputes or differences (subject to Article 8), each Party shall promptly notify the other of any matter that appears likely to give rise to a dispute or difference. The senior executives nominated in the Contract Particulars (or if either is not available, a colleague of similar standing) shall meet as soon as practicable for direct, good faith negotiations to resolve the matter.

## Mediation

**9.2 Mediation**

Subject to Article 8, if a dispute or difference arises under this Contract which cannot be resolved by direct negotiations, each Party shall give serious consideration to any request by the other to refer the matter to mediation.[51]

## Adjudication

**9.3 Adjudication**

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

9.3.1 for the purposes of the Scheme the Adjudicator shall be the person (if any) and the nominating body shall be that stated in the Contract Particulars;

9.3.2 where the dispute or difference is or includes a dispute or difference relating to clause 3.13.3 and as to whether an instruction issued thereunder is reasonable in all the circumstances:

9.3.2.1 the Adjudicator to decide such dispute or difference shall (where practicable) be an individual with appropriate expertise and experience in the specialist area or discipline relevant to the instruction or issue in dispute;

9.3.2.2 if the Adjudicator does not have the appropriate expertise and experience, the Adjudicator shall appoint an independent expert with such expertise and experience to advise and report in writing on whether or not the instruction under clause 3.13.3 is reasonable in all the circumstances.

## Arbitration

**9.4 Conduct of arbitration**

Any arbitration pursuant to Article 9 shall be conducted in accordance with the JCT 2024 edition of the Construction Industry Model Arbitration Rules (CIMAR), provided that if any amendments to that edition of the Rules have been issued by the JCT the Parties may, by a joint notice in writing to the Arbitrator, state that they wish the arbitration to be conducted in accordance with the Rules as so amended. References in clause 9.5 to a Rule or Rules are references to such Rule(s) as set out in the JCT 2024 edition of CIMAR.[52]

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[51] See the Design and Build Contract Guide.

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


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**9.5 Notice of reference to arbitration**

9.5.1 Where pursuant to Article 9 either Party requires a dispute or difference to be referred to arbitration, that Party shall serve on the other Party a notice of arbitration to such effect in accordance with Rule 2.1 identifying the dispute and requiring the other Party to agree to the appointment of an arbitrator. The Arbitrator shall be an individual agreed by the Parties or, failing such agreement within 14 days (or any agreed extension of that period) after the notice of arbitration is served, appointed on the application of either Party in accordance with Rule 2.3 by the person selected in accordance with the Contract Particulars.

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

9.5.3 After the Arbitrator has been appointed either Party may give a further notice of arbitration to the other Party and to the Arbitrator referring any other dispute which falls under Article 9 to be decided in the arbitral proceedings and Rule 3.3 shall apply.

**9.6 Powers of Arbitrator**

Subject to the provisions of Article 9 and clause 1.8, the Arbitrator shall, without prejudice to the generality of their powers, have power to rectify this Contract so that it accurately reflects the true agreement made by the Parties, to direct such measurements and/or valuations as may in their opinion be desirable in order to determine the rights of the Parties and to ascertain and award any sum which ought to have been the subject of or included in any payment and to open up, review and revise any account, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to them in the same manner as if no such account, opinion, decision, requirement or notice had been given.

**9.7 Effect of award**

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

**9.8 Appeal – questions of law**

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

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

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

**9.9 Arbitration Act 1996**

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


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# Schedules

## Schedule 1 Design Submission Procedure

(Clause 2.8)

1 The Contractor shall prepare and submit each of the Contractor's Design Documents to the Employer by the means and in the format stated in the Employer's Requirements or the Contractor's Proposals and in sufficient time to allow any comments of the Employer to be incorporated prior to the relevant Contractor's Design Document being used for procurement and/or in the carrying out of the Works. Where the means and format are not so stated, then, unless and until otherwise agreed with the Employer, the Contractor shall submit to the Employer 2 copies of each of the Contractor's Design Documents.

2 Within 14 days from the date of receipt of any Contractor's Design Document, or (if later) 14 days from either the date or expiry of the period for submission of the same stated in the Contract Documents, the Employer shall return one copy of that Contractor's Design Document to the Contractor marked 'A', 'B' or 'C' provided that a document shall be marked 'B' or 'C' only where the Employer considers that it is not in accordance with this Contract.

3 If the Employer does not respond to a Contractor's Design Document in the time stated in paragraph 2, it shall be regarded as marked 'A'.

4 Where the Employer marks a Contractor's Design Document 'B' or 'C', it shall identify by means of a written comment why it considers that the document is not in accordance with this Contract.

5 When a Contractor's Design Document is returned by the Employer:

5.1 if it is marked 'A', the Contractor shall carry out the Works in strict accordance with that document;

5.2 if it is marked 'B', the Contractor may carry out the Works in accordance with that document, provided that the Employer's comments are incorporated into it and an amended copy of it is promptly submitted to the Employer; or

5.3 if it is marked 'C', the Contractor shall take due account of the Employer's comments on it and shall either forthwith resubmit it to the Employer in amended form for comment in accordance with paragraph 1 or notify the Employer under paragraph 7.

6 The Contractor shall not carry out any work in accordance with a Contractor's Design Document marked 'C' and the Employer shall not be liable to pay for any work within the Works executed otherwise than in accordance with Contractor's Design Documents marked 'A' or 'B'.

7 If the Contractor disagrees with a comment of the Employer and considers that the Contractor's Design Document in question is in accordance with this Contract, it shall within 7 days of receipt of the comment notify the Employer that it considers that compliance with the comment would give rise to a Change. Such notification shall be accompanied by a statement setting out the Contractor's reasons. Upon receipt of such a notification the Employer shall within 7 days either confirm or withdraw the comment and, where the comment is confirmed, the Contractor shall amend and resubmit the document accordingly.

8 Provided always that:

8.1 confirmation or withdrawal of a comment in accordance with paragraph 7 shall not signify acceptance by the Employer that the relevant Contractor's Design Document or amended document is in accordance with this Contract or that compliance with the Employer's comment would give rise to a Change;

8.2 where in relation to a comment by the Employer the Contractor does not notify the Employer in accordance with paragraph 7, the comment in question shall not be treated as


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giving rise to a Change; and

8.3 neither compliance with the design submission procedure in this Schedule nor with the Employer's comments shall diminish the Contractor's obligations to ensure that the Contractor's Design Documents and Works are in accordance with this Contract.


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# Schedule 2 Supplemental Provisions

(Seventh Recital)

## Part 1

Supplemental Provisions 1 to 3 apply only if so stated in the Contract Particulars.

**Named Sub-Contractors**

1

1.1 Where the Employer's Requirements state that work ('Named Sub-Contract Work') is to be executed by a named person as the Contractor's sub-contractor (a 'Named Sub-Contractor'):

1.1.1 as soon as reasonably practicable after entering into this Contract the Contractor shall enter into a sub-contract with the Named Sub-Contractor that includes the undertaking referred to in paragraph 1.5 and notify the Employer of the date of such sub-contract;

1.1.2 if for any reason the Contractor is unable to enter into that sub-contract it shall immediately notify the Employer of the grounds and provided the Contractor has acted reasonably the Employer shall by a Change instruction:

1.1.2.1 remove the grounds;

1.1.2.2 direct the Contractor to carry out that work using either its own resources or, at the Contractor's option, a sub-contractor selected by the Contractor and approved by the Employer; or

1.1.2.3 omit the Named Sub-Contract Work from this Contract,

but shall not require that the work be executed by another Named Sub-Contractor.

1.2 Subject to the provisions contained in paragraph 1.1.2, the provisions of clause 5.2 *(Valuation of Changes)*, clauses 2.23 to 2.26 *(Adjustment of Completion Date)* and clauses 4.19 to 4.23 *(Loss and Expense)* shall as relevant apply to the Change instruction issued under that paragraph.

1.3 If the Contractor becomes entitled to terminate a Named Sub-Contractor's employment under its sub-contract or to give notice of a specified default which, if continued, would be grounds for such termination or is entitled to treat the sub-contract as repudiated, the Contractor:

1.3.1 shall promptly, and prior to giving any notice to that effect to the Named Sub-Contractor, notify the Employer and consult with it, if requested;

1.3.2 save where the Named Sub-Contractor is or becomes Insolvent, shall not give notice of termination, or notice that it is treating the sub-contract as repudiated, without the Employer's consent; and

1.3.3 shall at the time of issue send the Employer a copy of each notice that it gives to the Named Sub-Contractor.

1.4 If the Named Sub-Contractor's employment is terminated or if it repudiates the sub-contract:

1.4.1 the Contractor shall itself or by its selected sub-contractor complete any balance of the Named Sub-Contract Work;

1.4.2 such completion shall be treated as a Change except where the termination has resulted from the Contractor's default, whether by act or omission, or where


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there has been a material breach of paragraph 1.3; and

1.4.3 the Contractor shall account to the Employer for such proportion of any amount that it recovers, or with reasonable diligence could have recovered, from the Named Sub-Contractor in respect of the termination, as may properly and fairly be regarded as due to the Employer to offset the cost to it of the Change.

1.5 The Contractor shall include in any Named Sub-Contract a condition stating that the Named Sub-Contractor, having had notice of the terms in this Supplemental Provision 1, undertakes not to contend, whether in proceedings or otherwise, that the Contractor has suffered or incurred no loss and/or expense or that its liability to the Contractor should be in any way reduced or extinguished by reason of this Supplemental Provision 1 and in particular paragraph 1.4.

1.6 The Contractor's responsibility for carrying out and completing the Works in all respects in accordance with clauses 2.1.1 to 2.1.4 shall not be affected in any manner by the naming of any person for any work in accordance with this Supplemental Provision 1 or by any of the events that it refers to.

**Valuation of Changes – Contractor's estimates**

**2**

2.1 Section 5 *(Changes)*, clauses 2.23 to 2.26 *(Adjustment of Completion Date)* and clauses 4.19 to 4.23 *(Loss and Expense)* shall have effect as modified by the provisions of paragraphs 2.2 to 2.6.

2.2 Where compliance with instructions of the Employer under clause 3.9 will in the opinion of the Contractor or of the Employer entail a Valuation under clause 5.2 and/or the making of an adjustment of time in respect of the Relevant Event and/or the ascertainment of direct loss and/or expense under clause 4.20 the Contractor, before such compliance, shall submit to the Employer within 14 days of the date of the relevant instruction (or within such other period as may be agreed or, failing agreement, within such other period as may be reasonable in all the circumstances) estimates, or such of those as are relevant, as referred to in paragraphs 2.3.1 to 2.3.5 unless:

2.2.1 the Employer with the instructions or within 14 days thereafter states in writing that such estimates are not required; or

2.2.2 the Contractor within 10 days of receipt of the instructions raises for itself or on behalf of any sub-contractor reasonable objection to the provision of all or any of such estimates.

2.3 The estimates required under paragraph 2.2 shall be in substitution for any Valuation under clause 5.2 and/or any ascertainment under clause 4.20 and shall comprise:

2.3.1 the value of the adjustment to the Contract Sum, supported by all necessary calculations by reference to the values in the Contract Sum Analysis;

2.3.2 the additional resources (if any) required to comply with the instructions;

2.3.3 a method statement for compliance with the instructions;

2.3.4 the length of any extension of time required and the resultant change in the Completion Date; and

2.3.5 the amount of any direct loss and/or expense, not included in any other estimate, which results from the regular progress of the Works or any part of them being materially affected by compliance with the instructions under clause 3.9.

2.4 Upon submission of the estimates required under paragraph 2.2 the Employer and Contractor shall take all reasonable steps to agree those estimates and upon such agreement those estimates shall be binding on the Employer and Contractor.

2.5 If within 10 days of receipt of the Contractor's estimates the Contractor and Employer cannot agree on all or any of the matters therein the Employer:

2.5.1 may instruct compliance with the instruction and this Supplemental Provision 2


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shall not apply in respect of that instruction; or

2.5.2 may withdraw the instruction.

Where the Employer withdraws the instructions under paragraph 2.5.2 such withdrawal shall be at no cost to the Employer except that where the preparation of the estimates involved the Contractor in any additional design work solely and necessarily carried out for the purpose of preparing its estimates such design work shall be treated as a Change.

2.6 If the Contractor is in breach of paragraph 2.2 compliance with the instruction shall be dealt with in accordance with clauses 2.23 to 2.26, 3.9 and 4.20 but any resultant addition to the Contract Sum in respect of such compliance shall not be included in Interim Payments but shall be included in the adjustment of the Contract Sum under clause 4.2. Provided that such addition shall not include any amount in respect of loss of interest or any financing charges in respect of the cost to the Contractor of compliance with the instruction which have been suffered or incurred by it prior to the date of issue of the Final Statement or Employer's Final Statement.

**Loss and expense – Contractor's estimates**

3

3.1 Clauses 4.19 to 4.23 *(Loss and Expense)* shall have effect as modified by the provisions of paragraphs 3.2 to 3.6.

3.2 Where the Contractor pursuant to clause 4.19 is entitled to an amount in respect of direct loss and/or expense to be added to the Contract Sum, it shall (except in respect of direct loss and/or expense dealt with or being dealt with under Supplemental Provision 2) on presentation of the next Interim Payment Application submit to the Employer an estimate of the addition to the Contract Sum which the Contractor requires in respect of such loss and/or expense which it has incurred in the period immediately preceding that for which the Interim Payment Application has been made.

3.3 Following the submission of an estimate under paragraph 3.2 the Contractor shall for so long as it has incurred direct loss and/or expense to which clause 4.19 refers, on presentation of each Interim Payment Application submit to the Employer an estimate of the addition to the Contract Sum which the Contractor requires in respect of such loss and/or expense which has been incurred by it in the period immediately preceding that for which each Interim Payment Application is made.

3.4 Within 21 days of receipt of any estimate submitted under paragraph 3.2 or 3.3 the Employer may request such information and details as it may reasonably require in support of the Contractor's estimate but within the aforesaid 21 days the Employer shall give to the Contractor notice that:

3.4.1 it accepts the estimate;

3.4.2 it wishes to negotiate on the amount of the addition to the Contract Sum and in default of agreement to refer the issue as a dispute or difference to the Adjudicator in accordance with the provisions of clause 9.3; or

3.4.3 the provisions of clauses 4.19 and 4.20 shall apply in respect of the loss and/or expense to which the estimate relates.

If the Employer elects to negotiate pursuant to paragraph 3.4.2 and agreement is not reached, the provisions of clauses 4.19 and 4.20 shall apply in respect of the loss and/or expense to which the estimate relates.

3.5 Upon acceptance or agreement under paragraph 3.4.1 or 3.4.2 as to the amount of the addition to the Contract Sum such amount shall be added to the Contract Sum and no further additions to the Contract Sum shall be made in respect of the direct loss and/or expense incurred by the Contractor during the period and in respect of the matter set out in clauses 4.19 to 4.21 to which that amount related.

3.6 If the Contractor is in breach of paragraphs 3.2 and 3.3 direct loss and/or expense incurred by the Contractor shall be dealt with in accordance with clauses 4.19 and 4.20 save that any resultant addition to the Contract Sum shall not be included in Interim Payments but shall be included in the adjustment of the Contract Sum under clause 4.2. Provided that such addition shall not include any amount in respect of loss of interest or financing


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charges in respect of such direct loss and/or expense which have been suffered or incurred by the Contractor prior to the date of issue of the Final Statement or Employer's Final Statement.

## Part 2

Supplemental Provisions 4 to 7 apply unless otherwise stated in the Contract Particulars. Supplemental Provision 8 applies where the Employer is a Local or Public Authority or other body of the type mentioned in that provision; Supplemental Provision 9 applies where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations.

**Acceleration Quotation**

4

4.1

4.1.1 If the Employer wishes to investigate the possibility of achieving practical completion before the Completion Date for the Works or a Section it shall invite proposals from the Contractor in that regard (an 'Acceleration Quotation'). The Contractor on receiving such an invitation shall either:

4.1.1.1 provide an Acceleration Quotation accordingly, identifying the time that can be saved, the amount of the adjustment to the Contract Sum (inclusive of such amounts as are referred to in paragraph 4.1.2) and any other conditions attached; or

4.1.1.2 explain why it would be impracticable to achieve practical completion earlier than the Completion Date.

4.1.2 The adjustment to the Contract Sum to be specified under paragraph 4.1.1.1 shall include the amount to be paid in respect of any direct loss and/or expense that is not included in any other Confirmed Acceptance or in any ascertainment under clause 4.20 together with a fair and reasonable amount in respect of the cost of preparing the quotation.

4.1.3 The Employer may on or before receipt of the quotation seek revised proposals.

4.1.4 Without affecting its obligations under clauses 2.1.1 to 2.1.4 and 2.3, the Contractor shall be under no obligation to accelerate, or take any steps for that purpose, until it receives a Confirmed Acceptance of its Acceleration Quotation under paragraph 4.3.

4.2

4.2.1 Unless otherwise agreed, the Acceleration Quotation shall be submitted in compliance with the invitation not later than 21 days from the later of:

4.2.1.1 the date of receipt of the invitation; or

4.2.1.2 the date of receipt by the Contractor of information sufficient to enable it to prepare the quotation.

4.2.2 The quotation shall remain open for acceptance by the Employer for not less than 7 days from its receipt.

4.2.3 The Parties may agree to increase or reduce any of the periods referred to in this Supplemental Provision 4; confirmation of such agreement shall be notified to the Contractor by or on behalf of the Employer.

4.3 If the Employer wishes to accept an Acceleration Quotation, it shall within the period for acceptance confirm such acceptance by an instruction to the Contractor (a 'Confirmed Acceptance') stating:

4.3.1 the adjustment of the Contract Sum (including any amounts referred to in paragraph 4.1.2) to be made for complying with the instruction;

4.3.2 the adjustment to the time required by the Contractor for completion of the


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Works and/or Section and the resultant revised Completion Date(s) (which, where relevant, may be a date earlier than the Date for Completion); and

4.3.3 any such conditions as are referred to in paragraph 4.1.1.1.

4.4

4.4.1 If an Acceleration Quotation is not accepted, a fair and reasonable amount shall be added to the Contract Sum in respect of the cost of its preparation provided that it has been prepared on a fair and reasonable basis. Non-acceptance by the Employer of a quotation shall not of itself be evidence that the quotation was not prepared on such a basis.

4.4.2 Unless the Employer issues a Confirmed Acceptance, neither the Employer nor the Contractor may use the quotation for any purpose whatsoever.

**Health and safety**

**5**

5.1 Without limiting either Party's statutory and/or regulatory duties and responsibilities and/or the specific health and safety requirements of this Contract, the Parties will endeavour to establish and maintain a culture and working environment in which health and safety is of paramount concern to everybody involved with the project.

5.2 In addition to the specific health and safety requirements of this Contract, the Contractor undertakes to:

5.2.1 comply with any and all approved codes of practice produced or promulgated by the Health and Safety Executive;

5.2.2 ensure that all personnel engaged by the Contractor and members of the Contractor's supply chain on site receive appropriate site-specific health and safety induction training and regular refresher training;

5.2.3 ensure that all such personnel have access at all times to competent health and safety advice in accordance with regulation 7 of the Management of Health and Safety at Work Regulations 1999; and

5.2.4 ensure that there is full and proper health and safety consultation with all such personnel in accordance with the Health and Safety (Consultation with Employees) Regulations 1996.

**Cost savings and value improvements**

**6**

6.1 The Contractor is encouraged to propose changes to designs and specifications for the Works and/or to the programme for their execution that may benefit the Employer, whether in the form of a reduction in the cost of the Works or their associated life cycle costs, through practical completion at a date earlier than the Completion Date or otherwise.

6.2 The Contractor shall provide details of its proposed changes, identifying them as suggested under this Supplemental Provision 6, together with its assessment of the benefit it believes the Employer may obtain, expressed in financial terms, and a quotation.

6.3 Where the Employer wishes to implement a change proposed by the Contractor, the Parties shall negotiate with a view to agreeing its value, the financial benefit and any adjustment to the Completion Date. Upon agreement, the change and the amount of any adjustment of the Contract Sum shall be confirmed in an Employer's instruction, together with the share of the financial benefit to be paid to the Contractor and any adjustment to the Completion Date.

6.4 Original proposals by the Contractor under this Supplemental Provision 6 may only be instructed in accordance with it, provided always that nothing shall prevent the Employer from utilising other contractors to implement such changes after practical completion of the Works.


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**Performance Indicators and monitoring**

7

7.1 The Employer shall monitor and assess the Contractor's performance by reference to any performance indicators stated or identified in the Contract Documents.

7.2 The Contractor shall provide to the Employer all information that the Employer may reasonably require to monitor and assess the Contractor's performance against the targets for those performance indicators.

7.3 Where the Employer considers that a target for any of those performance indicators may not be met, it may inform the Contractor and the Contractor shall submit its proposals for improving its performance against that target to the Employer.

**Transparency**

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

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

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

**The Public Contracts Regulations 2015**

9 Where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations[53]:

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

9.2 the Contractor shall include in any sub-contract it enters into provisions requiring the sub-contractor:

9.2.1 to supply and notify to the Contractor the information required (as applicable) under regulations 71(3), 71(4) and 71(5) of the PC Regulations; and

9.2.2 to include in any sub-subcontract the sub-contractor in turn enters into provisions to the same effect as required under paragraph 9.2.1 of Supplemental Provision 9;

9.3

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

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

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[53] An explanatory summary of those provisions in the PC Regulations that are reflected in this Contract is contained in the Design and Build Contract Guide. Provisions relating to the PC Regulations are also set out in section 8 (Termination) of this Contract. The JCT Design and Build Sub-Contract (DBSub) meets the requirements of Supplemental Provision 9.


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# Schedule 3 Insurance Options

(Clause 6.7)

## Insurance Option A

(New Buildings – All Risks Insurance of the Works by the Contractor)[54]

Not applicable

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


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## Insurance Option B

(New Buildings – All Risks Insurance of the Works by the Employer)[54]

Not applicable


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## Insurance Option C

### (Joint Names Insurance by the Employer of Existing Structures and Works in or Extensions to them)[55]

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

**C.1** The Employer shall unless otherwise stated by the Contract Particulars for clause 6.7 and this Schedule effect and for the period specified in clause 6.7.2 maintain a Joint Names Policy in respect of the Existing Structures together with the contents of them owned by it or for which it is responsible, for the full cost of reinstatement, repair or replacement of loss or damage due to any of the Specified Perils.

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

**C.2** The Employer shall effect and for the period specified in clause 6.7.2 maintain a Joint Names Policy for All Risks Insurance with cover no less than that specified in clause 6.8 for the full reinstatement value of the Works or (where applicable) Sections (plus the percentage, if any, stated in the Contract Particulars to cover professional fees).

**Loss or damage**

**C.3** If during the carrying out of the Works there is any loss of or damage of any kind to any executed work, Site Materials and/or to any Existing Structures or their contents the provisions of clauses 6.13 and 6.14 shall as relevant apply.

---

[55] **Insurance Option C** is for use where there are Existing Structures. It can be used in its existing printed form by those Employers able to affect the Joint Names, Specified Perils cover for the Contractor in respect of the Existing Structures and those contents that are owned by the Employer or for which it is responsible.
However, the Joint Names Policy required by paragraph C.1 or the extension of a subsisting structure and contents policy to being a Joint Names Policy may not be readily available – and that provision is often not now appropriate for – refurbishment projects or alterations by tenant Employers where Existing Structures insurance is the landlord's responsibility.
Joint Names cover may also not be readily available to some domestic owner-occupiers looking to undertake refurbishments or extensions to their property.
The Contract Particulars for clause 6.7 and Schedule 3 therefore expressly allow the Parties in those circumstances to disapply paragraph C.1 and, by means of a C.1 Replacement Schedule, to include in place of that paragraph provisions that are tailored to their particular requirements.
**In JCT's view the preparation of such replacement provisions must be assigned to insurance professionals.**
An explanatory summary of the alternative arrangements generally adopted to overcome those difficulties is, however, contained in the Design and Build Contract Guide.


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# Schedule 4 Code of Practice

(Clause 3.13.3)

The purpose of the Code is to assist in the fair and reasonable operation of the requirements of clause 3.13.3.

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

1 the need in the event of non-compliance to demonstrate at no cost to the Employer either that it is unique and not likely to occur in similar elements of the Works or alternatively, the extent of any similar non-compliance in the Works already constructed or still to be constructed;

2 the need to discover whether any non-compliance in a primary structural element is a failure of workmanship and/or materials such that rigorous testing of similar elements must take place; or, where the non-compliance is in a less significant element, whether it is such as is to be statistically expected and can simply be repaired; or whether the non-compliance indicates an inherent weakness such as can only be found by selective testing, the extent of which must depend upon the importance of any detail concerned;

3 the significance of the non-compliance, having regard to the nature of the work in which it has occurred;

4 the consequence of any similar non-compliance on the safety of the building, its effect on users, adjoining property, the public, and compliance with any Statutory Requirements;

5 the level and standard of supervision and control of the Works by the Contractor;

6 the relevant records of the Contractor and, where relevant, those of any sub-contractor, whether resulting from the supervision and control referred to in paragraph 5 or otherwise;

7 any Codes of Practice or similar advice issued by a responsible body which are applicable to the non-compliant work, materials or goods;

8 any failure by the Contractor to carry out, or to secure the carrying out of, any tests specified in the Employer's Requirements or Contractor's Proposals or in an instruction of the Employer;

9 the reason for the non-compliance, when this has been established;

10 any technical advice that the Contractor has obtained in respect of the non-compliant work, materials or goods;

11 current recognised testing procedures;

12 the practicability of progressive testing in establishing whether any similar non-compliance is reasonably likely;

13 if alternative testing methods are available, the time required for and the consequential costs of such alternative testing methods;

14 any proposals of the Contractor; and

15 any other relevant matters.


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# Schedule 5 Third Party Rights

(Clauses 7.7 and 7.8)

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

**('P&T Rights')**

1

1.1 The Contractor warrants as at and with effect from practical completion of the Works (or, where there are Sections, practical completion of the relevant Section) that it has carried out the Works or, as the case may be, that Section, in accordance with this Contract. In the event of any breach of this warranty and subject to paragraphs 1.2, 1.3 and 1.4:

1.1.1 the Contractor shall be liable for the reasonable costs of repair, renewal and/or reinstatement of any part or parts of the Works to the extent that the Purchaser or Tenant incurs such costs and/or the Purchaser or Tenant is or becomes liable either directly or by way of financial contribution for such costs; and

1.1.2 where the Rights Particulars state that paragraph 1.1.2 applies, the Contractor shall in addition to the costs referred to in paragraph 1.1.1 be liable for any other losses incurred by the Purchaser or Tenant up to the maximum liability stated in or by the Rights Particulars.

1.2 Where paragraph 1.1.2 does not apply, the Contractor shall not be liable for any losses incurred by the Purchaser or Tenant other than the costs referred to in paragraph 1.1.1.

1.3 The Contractor's liability to a Purchaser or Tenant in respect of its P&T Rights shall be limited to the proportion of the Purchaser's or Tenant's losses which it would be just and equitable to require the Contractor to pay having regard to the extent of the Contractor's responsibility for the same, on the assumptions that the Consultant(s)[56]:

1.3.1 has or have provided contractual undertakings to or conferred third party rights on the Purchaser or Tenant as regards the performance of its or their services in connection with the Works in accordance with the terms of its or their respective consultancy agreements and that there are no limitations on liability as between the Consultant and the Employer in the consultancy agreement(s); and

1.3.2 has or have paid to the Purchaser or Tenant such proportion of the Purchaser's or Tenant's losses as it would be just and equitable for them to pay having regard to the extent of their responsibility for the Purchaser's or Tenant's losses.

1.4 The Contractor shall be entitled in any action or proceedings by the Purchaser or Tenant to rely on any term in this Contract and to raise the equivalent rights in defence of liability as it would have against the Employer under this Contract.

1.5 The obligations of the Contractor under or pursuant to this paragraph 1 shall not be released or diminished by the appointment of any person by the Purchaser or Tenant to carry out any independent enquiry into any relevant matter.

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

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

[56] See the Design and Build Contract Guide.


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4 The Purchaser or Tenant, insofar as it is the purchaser or tenant of any part(s) of the site, and subject to the Contractor having been paid all sums due and payable under this Contract, shall in respect of such parts have rights and licences in relation to the Contractor's Design Documents in the same terms as those conferred on the Employer by clause 2.36, but subject to similar conditions, limitations and exclusions as apply thereunder to the Employer.

5 Where this Contract requires the Contractor to take out and maintain Professional Indemnity insurance, the Contractor warrants that it has and shall maintain that insurance in the amount, on the terms and for the period referred to in clause 6.15 and its related Contract Particulars[57]. The Contractor shall immediately give written notice to the Purchaser or Tenant if such insurance ceases to be available at commercially reasonable rates or terms in order that the Contractor and the Purchaser or Tenant can discuss the means of best protecting their respective positions in the absence of such insurance. As and when reasonably requested to do so by the Purchaser or Tenant, the Contractor shall produce for inspection documentary evidence that its Professional Indemnity insurance is being maintained.

6 P&T Rights may be assigned without the Contractor's consent by a Purchaser or Tenant, by way of absolute legal assignment, to another person (P1) taking an assignment of the Purchaser's or Tenant's interest in the Works and by P1, by way of absolute legal assignment, to another person (P2) taking an assignment of P1's interest in the Works. In such cases the assignment shall only be effective upon written notice of it being given to the Contractor. No further or other assignment of a Purchaser's or Tenant's rights under this Schedule will be permitted and in particular P2 shall not be entitled to assign these rights.

7 Any notice to be given by the Purchaser or Tenant to the Contractor or by the Contractor to the Purchaser or Tenant shall be duly given if:

7.1 delivered by hand or sent by Signed For 1st class or Special Delivery Guaranteed post (or any method of posting as has replaced either method and is then current) to the recipient at such address as it may from time to time notify to the sender or (if no such address is then current) its last known principal business address or (where a body corporate) its registered or principal office and, where sent by post in that manner, it shall be deemed to have been received on the second Business Day after the date of posting; or

7.2 (where an email address has been stated for the Purchaser or Tenant (as the case may be) in the Employer's notice under clause 7.7.1 and for the Contractor in the Contract Particulars against clause 1.7.3) sent by email to the recipient's email address as there stated, or to such other email address as the recipient may from time to time notify to the sender, and shall be deemed to have been received on the next Business Day after the day on which it was sent.

8 No action or proceedings for any breach of P&T Rights shall be commenced against the Contractor after the expiry of the relevant period from the date of practical completion of the Works. Where there are Sections, no such action or proceedings shall be commenced against the Contractor in respect of any Section after the expiry of the relevant period from the date of practical completion of such Section. For the purposes of this paragraph, the relevant period shall be:

8.1 where this Contract is executed under hand, 6 years; and

8.2 where this Contract is executed as a deed, 12 years.

9 For the avoidance of doubt, the Contractor shall have no liability to the Purchaser or Tenant under this Schedule for delay in completion of the Works.

10 This Schedule shall be governed by and construed in accordance with the law of England and the English courts shall have jurisdiction over any dispute or difference between the Contractor and any Purchaser or Tenant which arises out of or in connection with the P&T Rights of that Purchaser or Tenant.

## Part 2: Third Party Rights for a Funder

**('Funder Rights')**

1 The Contractor warrants that it has complied and will continue to comply with this Contract. In the event of any breach of this warranty:

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[57] For Contractors which do not carry Professional Indemnity insurance, see the Design and Build Contract Guide.


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1.1 the Contractor's liability to the Funder for costs under this Schedule shall be limited to the proportion of the Funder's losses which it would be just and equitable to require the Contractor to pay having regard to the extent of the Contractor's responsibility for the same, on the assumptions that the Consultant(s)[55]:

1.1.1 has or have provided contractual undertakings to or conferred third party rights on the Funder that it or they has or have and will perform its or their services in connection with the Works in accordance with the terms of its or their respective consultancy agreements and that there are no limitations on liability as between the Consultant and the Employer in the consultancy agreement(s); and

1.1.2 has or have paid to the Funder such proportion of the Funder's losses as it would be just and equitable for them to pay having regard to the extent of their responsibility for the Funder's losses;

1.2 the Contractor shall be entitled in any action or proceedings by the Funder to rely on any term in this Contract and to raise the equivalent rights in defence of liability as it would have against the Employer under this Contract;

1.3 the obligations of the Contractor under or pursuant to this paragraph 1 shall not be released or diminished by the appointment of any person by the Funder to carry out any independent enquiry into any relevant matter.

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

3 The Funder has no authority to issue any direction or instruction to the Contractor in relation to this Contract unless and until the Funder has given notice under paragraph 5 or 6.4.

4 The Funder has no liability to the Contractor in respect of amounts due under this Contract unless and until the Funder has given notice under paragraph 5 or 6.4.

5 The Contractor agrees that, in the event of the termination of the Finance Agreement by the Funder, the Contractor shall, if so required by written notice given by the Funder within 14 days after the date of such termination and subject to paragraph 7, accept the instructions of the Funder or its appointee to the exclusion of the Employer in respect of the Works upon the terms and conditions of this Contract. The Employer acknowledges that the Contractor shall be entitled to rely on a notice given to the Contractor by the Funder under this paragraph 5 as conclusive evidence for the purposes of this Contract of the termination of the Finance Agreement by the Funder; and further acknowledges that such acceptance of the instructions of the Funder to the exclusion of the Employer shall not constitute any breach of the Contractor's obligations to the Employer under this Contract.

6

6.1 The Contractor shall not exercise any right of termination of its employment under this Contract without having first:

6.1.1 copied to the Funder any notices required by this Contract to be sent to the Employer prior to the Contractor being entitled to give notice under this Contract that its employment under this Contract is terminated; and

6.1.2 given to the Funder written notice that it has the right under this Contract forthwith to notify the Employer that its employment under this Contract is terminated.

6.2 The Contractor shall not treat this Contract as having been repudiated by the Employer without having first given to the Funder written notice that it intends so to notify the Employer.

6.3 The Contractor shall not:

6.3.1 issue a notice to the Employer to which paragraph 6.1.2 refers; or

6.3.2 notify the Employer that it is treating this Contract as having been repudiated by the Employer as referred to in paragraph 6.2


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before the lapse of 14 days from receipt by the Funder of the notice by the Contractor which the Contractor is required to give under paragraph 6.1.2 or 6.2.

6.4 The Funder may, not later than the expiry of the period referred to in paragraph 6.3, require the Contractor by written notice and subject to paragraph 7 to accept the instructions of the Funder or its appointee to the exclusion of the Employer in respect of the Works upon the terms and conditions of this Contract. The Employer acknowledges that the Contractor shall be entitled to rely on a notice given to the Contractor by the Funder under this paragraph 6.4 and that acceptance by the Contractor of the instructions of the Funder to the exclusion of the Employer shall not constitute any breach of the Contractor's obligations to the Employer under this Contract. Provided that nothing in this paragraph 6.4 shall relieve the Contractor of any liability it may have to the Employer for any breach by the Contractor of this Contract.

7 It shall be a condition of any notice given by the Funder under paragraph 5 or 6.4 that the Funder or its appointee accepts liability for payment of the sums due and payable to the Contractor under this Contract and for performance of the Employer's obligations including payment of any sums outstanding at the date of such notice. Upon the issue of any notice by the Funder under paragraph 5 or 6.4, this Contract shall continue in full force and effect as if no right of termination of the Contractor's employment under this Contract, nor any right of the Contractor to treat this Contract as having been repudiated by the Employer, had arisen and the Contractor shall be liable to the Funder and its appointee under this Contract in lieu of the Contractor's liability to the Employer. If any notice given by the Funder under paragraph 5 or 6.4 requires the Contractor to accept the instructions of the Funder's appointee, the Funder shall be liable to the Contractor as guarantor for the payment of all sums from time to time due to the Contractor from the Funder's appointee.

8 Subject to the Contractor having been paid all sums due and payable under this Contract, the Funder shall have rights and licences in relation to the Contractor's Design Documents in the same terms as those conferred on the Employer by clause 2.38, but subject to similar conditions, limitations and exclusions as apply thereunder to the Employer.

9 Where this Contract requires the Contractor to take out and maintain Professional Indemnity insurance, the Contractor warrants that it has and shall maintain that insurance in the amount, on the terms and for the period referred to in clause 6.15 and its related Contract Particulars[37]. The Contractor shall immediately give written notice to the Funder if such insurance ceases to be available at commercially reasonable rates or terms in order that the Contractor and the Funder can discuss the means of best protecting their respective positions in the absence of such insurance. As and when reasonably requested to do so by the Funder or its appointee under paragraph 5 or 6.4, the Contractor shall produce for inspection documentary evidence that its Professional Indemnity insurance is being maintained.

10 The rights contained in this Schedule may be assigned without the Contractor's consent by the Funder, by way of absolute legal assignment, to another person (P1) providing finance or re-finance in connection with the carrying out of the Works and by P1, by way of absolute legal assignment, to another person (P2) providing finance or re-finance in connection with the carrying out of the Works. In such cases the assignment shall only be effective upon written notice of it being given to the Contractor. No further or other assignment of Funder Rights will be permitted and in particular P2 shall not be entitled to assign these rights.

11 Any notice to be given by the Contractor to the Funder or by the Funder to the Contractor shall be duly given if:

11.1 delivered by hand or sent by Signed For 1st class or Special Delivery Guaranteed post (or any method of posting as has replaced either method and is then current) to the recipient at such address as it may from time to time notify to the sender or (if no such address is then current) its last known principal business address or (where a body corporate) its registered or principal office and, where sent by post in that manner, it shall be deemed to have been received on the second Business Day after the date of posting; or

11.2 (where an email address has been stated for the Funder in the Employer's notice under clause 7.8.1 and for the Contractor in the Contract Particulars against clause 1.7.3) sent by email to the recipient's email address as there stated, or to such other email address as the recipient may from time to time notify to the sender, and shall be deemed to have been received on the next Business Day after the day on which it was sent.

12 No action or proceedings for any breach of the rights contained in this Schedule shall be commenced against the Contractor after the expiry of the relevant period from the date of practical completion of the Works. Where there are Sections, no such action or proceedings shall be commenced against the


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Contractor in respect of any Section after the expiry of the relevant period from the date of practical completion of such Section. For the purposes of this paragraph, the relevant period shall be:

12.1 where this Contract is executed under hand, 6 years; and

12.2 where this Contract is executed as a deed, 12 years.

**13** Notwithstanding the rights contained in this Schedule, the Contractor shall have no liability to the Funder for delay under this Contract unless and until the Funder serves notice pursuant to paragraph 5 or 6.4. For the avoidance of doubt the Contractor shall not be required to pay damages in respect of the period of delay where the same has been paid to or deducted by the Employer.

**14**

14.1 This Schedule shall be governed by and construed in accordance with the law of England and subject to paragraph 14.2 the English courts shall have jurisdiction over any dispute or difference between the Contractor and the Funder which arises out of or in connection with this Schedule.

14.2 Following the giving of any notice by the Funder pursuant to paragraph 5 or 6.4, any dispute or difference which shall arise between the Contractor and the Funder (including any appointee or permitted assignee) shall be subject to the provisions of Article 8 and (where they apply) Article 9 and clauses 9.4 to 9.9.


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# Schedule 6 Forms of Bonds

(Clauses 4.6, 4.15 and 4.17)

(Agreed between the JCT and the British Bankers' Association[58])

## Part 1: Advance Payment Bond[59]

1 THE parties to this Bond are:

_____

whose registered office is at _____

_____ ('the Surety'), and

_____

of _____

_____ ('the Employer').

2 The Employer and _____ ('the Contractor')

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

_____

3 The Employer has agreed to pay the Contractor the sum of [_____] as an advance payment of sums due to the Contractor under the Contract ('the Advance Payment') for reimbursement by the Surety on the following terms:

3.1 when the Surety receives a demand from the Employer in accordance with clause 3.2 below the Surety shall repay the Employer the sum demanded up to the amount of the Advance Payment;

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

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

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

5 The Surety consents and agrees that the following actions by the Employer may be made and done without notice to or consent of the Surety and without in any way affecting changing or releasing the Surety from its obligations under this Bond and the liability of the Surety hereunder shall not in any

[58] The British Bankers' Association has been merged into UK Finance.

[59] Not applicable where the Employer is a Local Authority or other public sector body.


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way be affected hereby. The actions are:

5.1 waiver by the Employer of any of the terms, provisions, conditions, obligations and agreements of the Contractor or any failure to make demand upon or take action against the Contractor;

5.2 any modification or changes to the Contract; and/or

5.3 the granting of any extensions of time to the Contractor without affecting the terms of clause 7.3 below.

6 The Surety's maximum aggregate liability under this Bond which shall commence on payment of the Advance Payment by the Employer to the Contractor shall be the amount of [_____] which sum shall be reduced by the amount of any reimbursement made by the Contractor to the Employer as advised by the Employer in writing to the Surety.

7 The obligations of the Surety under this Bond shall cease upon whichever is the earliest of:

7.1 the date on which the Advance Payment is reduced to nil as certified in writing to the Surety by the Employer;

7.2 the date on which the Advance Payment or any balance thereof is repaid to the Employer by the Contractor (as certified in writing to the Surety by the Employer) or by the Surety; and

7.3 [*longstop date to be given*],

and any claims hereunder must be received by the Surety in writing on or before such earliest date.

8 This Bond is not transferable or assignable without the prior written consent of the Surety. Such written consent will not be unreasonably withheld.

9 Notwithstanding any other provisions of this Bond nothing in this Bond confers or is intended to confer any right to enforce any of its terms on any person which is not a party to it.

10 This Bond shall be governed and construed in accordance with the laws of England and Wales.

---

**IN WITNESS** whereof this Deed of Guarantee has been duly executed and delivered on the date below.

Signed as a Deed by: _____

as the Attorney and on behalf of the Surety: _____

In the presence of:

_____
*witness' signature*

_____
*witness's name*

_____
*witness's address*

_____

Date: _____


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## Schedule to Advance Payment Bond

(clause 3.2 of the Bond)

## Notice of Demand

Date of Notice: _____

Date of Bond: _____

Employer: _____

Surety: _____

The Bond has come into effect.

We hereby demand payment of the sum of

£ _____ (amount in words)
which does not exceed the amount of reimbursement for which the Contractor is in default at the date of this notice.

Address for payment: _____

_____

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

Signed by _____

Name: _____

Official Position: _____

Signed by _____

Name: _____

Official Position: _____

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


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## Part 2: Bond in respect of payment for off-site materials and/or goods

1 THE parties to this Bond are:

_____

whose registered office is at _____

_____ ('the Surety'), and

_____

of _____

_____ ('the Employer').

2 The Employer and _____ ('the Contractor')

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

_____

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

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

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

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

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

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

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

7 The Surety consents and agrees that the following actions by the Employer may be made and done without notice to or consent of the Surety and without in any way affecting changing or releasing the Surety from its obligations under this Bond and the liability of the Surety hereunder shall not in any way be affected hereby. The actions are:

7.1 waiver by the Employer of any of the terms, provisions, conditions, obligations and agreements of the Contractor or any failure to make demand upon or take action against the Contractor;

7.2 any modification or changes to the Contract; and/or


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7.3 the granting of an extension of time to the Contractor without affecting the terms of clause 9.2 below.

8 The Surety's maximum aggregate liability under this Bond shall be *[_____].

9 The obligations of the Surety under this Bond shall cease upon whichever is the earlier of:

9.1 the date on which all the Listed Items have been delivered to or adjacent to the Works as certified in writing to the Surety by the Employer; or

9.2 *[longstop date to be given]*,

and any claims hereunder must be received by the Surety in writing on or before such earlier date.

10 The Bond is not transferable or assignable without the prior written consent of the Surety. Such written consent will not be unreasonably withheld.

11 Notwithstanding any other provisions of this Bond nothing in this Bond confers or is intended to confer any right to enforce any of its terms on any person which is not a party to it.

12 This Bond shall be governed and construed in accordance with the laws of England and Wales.

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

---

**IN WITNESS** whereof this Deed of Guarantee has been duly executed and delivered on the date below:

Signed as a Deed by: _____

as the Attorney and on behalf of the Surety: _____

In the presence of:

_____
*witness' signature*

_____
*witness's name*

_____
*witness's address*

_____

Date: _____


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## Schedule to Bond

(clause 4 of the Bond)

## Notice of Demand

Date of Notice: _____

Date of Bond: _____

Employer: _____

Surety: _____

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

Address for payment: _____

_____

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

Signed by _____

Name: _____

Official Position: _____

Signed by _____

Name: _____

Official Position: _____

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


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## Part 3: Retention Bond[60]

Not applicable

[60] Not applicable where the Employer is a Local Authority or other public sector body.


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