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

SBC/Q 2011
Standard Building Contract
With Quantities 2011
New Rules of Measurement Update
Issued August 2012

The *RICS New Rules of Measurement – Detailed Measurement for Building Works* (‘NRM2’) have been published with a view to their replacing the *Standard Method of Measurement for Building Works* (‘SMM7’) from 1 January 2013. NRM2 should be used instead of SMM7 for all relevant JCT contracts and sub-contracts entered into on or after that date but, if users wish to use NRM2 instead of SMM7 for contracts or sub-contracts entered into before that date, they may of course do so.

The amendments set out below for Main Contracts apply to the Standard Building Contract (all versions – SBC/Q, SBC/AQ, SBC/XQ) and the Intermediate Building Contract (both versions – IC and ICD). Amendments are also given for the Construction Management Trade Contract, where different measurement rules may apply.

The amendments for Sub-Contracts apply to the Standard Building Sub-Contract (both versions – SBCSub/D/C and SBCSub/C), the Design and Build Sub-Contract (DBSub/C), the Intermediate Sub-Contract (both versions – ICSub/D/C and ICSub/C), the Intermediate Named Sub-Contract (ICSub/NAM/C), and the Management Works Contract (MCWC/C).

### Main Contracts

<table>
<thead>
<tr>
<th>Clause number</th>
<th>Modification</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Clause 1·1</strong></td>
<td>In the definition of ‘Provisional Sum’, where applicable, <strong>delete</strong> ‘General Rule 10 of Standard Method of Measurement’ and <strong>insert</strong> ‘paragraph 2.9.1 of the Measurement Rules’;</td>
</tr>
<tr>
<td><strong>Delete</strong> the definition of ‘Standard Method of Measurement’;</td>
<td></td>
</tr>
<tr>
<td><strong>Insert</strong> the following new definition:</td>
<td></td>
</tr>
<tr>
<td>‘Measurement Rules: the RICS New Rules of Measurement – Detailed Measurement for Building Works (NRM2), in the form published at the Base Date, unless otherwise stated in the Contract [Bills/Documents]*.’</td>
<td></td>
</tr>
<tr>
<td>* Delete as applicable.</td>
<td></td>
</tr>
<tr>
<td><strong>Clause 1·4, etc.</strong></td>
<td><strong>Either</strong></td>
</tr>
<tr>
<td><strong>Insert</strong> the following as clause 1·4·6:</td>
<td></td>
</tr>
<tr>
<td>‘references to the Standard Method of Measurement shall be read as references to the Measurement Rules.’</td>
<td></td>
</tr>
<tr>
<td>or</td>
<td></td>
</tr>
<tr>
<td>In each of the following clauses, <strong>delete</strong> ‘Standard Method of Measurement’ and <strong>insert</strong> ‘Measurement Rules’:</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SBC/Q</th>
<th>SBC/AQ</th>
<th>SBC/XQ</th>
</tr>
</thead>
<tbody>
<tr>
<td>2·13·1</td>
<td>2·13·1</td>
<td>5·6·3·3</td>
</tr>
<tr>
<td>2·14·1</td>
<td>2·14·1</td>
<td></td>
</tr>
<tr>
<td>5·6·3·3</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>IC/ICD</th>
</tr>
</thead>
<tbody>
<tr>
<td>2·12·1</td>
</tr>
<tr>
<td>2·12·2</td>
</tr>
<tr>
<td>5·3·3·3</td>
</tr>
</tbody>
</table>
Construction Management Trade Contract

<table>
<thead>
<tr>
<th>Clause number</th>
<th>Modification</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Contract Particulars, 2·12·1</strong></td>
<td>Delete the existing entry and its related footnote and insert the following:</td>
</tr>
<tr>
<td>Bills of quantities – the method of measurement[^16] * the RICS Measurement Rules/ used is * the Standard Method of Measurement for Civil Engineering/</td>
<td></td>
</tr>
<tr>
<td><em>(Unless otherwise stated in the Trade Contract Documents, the form of the document shall be that published at the Base Date.)</em></td>
<td></td>
</tr>
<tr>
<td>[^16] The appropriate method of measurement for building works is that in the RICS Measurement Rules and for civil engineering is the Civil Engineering Standard Method of Measurement (CESMM), but the Parties may agree to use another method of measurement.</td>
<td></td>
</tr>
</tbody>
</table>

| Clause 1·1 | Delete the existing definitions of the terms below and insert the following: |
| Defined Provisional Sum: ‘(to the extent that there are bills of quantities and regardless of the method of measurement used), the definition of the term in paragraph 2.9.1.2 of the RICS Measurement Rules.’ |
| Provisional Sum: ‘where the Trade Contract Documents include bills of quantities, the term includes a sum provided in the bills for work, whether or not it is identified as being for defined or undefined work within the meaning of paragraph 2.9.1 of the RICS Measurement Rules; and where the Trade Contract Documents do not include bills of quantities, the term includes a sum provided for work that the Employer may or may not decide to have carried out, or which cannot be accurately specified in the Trade Contract Documents.’ |

Delete the definition of ‘Standard Method of Measurement (SMM)’

Insert the following new definition:


| Clause 5·8·3 | Delete ‘Standard Method of Measurement’ and insert ‘method of measurement identified in the Trade Contract Particulars for clause 2·12·1’ |
### Sub-Contracts

<table>
<thead>
<tr>
<th>Clause number</th>
<th>Modification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clause 1·1</td>
<td>Delete the definition of 'Standard Method of Measurement'; <strong>Insert</strong> the following new definition:</td>
</tr>
<tr>
<td></td>
<td>'Measurement Rules: the RICS New Rules of Measurement – Detailed Measurement for Building Works (NRM2), in the form published at the [Sub-Contract/Works Contract]* Base Date, unless otherwise stated in the [Sub-Contract/Works Contract]* Documents.'</td>
</tr>
<tr>
<td></td>
<td>* Delete as applicable.</td>
</tr>
<tr>
<td>Clause 1·4, etc.</td>
<td>Either</td>
</tr>
<tr>
<td></td>
<td><strong>Insert</strong> the following as clause 1·4·6:</td>
</tr>
<tr>
<td></td>
<td>'references to the Standard Method of Measurement shall be read as references to the Measurement Rules.'</td>
</tr>
<tr>
<td></td>
<td>or</td>
</tr>
<tr>
<td></td>
<td>In each of the following clauses, <strong>delete</strong> 'Standard Method of Measurement' and <strong>insert</strong> 'Measurement Rules':</td>
</tr>
<tr>
<td>SBCSub/D/C, DBSub/C &amp; MCWC/C</td>
<td>SBCSub/C</td>
</tr>
<tr>
<td>2·8·1</td>
<td>2·8</td>
</tr>
<tr>
<td>2·9·1</td>
<td>2·9·1</td>
</tr>
<tr>
<td>5·8·3</td>
<td>5·8·3</td>
</tr>
<tr>
<td>ICSub/D/C, ICSub/C &amp; ICSub/NAM/C</td>
<td></td>
</tr>
<tr>
<td>2·7·1</td>
<td></td>
</tr>
<tr>
<td>2·7·2</td>
<td></td>
</tr>
<tr>
<td>5·5·3</td>
<td></td>
</tr>
</tbody>
</table>

### Incorporation of the modifications

The modifications may readily be incorporated in one of two ways:

- **either** by amending the contract document itself in accordance with this Update and executing it in its amended form, with each amendment initialled by or on behalf of each party
- **or** by attaching this Update to the Contract; and, prior to execution, inserting the following further provision in the Articles with the next available number (i.e. normally as Article 10):

> "Article [ ___ ]; New Rules of Measurement Update – incorporation
This Agreement and the Conditions shall have effect as modified by the amendments set out in the attached New Rules Measurement Update."

(that Article in similar fashion being initialled on execution.)
Standard Building Contract With Quantities (SBC/Q)

Appropriate:

- for larger works designed and/or detailed by or on behalf of the Employer, where detailed contract provisions are necessary and the Employer is to provide the Contractor with drawings; and with bills of quantities to define the quantity and quality of the work; and

- where an Architect/Contract Administrator and Quantity Surveyor are to administer the conditions.

Can be used:

- where the Contractor is to design discrete part(s) of the works (Contractor’s Designed Portion);

- where the works are to be carried out in sections;

- by both private and local authority employers.
## Articles of Agreement

<table>
<thead>
<tr>
<th>Article</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recitals</td>
<td>2</td>
</tr>
<tr>
<td>Articles</td>
<td>4</td>
</tr>
</tbody>
</table>

1. Contractor’s obligations
2. Contract Sum
3. Architect/Contract Administrator
4. Quantity Surveyor
5. CDM Co-ordinator
6. Principal Contractor
7. Adjudication
8. Arbitration
9. Legal proceedings

### Contract Particulars

<table>
<thead>
<tr>
<th>Contract Particulars</th>
<th>7</th>
</tr>
</thead>
</table>

### Conditions

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definitions and Interpretation</td>
<td>27</td>
</tr>
<tr>
<td>Definitions</td>
<td>21</td>
</tr>
<tr>
<td>Interpretation</td>
<td>22</td>
</tr>
</tbody>
</table>

1. Reference to clauses etc.
2. Headings, references to persons, legislation etc.
3. Reckoning periods of days
4. Contracts (Rights of Third Parties) Act 1999
5. Notices and other communications
7. Effect of Final Certificate
8. Effect of certificates other than Final Certificate

### Carrying out the Works

<table>
<thead>
<tr>
<th>Contractor’s Obligations</th>
<th>35</th>
</tr>
</thead>
</table>

2. General obligations
3. Contractor’s Designed Portion
4. Materials, goods and workmanship
5. Date of Possession – progress
6. Deferment of possession
7. Early use by Employer
8. Work not forming part of the Contract

### Supply of Documents, Setting Out etc.

- Contract Documents
- Construction information and Contractor’s master programme
- Levels and setting out of the Works
- Information Release Schedule
- Further drawings, details and instructions

### Errors, Discrepancies and Divergences

- Preparation of Contract Bills and Employer’s Requirements
- Contract Bills and CDP Documents – errors and inadequacy
- Notice of discrepancies etc.
- Discrepancies in CDP Documents
- Divergences from Statutory Requirements
- Emergency compliance with Statutory Requirements

### CDP Design Work

- Design liabilities and limitation
- Errors and failures – other consequences

### Fees, Royalties and Patent Rights

- Fees or charges legally demandable
- Royalties and patent rights – Contractor’s indemnity
- Patent rights – Instructions

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

- Materials and goods – on site
- Materials and goods – off site

### Adjustment of Completion Date

- Related definitions and interpretation
- Notice by Contractor of delay to progress
- Fixing Completion Date
- Relevant Events

### Practical Completion, Lateness and Liquidated Damages

- Practical completion and certificates
- Non-Completion Certificates
- Payment or allowance of liquidated damages

### Partial Possession by Employer

- Contractor’s consent
- Practical completion date
- Defects etc. – Relevant Part
- Insurance – Relevant Part
- Liquidated damages – Relevant Part
Defects 2:38 Schedules of defects and instructions 2:39 Certificate of Making Good

Contractor’s Design Documents 4:38

Section 3 Control of the Works 47
Access and Representatives
3-1 Access for Architect/Contract Administrator 3-2 Person-in-charge
3-3 Employer’s representative 3-4 Clerk of works
3-5 Replacement of Architect/Contract Administrator or Quantity Surveyor
3-6 Contractor’s responsibility

Sub-Contracting
3-7 Consent to sub-contracting 3-8 List in Contract Bills
3-9 Conditions of sub-contracting

Architect/Contract Administrator’s Instructions
3-10 Compliance with instructions 3-11 Non-compliance with instructions
3-12 Instructions other than in writing
3-13 Provisions empowering instructions 3-14 Instructions requiring Variations
3-15 Postponement of work 3-16 Instructions on Provisional Sums
3-17 Inspection – tests
3-18 Work not in accordance with the Contract 3-19 Workmanship not in accordance with the Contract
3-20 Executed work 3-21 Exclusion of persons from the Works
3-22 Antiquities

CDM Regulations
3-23 Undertakings to comply 3-24 Appointment of successors

Section 4 Payment 53
Contract Sum and Adjustments
4-1 Work included in Contract Sum 4-2 Adjustment only under the Conditions
4-3 Items included in adjustments 4-4 Taking adjustments into account
4-5 Final adjustment

Payments, Certificates and Notices 6:4
4-6 VAT 4-7 Construction Industry Scheme (CIS)
4-8 Advance payment 4-9 Interim payments – due dates and amounts due
4-10 Interim Certificates and valuations

Gross Valuation
Section 5 Variations 63
General
5-1 Definition of Variations 5-2 Valuation of Variations and provisional sum work
5-3 Variation Quotations 5-4 Contractor’s right to be present at measurement
5-5 Giving effect to Valuations, agreements etc.

The Valuation Rules
5-6 Measurable Work 5-7 Daywork
5-8 Contractor’s Designed Portion – Valuation
5-9 Change of conditions for other work
5-10 Additional provisions

Section 6 Injury, Damage and Insurance 67
Injury to Persons and Property
6-1 Liability of Contractor – personal injury or death
6-2 Liability of Contractor – injury or damage to property
6-3 Injury or damage to property – Works and Site Materials excluded

Insurance against Personal Injury and Property Damage
6-4 Contractor’s insurance of his liability
6-5 Contractor’s insurance of liability of Employer
6-6 Excepted Risks

Insurance of the Works
6-7 Insurance Options
6-8 Related definitions
6.9 Sub-contractors – Specified Perils cover under Joint Names All Risks Policies
6.10 Terrorism Cover – policy extensions and premiums
6.11 Terrorism Cover – non-availability – Employer’s options

CDP Professional Indemnity Insurance

6.12 Obligation to insure
6.13 Increased cost and non-availability

Joint Fire Code – compliance

6.14 Application of clauses
6.15 Compliance with Joint Fire Code
6.16 Breach of Joint Fire Code – Remedial Measures
6.17 Joint Fire Code – amendments/revisions

Section 7 Assignment, Third Party Rights and Collateral Warranties

Assignment
7.1 General
7.2 Rights of enforcement

Clauses 7A to 7E – Preliminary

7.3 Notices
7.4 Execution of Collateral Warranties

Third Party Rights from Contractor

7A Rights for Purchasers and Tenants
7B Rights for a Funder

Collateral Warranties

7C Contractor’s Warranties – Purchasers and Tenants
7D Contractor’s Warranty – Funders
7E Sub-Contractors’ Warranties

Section 8 Termination

General

8.1 Meaning of insolvency
8.2 Notices under section 8
8.3 Other rights, reinstatement

Termination by Employer

8.4 Default by Contractor
8.5 Insolvency of Contractor
8.6 Corruption
8.7 Consequences of termination under clauses 8.4 to 8.6
8.8 Employer’s decision not to complete the Works

Termination by Contractor

8.9 Default by Employer
8.10 Insolvency of Employer

Termination by either Party

8.11

Consequences of Termination under clauses 8.9 to 8.11, etc.

Section 9 Settlement of Disputes

9.1 Mediation
9.2 Adjudication

Arbitration

9.3 Conduct of arbitration
9.4 Notice of reference to arbitration
9.5 Powers of Arbitrator
9.6 Effect of award
9.7 Appeal – questions of law
9.8 Arbitration Act 1996

Schedules

Schedule 1 Contractor’s Design Submission Procedure

Schedule 2 Variation and Acceleration Quotation Procedures

Schedule 3 Insurance Options

Insurance Option A
(New Buildings – All Risks Insurance of the Works by the Contractor)
Insurance Option B
(New Buildings – All Risks Insurance of the Works by the Employer)
Insurance Option C
(Insurance by the Employer of Existing Structures and Works in or Extensions to them)

Schedule 4 Code of Practice

Schedule 5 Third Party Rights

Part 1: Third Party Rights for Purchasers and Tenants
Part 2: Third Party Rights for a Funders

Schedule 6 Forms of Bonds

Part 1: Advance Payment Bond
Part 2: Bond in respect of payment for off-site materials and/or goods
Part 3: Retention Bond

Schedule 7 Fluctuations Options

Fluctuations Option A
(Contribution, levy and tax fluctuations)
Fluctuations Option B
(Labour and materials cost and tax fluctuations)
Fluctuations Option C
(Formula adjustment)

Schedule 8 Supplemental Provisions
This Agreement is made the ________________ 20 _______

Between

The Employer ______________________________________

________________________________________________

(Company No._____________)\(^1\)

of/whose registered office is at __________________________________

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

And

The Contractor ______________________________________

________________________________________________

(Company No._____________)\(^1\)

of/whose registered office is at __________________________________

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

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

Whereas

First the Employer wishes to have the following work carried out:\[2\]:

\[\]

at

and has had drawings and bills of quantities prepared which show and describe the work to be done;

Second the Contractor has supplied the Employer with a fully priced copy of the bills of quantities, which for identification has been signed or initialled by or on behalf of each Party ('the Contract Bills'); and has provided the Employer with the priced schedule of activities annexed to this Contract ('the Activity Schedule')\[3\];

Third the drawings are numbered/listed in

annexed to this Contract ('the Contract Drawings') and have for identification been signed or initialled by or on behalf of each Party\[4\];

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 Employer has provided the Contractor with a schedule ('the Information Release Schedule') which states the information the Architect/Contract Administrator will release and the time of that release\[5\];

Sixth the division of the Works into Sections is shown in the Contract Bills and/or the Contract Drawings or in such other documents as are identified in the Contract Particulars\[6\].


[3] Delete these lines if a priced Activity Schedule is not provided. In the Activity Schedule, each activity should be priced, so that the sum of those prices equals the Contract Sum excluding Provisional Sums and the value of work for which Approximate Quantities are included in the Contract Bills.

[4] State the identifying numbers of the Contract Drawings or identify the schedule of drawings or other document listing them, which should be annexed to this Contract, and make the appropriate deletions. The drawings themselves should be signed or initialled by or on behalf of each Party.

[5] Delete the Fifth Recital if an Information Release Schedule is not provided.

[6] Delete the Sixth Recital if the Works are not divided into Sections.
Seventh where so stated in the Contract Particulars, this Contract is supplemented by the Framework Agreement identified in those particulars;

Eighth the Supplemental Provisions identified in the Contract Particulars apply;

*The Ninth to Twelfth Recitals apply only where there is a Contractor's Designed Portion*

Ninth the Works include the design and construction of[7] ____________________________

__________________________________________________ ('the Contractor’s Designed Portion');

Tenth the Employer has supplied to the Contractor documents showing and describing or otherwise stating his requirements for the design and construction of the Contractor’s Designed Portion (‘the Employer’s Requirements’);

Eleventh 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 Contractor’s Designed Portion (‘the Contractor’s Proposals’); and

- an analysis of the portion of the Contract Sum relating to the Contractor’s Designed Portion (‘the CDP Analysis’);

Twelfth the Employer has examined the Contractor’s Proposals and, subject to the Conditions, is satisfied that they appear to meet the Employer’s Requirements[8]. The Employer’s Requirements, the Contractor’s Proposals and the CDP Analysis have each for identification been signed or initialled by or on behalf of each Party and particulars of each are given in the Contract Particulars;

[7] State nature of work in the Contractor’s Designed Portion, or delete these four Recitals if not applicable. If the space here is insufficient a separate list should be prepared, signed or initialled by or on behalf of each Party and identified here, either as a specified Annex to this Contract or by its reference number, date or other identifier.

[8] Where the Employer has accepted a divergence from his requirements in the proposals submitted by the Contractor, the divergence should be removed by amending the Employer’s Requirements before the Contract is executed.
Now it is hereby agreed as follows

Article 1: Contractor's obligations
The Contractor shall carry out and complete 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

______________________________ (£ __________ ) (the Contract Sum)
or such other sum as shall become payable under this Contract.

Article 3: Architect/Contract Administrator
For the purposes of this Contract the Architect/Contract Administrator is

______________________________
of ______________________________
or, if he ceases to be the Architect/Contract Administrator, such other person as the Employer shall nominate in accordance with clause 3·5 of the Conditions.

Article 4: Quantity Surveyor
For the purposes of this Contract the Quantity Surveyor is

______________________________
of ______________________________
or, if he ceases to be the Quantity Surveyor, such other person as the Employer shall nominate in accordance with clause 3·5 of the Conditions.

[9] If the Architect/Contract Administrator is to exercise the Quantity Surveyor's functions under the Conditions, his name should be inserted in Article 4.
Article 5: CDM Co-ordinator

The CDM Co-ordinator for the purposes of the CDM Regulations is the Architect/Contract Administrator

(or)\[10\]

of

or, if he ceases to be the CDM Co-ordinator, such other person as the Employer shall appoint pursuant to regulation 14(3) of those regulations.

Article 6: Principal Contractor

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

(or)\[10\]

of

or, if he ceases to be the Principal Contractor, such other contractor as the Employer shall appoint pursuant to regulation 14(3) of the CDM Regulations and/or regulation 4 of the SWMP Regulations.

Article 7: Adjudication

If any dispute or difference arises under this Contract, either Party may refer it to adjudication in accordance with clause 9.2.\[11\]

Article 8: Arbitration

Where Article 8 applies\[12\], then, subject to Article 7 and the exceptions set out below, any dispute or difference between the Parties of any kind whatsoever arising out of or in connection with this Contract shall be referred to arbitration in accordance with clauses 9.3 to 9.8 and the JCT 2011 edition of the Construction Industry Model Arbitration Rules (CIMAR). The exceptions to this Article 8 are:

- any disputes or differences arising under or in respect of the Construction Industry Scheme or VAT, to the extent that legislation provides another method of resolving such disputes or differences; and

\[10\] Insert the name of the CDM Co-ordinator only where the Architect/Contract Administrator is not to fulfil that role, and that of the Principal Contractor only if that is to be a person other than the Contractor. If the project is not notifiable under the CDM Regulations 2007 (i.e. a project which is not likely to involve more than 30 days, or 500 person days, of construction work or which is being carried out for a homeowner as a purely domestic project), delete Articles 5 and 6 in their entirety.

\[11\] 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 Standard Building Contract Guide.

\[12\] If it is intended, subject to the right of adjudication and exceptions stated in Article 8, that disputes or differences should be determined by arbitration and not by legal proceedings, the Contract Particulars must state that Article 8 and clauses 9.3 to 9.8 apply and the words “do not apply” must be deleted. If the Parties wish any dispute or difference to be determined by the courts of another jurisdiction the appropriate amendment should be made to Article 9 (see also clause 1.11 and Schedule 5 Parts 1 and 2).
• any disputes or differences in connection with the enforcement of any decision of an Adjudicator.

Article 9: Legal proceedings

Subject to Article 7 and (where it applies) to Article 8, the English courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.
### Part 1: General

<table>
<thead>
<tr>
<th>Clause etc.</th>
<th>Subject</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fourth Recital and clause 4·7</td>
<td>Construction Industry Scheme (CIS)</td>
</tr>
<tr>
<td></td>
<td>Employer at the Base Date is a ‘contractor’/is not a ‘contractor’ for the purposes of the CIS</td>
</tr>
<tr>
<td>Sixth Recital</td>
<td>Description of Sections (if any)</td>
</tr>
</tbody>
</table>
| | (If not shown or described in the Contract Drawings or Contract Bills, state the reference numbers and dates or other identifiers of documents in which they are shown.)
| Seventh Recital | Framework Agreement (if applicable) |
| | (State date, title and parties.) |
| Eighth Recital and Schedule 8 | Supplemental Provisions |
| | (Where neither entry against an item below is deleted, the relevant paragraph applies.) |
| Collaborative working | Paragraph 1 |
| | * applies/does not apply |
| Health and safety | Paragraph 2 |
| | * applies/does not apply |
| Cost savings and value improvements | Paragraph 3 |
| | * applies/does not apply |
| Sustainable development and environmental considerations | Paragraph 4 |
| | * applies/does not apply |
| Performance Indicators and monitoring | Paragraph 5 |
| | * applies/does not apply |

---

[13] 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.
Notification and negotiation of disputes

Where paragraph 6 applies, the respective nominees of the Parties are

Paragraph 6
* applies/does not apply

Employer’s nominee

Contractor’s nominee

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

Tenth Recital

Employer’s Requirements
(State reference numbers and dates or other identifiers of documents in which these are contained)\[13\]

Eleventh Recital

Contractor’s Proposals
(State reference numbers and dates or other identifiers of documents in which these are contained)\[13\]

Eleventh Recital

CDP Analysis
(State reference numbers and dates or other identifiers of documents in which this is contained)\[13\]

Article 8

Arbitration
(If neither entry is deleted, Article 8 and clauses 9.3 to 9.8 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must be stated that Article 8 and clauses 9.3 to 9.8 apply.)\[14\]

* Article 8 and clauses 9.3 to 9.8 (Arbitration) apply/do not apply

1.1

Base Date

[14] On factors to be taken into account by the Parties in considering whether disputes are to be determined by arbitration or by legal proceedings, see the Standard Building Contract Guide. See also footnote [12].
1.1 CDM Planning Period[^15] shall mean the period of

________________________ * days/weeks

* ending on the Date of Possession/
* beginning/ending on

________________________ 20 ___ ___

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

Sections: Dates for Completion of Sections[^16]

Section : ___________________________

Section : ___________________________

Section : ___________________________

1.7 Addresses for service of notices by the Parties (If none is stated, the address in each case, subject to clause 1.7.3, shall be that shown at the commencement of the Agreement.)[^17]

Employer ___________________________

________________________

Contractor ___________________________

________________________

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

Sections: Dates of Possession of Sections[^16]

Section : 20 ___ ___

Section : 20 ___ ___

Section : 20 ___ ___

[^15] Under the CDM Regulations 2007 every client is expressly required to allocate sufficient time (the CDM Planning Period) prior to the commencement of construction to enable contractors and others to carry out necessary CDM planning and preparation. There may be cases where that planning and preparation needs to be completed earlier than the Date of Possession and adaptation of the entries may be needed where there are Sections.

[^16] Continue on further sheets if necessary, which should be signed or initialled by or on behalf of each Party and then be annexed to this Contract.

[^17] As to service of notices etc. outside the United Kingdom, see the Standard Building Contract Guide.
2.5 Deferment of possession of the site
(where possession by Sections does not apply)

Sections: deferment of possession of Sections

Clause 2.5
* applies/does not apply

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

Secti ons: deferment of possession of Sections

Clause 2.5
* applies/does not apply

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

Secti on __ : __________________________

Secti on __ : __________________________

Secti on __ : __________________________

2.9.1.2 Master programme

2.19.3 Contractor's Designed Portion: limit of Contractor's liability for loss of use etc. (if any)

£ __________________________

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

at the rate of

£ __________________________ per _________

Sections: rate of liquidated damages for each Section

Secti on ____ : £ ___________ per _________

Secti on ____ : £ ___________ per _________

Secti on ____ : £ ___________ per _________

2.37 Sections: Section Sums

Secti on __ : __________________________

Secti on __ : __________________________

Secti on __ : __________________________

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

Sections: Rectification Periods
(If no other period is stated, the period is 6 months.)

Rectification Period
from the date of practical completion of the Works

Secti on ____ : ________________ months

Secti on ____ : ________________ months

Secti on ____ : ________________ months

from the date of practical completion of each Section
4·8 Advance payment
(Not applicable where the Employer is a Local Authority)
* Clause 4·8 applies/does not apply
If applicable:
the advance payment will be\[18\]
£ __________ per cent of the Contract Sum
and will be paid to the Contractor on __________:
it will be reimbursed to the Employer in the following amount(s) and at the following time(s)
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

4·8 Advance Payment Bond
(Not applicable where the Employer is a Local 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/is not required

4·9·1 Interim payments – due dates
(If no date is stated, the first due date is one month after the Date of Possession.)
The first due date is:
and thereafter the same date in each month or the nearest Business Day in that month\[19\]

4·17·4 Listed Items – uniquely identified
(Delete the entry if no bond is required.)
* For uniquely identified Listed Items a bond in respect of payment for such items is required for
£ ______________

4·17·5 Listed Items – not uniquely identified
(Delete the entry if clause 4·17·5 does not apply.)
* For Listed Items that are not uniquely identified a bond in respect of payment for such items is required for
£ ______________________________

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

[19] The first date should not be more than one month after the Date of Possession. Where it is intended that interim payments should become due on the last day of each month, the entry may be completed/amended to read ‘The last day of (insert month) and thereafter the last day in each month or the nearest Business Day in that month.’ After practical completion, clause 4·9·1 allows for intervals of 2 months (or such other period as the Parties agree) between interim payments.
4·19 Contractor’s Retention Bond
(Not applicable where the Employer is a Local Authority)
(Not applicable unless stated to apply and relevant particulars are given below)

Clause 4·19
* applies/does not apply

If clause 4·19 applies, the maximum aggregate sum for the purposes of clause 2 of the bond is

£ ______________________

For the purposes of clause 6·3 of the bond, the expiry date shall be

__________________________ per cent

4·20·1 Retention Percentage
(The percentage is 3 per cent unless a different rate is stated; if no retention is required, insert ‘Nil’ or ‘0’.)

4·21 and Schedule 7 Fluctuations Options[20]
(If no Fluctuations Option is selected, Option A applies.)

Schedule 7:
* Fluctuations Option A applies/
* Fluctuations Option B applies/
* Fluctuations Option C applies

Percentage addition for Fluctuations Option A, paragraph A·12 or Option B, paragraph B·13

__________________________ per cent

Formula Rules for Fluctuations Option C, paragraph C·1·2

(For Local Authorities only)

Rule 3: Base Month

__________________________ 20

Rule 3: Non-Adjustable Element

__________________________ per cent

Rules 10 and 30(i):
* Part I/Part II of section 2 of the Formula Rules applies[21]

£ ______________________

__________________________

[20] Delete all but one.

[21] The Part to be deleted depends upon which method of formula adjustment (Part I – Work Category Method or Part II – Work Group Method) is applicable.
6.5.1 Insurance – liability of Employer
(Not required unless it is stated that it may be required and the minimum amount of indemnity is stated)

Insurance may be required/is not required

Minimum amount of indemnity for any one occurrence or series of occurrences arising out of one event

£ ____________________  

[22]

6.7 and Schedule 3 Insurance of the Works – Insurance Options

6.7 and Schedule 3 Insurance Option A (paragraphs A.1 and A.3), B (paragraph B.1) or C (paragraph C.2)

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

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

_____ _____ _____ _____ per cent

6.7 and Schedule 3 Insurance Option A (paragraph A.3)

Annual renewal date of insurance
(as supplied by the Contractor)

6.10 and Schedule 3 Terrorism Cover – details of the required cover
(State reference numbers and dates or other identifiers of documents setting out the requirements. Unless otherwise stated, Pool Re Cover is required.)

6.12 Contractor’s Designed Portion (CDP) Professional Indemnity insurance

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

(If no amount is stated, insurance under clause 6.12 shall not be required.)

Amount of indemnity required
* relates to claims or series of claims arising out of one event/
* is the aggregate amount for any one period of insurance

and is

£ ____________________

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

* is required, with a sub-limit of indemnity of

£ ____________________ /

* is not required

[22] 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.

[23] Obtaining Terrorism Cover, which is necessary in order to comply with the requirements of Insurance Option A, B or C, will involve an additional premium and may in certain situations be difficult to effect. Where a difficulty arises discussion should take place between the Parties and their insurance advisers. See the Standard Building Contract Guide.
Expiry of required period of CDP 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.)

* 6 years/
* 12 years/
* ____________________________ years
(not exceeding 12 years)

6·14 Joint Fire Code

If the Joint Fire Code applies, state whether the insurer under Schedule 3, Insurance Option A, B or C (paragraph C·2) has specified that the Works are a ‘Large Project’:

The Joint Fire Code applies/does not apply[24]

* Yes/No[24]

6·17 Joint Fire Code – amendments/revisions
(The cost shall be borne by the Contractor unless otherwise stated.)

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

* the Employer/the Contractor

7·2 Assignment/grant by Employer of rights under clause 7·2
(If neither entry is deleted, clause 7·2 applies.)

Sections: rights under clause 7·2
(If clause 7·2 applies, amend the entry if rights under that clause are to apply to certain Sections only.)

* Rights under clause 7·2 apply to each Section

8·9·2 Period of suspension
(If none is stated, the period is 2 months.)

8·11·1 to 8·11·5 Period of suspension
(If none is stated, the period is 2 months.)

9·2·1 Adjudication[25]

Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)[26]
(Where an Adjudicator is not named and a nominating body has not been selected, the nominating body shall be one of the bodies listed opposite selected by the Party requiring the reference to adjudication.)

The Adjudicator is ______________________

* Royal Institute of British Architects
* The Royal Institution of Chartered Surveyors
* constructionadjudicators.com[27]
* Association of Independent Construction Adjudicators[28]
* Chartered Institute of Arbitrators

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

[25] 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.

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

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

[28] Association of Independent Construction Adjudicators acts as an agent of and is controlled by the National Specialist Contractors’ Council for the purpose of the nomination of adjudicators.
9.4.1 Arbitration

[29] – appointor of Arbitrator (and of any replacement)

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

President or a Vice-President:

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

[29] This only applies where the Contract Particulars state (against the reference to Article 8) that Article 8 and clauses 9.3 to 9.8 (Arbitration) apply.

[30] Delete all but one of the bodies asterisked.
Part 2: Third Party Rights and Collateral Warranties

If such rights or warranties are required from the Contractor, complete the particulars in (A) to (D) below:

P&T Rights Particulars

(A) Identity of Purchasers/Tenants on whom P&T Rights may be conferred, and whether (in the case of the Contractor) those rights are to be conferred as third party rights (clause 7A) or by Collateral Warranty (clause 7C) [31]

<table>
<thead>
<tr>
<th>Clauses 7A, 7C and 7E of the Conditions</th>
<th>Name, class or description of person [32]</th>
<th>The part of the Works to be purchased or let</th>
<th>State in each case which of clause 7A or 7C applies</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(P&T Rights are conferred only on persons who are sufficiently identified in the first column. If in relation to an identified person it is not stated whether P&T Rights from the Contractor are to be conferred under clause 7A (Third Party Rights) or under clause 7C (Collateral Warranty), clause 7A applies.)

[31] The Contractor may be required to grant rights either as Third Party Rights or Collateral Warranties. In the case of Sub-Contractors, provision is made only for the grant of Collateral Warranties – see Part 2(E) of these particulars and the Standard Building Contract Guide.

### Paragraph of Schedule 5, Part 1 or Clause of CWa/P&T[^33]

**1·1·2 Applicability of paragraph/clause 1·1·2**

Maximum liability

(Unless paragraph/clause 1·1·2 is stated to apply and the maximum liability is stated, paragraph/clause 1·1·2 does not apply.)

Type of maximum liability

(If not stated, it shall be an aggregate limit on liability.)

**1·3·1 Net Contribution: Consultants**

(If none are specified, these shall be the Architect/Contract Administrator and the Quantity Surveyor (including any replacements), together with any other consultants who agree to give third party rights or collateral warranties (or undertakings in similar terms) to any Purchaser(s) and/or Tenant(s).)

For the purposes of paragraph/clause 1·3·1[^33] ‘the Consultants’ are:

**1·3·2 Net Contribution: Sub-Contractors**

(If none are specified, these shall be such as agree to give third party rights or collateral warranties (or undertakings in similar terms) to any Purchaser(s) and/or Tenant(s).)

For the purposes of paragraph/clause 1·3·2[^33] ‘the Sub-Contractors’ are:

<table>
<thead>
<tr>
<th>Funder Rights Particulars</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>(C) Identity of Funder in whom Funder Rights may be vested under this Contract</strong></td>
</tr>
<tr>
<td>(If not identified by name, class or description, Funder Rights shall not be required from the Contractor.)</td>
</tr>
</tbody>
</table>

[^33]: The paragraph numbers in Schedule 5 are the same as the clause numbers in the JCT Collateral Warranty.
Paragraph of Schedule 5, Part 2 or Clause of CWa/F

(D) Funder Rights from the Contractor

Nature of Funder Rights from the Contractor
(If neither clause reference is deleted, clause 7B applies.)

1-1

Net Contribution: Consultants and Sub-Contractors
(Unless otherwise stated, these shall be those specified (or deemed to be specified) under (B) above.)

* Clause 7B (Third Party Rights) applies/
* Clause 7D (Collateral Warranty) applies

________________________

________________________
Collateral Warranties from Sub-Contractors

(E) If warranties are required from sub-contractors, complete the particulars below:

<table>
<thead>
<tr>
<th>Clauses</th>
<th>Sub-contractors from whom Warranties may be required[^34]</th>
<th>Type(s) of warranty (SCWa/P&amp;T, SCWa/F, SCWa/E) required[^35] from each sub-contractor</th>
<th>Levels of Professional Indemnity insurance required (if applicable)[^36]</th>
</tr>
</thead>
</table>

For these purposes, unless otherwise stated:

(i) all Purchasers and Tenants identified at (A) above, any Funder identified at (C) above and the Employer shall be entitled to a warranty from a sub-contractor where the appropriate type is shown above as required from him;

(ii) if applicable, the levels of Professional Indemnity insurance must be specified[^36]; the basis of that cover shall be whichever applies under the Contract Particulars for clause 6.12;

(iii) if a maximum liability is specified under (B) above, that shall also apply in relation to all sub-contractors’ Collateral Warranties unless a lower amount is specified;

(iv) “the Consultants” for sub-contractors’ Collateral Warranties shall be those stated in (B) above.

[^34]: Employers should be selective in listing the sub-contractors (or categories of sub-contractor) from whom collateral warranties may be required (see the Standard Building Contract Guide).

[^35]: Where a sub-contractor is required to grant Collateral Warranties of the types referred to in clause 7E (i.e. the Sub-Contractor Collateral Warranty for a Purchaser or Tenant (SCWa/P&T), for a Funder (SCWa/F) and for the Employer (SCWa/E)), state the particular type(s). All three Collateral Warranties are documents prepared by JCT.

[^36]: Professional Indemnity insurance applies only where the sub-contractor has design responsibilities. As to cover levels, see the Standard Building Contract Guide.
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 Standard Building Contract Guide.

Execution under hand

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

Execution as a Deed

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

Other forms of Attestation

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

Signed by or on behalf of the Employer

in the presence of:

witness’ signature

witness’ name

witness’ address


Signed by or on behalf of the Contractor

in the presence of:

witness’ signature

witness’ name

witness’ address
Notes on Execution as a Deed

1 For the purposes of execution as a deed, two forms are provided for execution, one for the Employer and the other for the Contractor. Each form provides four methods of execution, (A) to (D), for use as appropriate. The full name of the Employer or Contractor (whether an individual, a company or other body) should be inserted where indicated at the commencement of the relevant form. This applies irrespective of the method used.

2 For public and private companies incorporated and registered under the Companies Acts, the three principal methods of execution as a deed are:

(A) through signature by a Director and the Company Secretary or by two Directors;

(B) by affixing the company’s common seal in the presence of a Director and the Company Secretary or of two Directors or other duly authorised officers; or

(C) signature by a single Director in the presence of a witness who attests the signature.

Methods (A) and (C) are available to public and private companies whether or not they have a common seal. (Method (C) was introduced by section 44(2)(b) of the Companies Act 2006.) Methods (A) and (C) are not available under companies legislation to local authorities or to certain other bodies corporate, e.g. bodies incorporated by letters patent or private Act of Parliament that are not registered under companies legislation and such bodies may only use method (B).

3 Where method (A) is being used, delete the inappropriate words and insert in the spaces indicated the names of the two Directors, or of the Director and the Company Secretary, who are to sign.

4 If method (B) (affixing the common seal) is adopted in cases where either or both the authorised officers attesting its affixation are not themselves a Director or the Company Secretary, their respective office(s) should be substituted for the reference(s) to Director and/or to Company Secretary/Director. (In the case of execution by bodies that are not companies, the reference to “Company” under the second signature should be deleted where appropriate.)

5 Method (C) (execution by a single Director) has been introduced primarily, but not exclusively, for ‘single officer’ companies. The Director should sign where indicated in the presence of a witness who should then sign and set out his name and address.

6 Where the Employer or Contractor is an individual, he should use method (D) and sign where indicated in the presence of a witness who should then sign and set out his name and address.
Executed as a Deed by the Employer

namely

(A) acting by a Director and the Company Secretary/two Directors of the company

(Print name of signatory)

Signature

Director

and

(Print name of signatory)

Signature

Company Secretary/Director

(B) by affixing hereto the common seal of the company/other body corporate in the presence of

Signature

Director

Signature

Company Secretary/Director

[Common seal of company]

(C) by attested signature of a single Director of the company

Signature

Director

in the presence of

Witness’ signature

(Print name)

Witness’ address

(D) by attested signature of the individual

Signature

in the presence of

Witness’ signature

(Print name)

Witness’ address

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

namely

(A) acting by a Director and the Company Secretary/two Directors of the company

(Print name of signatory) and (Print name of signatory)

Signature Director Signature Company Secretary/Director

(B) by affixing hereto the common seal of the company/other body corporate in the presence of

Signature Director

Signature Company Secretary/Director [Common seal of company]

(C) by attested signature of a single Director of the company

Signature Director

in the presence of

Witness’ signature (Print name)

Witness’ address

(D) by attested signature of the individual

Signature

in the presence of

Witness’ signature (Print name)

Witness’ address

Note: The numbers on this page refer to the numbered paragraphs in the Notes on Execution as a Deed.
Section 1 Definitions and Interpretation

Definitions

1·1 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:

<table>
<thead>
<tr>
<th>Word or phrase</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acceleration Quotation:</td>
<td>a quotation by the Contractor for an acceleration in the carrying out of the Works or a Section made under paragraph 2 of Schedule 2.</td>
</tr>
<tr>
<td>Activity Schedule:</td>
<td>see the Second Recital.</td>
</tr>
<tr>
<td>Adjudicator:</td>
<td>an individual appointed under clause 9·2 as the Adjudicator.</td>
</tr>
<tr>
<td>Agreement:</td>
<td>the Articles of Agreement to which these Conditions are annexed, consisting of the Recitals, the Articles and the Contract Particulars.</td>
</tr>
<tr>
<td>All Risks Insurance:</td>
<td>see clause 6·8</td>
</tr>
<tr>
<td>Approximate Quantity:</td>
<td>a quantity in the Contract Bills there identified as an approximate quantity.</td>
</tr>
<tr>
<td>Arbitrator:</td>
<td>an individual appointed under clause 9·4 as the Arbitrator.</td>
</tr>
<tr>
<td>Architect/Contract Administrator:</td>
<td>the person named in Article 3 or any successor nominated or otherwise agreed under clause 3·5.</td>
</tr>
<tr>
<td>Article:</td>
<td>an article in the Agreement.</td>
</tr>
<tr>
<td>Base Date:</td>
<td>the date stated as such date in the Contract Particulars (against the reference to clause 1·1)[37].</td>
</tr>
<tr>
<td>Business Day:</td>
<td>any day which is not a Saturday, a Sunday or a Public Holiday.</td>
</tr>
<tr>
<td>CDM Co-ordinator:</td>
<td>the Architect/Contract Administrator or other person named in Article 5 or any successor appointed by the Employer.</td>
</tr>
<tr>
<td>CDM Planning Period:</td>
<td>the minimum amount of time referred to in regulation 10(2)(c) of the CDM Regulations, as specified in the Contract Particulars (against the reference to clause 1·1).</td>
</tr>
<tr>
<td>CDP Analysis:</td>
<td>see the Eleventh Recital and the Contract Particulars.</td>
</tr>
</tbody>
</table>

[37] The Base Date is relevant (inter alia) to clause 2·17·2·1 (changes in Statutory Requirements) and the Fluctuations Options (Schedule 7) and it helps to determine the edition/issue and/or version of documents relevant to this Contract, e.g. the Standard Method of Measurement and definitions of the prime cost of daywork (clause 5·7).
CDP Documents: the Employer’s Requirements, the Contractor’s Proposals, the CDP Analysis and the further documents referred to in clause 2·9·4.

CDP Works: that part of the Works comprised in the Contractor’s Designed Portion.

Certificate of Making Good: see clause 2·39.

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 2·28 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 Architect/Contract Administrator’s instruction confirming acceptance of a Variation Quotation or Acceleration Quotation under paragraph 4 of Schedule 2.

Construction Industry Scheme (or ‘CIS’): see the Fourth Recital.

Construction Phase Plan: the plan prepared by the Principal Contractor, where the project is notifiable under the CDM Regulations and in order to comply with regulation 23, including any updates and revisions.

Contract Bills: the fully priced bills of quantities referred to in the Second Recital.

Contract Documents: the Contract Drawings, the Contract Bills, the Agreement and these Conditions, together with (where applicable) the Employer’s Requirements, the Contractor’s Proposals and the CDP Analysis.

Contract Drawings: the drawings referred to in the Third Recital.

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.

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 prepared by or for the Contractor in relation to the Contractor’s Designed Portion.

Contractor’s Designed Portion: see the Ninth Recital.

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

Contractor’s Proposals: see the Eleventh Recital and the Contract Particulars.

Date for Completion: the date stated as such date in the Contract Particulars (against the reference to clause 1·1) in relation to the Works or a Section.

Date of Possession: the date stated as such date in the Contract Particulars (against the reference to clause 2·4) in relation to the Works or a Section.

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

Employer’s Requirements: see the Tenth Recital and the Contract Particulars.

Excluded Risks: see clause 6.8.

Final Certificate: see clauses 1.9 and 4.15.

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

Fluctuations Options A, B and C: the provisions set out in Schedule 7 (see clause 4.21 and the Contract Particulars).

Funder: the person named or otherwise sufficiently identified as such in or by the Funder Rights Particulars and in respect of whom the Employer gives notice under clause 7B.1.

Funder Rights: the rights in favour of the Funder set out in Part 2 of Schedule 5 or in the appropriate form of collateral warranty.

Funder Rights Particulars: the entries against clause 6.12 in Part 1 and the relevant items and entries in that section of Part 2 of the Contract Particulars.

Gross Valuation: see clause 4.16.

Information Release Schedule: the schedule referred to in the Fifth Recital.

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 dealing rate of the Bank of England current at the date that a payment due under this Contract becomes overdue.

Interim Application: see clause 4.11.

Interim Certificate: any of the certificates to which clause 4.10.1 refers.

Interim Payment Notice: see clause 4.11.2.


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 Contract Bills.

Non-Completion Certificate: see clause 2.31.

P&T Rights: the rights in favour of a Purchaser or Tenant set out in Part 1 of Schedule 5 or in the appropriate form of collateral warranty.

P&T Rights Particulars: the entries against clause 6.12 in Part 1 and the relevant items and entries in that section of Part 2 of the Contract Particulars.

Parties: the Employer and the Contractor together.
continued 1.1

Party: either the Employer or the Contractor.


Practical Completion Certificate: see clause 2.30.

Pre-agreed Adjustment: see clause 2.26.2.

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

Provisional Sum: includes a sum provided for work, whether or not identified as being for defined or undefined work within the meaning of General Rule 10 of the Standard Method of Measurement.

Public Holiday: Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday. [38]

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

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

Recitals: the recitals in the Agreement.

Rectification Period: the period stated as such period in the Contract Particulars (against the reference to clause 2.38) in relation to the Works or (where applicable) a Section.

Relevant Date: see clause 2.33.

Relevant Event: see clause 2.29.

Relevant Matter: see clause 4.24.

Relevant Omission: see clause 2.26.3.

Relevant Part: see clause 2.33.

Retention: see clauses 4.9.2 and 4.18 to 4.20.

Retention Bond: see clause 4.19.

Retention Percentage: see clause 4.20 and the Contract Particulars.


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

Section Completion Certificate: see clause 2.30.2.

Section Sum: see clause 2.37 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.

[38] Amend as necessary if different Public Holidays are applicable.
Specified Perils: see clause 6·8.

Standard Method of Measurement: the Standard Method of Measurement of Building Works, 7th Edition, produced by The Royal Institution of Chartered Surveyors and the Construction Confederation, current, unless otherwise stated in the Contract Bills, at the Base Date (references in that publication to ‘the Appendix’ being read as references to the Contract Particulars).

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

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


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

Terrorism Cover: see clause 6·8.

Valuation: a valuation by the Quantity Surveyor in accordance with the Valuation Rules, pursuant to clause 5·2.

Valuation Rules: see clauses 5·6 to 5·10.

Variation: see clause 5·1.

Variation Quotation: see clause 5·3 and paragraph 1 of Schedule 2.

VAT: Value Added Tax.

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

Interpretation

Reference to clauses etc.

1·2 Unless otherwise stated, a reference in the Agreement or in these Conditions to a clause or Schedule is to that clause 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.

Agreement etc. to be read as a whole

1·3 The Agreement and these Conditions are to be read as a whole but nothing contained in the Contract Bills or the CDP Documents, nor anything in any Framework Agreement, shall override or modify the Agreement or these Conditions.

Headings, references to persons, legislation etc.

1·4 In the Agreement and these Conditions, unless the context otherwise requires:

• the headings are included for convenience only and shall not affect the interpretation of this Contract;
continued 1·4

2 the singular includes the plural and vice versa;

3 a gender includes any other gender;

4 a reference to a ‘person’ includes any individual, firm, partnership, company and any other body corporate; and

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.

Reckoning periods of days

1·5 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.

Contracts (Rights of Third Parties) Act 1999

1·6 Other than such rights of any Purchasers, Tenants and/or Funder as take effect pursuant to clauses 7A and/or 7B, nothing in this Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

Notices and other communications

1·7

1 Any notice or other communication between the Parties, or by or to the Architect/Contract Administrator or Quantity Surveyor, that is expressly referred to in the Agreement or these Conditions (including, without limitation, each application, approval, consent, confirmation, counter-notice, decision, instruction or other notification) shall be in writing.

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 from time to time agree in writing for the purposes of this Contract.[39]

3 Subject to clauses 1·7·2 and 1·7·4, any notice, communication or document may be given or served by any effective means and shall be duly given or served if delivered by hand or sent by pre-paid post to:

1 the recipient’s address stated in the Contract Particulars, or to such other address as the recipient may from time to time notify to the sender; or

2 if no such address is then current, the recipient’s last known principal business address or (where a body corporate) its registered or principal office.

4 Any notice expressly required by this Contract to be given in accordance with this clause 1·7·4 shall be delivered by hand or sent by Recorded Signed for or Special Delivery post. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.

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.

Issue of Architect/Contract Administrator’s certificates

1·8 Each certificate to be issued by the Architect/Contract Administrator under these Conditions shall be issued to the Employer and the Contractor at the same time.

[39] The Parties should agree a communications protocol on or before entering into the Contract, or as soon thereafter as is practicable. If the medium or format to be used for the Contractor’s Design Submission Procedure (Schedule 1) is not stated in the Employer’s Requirements or Contractor’s Proposals, that also should be covered by the protocol. See the Standard Building Contract Guide.
Effect of Final Certificate

1·9

1 Except as provided in clauses 1·9·2, 1·9·3 and 1·9·4 (and save in respect of fraud), the Final Certificate shall have effect in any proceedings under or arising out of or in connection with this Contract (whether by adjudication, arbitration or legal proceedings) as:

1 conclusive evidence that where and to the extent that any of the particular qualities of any materials or goods or any particular standard of an item of workmanship was described expressly in the Contract Drawings or the Contract Bills, or in any instruction issued by the Architect/Contract Administrator under these Conditions or in any drawings or documents issued by the Architect/Contract Administrator under any of clauses 2·9 to 2·12, to be for the approval of the Architect/Contract Administrator, the particular quality or standard was to the reasonable satisfaction of the Architect/Contract Administrator, but the Final Certificate shall not be conclusive evidence that they or any other materials or goods or workmanship comply with any other requirement or term of this Contract;

2 conclusive evidence that any necessary effect has been given to all the terms of this Contract which require that an amount be added to or deducted from the Contract Sum or that an adjustment be made to the Contract Sum save where there has been any accidental inclusion or exclusion of any work, materials, goods, or figure in any computation or any arithmetical error in any computation, in which event the Final Certificate shall have effect as conclusive evidence as to all other computations;

3 conclusive evidence that all and only such extensions of time, if any, as are due under clause 2·28 have been given; and

4 conclusive evidence that the reimbursement of direct loss and/or expense, if any, to the Contractor pursuant to clause 4·23 is in final settlement of all and any claims which the Contractor has or may have arising out of the occurrence of any of the Relevant Matters, whether such claim be for breach of contract, duty of care, statutory duty or otherwise.

2 If adjudication, arbitration or other proceedings have been commenced by either Party before the Final Certificate is issued, the Final Certificate shall have effect as conclusive evidence as provided in clause 1·9·1 upon and from the earlier of either:

1 the conclusion of such proceedings, in which case the Final Certificate shall be subject to the terms of any decision, award or judgment in or settlement of such proceedings; or

2 the expiry of any period of 12 months from or after the issue of the Final Certificate during which neither Party takes any further step in such proceedings, in which case the Final Certificate shall be subject to any terms agreed in settlement of any of the matters previously in issue in such proceedings.

3 If adjudication, arbitration or other proceedings are commenced by either Party within 28 days after the Final Certificate has been issued, the Final Certificate shall have effect as conclusive evidence as provided in clause 1·9·1 save only in respect of the matters to which those proceedings relate.

4 In the case of a dispute or difference on which an Adjudicator gives his decision on a date after the date of issue of the Final Certificate, if either Party wishes to have that dispute or difference determined by arbitration or legal proceedings, that Party may commence arbitration or legal proceedings within 28 days of the date on which the Adjudicator gives his decision.

Effect of certificates other than Final Certificate

1·10

Save as stated in clause 1·9 no certificate of the Architect/Contract Administrator shall of itself be conclusive evidence that any works, any materials or goods or any design completed by the Contractor for the Contractor’s Designed Portion to which the certificate relates are in accordance with this Contract.
Applicable law

1.11 This Contract shall be governed by and construed in accordance with the law of England. [40] Where the Parties do not wish the law applicable to this Contract to be the law of England appropriate amendments should be made.
Section 2  Carrying out the Works

Contractor’s Obligations

General obligations

2·1 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 other Statutory Requirements, and shall give all notices required by the Statutory Requirements.

Contractor’s Designed Portion

2·2 Where the Works include a Contractor’s Designed Portion, the Contractor shall:

·1 in accordance with the Contract Drawings and the Contract Bills (to the extent they are relevant), complete the design for the Contractor’s Designed Portion, including the selection of any specifications for the kinds and standards of the materials, goods and workmanship to be used in the CDP Works, so far as not described or stated in the Employer’s Requirements or the Contractor’s Proposals;

·2 comply with the Architect/Contract Administrator’s directions for the integration of the design of the Contractor’s Designed Portion with the design of the Works as a whole, subject to the provisions of clause 3·10·3; and

·3 in complying with this clause 2·2, comply with regulations 11, 12 and 18 of the CDM Regulations.

Materials, goods and workmanship

2·3 ·1 All materials and goods for the Works, excluding any CDP Works, shall, so far as procurable, be of the kinds and standards described in the Contract Bills. Materials and goods for any CDP 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 documents referred to in clause 2·9·4. The Contractor shall not substitute any materials or goods so described without the Architect/Contract Administrator’s consent, which shall not be unreasonably delayed or withheld but shall not relieve the Contractor of his other obligations.

·2 Workmanship for the Works, excluding any CDP Works, shall be of the standards described in the Contract Bills. Workmanship for any CDP 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.

·3 Where and to the extent that approval of the quality of materials or goods or of the standards of workmanship is a matter for the Architect/Contract Administrator’s opinion, such quality and standards shall be to his reasonable satisfaction. To the extent that the quality of materials and goods or standards of workmanship are neither described in the manner referred to in clause 2·3·1 or 2·3·2 nor stated to be a matter for such opinion or satisfaction, they shall in the case of the Contractor’s Designed Portion be of a standard appropriate to it and shall in any other case be of a standard appropriate to the Works.

·4 The Contractor shall upon the request of the Architect/Contract Administrator provide him with reasonable proof that the materials and goods used comply with this clause 2·3.

·5 The Contractor shall take all reasonable steps to encourage Contractor’s Persons to be registered cardholders under the Construction Skills Certification Scheme (CSCS) or qualified under an equivalent recognised qualification scheme.
Possession

Date of Possession – progress

2·4 On the Date of Possession possession of the site or, in the case of a Section, possession of the relevant part of the site shall be given to the Contractor who shall thereupon begin the construction of the Works or Section and regularly and diligently proceed with and complete the same on or before the relevant Completion Date. For the purposes of the Works insurances the Contractor shall retain possession:

1 of the site and the Works up to and including the date of issue of the Practical Completion Certificate; or

2 of each Section and the relevant part of the site up to and including the date of issue of the Section Completion Certificate for that Section and, in respect of any balance of the site, up to and including the date of issue of the Practical Completion Certificate

and, subject to clause 2·33 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.

Deferment of possession

2·5 If the Contract Particulars state that clause 2·5 applies in respect of the Works or any 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.

Early use by Employer

2·6

1 Notwithstanding clause 2·4, the Employer may, with the Contractor’s consent, use or occupy the site or the Works or part of them, whether for storage or otherwise, before the date of issue of the Practical Completion Certificate or relevant Section Completion Certificate. Before the Contractor gives his consent to such use or occupation, the Contractor or the Employer shall notify the insurers under whichever of Insurance Options A, B or C (paragraph C·2) applies and obtain confirmation that such use or occupation will not prejudice the insurance. Subject to such confirmation, the Contractor’s consent shall not be unreasonably delayed or withheld.

2 Where Insurance Option A applies and the insurers’ confirmation is conditional on an additional premium being paid, the Contractor shall notify the Employer of the amount of it. If the Employer continues to require such use or occupation, the additional premium shall be added to the Contract Sum and the Contractor shall if requested produce the receipt for it to the Employer.

Work not forming part of the Contract

2·7 In regard to any work not forming part of this Contract which the Employer requires to be carried out by the Employer himself or by any Employer’s Persons:

1 where the Contract Bills 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 where the Contract Bills do not provide the information referred to in clause 2·7·1, the Employer may with the Contractor’s consent arrange for the execution of such work, such consent not to be unreasonably delayed or withheld.

Supply of Documents, Setting Out etc.

Contract Documents

2·8

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 Immediately after the execution of this Contract the Architect/Contract Administrator, without charge to the Contractor, shall (unless previously provided) provide him with:
continued 2·8·2

- 1 one copy, certified on behalf of the Employer, of the Contract Documents;

- 2 two further copies of the Contract Drawings; and

- 3 two copies of the unpriced bills of quantities.

- 3 The Contractor shall keep upon the site and available to the Architect/Contract Administrator or his representative at all reasonable times a copy of each of the following documents, namely: the Contract Drawings; the unpriced bills of quantities; the CDP Documents (where applicable); the descriptive schedules or similar documents referred to in clause 2·9·1·1; the master programme referred to in clause 2·9·1·2; and the drawings and details referred to in clauses 2·10 and 2·12.

- 4 None of the documents referred to in this clause 2·8 or provided or released to the Contractor in accordance with clauses 2·9 to 2·12 shall be used by the Contractor for any purpose other than this Contract, and the Employer, the Architect/Contract Administrator and the Quantity Surveyor shall not divulge or use except for the purposes of this Contract any of the rates or prices in the Contract Bills.

Construction information and Contractor’s master programme

2·9

- 1 As soon as possible after the execution of this Contract, if not previously provided:

- 1 the Architect/Contract Administrator, without charge to the Contractor, shall provide him with any descriptive schedules or similar documents necessary for use in carrying out the Works (excluding any CDP Works), together with any pre-construction information required for the purposes of regulation 10 of the CDM Regulations; and

- 2 the Contractor shall without charge provide the Architect/Contract Administrator with his master programme for the execution of the Works identifying, where required in the Contract Particulars, the critical paths and/or providing such other details as are specified in the Contract Documents.

- 2 Within 14 days of any decision by the Architect/Contract Administrator under clause 2·28·1 or of agreement of any Pre-agreed Adjustment, the Contractor shall provide him with an amendment or revision of the master programme that takes account of that decision or agreement, with the details referred to in clause 2·9·1·2.

- 3 Nothing in the descriptive schedules or similar documents, or in the master programme or any amendment or revision of it, shall however impose any obligation beyond those imposed by the Contract Documents.

- 4 In relation to any CDP Works, the Contractor, in addition to complying with regulations 11, 12 and 18 of the CDM Regulations, shall without charge provide the Architect/Contract Administrator with copies of:

- 1 such Contractor’s Design Documents, and (if requested) related calculations and information, as are reasonably necessary to explain or amplify the Contractor’s Proposals; and

- 2 all levels and setting out dimensions which the Contractor prepares or uses for the purposes of carrying out and completing the Contractor’s Designed Portion.

- 5 The Contractor’s Design Documents and other information referred to in clause 2·9·4·1 shall be provided to the Architect/Contract Administrator as and when necessary from time to time in accordance with the Contractor’s Design Submission Procedure set out in Schedule 1 or as otherwise stated in the Contract Documents, and the Contractor shall not commence any work to which such a document relates before that procedure has been complied with.

Levels and setting out of the Works

2·10

The Architect/Contract Administrator shall determine any levels required for the execution of the Works and, subject to clause 2·9·4·2, shall provide the Contractor by way of accurately dimensioned drawings with such information as shall enable the Contractor to set out the Works. The Contractor shall be responsible for, and shall at no cost to the Employer amend, any errors arising from his own inaccurate setting out. With the Employer’s consent, the Architect/Contract Administrator may instruct that such errors shall not be amended and an appropriate deduction shall be made from the Contract Sum for those that are not required to be amended.
Information Release Schedule

2·11 Except to the extent that the Architect/Contract Administrator is prevented by an act or default of the Contractor or of any of the Contractor’s Persons, he shall ensure that the information referred to in the Information Release Schedule is released at the time stated in that schedule. The Employer and the Contractor may agree to vary any such time, such agreement not to be unreasonably withheld.

Further drawings, details and instructions

2·12 ·1 Where not included in the Information Release Schedule, the Architect/Contract Administrator shall from time to time, without charge to the Contractor, provide him with such further drawings or details as are reasonably necessary to explain and amplify the Contract Drawings and shall issue such instructions (including those for or in regard to the expenditure of Provisional Sums) as are necessary to enable the Contractor to carry out and complete the Works in accordance with this Contract.

·2 The further drawings, details and instructions shall be provided or given at the time it is reasonably necessary for the Contractor to receive them, having regard to the progress of the Works, or, if in the Architect/Contract Administrator’s opinion practical completion of the Works or relevant Section is likely to be achieved before the relevant Completion Date, having regard to that Completion Date.

·3 Where the Contractor has reason to believe that the Architect/Contract Administrator is not aware of the time by which the Contractor needs to receive such further drawings, details or instructions, he shall, so far as reasonably practicable, notify the Architect/Contract Administrator sufficiently in advance as to enable the Architect/Contract Administrator to comply with this clause 2·12.

Errors, Discrepancies and Divergences

Preparation of Contract Bills and Employer’s Requirements

2·13 ·1 Unless in respect of any specified item or items it is otherwise specifically stated in the Contract Bills, the Contract Bills are to have been prepared in accordance with the Standard Method of Measurement and any addendum bills to be issued for the purposes of obtaining a Variation Quotation shall be prepared on the same basis.

·2 Subject to clause 2·17, 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.

Contract Bills and CDP Documents – errors and inadequacy

2·14 ·1 If in the Contract Bills or any such addendum bill as is referred to in clause 2·13·1, there is any unstated departure from the method of preparation referred to in that clause or any error in description or in quantity or any omission of items (including any error in or omission of information in any item which is the subject of a Provisional Sum for defined work), the departure, error or omission shall not vitiate this Contract but shall be corrected. Where the description of a Provisional Sum for defined work does not provide the information required by the Standard Method of Measurement, the description shall be corrected so that it does provide that information.

·2 If an inadequacy is found in any design in the Employer’s Requirements in relation to which the Contractor under clause 2·13·2 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 altered or modified accordingly.

·3 Subject to clause 2·17, any correction, alteration or modification under clause 2·14·1 or 2·14·2 shall be treated as a Variation.

·4 Any error in description or in quantity in the Contractor’s Proposals or in the CDP Analysis or any error consisting of an omission of items from them shall be corrected, but there shall be no addition to the Contract Sum in respect of that correction or in respect of any instruction requiring a Variation of work not comprised in the Contractor’s Designed Portion that is necessitated by any such error or its correction.
Notice of discrepancies etc.

2.15 If the Contractor becomes aware of any such departure, error, omission or inadequacy as is referred to in clause 2.14 or any other discrepancy or divergence in or between any of the following documents, namely:

· 1 the Contract Drawings;
· 2 the Contract Bills;
· 3 any instruction issued by the Architect/Contract Administrator under these Conditions;
· 4 any drawings or documents issued by the Architect/Contract Administrator under any of clauses 2.9 to 2.12; and
· 5 (where applicable) the CDP Documents,

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

Discrepancies in CDP Documents

2.16

· 1 Where the discrepancy or divergence to be notified under clause 2.15 is within or between the CDP Documents other than the Employer’s Requirements, the Contractor shall send with his notice, or as soon thereafter as is reasonably practicable, a statement setting out his proposed amendments to remove it. The Architect/Contract Administrator shall not be obliged to issue instructions until he receives that statement, but, when issued, the Contractor shall comply with those instructions and, to the extent that they relate to the removal of that discrepancy or divergence, there shall be no addition to the Contract Sum.

· 2 Where the discrepancy is within the Employer’s Requirements (including any Variation of them issued under clause 3.14) 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 such a discrepancy, the Contractor shall notify the Architect/Contract Administrator of his proposed amendment to deal with it and the Architect/Contract Administrator shall either agree the proposed amendment or decide how the discrepancy shall be dealt with; that agreement or decision shall be notified to the Contractor and treated as a Variation.

Divergences from Statutory Requirements

2.17

· 1 If the Contractor or Architect/Contract Administrator becomes aware of any divergence between the Statutory Requirements and any of the documents referred to in clause 2.15, he shall immediately give the other notice specifying the divergence and, where it is between the Statutory Requirements and any of the CDP Documents, the Contractor shall notify the Architect/Contract Administrator of his proposed amendment for removing it.

· 2 Within 7 days of becoming aware of such divergence (or, where applicable, within 14 days of receipt of the Contractor’s proposed amendment), the Architect/Contract Administrator shall issue instructions in that regard, in relation to which:

· 1 in the case of a divergence between the Statutory Requirements and any of the CDP Documents, the Contractor shall comply at no cost to the Employer unless after the Base Date there is a change in the Statutory Requirements which necessitates an alteration or modification to the Contractor’s Designed Portion, in which event such alteration or modification shall be treated as an instruction requiring a Variation of the Employer’s Requirements; and

· 2 in any other case, if and insofar as those instructions require the Works to be varied, they shall be treated as instructions requiring a Variation.

· 3 Provided the Contractor is not in breach of clause 2.17.1, the Contractor shall not be liable under this Contract if the Works (other than the CDP Works) do not comply with the Statutory Requirements to the extent that the non-compliance results from the Contractor having carried out work in accordance with the documents referred to in clauses 2.15.1 to 2.15.4 (other than an instruction for a Variation in respect of the Contractor’s Designed Portion).
Emergency compliance with Statutory Requirements

2·18  ·1 If in any emergency compliance with the Statutory Requirements necessitates the Contractor supplying materials and/or executing work before receiving instructions under clause 2·17·2, the Contractor shall supply such limited materials and execute such limited work as are reasonably necessary to secure immediate compliance.

·2 The Contractor shall forthwith notify the Architect/Contract Administrator of the emergency and of the steps that he is taking under clause 2·18·1.

·3 Where the emergency has arisen because of a divergence between the Statutory Requirements and any of the documents referred to in clauses 2·15·1 to 2·15·4, then, provided that the Contractor has complied with clause 2·18·2, work executed and materials supplied by the Contractor under clause 2·18·1 shall be treated as executed and supplied pursuant to an instruction requiring a Variation.

CDP Design Work

Design liabilities and limitation

2·19 Where there is a Contractor’s Designed Portion:

·1 insofar as its design is comprised in the Contractor’s Proposals and in what the Contractor is to complete in accordance with the Employer’s Requirements and these Conditions (including any further design required to be carried out by the Contractor as a result of a Variation), the Contractor shall in respect of any inadequacy in such design have the like liability to the Employer, whether under statute or otherwise, as would an architect or, as the case may be, other appropriate professional designer holding himself out as competent to take on work for such design who, acting independently under a separate contract with the Employer, has supplied such design for or in connection with works to be carried out and completed by a building contractor who is not the supplier of the design.

·2 where and to the extent that this Contract involves the Contractor in taking on work for or in connection with the provision of a dwelling or dwellings, the reference in clause 2·19·1 to the Contractor’s liability includes liability under the Defective Premises Act 1972.

·3 where or to the extent that this Contract does not involve the Contractor in taking on work for or in connection with the provision of a dwelling or dwellings to which the Defective Premises Act 1972 applies, the Contractor’s liability for loss of use, loss of profit or other consequential loss arising in respect of the liability of the Contractor referred to in clause 2·19·1 shall be limited to the amount, if any: stated in the Contract Particulars; but such limitation of amount shall not apply to or be affected by any liquidated damages under clause 2·32.

Errors and failures – other consequences

2·20 No extension of time shall be given, and clauses 4·23 and 8·9·2 shall not have effect, where or to the extent that the cause of the progress of the Works having been delayed, affected or suspended is:

·1 any error, divergence, omission or discrepancy in the Contractor’s Proposals or in anything provided under clause 2·9·4, or any failure of the Contractor, in completing the Contractor’s Design Documents, to comply with regulations 11, 12 and 18 of the CDM Regulations; or

·2 failure by the Contractor to provide in due time any necessary Contractor’s Design Documents or related calculations or information either:

·1 as required by clause 2·9·5; or

·2 in response to an application from the Architect/Contract Administrator specifying the relevant documents or information and date by which it is reasonably necessary for them to be received, having regard to the progress of the Works (or, where practical completion of the Works or Section is likely to be achieved before the relevant Completion Date, having regard to that Completion Date).
Fees, Royalties and Patent Rights

Fees or charges legally demandable

2.21 The Contractor shall pay all fees or charges (including any rates or taxes) legally demandable under any of the Statutory Requirements and indemnify the Employer against any liability resulting from any failure to do so. Where such fees or charges are stated by way of a Provisional Sum in the Contract Bills they shall be dealt with in accordance with clauses 4.3.2.1 and 4.3.3.3 and in any other case the amount of any such fees or charges (including any rates or taxes other than VAT) shall be added to the Contract Sum unless they:

1. are priced in the Contract Bills; or
2. relate solely to the Contractor’s Designed Portion (in which case they shall be deemed to be included in the Contract Sum).

Royalties and patent rights – Contractor’s indemnity

2.22 All royalties or other sums payable in respect of the supply and use in carrying out the Works as described by or referred to in the Contract Bills or in the Employer’s Requirements of any patented articles, processes or inventions shall be deemed to have been included in the Contract Sum, and the Contractor shall indemnify the Employer from and against all claims and proceedings which may be brought or made against the Employer, and all damages, costs and expense to which he may be put, by reason of the Contractor infringing or being held to have infringed any patent rights in relation to any such articles, processes or inventions.

Patent rights – Instructions

2.23 Where in compliance with the Architect/Contract Administrator’s instructions the Contractor shall supply and/or use in carrying out the Works any patented articles, processes or inventions, the Contractor shall not be liable in respect of any infringement or alleged infringement of any patent rights in relation to any such articles, processes or inventions 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.

Unfixed Materials and Goods – property, risk etc.

Materials and goods – on site

2.24 Site Materials shall not be removed from storage on or adjacent to the Works except for use on the Works without the Architect/Contract Administrator’s consent, such consent not to be unreasonably delayed or withheld. Where their value has in accordance with clauses 4.10 and 4.16 been included in any Interim Certificate under which the amount properly due to the Contractor has been paid by the Employer, they shall upon such payment become the Employer’s property, but, subject to Insurance Option B or C (if applicable), the Contractor shall remain responsible for loss or damage to them.

Materials and goods – off site

2.25 Where the value of any Listed Items has in accordance with clause 4.17 been included in any Interim Certificate under which the amount properly due to the Contractor has been paid by the Employer, those items shall become the Employer’s property and thereafter the Contractor shall not, except for use upon the Works, remove or cause or permit them to be moved or removed from the premises where they are. The Contractor shall be responsible for any loss of or damage to them and for the cost of their storage, handling and insurance until they are delivered to and placed on or adjacent to the Works. As from such delivery the provisions of clause 2.24 (except the words “Where their value” to “Employer’s property, but,”) shall apply to such items.

Adjustment of Completion Date

Related definitions and interpretation

2.26 In clauses 2.27 to 2.29 and, so far as relevant, in the other clauses of these Conditions:

1. any reference to delay or extension of time includes any further delay or further extension of time;
2.26 ‘Pre-agreed Adjustment’ means the fixing of a revised Completion Date for the Works or a Section by the Confirmed Acceptance of a Variation Quotation or an Acceleration Quotation;

2.27 ‘Relevant Omission’ means the omission of any work or obligation through an instruction for a Variation under clause 3.14 or through an instruction under clause 3.16 in regard to a Provisional Sum for defined work.

Notice by Contractor of delay to progress

2.27.1 If and whenever it becomes reasonably apparent that the progress of the Works or any Section is being or is likely to be delayed the Contractor shall forthwith give notice to the Architect/Contract Administrator of the material circumstances, including the cause or causes of the delay, and shall identify in the notice any event which in his opinion is a Relevant Event.

2.27.2 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.

2.27.3 The Contractor shall forthwith notify the Architect/Contract Administrator of any material change in the estimated delay or in any other particulars and supply such further information as the Architect/Contract Administrator may at any time reasonably require.

Fixing Completion Date

2.28.1 If, in the Architect/Contract Administrator’s opinion, on receiving a notice and particulars under clause 2.27:

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

2 completion of the Works or of any Section is likely to be delayed thereby beyond the relevant Completion Date,

then, save where these Conditions expressly provide otherwise, the Architect/Contract Administrator shall give an extension of time by fixing such later date as the Completion Date for the Works or Section as he then estimates to be fair and reasonable.

2 Whether or not an extension is given, the Architect/Contract Administrator shall notify the Contractor of his decision in respect of any notice under clause 2.27 as soon as is reasonably practicable and in any event within 12 weeks of receipt of the required particulars. Where the period from receipt to the Completion Date is less than 12 weeks, he shall endeavour to do so prior to the Completion Date.

2.28.3 The Architect/Contract Administrator shall in his decision state:

1 the extension of time that he has attributed to each Relevant Event; and

2 (in the case of a decision under clause 2.28.4 or 2.28.5) the reduction in time that he has attributed to each Relevant Omission.

2.28.4 After the first fixing of a later Completion Date in respect of the Works or a Section, either under clause 2.28.1 or by a Pre-agreed Adjustment, but subject to clauses 2.28.6.3 and 2.28.6.4, the Architect/Contract Administrator may by notice to the Contractor, giving the details referred to in clause 2.28.3, fix a Completion Date for the Works or that Section earlier than that previously so fixed if in his opinion the fixing of such earlier Completion Date is fair and reasonable, having regard to any Relevant Omissions for which instructions have been issued after the last occasion on which a new Completion Date was fixed for the Works or for that Section.

2.28.5 After the Completion Date for the Works or for a Section, if this occurs before the date of practical completion, the Architect/Contract Administrator may, and not later than the expiry of 12 weeks after the date of practical completion shall, by notice to the Contractor, giving the details referred to in clause 2.28.3:

1 fix a Completion Date for the Works or for the Section later than that previously fixed if in his opinion that is fair and reasonable having regard to any Relevant Events, whether on reviewing a previous decision or otherwise and whether or not the Relevant Event has been specifically notified by the Contractor under clause 2.27.1; or

2 notify the Contractor of his decision to fix a later completion date and the details referred to in clause 2.28.3.
subject to clauses 2.28.6.3 and 2.28.6.4, fix a Completion Date earlier than that previously fixed if in his opinion that is fair and reasonable having regard to any instructions for Relevant Omissions issued after the last occasion on which a new Completion Date was fixed for the Works or Section; or

confirm the Completion Date previously fixed.

Provided always that:

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

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

no decision of the Architect/Contract Administrator under clause 2.28.4 or 2.28.5.2 shall fix a Completion Date for the Works or any Section earlier than the relevant Date for Completion; and

no decision under clause 2.28.4 or 2.28.5.2 shall alter the length of any Pre-agreed Adjustment except in the case of a Variation Quotation where the relevant Variation is itself the subject of a Relevant Omission.

Relevant Events

The following are the Relevant Events referred to in clauses 2.27 and 2.28:

Variations and any other matters or instructions which under these Conditions are to be treated as, or as requiring, a Variation;

Architect/Contract Administrator’s instructions:

under any of clauses 2.15, 3.15, 3.16 (excluding an instruction for expenditure of a Provisional Sum for defined work) or 5.3.2; or

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

deferrment of the giving of possession of the site or any Section under clause 2.5;

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

the execution of work for which an Approximate Quantity is not a reasonably accurate forecast of the quantity of work required;

suspension by the Contractor under clause 4.14 of the performance of any or all of his obligations under this Contract;

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

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

exceptionally adverse weather conditions;

loss or damage occasioned by any of the Specified Perils;

civil commotion or the use or threat of terrorism and/or the activities of the relevant authorities in dealing with such event or threat;
·12 strike, lock-out or local combination of workmen affecting any of the trades employed upon the Works or any of the trades engaged in the preparation, manufacture or transportation of any of the goods or materials required for the Works or any persons engaged in the preparation of the design for the Contractor’s Designed Portion;

·13 the exercise after the Base Date by the United Kingdom Government of any statutory power which directly affects the execution of the Works;

·14 force majeure.

Practical Completion, Lateness and Liquidated Damages

Practical completion and certificates

2·30 When in the Architect/Contract Administrator’s opinion practical completion of the Works or a Section is achieved and the Contractor has complied sufficiently with clauses 2·40 and 3·23·4, then:

·1 in the case of the Works, the Architect/Contract Administrator shall forthwith issue a certificate to that effect (‘the Practical Completion Certificate’);

·2 in the case of a Section, he shall forthwith issue a certificate of practical completion of that Section (a ‘Section Completion Certificate’);

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

Non-Completion Certificates

2·31 If the Contractor fails to complete the Works or a Section by the relevant Completion Date, the Architect/Contract Administrator shall issue a certificate to that effect (a ‘Non-Completion Certificate’). If a new Completion Date is fixed after the issue of such a certificate, such fixing shall cancel that certificate and the Architect/Contract Administrator shall where necessary issue a further certificate.

Payment or allowance of liquidated damages

2·32 Provided:

·1 the Architect/Contract Administrator has issued a Non-Completion Certificate for the Works or a Section; and

·2 the Employer has notified the Contractor before the date of the Final Certificate that he may require payment of, or may withhold or deduct, liquidated damages,

the Employer may, not later than 5 days before the final date for payment of the amount payable under clause 4·15, give notice to the Contractor in the terms set out in clause 2·32·2.

A notice from the Employer under clause 2·32·1 shall state that for the period between the Completion Date and the date of practical completion of the Works or that Section:

·1 he requires the Contractor to pay liquidated damages at the rate stated in the Contract Particulars, or lesser rate stated in the notice, in which event the Employer may recover the same as a debt; and/or

·2 that he will withhold or deduct liquidated damages at the rate stated in the Contract Particulars, or at such lesser stated rate, from sums due to the Contractor.[41]

·3 If the Architect/Contract Administrator fixes a later Completion Date for the Works or a Section or such later Completion Date is stated in a Confirmed Acceptance, the Employer shall pay or repay to the Contractor any amounts recovered, allowed or paid under clause 2·32 for the period up to that later Completion Date.

[41] In addition to the notice under clause 2·32·2, the Employer, if he intends to withhold or deduct all or any of the liquidated damages payable, must give the appropriate Pay Less Notice under clause 4·12·5, 4·15·4 or 4·15·6·3.
If the Employer in relation to the Works or a Section has notified the Contractor in accordance with clause 2·32·1·2 that he may require payment of, or may withhold or deduct, liquidated damages, then, unless the Employer states otherwise in writing, clause 2·32·1·2 shall remain satisfied in relation to the Works or Section, notwithstanding the cancellation of the relevant Non-Completion Certificate and issue of any further Non-Completion Certificate.

Partial Possession by Employer

Contractor’s consent

2·33 If at any time or times before the date of issue by the Architect/Contract Administrator of the Practical Completion Certificate or relevant Section Completion Certificate the Employer wishes to take possession of any part or parts of the Works or a Section and the Contractor’s consent has been obtained (which consent shall not be unreasonably delayed or withheld), then, notwithstanding anything expressed or implied elsewhere in this Contract, the Employer may take possession of such part or parts. The Architect/Contract Administrator shall thereupon give the Contractor notice on behalf of the Employer identifying the part or parts taken into possession and giving the date when the Employer took possession (‘the Relevant Part’ and ‘the Relevant Date’ respectively).

Practical completion date

2·34 For the purposes of clauses 2·38 and 4·20·2, 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.

Defects etc. – Relevant Part

2·35 When in the Architect/Contract Administrator’s opinion any defects, shrinkages or other faults in the Relevant Part which he has required to be made good under clause 2·38 have been made good, he shall issue a certificate to that effect.

Insurance – Relevant Part

2·36 As from the Relevant Date the insurance obligation of the Contractor under Insurance Option A or of the Employer under Insurance Option B or paragraph C·2 of Insurance Option C (wherever applies) shall terminate in respect of the Relevant Part (but not otherwise); and, where Insurance Option C applies, the obligation of the Employer to insure under paragraph C·1 shall from the Relevant Date include the Relevant Part.

Liquidated damages – Relevant Part

2·37 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

Schedules of defects and instructions

2·38 If any defects, shrinkages or other faults in the Works or a Section appear within the relevant Rectification Period due to materials, goods or workmanship not in accordance with this Contract or any failure of the Contractor to comply with his obligations in respect of the Contractor’s Designed Portion:

1 such defects, shrinkages and other faults shall be specified by the Architect/Contract Administrator in a schedule of defects which he shall deliver to the Contractor as an instruction not later than 14 days after the expiry of that Rectification Period; and

2 notwithstanding clause 2·38·1, the Architect/Contract Administrator may whenever he considers it necessary issue instructions requiring any such defect, shrinkage or other fault to be made good, provided no instructions under this clause 2·38·2 shall be issued after delivery of a schedule of defects or more than 14 days after the expiry of the relevant Rectification Period.
Within a reasonable time after receipt of such schedule or instructions, the defects, shrinkages and other faults shall at no cost to the Employer be made good by the Contractor unless the Architect/Contract Administrator with the Employer’s consent shall otherwise instruct. If he does so otherwise instruct, an appropriate deduction shall be made from the Contract Sum in respect of the defects, shrinkages or other faults not made good.

Certificate of Making Good

2.39 When in the Architect/Contract Administrator’s opinion the defects, shrinkages or other faults in the Works or a Section which he has required to be made good under clause 2.38 have been made good, he shall issue a certificate to that effect (a ‘Certificate of Making Good’), and completion of that making good shall for the purposes of this Contract be deemed to have taken place on the date stated in that certificate.

Contractor’s Design Documents

As-built Drawings

2.40 Where there is a Contractor’s Designed Portion, the Contractor, before practical completion of the Works or relevant Section, shall without further charge to the Employer supply for the retention and use of the Employer such Contractor’s Design Documents and related information as may be specified in the Contract Documents or as the Employer may reasonably require, showing or describing the Contractor’s Designed Portion as built and, without affecting the Contractor’s obligations under clause 3.23 (the health and safety file), concerning the maintenance and operation of that portion, including any installations forming part of it.

Copyright and use

2.41 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 or the Architect/Contract Administrator, the copyright in all Contractor’s Design Documents shall remain vested in the Contractor.

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. Such licence shall enable the Employer to copy and use the Contractor’s Design Documents for the extension of the Works but shall not include a licence to reproduce the designs contained in them for any extension of the Works.

3 The Contractor shall not be liable for any use by the Employer of any of the Contractor’s Design Documents for any purpose other than that for which they were prepared.
Section 3    Control of the Works

Access and Representatives

Access for Architect/Contract Administrator

3.1 The Architect/Contract Administrator and any person authorised by him shall at all reasonable times have access to the Works and to the workshops or other premises of the Contractor where work is being prepared for this Contract. When work is to be prepared in workshops or other premises of a sub-contractor the Contractor shall by a term in the sub-contract secure so far as possible a similar right of access to those workshops or premises for the Architect/Contract Administrator and any person authorised by him and shall do all things 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.

Person-in-charge

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

Employer’s representative

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

Clerk of works

3.4 The Employer shall be entitled to appoint a clerk of works whose duty shall be to act solely as inspector on behalf of the Employer under the Architect/Contract Administrator’s directions and the Contractor shall afford every reasonable facility for the performance of that duty. If any direction is given to the Contractor by the clerk of works, it shall be of no effect unless given in regard to a matter in respect of which the Architect/Contract Administrator is expressly empowered by these Conditions to issue instructions and unless confirmed in writing by the Architect/Contract Administrator within 2 working days of the direction being given. Any direction so given and confirmed shall, as from the date of issue of that confirmation, be deemed an instruction of the Architect/Contract Administrator.

Replacement of Architect/Contract Administrator or Quantity Surveyor

3.5 1 If the Architect/Contract Administrator or Quantity Surveyor at any time ceases to hold that post for the purposes of this Contract, the Employer shall as soon as reasonably practicable, and in any event within 21 days of the cessation, nominate and give the Contractor notice of the identity of a replacement. Except where the Employer is a Local Authority and the nominated replacement is an official of it, the Contractor may within 7 days of the notice give a counter-notice that he objects to the nominated person acting as replacement and, if the Contractor’s reasons for doing so are accepted by the Employer or considered sufficient by a person appointed under the dispute resolution procedures of this Contract, the Employer shall withdraw the nomination and nominate an acceptable replacement.

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

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

3.6 Notwithstanding any obligation of the Architect/Contract Administrator to the Employer and whether or not the Employer appoints a clerk of works, the Contractor shall remain wholly responsible for carrying out and completing the Works in all respects in accordance with these Conditions. That responsibility shall not be affected by the Architect/Contract Administrator or the clerk of works at any time going on or carrying out any inspection of the Works or visiting any workshop or other premises to inspect them or any work in preparation there, or by the Architect/Contract Administrator including the value of any work, materials or goods in a certificate for payment or by his issuing the Practical Completion Certificate, any Section Completion Certificate or any Certificate of Making Good.

Sub-Contracting

Consent to sub-contracting

3.7 1 The Contractor shall not without the Architect/Contract Administrator’s consent sub-contract the whole or any part of the Works. Such consent shall not be unreasonably delayed or withheld but the Contractor shall remain wholly responsible for carrying out and completing the Works in all respects in accordance with clause 2.1 notwithstanding any such sub-contracting.

2 Where there is a Contractor’s Designed Portion, the Contractor shall not without the Employer’s consent sub-contract the design for it. Such consent shall not be unreasonably delayed or withheld but shall not in any way affect the obligations of the Contractor under clauses 2.2 and 2.19 or any other provision of this Contract.

3 The provisions of this clause 3.7 and of clauses 3.8 and 3.9 shall not apply to the execution of part of the Works by a Statutory Undertaker, who shall not in that capacity be a sub-contractor within the terms of this Contract.

List in Contract Bills

3.8 1 Where the Contract Bills provide that certain work measured or otherwise described in those Bills and priced by the Contractor is to be carried out by persons named in a list in or annexed to the Contract Bills and selected from that list by and at the sole discretion of the Contractor, the provisions of this clause 3.8 shall apply.

2 The list shall comprise not less than three persons. The Employer (or the Architect/Contract Administrator on his behalf) and the Contractor shall each be entitled with the consent of the other, which shall not be unreasonably delayed or withheld, to add additional persons to the list at any time prior to the execution of a binding sub-contract.[43]

3 If at any time prior to the execution of a binding sub-contract there are less than three persons named in the list that are able and willing to carry out the relevant work, then, either:

1 the Employer and the Contractor shall by agreement (which shall not be unreasonably delayed or withheld) add the names of other persons so that the list comprises not less than three such persons,[43] or

2 the work shall be carried out by the Contractor who may sub-contract to any sub-contractor in accordance with clause 3.7.

4 A person selected from the list by the Contractor under this clause 3.8 shall be a sub-contractor.

Conditions of sub-contracting

3.9 Where considered appropriate, the Contractor shall engage the Sub-Contractor using the relevant version of the JCT Standard Building Sub-Contract. It shall be a condition of any sub-contract that[44]:

---

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

[44] The requirements of clauses 3.9.1 and 3.9.2 together with those in paragraphs A.3 and B.4 of the Fluctuations Options (Schedule 7) are met by the JCT Standard Building Sub-Contracts (SBCSub and SBCSub/D).
the employment of the sub-contractor under the sub-contract shall terminate immediately upon the termination (for any reason) of the Contractor’s employment under this Contract;

2 the sub-contract shall provide:

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 that:

1 where, in accordance with clauses 4·10 and 4·16 of these Conditions, the value of any Site Materials has been included in any Interim Certificate under which the amount properly due to the Contractor has been paid to him, they shall upon such payment become the Employer’s property and the sub-contractor shall not deny that they have become the Employer’s property;

2 if the Contractor pays the sub-contractor for any Site Materials before their value is included in any Interim Certificate, they shall upon such payment become the Contractor’s property;

2 for the grant by the sub-contractor of the rights of access to workshops or other premises referred to in clause 3·1 of these Conditions;

3 that each party undertakes to the other in relation to the Works and the site duly to comply with the CDM Regulations;

4 that if by the final date for payment stated in the sub-contract the Contractor fails to pay a sum, or any part of it, due to the sub-contractor, the Contractor shall, in addition to any unpaid amount that should properly have been paid, pay simple interest on that amount at the Interest Rate for the period from the final date for payment until such payment is made; such payment of interest to be on and subject to terms equivalent to those of clauses 4·12·6 and 4·15·7 of these Conditions;

5 where applicable, for the execution and delivery by the sub-contractor, in each case within 14 days of receipt of a written request by the Contractor, of such collateral warranties as comply with the Contract Documents;

6 that neither of the provisions referred to in clauses 3·9·2·1·1 and 3·9·2·1·2 shall operate so as to affect any vesting in the Contractor of property in any Listed Item required for the purposes of clause 4·17·2·1 of these Conditions.

The Contractor shall not give such consent as is referred to in clause 3·9·2·1 without the prior consent of the Architect/Contract Administrator under clause 2·24 of these Conditions.

**Architect/Contract Administrator’s Instructions**

**Compliance with instructions**

3·10 The Contractor shall forthwith comply with all instructions issued to him by the Architect/Contract Administrator in regard to any matter in respect of which the Architect/Contract Administrator is expressly empowered by these Conditions to issue instructions, save that:

1 where an instruction requires a Variation of the type referred to in clause 5·1·2, the Contractor need not comply to the extent that he notifies a reasonable objection to it to the Architect/Contract Administrator;

2 where an instruction for a Variation is given which pursuant to clause 5·3·1 requires the Contractor to provide a Variation Quotation, the Variation shall not be carried out until the Architect/Contract Administrator has in relation to it issued either a Confirmed Acceptance or a further instruction under clause 5·3·2;
continued 3.10

3 if in the Contractor’s opinion compliance with any direction under clause 2.2.2 or any instruction issued by the Architect/Contract Administrator injuriously affects the efficacy of the design of the Contractor’s Designed Portion (including the obligations of the Contractor to comply with regulations 11, 12 and 18 of the CDM Regulations), he shall within 7 days of receipt of the direction or instruction give notice to the Architect/Contract Administrator specifying the injurious effect, and the direction or instruction shall not take effect unless confirmed by the Architect/Contract Administrator.

Non-compliance with instructions

3.11 Subject to clause 3.10, if within 7 days after receipt of a notice from the Architect/Contract Administrator requiring compliance with an instruction the Contractor does not comply, the Employer may employ and pay other persons to execute any work whatsoever which may be necessary to give effect to that instruction. The Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and an appropriate deduction shall be made from the Contract Sum.

Instructions other than in writing

3.12 1 Where the Architect/Contract Administrator issues an instruction otherwise than in writing, it shall be of no immediate effect but the Contractor shall confirm it in writing to the Architect/Contract Administrator within 7 days, and, if he does not dissent by notice to the Contractor within 7 days from receipt of the Contractor’s confirmation, it shall take effect as from the expiry of the latter 7 day period.

2 If within 7 days of giving an instruction otherwise than in writing the Architect/Contract Administrator confirms it in writing, the Contractor shall not be obliged to confirm it and it shall take effect as from the date of the Architect/Contract Administrator’s confirmation.

3 If neither the Contractor nor the Architect/Contract Administrator confirms such an instruction in the manner and time stated but the Contractor nevertheless complies with it, the Architect/Contract Administrator may at any time prior to the issue of the Final Certificate confirm it with retrospective effect.

Provisions empowering instructions

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

Instructions requiring Variations

3.14 1 The Architect/Contract Administrator may issue instructions requiring a Variation.

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 3.10.1.

3 In respect of the Contractor’s Designed Portion, any instruction requiring a Variation shall be an alteration to or modification of the Employer’s Requirements.

4 The Architect/Contract Administrator may sanction in writing any Variation made by the Contractor otherwise than pursuant to an instruction.

5 No Variation required by the Architect/Contract Administrator or subsequently sanctioned by him shall vitiate this Contract.

Postponement of work

3.15 The Architect/Contract Administrator may issue instructions in regard to the postponement of any work to be executed under this Contract.

Instructions on Provisional Sums

3.16 The Architect/Contract Administrator shall issue instructions in regard to the expenditure of Provisional Sums included in the Contract Bills or in the Employer’s Requirements.
Inspection – tests

3·17 The Architect/Contract Administrator may issue instructions requiring the Contractor to open up for inspection any work covered up or to arrange for or carry out any test of any materials or goods (whether or not already incorporated in the Works) or of any executed work. The cost of such opening up or testing (including the cost of making good) shall be added to the Contract Sum unless provided for in the Contract Bills or unless the inspection or test shows that the materials, goods or work are not in accordance with this Contract.

Work not in accordance with the Contract

3·18 If any work, materials or goods are not in accordance with this Contract the Architect/Contract Administrator, in addition to his other powers, may:

·1 issue instructions in regard to the removal from the site of all or any of such work, materials or goods;

·2 after consultation with the Contractor and with the agreement of the Employer, allow all or any of such work, materials or goods to remain (except those which are part of the Contractor’s Designed Portion), in which event he shall notify the Contractor to that effect but that shall not be construed as a Variation and an appropriate deduction shall be made from the Contract Sum;

·3 after consultation with the Contractor, issue such instructions requiring a Variation as are reasonably necessary as a consequence of any instruction under clause 3·18·1 and/or of any notification under clause 3·18·2 (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

·4 having due regard to the Code of Practice set out in Schedule 4, issue such instructions under clause 3·17 to open up for inspection or to test as are reasonable in all the circumstances to establish to the reasonable satisfaction of the Architect/Contract Administrator the likelihood or extent, as appropriate to the circumstances, of any further similar non-compliance. To the extent that such instructions are reasonable, whatever the results of the opening up, no addition shall be made to the Contract Sum but clauses 2·28 and 2·29·2·2 shall apply unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract.

Workmanship not in accordance with the Contract

3·19 Where there is any failure to comply with clause 2·1 in regard to the carrying out of work in a proper and workmanlike manner and/or in accordance with the Construction Phase Plan, the Architect/Contract Administrator, in addition to his other powers, may, after consultation with the Contractor, issue such instructions (whether requiring a Variation 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.

Executed work

3·20 In respect of any materials, goods or workmanship, as comprised in executed work, which under clause 2·3 are to be to the reasonable satisfaction of the Architect/Contract Administrator, the Architect/Contract Administrator, if he is dissatisfied, shall give the reasons for such dissatisfaction to the Contractor within a reasonable time from the execution of the unsatisfactory work.

Exclusion of persons from the Works

3·21 The Architect/Contract Administrator may (but shall not unreasonably or vexatiously) issue instructions requiring the exclusion from the site of any person employed thereon.

Antiquities

3·22 ·1 All fossils, antiquities and other objects of interest or value which may be found on the site or in excavating it during the progress of the Works shall become the Employer’s property. Upon discovery of any such object the Contractor shall forthwith:

·1 use his best endeavours not to disturb the object and cease work if and insofar as its continuance would endanger the object or prevent or impede its excavation or removal;
continue 3·22·1

·2 take all steps necessary to preserve the object in the exact position and condition in which it was found; and

·3 inform the Architect/Contract Administrator or the clerk of works of its discovery and precise location.

·2 The Architect/Contract Administrator shall issue instructions as to action to be taken concerning any object reported under clause 3·22·1, which (without limiting his powers) may require the Contractor to permit the examination, excavation or removal of the object by a third party.

CDM Regulations

Undertakings to comply

3·23 Each Party acknowledges that he is aware of and undertakes to the other that in relation to the Works and site he will duly comply with the CDM Regulations. Without limitation, where the project that comprises or includes the Works is notifiable:

·1 the Employer shall ensure that the CDM Co-ordinator carries out all his duties and, where the Contractor is not the Principal Contractor, shall ensure that the Principal Contractor carries out all his duties under those regulations;

·2 where the Contractor is and while he remains the Principal Contractor, he shall ensure that:

·1 the Construction Phase Plan is prepared and received by the Employer before construction work under this Contract is commenced, and that any subsequent amendment to it by the Contractor is notified to the Employer, the CDM Co-ordinator and (where not the CDM Co-ordinator) the Architect/Contract Administrator; and

·2 welfare facilities complying with Schedule 2 of the CDM Regulations are provided from the commencement of construction work until the end of the construction phase;[45]

·3 where the Contractor is not the Principal Contractor, he shall promptly notify the Principal Contractor of the identity of each sub-contractor that he appoints and each sub-subcontractor appointment notified to him;

·4 the Contractor shall promptly upon the written request of the CDM Co-ordinator provide, and shall ensure that any sub-contractor, through the Contractor, provides, to the CDM Co-ordinator (or, if the Contractor is not the Principal Contractor, to the Principal Contractor) such information as the CDM Co-ordinator reasonably requires for the preparation of the health and safety file.

Appointment of successors

3·24 If the Employer by a further appointment replaces the CDM Co-ordinator or the Principal Contractor, the Employer shall immediately upon such further appointment notify the Contractor of the name and address of the new appointee. If the Employer appoints a successor to the Contractor as the Principal Contractor, the Contractor shall at no cost to the Employer comply with all reasonable requirements of the new Principal Contractor to the extent necessary for compliance with the CDM Regulations; no extension of time shall be given in respect of such compliance.

[45] There is a duty on contractors to ensure compliance with Schedule 2 of the CDM Regulations so far as is reasonably practicable, whether or not the project is notifiable and whether or not the contractor is the Principal Contractor.
Section 4  Payment

Contract Sum and Adjustments

Work included in Contract Sum

4·1 The quality and quantity of the work included in the Contract Sum shall be that set out in the Contract Bills and, where there is a Contractor’s Designed Portion, in the CDP Documents.

Adjustment only under the Conditions

4·2 The Contract Sum shall not be adjusted or altered in any way other than in accordance with the express provisions of these Conditions and, subject to clause 2·14, any error in the computation of the Contract Sum is accepted by the Parties.

Items included in adjustments

4·3 ·1 The Contract Sum shall be adjusted by:

1 any amounts agreed by the Employer and the Contractor in respect of Variations and other work of the types referred to in clause 5·2·1;
2 the amounts stated in any Variation Quotation or Acceleration Quotation for which there is a Confirmed Acceptance, and by the amount of any Variations valued under clause 5·3·3, and
3 (where Insurance Option A applies) any variation in premium referred to in clause 6·10·2.

·2 There shall be deducted from the Contract Sum:

1 all Provisional Sums and the value of all work for which an Approximate Quantity is included in the Contract Bills or in the Employer’s Requirements;
2 the amount of each Valuation under clause 5·6·2 or 5·8·3 of items omitted in accordance with a Variation, together with the amount included in the Contract Bills or in the CDP Analysis for any other work as referred to in clause 5·9;
3 any amounts deductible under clause 2·10, 2·38, 3·11, 3·18·2 or 6·16·2 and any amounts allowable to the Employer under whichever Fluctuations Option applies; and
4 any other amount required by this Contract to be deducted from the Contract Sum.

·3 There shall be added to the Contract Sum:

1 any amounts payable by the Employer to the Contractor as a result of payments made or costs incurred by the Contractor under clauses 2·21, 2·23, 3·17 and 6·5;
2 the amount of the Valuation of any Variation, including the valuation of other work as referred to in clause 5·9 but excluding any omission;
3 the amount of the Valuation of work executed by, or the amount of any disbursements by, the Contractor in accordance with Architect/Contract Administrator’s instructions as to the expenditure of Provisional Sums included in the Contract Bills or in the Employer’s Requirements and of all work for which an Approximate Quantity is included in the Contract Bills or in the Employer’s Requirements;
4 any amounts ascertained under clause 4·23;
5 any amounts paid by the Contractor under Insurance Option B or C or under clause 2·6·2, 6·10·3, 6·11·3 or 6·17 which the Contractor is entitled to have added to the Contract Sum;
any amounts payable to the Contractor under whichever Fluctuations Option applies;

-7 any amounts payable under clause 4.14.2; and

-8 any other amount required by this Contract to be added to the Contract Sum.

**Taking adjustments into account**

4.4 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 Certificate.

**Final adjustment**

4.5

1. Not later than 6 months after the issue of the Practical Completion Certificate or last Section Completion Certificate, the Contractor shall provide the Architect/Contract Administrator or (if so instructed) the Quantity Surveyor, with all documents necessary for the adjustment of the Contract Sum.

2. Not later than 3 months after receipt of the documents referred to in clause 4.5.1:

   1. the Architect/Contract Administrator, or, if he so instructs, the Quantity Surveyor, shall (unless previously ascertained) ascertain the amount of any loss and/or expense under clause 4.23; and

   2. the Quantity Surveyor shall prepare a statement of all adjustments to be made to the Contract Sum under clause 4.3, other than any loss and/or expense then being ascertained,

and the Architect/Contract Administrator shall within that 3 month period send to the Contractor a copy of that statement and (if applicable) that ascertainment.

**Payments, Certificates and Notices**

**VAT**

4.6

1. The Contract Sum is exclusive of VAT and in relation to any payment to the Contractor under this Contract, the Employer shall in addition pay the amount of any VAT properly chargeable in respect of it.

2. To the extent that after the Base Date the supply of goods and services to the Employer becomes exempt from VAT there shall be paid to the Contractor an amount equal to the amount of input tax on the supply to the Contractor of goods and services which contribute to the Works but which as a consequence of that exemption the Contractor cannot recover.

**Construction Industry Scheme (CIS)**

4.7 If the Employer is or at any time up to the payment of the Final Certificate becomes a ‘contractor’ for the purposes of the CIS, his obligation to make any payment under this Contract is subject to the provisions of the CIS.

**Advance payment**

4.8 Where the Contract Particulars state that clause 4.8 applies, the advance payment shall be paid to the Contractor on the date and reimbursed to the Employer on the terms stated in the Contract Particulars. Provided that where 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.

---

[46] See the Contract Particulars (Fourth Recital and clause 4.7).

[47] As to approval of sureties, see the Standard Building Contract Guide.
Interim payments – due dates and amounts due

4·9·1 For the period up to practical completion of the Works, the due dates for interim payments by the Employer shall be the monthly dates specified in the Contract Particulars up to either the date of practical completion or the specified date within one month thereafter. The due dates shall subsequently be the specified date at intervals of 2 months (unless otherwise agreed). The last due date shall be the date of expiry of the Rectification Period or, if later, the date of issue of the Certificate of Making Good (or, where there are Sections, the last such period or certificate).

4·9·2 Subject to any agreement between the Parties as to stage payments, the sum due as an interim payment shall be the Gross Valuation under clause 4·16 less the aggregate of:

1 any amount which may be deducted and retained by the Employer as provided in clauses 4·18 to 4·20 (‘the Retention’);

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 4·8;

3 the sums stated as due in previous Interim Certificates; and

4 any sums paid in respect of an Interim Payment Notice given after the issue of the latest Interim Certificate, whether as adjusted by a Pay Less Notice or otherwise.

Interim Certificates and valuations

4·10·1 The Architect/Contract Administrator shall not later than 5 days after each due date issue an Interim Certificate, stating the sum that he considers to be or have been due at the due date to the Contractor in respect of the interim payment, calculated in accordance with clause 4·9·2, and the basis on which that sum has been calculated.

4·10·2 Interim valuations shall be made by the Quantity Surveyor whenever the Architect/Contract Administrator considers them necessary for ascertaining the amount to be stated as due in an Interim Certificate, except where Fluctuations Option C (formula adjustment) applies[48], when an interim valuation shall be made before the issue of each Interim Certificate.

Contractor’s Interim Applications and Payment Notices

4·11·1 In relation to any interim payment the Contractor may not less than 7 days before the due date make an application to the Quantity Surveyor (an ‘Interim Application’), stating the sum that the Contractor considers will become due to him at the relevant due date in accordance with clause 4·9·2 and the basis on which that sum has been calculated.

4·11·2 If an Interim Certificate is not issued in accordance with clause 4·10·1, then:

1 where the Contractor has made an Interim Application in accordance with clause 4·11·1, that application is for the purposes of these Conditions an Interim Payment Notice; or

2 where the Contractor has not made an Interim Application, he may at any time after the 5 day period referred to in clause 4·10·1 give an Interim Payment Notice to the Quantity Surveyor, stating the sum that the Contractor considers to be or have been due to him at the relevant due date in accordance with clause 4·9·2 and the basis on which that sum has been calculated.

Interim payments – final date and amount

4·12·1 Subject to clause 4·12·4, the final date for payment of an interim payment shall be 14 days from its due date.

4·12·2 Subject to any Pay Less Notice given by the Employer under clause 4·12·5, the sum to be paid by the Employer on or before the final date for payment shall be the sum stated as due in the Interim Certificate.

[48] See the Contract Particulars under the reference to clause 4·21 and Schedule 7.
3. If the Interim Certificate is not issued in accordance with clause 4.10.1, but an Interim Payment Notice has been given under clause 4.11, the sum to be paid by the Employer shall, subject to any Pay Less Notice under clause 4.12.5, be the sum stated as due in the Interim Payment Notice.

4. Where an Interim Payment Notice is given under clause 4.11.2.2, the final date for payment of the sum specified in it shall for all purposes be regarded as postponed by the same number of days as the number of days after expiry of the 5 day period referred to in clause 4.10.1 that the Interim Payment Notice is given.

5. If the Employer intends to pay less than the sum stated as due from him in the Interim Certificate or Interim Payment Notice, as the case may be, he shall not later than 5 days before the final date for payment give the Contractor notice of that intention in accordance with clause 4.13.1 (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 as due in the notice.

6. If the Employer fails to pay a sum, or any part of it, due to the Contractor under these Conditions by the final date for its payment, the Employer shall, in addition to any unpaid amount that should properly have been paid, pay the Contractor simple interest on that amount at the Interest Rate for the period from the final date for payment until payment is made. Interest under this clause 4.12.6 shall be a debt due to the Contractor from the Employer.

7. Acceptance of a payment of interest under clause 4.12.6 shall not in any circumstances be construed as a waiver of the Contractor’s right to proper payment of the principal amount due, to suspend performance under clause 4.14 or to terminate his employment under section 8.

Pay Less Notices and general provisions

4.13 1. A Pay Less Notice:

1. (where it is to be given by the Employer) shall specify both the sum that he considers to be due to the Contractor at the date the notice is given and the basis on which that sum has been calculated, and may be given on behalf of the Employer by the Architect/Contract Administrator, Quantity Surveyor or Employer’s representative or by any other person who the Employer notifies the Contractor as being authorised to do so;

2. (where it is to be given by the Contractor) shall be sent to the Employer, with a copy to the Architect/Contract Administrator, and shall specify both the sum that the Contractor considers to be due to the Employer at that date and the basis on which that sum has been calculated;

3. may not be given in relation to a payment for which an Interim Certificate or the Final Certificate has not been issued until the Contractor has in respect of the payment given an Interim Payment Notice or Final Payment Notice.

2. In relation to the requirements for the issue of certificates and the giving of notices under section 4, it is immaterial that the amount then considered to be due may be zero.

3. Notwithstanding his fiduciary interest in the Retention as stated in clause 4.18, the Employer is entitled to exercise any rights under this Contract of withholding or deduction from sums due or to become due to the Contractor, whether or not any Retention is included in any such sum under clause 4.20.

Contractor’s right of suspension

4.14 1. Without affecting the Contractor’s other rights and remedies, if the Employer fails to pay the Contractor the sum payable in accordance with clause 4.12 (together with any VAT properly chargeable in respect of such payment) by the final date for payment and the failure continues for 7 days after the Contractor has given notice to the Employer, with a copy to the Architect/Contract Administrator, of his intention to suspend the performance of his obligations under this Contract and the ground or grounds on which it is intended to suspend performance, the Contractor may suspend performance of any or all of those obligations until payment is made in full.
Where the Contractor exercises his right of suspension under clause 4·14·1, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of the exercise of the right.

Applications in respect of any such costs and expenses shall be made to the Architect/Contract Administrator and the Contractor shall with his application or on request submit such details of the costs and expenses as are reasonably necessary to enable his entitlement to be ascertained.

**Final Certificate and final payment**

4·15

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

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

2. the date of issue of the Certificate of Making Good under clause 2·39 or (where there are Sections) the last such certificate to be issued; or

3. the date on which the Architect/Contract Administrator sends to the Contractor copies of the statement and of any ascertainment to be prepared under clause 4·5·2.

2. The Final Certificate shall state:

1. the Contract Sum as adjusted in accordance with clause 4·3; and

2. the sum of amounts already stated as due in Interim Certificates plus the amount of any advance payment paid pursuant to clause 4·8 and (where relevant) any such sums as are referred to in clause 4·9·2·4,

and (without affecting the rights of the Contractor in respect of any interim payment not paid in full by the Employer by its final date for payment) the final payment shall be the difference (if any) between the two sums, which shall be shown in the Final Certificate as a balance due to the Contractor from the Employer or to the Employer from the Contractor, as the case may be. The Final Certificate shall state the basis on which that amount has been calculated.

3. The due date for the final payment shall be the date of issue of the Final Certificate or, if that certificate is not issued within the 2 month period referred to in clause 4·15·1, the last day of that period and, subject to clause 4·15·6, the final date for payment shall be 28 days from its due date.

4. If the Party by whom the final payment is stated to be payable (‘the payer’) intends to pay less than the stated balance, he shall not later than 5 days before the final date for payment give the other Party a Pay Less Notice in accordance with clause 4·13·1.

5. Where a Pay Less Notice is given under clause 4·15·4, the payment to be made on or before the final date for payment shall not be less than the amount stated as due in the notice.

6. If the Final Certificate is not issued in accordance with clauses 4·15·1 and 4·15·2:

1. the Contractor may at any time after expiry of the 2 month period referred to in clause 4·15·1 give notice to the Employer with a copy to the Architect/Contract Administrator (a ‘Final Payment Notice’) stating what the Contractor considers to be the amount of the final payment due to him under this Contract and the basis on which the sum has been calculated and, subject to any Pay Less Notice given under clause 4·15·6·3, the final payment shall be that amount;

2. if the Contractor gives a Final 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 2 month period that the Final Payment Notice is given;

---

following the Final 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 4.13.1 and, if he gives such notice, the provisions of clause 4.15.5 shall correspondingly apply.

·7 If the payer fails to pay the final payment, or any part of it, by the final date for its payment, he shall, in addition to any unpaid amount that should properly have been paid, pay the other Party simple interest on that amount at the Interest Rate for the period from the final date for payment until payment is made.

·8 Acceptance of a payment of interest under this clause 4.15 shall not in any circumstances be construed as a waiver of any right to proper payment of the principal amount due.

·9 The final payment and any interest under this clause 4.15 shall be a debt due from the payer to the other Party.

Gross Valuation

Ascertainment

4.16 The Gross Valuation shall be the total of the amounts referred to in clauses 4.16.1 and 4.16.2 less the total of the amounts referred to in clause 4.16.3, applied up to and including a date not more than 7 days before the due date of an interim payment.

·1 The total values of the following which are subject to Retention shall be included:

·1 work properly executed by the Contractor (including work so executed for which a value has been agreed pursuant to clause 5.2.1 or which has been valued under the Valuation Rules and work for which there is a Confirmed Acceptance of a Variation Quotation), together, where applicable, with any adjustment of that value under Fluctuations Option C or by Confirmed Acceptance of an Acceleration Quotation, but excluding any amounts referred to in clause 4.16.2.4. Where there is an Activity Schedule, the value of the work in each activity to which it relates shall be a proportion of the price stated for the work in that activity equal to the proportion of the work in that activity that has then been properly executed;

·2 Site Materials, 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; and

·3 Listed Items (if any), when their value is to be included under clause 4.17.

·2 The following which are not subject to Retention shall be included:

·1 any amounts to be included in Interim Certificates in accordance with clause 4.4 as a result of payments made or costs incurred by the Contractor under clause 2.6.2, 2.21, 2.23, 3.17, 6.5, 6.10.2 or 6.10.3 or paragraph B.2.1.2 or C.3.1 of Schedule 3;

·2 any amounts payable under clause 4.14.2;

·3 any amounts ascertained under clause 4.23;

·4 any amounts in respect of any restoration, replacement or repair of loss or damage and removal and disposal of debris under paragraph B.3.5 or C.4.5.2 of Schedule 3 or clause 6.11.5.2; and

·5 any amount payable to the Contractor under Fluctuations Option A or B, if applicable.

·3 The following shall be deducted:

·1 any amounts deductible under clause 2.10, 2.38, 3.11 or 3.18.2; and

·2 any amount allowable by the Contractor to the Employer under clause 6.10.2 or under Fluctuations Option A or B, if applicable.
Off-site materials and goods

4·17 The sum stated as due in an Interim Certificate shall include the value of any Listed Items before their delivery to or adjacent to the Works provided that the following conditions have been fulfilled:

1. the Listed Items are in accordance with this Contract;
2. the Contractor has provided the Architect/Contract Administrator with reasonable proof that:
   1. the property in the Listed Items is vested in the Contractor; and
   2. the Listed Items are insured against loss or damage for their full value under a policy of insurance protecting the interests of the Employer and the Contractor in respect of the Specified Perils, during the period commencing with the transfer of property in the Listed Items to the Contractor until they are delivered to, or adjacent to, the Works;
3. at the premises where the Listed Items have been manufactured or assembled or are stored, there is in relation to those items clear identification of:
   1. the Employer as the person to whose order they are held; and
   2. their destination as the Works,
and the items either are set apart or have been clearly and visibly marked, individually or in sets, by letters or figures or by reference to a pre-determined code; and
4. in the case of 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[47] in the terms set out in Part 2 of Schedule 6 ('the required bond') in the amount specified in the Contract Particulars for this clause 4·17·4; or
5. in the case of Listed Items which are not uniquely identified, the Contractor has provided the required bond in the amount specified in the Contract Particulars for this clause 4·17·5.

Retention

Rules on treatment of Retention

4·18 The Retention which the Employer may deduct and retain as referred to in clause 4·9·2·1 shall be subject to the following rules:

1. the Employer’s interest in the Retention is fiduciary as trustee for the Contractor (but without obligation to invest);
2. prior to the date for issue of each Interim Certificate the Architect/Contract Administrator shall prepare, or instruct the Quantity Surveyor to prepare, and with that certificate shall issue to the Employer and the Contractor a statement specifying the amount of the Retention deducted (and, where relevant, the amount to be released in accordance with clause 4·20) in arriving at the sum stated as due;
3. except where the Employer is a Local Authority, the Employer, to the extent that he exercises his right under clause 4·20 and if the Contractor so requests, shall at the date of payment place the Retention in a separate bank account (so designated as to identify the amount as the Retention held by the Employer on trust as provided in clause 4·18·1) and certify to the Architect/Contract Administrator and the Contractor that the amount has been so placed. The Employer shall be entitled to the full beneficial interest in any interest accruing on the separate bank account and shall be under no duty to account for any such interest to the Contractor or any sub-contractor.
Retention Bond

4-19 Where the Contract Particulars state that clause 4·19 applies, then:

1. subject to clauses 4·19·3 and 4·19·4, the provisions of clauses 4·9·2·1 and 4·20 permitting the deduction of the Retention shall not apply save that the Architect/Contract Administrator shall prior to the date for issue of each Interim Certificate prepare, or instruct the Quantity Surveyor to prepare, a statement specifying the deduction in respect of the Retention that would have been made had those clauses applied[50];

2. on or before the Date of Possession the Contractor shall provide to the Employer and thereafter maintain a bond ('the Retention Bond') in favour of the Employer from a surety approved by the Employer ('the Surety') in the terms set out in Part 3 of Schedule 6, incorporating in clauses 2 (maximum aggregate sum) and 6·3 (expiry date) of the bond the sum and date stated in the Contract Particulars;

3. if the Contractor fails to provide or maintain the Retention Bond in accordance with clause 4·19·2, the provisions of clauses 4·9·2·1 and 4·20 permitting the deduction of the Retention shall apply in respect of Interim Certificates issued after the date of the failure, save that if the Contractor subsequently provides the required bond the Employer shall, in the next Interim Certificate to be issued after such compliance, release to the Contractor the Retention deducted during the period of failure;

4. if at any time the amount of the Retention that would have been deducted had the provisions of clauses 4·9·2·1 and 4·20 applied exceeds the aggregate sum stated in the Retention Bond, then either the Contractor shall arrange with the Surety for the aggregate sum to equate to such amount or the amount not covered by the bond may be deducted as Retention; and

5. where the Employer has required the Contractor to provide a performance bond, then, in respect of any default for which the Employer is entitled to make a demand under the performance bond as well as under the Retention Bond, the Employer shall first have recourse to the Retention Bond.

Retention – amounts and periods

4·20 The Retention which the Employer may deduct and retain shall be such percentage of the total amount included under clause 4·16·1 in the Gross Valuation for an Interim Certificate as is permitted by the following rules[51]:

1. the Retention Percentage shall be 3 per cent or such other rate as is stated in the Contract Particulars;

2. the Retention Percentage may be deducted from so much of the total amount as relates to:
   1. work where the Works or (where there are Sections) the Section(s) of which it forms part have not reached practical completion; and
   2. Site Materials and Listed Items;

3. half the Retention Percentage may be deducted from so much of the total amount as relates to work where the Works or relevant Section(s) have reached practical completion but in respect of which a Certificate of Making Good under clause 2·39 has not been issued or relates to work in a Relevant Part where a certificate under clause 2·35 has not been issued.

Fluctuations

Choice of fluctuation provisions

4·21 Fluctuations shall be dealt with by the application of Schedule 7 in accordance with whichever of the following is stated in the Contract Particulars to apply:

[50] This saving provision is included in view of the provisions of clauses 4·2 and 4·3 of the form of Retention Bond in Schedule 6.

[51] For the effect of clause 4·20·3, see the Standard Building Contract Guide.
Fluctuations Option A: contribution, levy and tax fluctuations, or
Fluctuations Option B: labour and materials cost and tax fluctuations, or
Fluctuations Option C: formula adjustment.

Applicability to Variation Quotations

4.22 Unless otherwise agreed, whichever of Fluctuations Options A, B or C applies under this Contract shall apply in respect of work for which there is a Confirmed Acceptance of a Variation Quotation, or in respect of a Variation to such work, where the base date for its calculation is specified in that quotation.

Loss and Expense

Matters materially affecting regular progress

4.23 If in the execution of this Contract the Contractor incurs or is likely to incur direct loss and/or expense for which he would not be reimbursed by a payment under any other provision in these Conditions due to a deferment of giving possession of the site or relevant part of it under clause 2.5 or because the regular progress of the Works or of any part of them has been or is likely to be materially affected by any of the Relevant Matters, the Contractor may make an application to the Architect/Contract Administrator. If the Contractor makes such application, save where these Conditions provide that there shall be no addition to the Contract Sum or otherwise exclude the operation of this clause, then, if and as soon as the Architect/Contract Administrator is of the opinion that the regular progress has been or is likely to be materially affected as stated in the application or that direct loss and/or expense has been or is likely to be incurred due to such deferment, the Architect/Contract Administrator shall ascertain, or instruct the Quantity Surveyor to ascertain, the amount of the loss and/or expense which has been or is being incurred; provided always that the Contractor shall:

·1 make his application as soon as it has become, or should reasonably have become, apparent to him that the regular progress has been or is likely to be affected;

·2 in support of his application submit to the Architect/Contract Administrator upon request such information as should reasonably enable the Architect/Contract Administrator to form an opinion; and

·3 upon request submit to the Architect/Contract Administrator or to the Quantity Surveyor such details of the loss and/or expense as are reasonably necessary for such ascertainment.

Relevant Matters

4.24 The following are the Relevant Matters:

·1 Variations (excluding those where loss and/or expense is included in the Confirmed Acceptance of a Variation Quotation but including any other matters or instructions which under these Conditions are to be treated as, or as requiring, a Variation);

·2 Architect/Contract Administrator’s instructions:

   ·1 under clause 3.15 or 3.16 (excluding an instruction for expenditure of a Provisional Sum for defined work);

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

   ·3 in relation to any discrepancy or divergence referred to in clause 2.15;

·3 compliance with clause 3.22.1 or with Architect/Contract Administrator’s instructions under clause 3.22.2;

[52] 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. 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.
4.24 Continued

4. The execution of work for which an Approximate Quantity is not a reasonably accurate forecast of the quantity of work required;

5. Any impediment, prevention or default, whether by act or omission, by the Employer, the Architect/Contract Administrator, the Quantity Surveyor or any of the Employer’s Persons, except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or of any of the Contractor’s Persons.

**Amounts ascertained – addition to Contract Sum**

4.25 Any amounts from time to time ascertained under clause 4.23 shall be added to the Contract Sum.

**Reservation of Contractor’s rights and remedies**

4.26 The provisions of clauses 4.23 to 4.25 are without prejudice to any other rights and remedies which the Contractor may possess.
General

Definition of Variations

5·1 The term 'Variation' means:

- the alteration or modification of the design, quality or quantity of the Works including:
  - the addition, omission or substitution of any work;
  - the alteration of the kind or standard of any of the materials or goods to be used in the Works;
  - 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;
- the imposition by the Employer of any obligations or restrictions in regard to the matters set out in this clause 5·1·2 or the addition to or alteration or omission of any such obligations or restrictions so imposed or imposed by the Employer in the Contract Bills or in the Employer’s Requirements in regard to:
  - access to the site or use of any specific parts of the site;
  - limitations of working space;
  - limitations of working hours; or
  - the execution or completion of the work in any specific order.[53]

Valuation of Variations and provisional sum work

5·2 Subject to clause 5·2·2, the value of:

- all Variations required by Architect/Contract Administrator’s instructions or subsequently sanctioned by him in writing;
- all work which under these Conditions is to be treated as a Variation;
- all work executed by the Contractor in accordance with Architect/Contract Administrator’s instructions as to the expenditure of Provisional Sums included in the Contract Bills or in the Employer’s Requirements; and
- all work executed by the Contractor for which an Approximate Quantity has been included in the Contract Bills or in the Employer’s Requirements

shall be such amount as is agreed by the Employer and the Contractor or, where not agreed, shall, unless otherwise agreed by the Employer and the Contractor, be the amount valued by the Quantity Surveyor (a ‘Valuation’) in accordance with clauses 5·6 to 5·10 (‘the Valuation Rules’), such Valuation insofar as it relates to the Contractor’s Designed Portion being in accordance with clause 5·8.

- Clause 5·2·1 shall not apply in respect of a Variation for which a Variation Quotation is made and for which the Architect/Contract Administrator issues a Confirmed Acceptance or in respect of a Variation thereto to which clause 5·3·3 applies.

[53] See clauses 3·10·1 and (where applicable) 3·10·3 for the Contractor’s right of reasonable objection to Variations.
Variation Quotation

5·3 1 If the Architect/Contract Administrator in his instruction for a Variation states that the Contractor is to provide a quotation in accordance with the provisions of Schedule 2 (a ‘Variation Quotation’), the Contractor shall subject to receipt of sufficient information provide a quotation in accordance with those provisions, unless within 7 days of his receipt of that instruction (or such longer period as is either stated in the instruction or agreed between them) he notifies the Architect/Contract Administrator that he disagrees with the application of the procedure to that instruction.

2 If the Contractor notifies his disagreement within that period, he shall not be obliged to provide that quotation and the Variation shall not be carried out unless and until the Architect/Contract Administrator gives a further instruction that the Variation is to be carried out and is to be valued by a Valuation.

3 Where a Variation Quotation has been made for work and a Confirmed Acceptance issued, then, if the Architect/Contract Administrator subsequently issues an instruction requiring a Variation of that work, the Quantity Surveyor shall make a valuation of that Variation on a fair and reasonable basis having regard to the content of that quotation and shall include in that valuation the direct loss and/or expense, if any, incurred by the Contractor because the regular progress of the Works or of any part of them is materially affected by compliance with the instruction.

Contractor’s right to be present at measurement

5·4 Where it is necessary to measure work for the purpose of a Valuation the Quantity Surveyor shall give the Contractor an opportunity to be present at the time of such measurement and to take such notes and measurements as the Contractor may require.

Giving effect to Valuations, agreements etc.

5·5 Effect shall be given by means of addition to or deduction from the Contract Sum to each agreement by the Employer and the Contractor under clause 5·2·1, each Valuation, each Confirmed Acceptance and each valuation under clause 5·3·3.

The Valuation Rules

Measurable Work

5·6 1 To the extent that a Valuation relates to the execution of additional or substituted work which can properly be valued by measurement or to the execution of work for which an Approximate Quantity is included in the Contract Bills and subject to clause 5·8 in the case of CDP Works, such work shall be measured and shall be valued in accordance with the following rules:

1 where the additional or substituted work is of similar character to, is executed under similar conditions as, and does not significantly change the quantity of, work set out in the Contract Bills, the rates and prices for the work so set out shall determine the valuation;

2 where the additional or substituted work is of similar character to work set out in the Contract Bills but is not executed under similar conditions thereto and/or significantly changes its quantity, the rates and prices for the work so set out shall be the basis for determining the valuation and the Valuation shall include a fair allowance for such difference in conditions and/or quantity;

3 where the additional or substituted work is not of similar character to work set out in the Contract Bills, the work shall be valued at fair rates and prices;

4 where the Approximate Quantity is a reasonably accurate forecast of the quantity of work required the rate or price for the Approximate Quantity shall determine the valuation; and

5 where the Approximate Quantity is not a reasonably accurate forecast of the quantity of work required, the rate or price for that Approximate Quantity shall be the basis for determining the valuation and the Valuation shall include a fair allowance for such difference in quantity.
Provided that clauses 5·6·1·4 and 5·6·1·5 shall apply only to the extent that the work has not been altered or modified other than in quantity.

2 To the extent that a Valuation relates to the omission of work set out in the Contract Bills and subject to clause 5·8 in the case of CDP Works, the rates and prices for such work therein set out shall determine the valuation of the work omitted.

3 In any valuation of work under clauses 5·6·1 and 5·6·2:

1 measurement shall be in accordance with the same principles as those governing the preparation of the Contract Bills, as referred to in clause 2·13;

2 allowance shall be made for any percentage or lump sum adjustments in the Contract Bills; and

3 allowance, where appropriate, shall be made for any addition to or reduction of preliminary items of the type referred to in the Standard Method of Measurement, provided that no such allowance shall be made in respect of compliance with an Architect/Contract Administrator’s instruction for the expenditure of a Provisional Sum for defined work.

Daywork

5·7 Where the execution of additional or substituted work cannot be valued in accordance with clause 5·6 or 5·8, as applicable, the Valuation shall comprise:

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 the Construction Confederation as current at the Base Date) together with Percentage Additions to each section of the prime cost at the rates stated in the Contract Bills or, if they apply in respect of labour, at the All-Inclusive Rates stated therein; or

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[54], 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 Contract Bills or, if they apply in respect of labour, at the All-Inclusive Rates stated therein.

Provided that in any case vouchers specifying the time daily spent upon the work, the workmen’s names, the plant and the materials employed shall be delivered for verification to the architect/contract administrator or his authorised representative not later than 7 Business Days after the work has been executed.

Contractor’s Designed Portion – Valuation

5·8 Valuations relating to the Contractor’s Designed Portion shall be made under this clause 5·8.

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

2 The valuation of additional or substituted work shall be consistent with the values of work of a similar character set out in the CDP 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 CDP Analysis a fair valuation shall be made.

3 The valuation of the omission of work set out in the CDP Analysis shall be in accordance with the values therein for such work.

4 Clauses 5·6·3·2, 5·6·3·3, 5·7 and 5·9 shall apply so far as is relevant.

[54] There are currently three definitions to which clause 5·7·2 refers, namely those agreed between the RICS and the Electrical Contractors Association, the RICS and the Electrical Contractors Association of Scotland and the RICS and the Heating and Ventilating Contractors Association.
Change of conditions for other work

5·9 If as a result of:

- 1 compliance with any instruction requiring a Variation;
- 2 compliance with any instruction as to the expenditure of a Provisional Sum for undefined work;
- 3 compliance with any instruction as to the expenditure of a Provisional Sum for defined work, to the extent that the instruction for that work differs from the description given for such work in the Contract Bills; or
- 4 the execution of work for which an Approximate Quantity is included in the Contract Bills, to the extent that the quantity is more or less than the quantity ascribed to that work in the Contract Bills,

there is a substantial change in the conditions under which any other work is executed (including CDP Works), then such other work shall be treated as if it had been the subject of an instruction requiring a Variation and shall be valued in accordance with the provisions of this section 5.

Additional provisions

5·10 · 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 Variation cannot reasonably be effected in the Valuation by the application of clauses 5·6 to 5·9, a fair valuation shall be made.

- 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.
Section 6  Injury, Damage and Insurance

Injury to Persons and Property

Liability of Contractor – personal injury or death

6·1 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, of any of the Employer’s Persons or of any Statutory Undertaker.

Liability of Contractor – injury or damage to property

6·2 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 of any of the Contractor’s Persons. This liability and indemnity is subject to clause 6·3 and, where Insurance Option C (Schedule 3, paragraph C·1) applies, excludes loss or damage to any property required to be insured thereunder caused by a Specified Peril.

Injury or damage to property – Works and Site Materials excluded

6·3 ·1 Subject to clauses 6·3·2 and 6·3·3, the reference in clause 6·2 to ‘property real or personal’ does not include the Works, work executed and/or Site Materials up to and including whichever is the earlier of:
·1 the date of issue of the Practical Completion Certificate; or
·2 the date of termination of the Contractor’s employment.
·2 Where a Section Completion Certificate is issued in respect of a Section, that Section shall not after the date of issue of that certificate be regarded as ‘the Works’ or ‘work executed’ for the purpose of clause 6·3·1.
·3 If clause 2·33 has been operated, then, after the Relevant Date, the Relevant Part shall not be regarded as ‘the Works’ or ‘work executed’ for the purpose of clause 6·3·1.

Insurance against Personal Injury and Property Damage

Contractor's insurance of his liability

6·4 ·1 Without prejudice to his obligation to indemnify the Employer under clauses 6·1 and 6·2, the Contractor shall take out and maintain insurance in respect of claims arising out of his liability referred to in clauses 6·1 and 6·2 which:
·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
for all other claims to which clause 6·4·1 applies, 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 be in a sum not less than that stated in the Contract Particulars for any one occurrence or series of occurrences arising out of one event.

2 As and when reasonably required to do so by the Employer, the Contractor shall send to the Architect/Contract Administrator for inspection by the Employer documentary evidence that the insurances required by clause 6·4·1 have been taken out and are being maintained, and at any time the Employer may (but shall not unreasonably or vexatiously) require that the relevant policy or policies and related premium receipts be sent to the Architect/Contract Administrator for such inspection.

3 If the Contractor defaults in taking out or in maintaining insurance in accordance with clause 6·4·1 the Employer may himself insure against any liability or expense which he may incur as a result of such default and the amount paid or payable by him in respect of premiums therefore may be deducted from any sums due or to become due to the Contractor under this Contract or shall be recoverable from the Contractor as a debt.

Contractor’s insurance of liability of Employer

6·5·1 If the Contract Particulars state that insurance under clause 6·5·1 may be required, the Contractor shall, if instructed by the Architect/Contract Administrator, take out a policy of insurance in the names of the Employer and the Contractor for the amount of indemnity there stated in respect of any expense, liability, loss, claim or proceedings which the Employer may incur or sustain by reason of injury or damage to any property caused by collapse, subsidence, heave, vibration, weakening or removal of support or lowering of ground water arising out of or in the course of or by reason of the carrying out of the Works, excluding injury or damage:

1 for which the Contractor is liable under clause 6·2; or

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

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

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

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

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

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

[55] 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 the excess in the policy and cover may not be available in respect of loss or damage due to gradual pollution.

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

[57] A policy of insurance taken out for the purposes of clause 6·5 should not have an expiry date earlier than the end of the Rectification Period.
continued 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

-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.

-2 Any insurance under clause 6·5·1 shall be placed with insurers approved by the Employer, and the Contractor shall send to the Architect/Contract Administrator for deposit with the Employer the policy or policies and related premium receipts.

-3 The amounts expended by the Contractor to take out and maintain the insurance referred to in clause 6·5·1 shall be added to the Contract Sum.

Excepted Risks

6·6 Notwithstanding clauses 6·1, 6·2 and 6·4·1, the Contractor shall not be liable either to indemnify the Employer or 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

Insurance Options

6·7 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.[58]

Related definitions

6·8 In Schedule 3 and, so far as relevant, in the clauses of these Conditions the following phrases shall have the meanings given below:

All Risks Insurance[59]: 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[60];

(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 who are members of the Pool Reinsurance Company Limited scheme or of any similar successor scheme[61]

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.

[60] 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 to Contractors, though it is not standard.

[61] As respects Terrorism Cover and the requirements of Insurance Options A, B and C, see footnote [59] and the Standard Building Contract Guide.
Sub-contractors – Specified Perils cover under Joint Names All Risks 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 Joint Names Policy referred to in paragraph A·1, A·3, B·1 or C·2 of Schedule 3 shall either:

·1 provide for recognition of each sub-contractor as an insured under the relevant Joint Names Policy; or

·2 include a waiver by the relevant 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 shall continue up to and including the date of issue of any certificate or other document which states that in relation to the Works, the sub-contractor’s works are practically complete or, if earlier, the date of termination of the sub-contractor’s employment. Where there are Sections and the sub-contractor’s works relate to more than one Section, the recognition or waiver for such sub-contractor shall nevertheless cease in relation to a Section upon the issue of such certificate or other document for his work in that Section.

·2 The provisions of clause 6·9·1 shall apply also in respect of any Joint Names Policy taken out by the Employer under paragraph A·2, or by the Contractor under paragraph B·2·1·2 or C·3·1·2 of Schedule 3.

Terrorism Cover – policy extensions and premiums

6·10 1 To the extent that the Joint Names Policy for the Works and Site Materials 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 take out and maintain, either as an extension to the Joint Names Policy or as a separate Joint Names Policy, in the same amount and for the required period of the Joint Names Policy, such Terrorism Cover as is specified in or by the Contract Particulars, subject to clauses 6·10·4 and 6·11.

·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.

·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.

·4 Where Insurance Option A applies and the Employer is a Local Authority, if at any renewal of the Terrorism Cover (of any type) there is an increase in the rate on which the premium is based, he may instruct the Contractor not to renew the Terrorism Cover. If he so instructs, the provisions of clauses 6·11·5·1 and 6·11·5·2 shall apply with effect from the renewal date.

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.

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

·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
•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.

•3 Where Insurance Option A applies and the Employer gives notice under clause 6·11·2·1 requiring continuation of the Works, he may instruct the Contractor to effect and maintain any alternative or additional form of Terrorism Cover then reasonably obtainable by the Contractor; the net additional cost to the Contractor of any such cover and its renewal shall be added to the Contract Sum.

•4 If the Employer gives notice of termination under clause 6·11·2·2, then upon and from such termination the provisions of clauses 8·12·2 to 8·12·5 (excluding clause 8·12·3·5) shall apply and, notwithstanding any other provision of this Contract, no further sum shall become due to the Contractor other than the amounts referred to in clauses 8·12·3·1 to 8·12·3·4.

•5 If the Employer does not give notice of termination under clause 6·11·2·2, then:

•1 if work executed and/or Site Materials suffer physical loss or damage caused by terrorism, the Contractor shall with due diligence restore the damaged work, replace or repair any lost or damaged Site Materials, remove and dispose of any debris and proceed with the carrying out of the Works;

•2 the restoration, replacement or repair of such loss or damage and (when required) the removal and disposal of debris shall be treated as a Variation; without deduction of Retention and with no reduction in any amount payable to the Contractor pursuant to this clause 6·11·5·2 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; and

•3 (where Insurance Option C applies) the requirement that the Works continue to be carried out shall not be affected by any loss or damage to the existing structures and/or their contents caused by terrorism but not so as thereby to impose any obligation on the Employer to reinstate the existing structures or affect the rights of either Party under paragraph C·4·4 of Schedule 3.

### CDP Professional Indemnity Insurance

**Obligation to insure**

6·12 Where there is a Contractor's Designed Portion, the Contractor shall:

•1 forthwith after this Contract has been entered into, take out (unless he 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[62];

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

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

**Increased cost and non-availability**

6·13 If the insurance referred to in clause 6·12 ceases to be available at commercially reasonable rates, 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

Application of clauses

6·14 Clauses 6·15 to 6·17 apply where the Contract Particulars state that the Joint Fire Code applies.

Compliance with Joint Fire Code

6·15 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.

Breach of Joint Fire Code – Remedial Measures

6·16 1 If a breach of the Joint Fire Code occurs and the insurers under the Joint Names Policy in respect of the Works specify by notice to the Employer or the Contractor the remedial measures they require (the ‘Remedial Measures’), the Party receiving the notice shall send copies of it to the other and to the Architect/Contract Administrator, and then:

- 1 subject to clause 6·16·1·2, where the Remedial Measures relate to the obligation of the Contractor to carry out and complete the Works, the Contractor shall ensure that the Remedial Measures are carried out by such date as the insurers specify; and

- 2 to the extent that the Remedial Measures require a Variation to the Works as described in the Contract Documents or in an Architect/Contract Administrator’s instruction, the Architect/Contract Administrator shall issue such instructions as are necessary to enable compliance. If, in any emergency, compliance with the Remedial Measures in whole or in part requires the Contractor to supply materials or execute work before receiving instructions under this clause 6·16·1·2, the Contractor shall supply such limited materials and execute such limited work as are reasonably necessary to secure immediate compliance. The Contractor shall forthwith notify the Architect/Contract Administrator of the emergency and of the steps he is taking under this clause 6·16·1·2. Save to the extent they relate to the Contractor’s Designed Portion, such work executed and materials supplied by the Contractor shall be treated as if they had been executed and supplied under an instruction requiring a Variation.

2 If the Contractor, within 7 days of receipt of a notice specifying Remedial Measures not requiring an Architect/Contract Administrator’s instruction under clause 6·16·1·2, does not begin to carry out or thereafter fails without reasonable cause regularly and diligently to proceed with the Remedial Measures, then the Employer may employ and pay other persons to carry out those Remedial Measures. The Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and an appropriate deduction shall be made from the Contract Sum.

Joint Fire Code – amendments/revisions

6·17 Where the Joint Fire Code is, under the Joint Names Policy, applicable to the Works and amendments or revisions are made to it after the Base Date, the cost, if any, 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.
Section 7  Assignment, Third Party Rights and Collateral Warranties

Assignment

General

7.1 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.

Rights of enforcement

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

Clauses 7A to 7E – Preliminary

Notices

7.3 Each notice referred to in clauses 7A to 7E shall be given to the Contractor in accordance with clause 1.7.4.

Execution of Collateral Warranties

7.4 Where this Contract is executed as a deed, any collateral warranty to be entered into or procured pursuant to this section 7 shall be executed as a deed. Where this Contract is executed under hand, any such warranty may be executed under hand.

Third Party Rights from Contractor

Rights for Purchasers and Tenants

7A 1 Where clause 7A is stated in Part 2 of the Contract Particulars to apply to a Purchaser or Tenant, P&T Rights shall vest in that Purchaser or Tenant on the date of receipt by the Contractor of the Employer’s notice to that effect, stating the name of the Purchaser or Tenant and the nature of his interest in the Works.

2 The rights of the Employer and/or the Contractor:

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

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

·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.

3 Where P&T Rights have vested in any Purchaser or Tenant, then, notwithstanding the provisions of clause 7A.2, the Employer and the Contractor shall not be entitled without the consent of such Purchaser or Tenant to amend or vary the express provisions of this clause 7A or of Part 1 of Schedule 5 (Third Party Rights for Purchasers and Tenants).
Rights for a Funder

7B 1. Where clause 7B is stated in Part 2 of the Contract Particulars to apply to a Funder, the Employer may by notice to the Contractor confer Funder Rights on the Funder identified in the notice. Those rights shall vest in the Funder on the date of receipt by the Contractor of the Employer’s notice.

2. Where Funder Rights have been vested in the Funder pursuant to clause 7B·1:

1. no amendment or variation shall be made to the express terms of this clause 7B or of Part 2 of Schedule 5 (Third Party Rights for a Funder) without the prior written consent of the Funder; and

2. neither the Employer nor the Contractor shall agree to rescind this Contract, and the rights of the Contractor to terminate his employment under this Contract or to treat it as repudiated shall in all respects be subject to the provisions of 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

Contractor’s Warranties – Purchasers and Tenants

7C Where clause 7C is stated in Part 2 of the Contract Particulars to apply to a Purchaser or Tenant, the Employer may by notice to the Contractor, identifying the Purchaser or Tenant and his interest in the Works, require that the Contractor within 14 days from receipt of that notice enter into with such Purchaser or Tenant a Collateral Warranty in the form CWa/P&T, completed in accordance with the P&T Rights Particulars.

Contractor’s Warranty – Funder

7D Where clause 7D is stated in Part 2 of the Contract Particulars to apply to a Funder, 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 Funder Rights Particulars.

Sub-Contractors’ Warranties

7E Where Part 2 of the Contract Particulars provides for the giving by any sub-contractor of a Collateral Warranty to a Purchaser, Tenant or Funder or to the Employer, the Contractor shall within 21 days from receipt of the Employer’s notice, identifying the relevant sub-contractor, type of warranty and beneficiary, comply with the Contract Documents as to obtaining such warranties in the form SCWa/P&T, SCWa/F or SCWa/E (as the case may be), completed in accordance with Part 2 of the Contract Particulars and subject to any amendments proposed by any such sub-contractor and approved by the Contractor and the Employer, such approval not to be unreasonably delayed or withheld.
Section 8  Termination

General

Meaning of insolvency

8·1 For the purposes of these Conditions:

·1 a Party which is a company becomes Insolvent:

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

·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;

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

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

·2 a Party which is a partnership becomes Insolvent:

·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

·2 when sequestration is awarded on the estate of the partnership under section 12 of the Bankruptcy (Scotland) Act 1985 or the partnership grants a trust deed for its creditors.

·3 a Party who is an individual becomes Insolvent:

·1 on the making of a bankruptcy order against him under Part IX of the Insolvency Act 1986; or

·2 on the sequestration of his estate under the Bankruptcy (Scotland) Act 1985 or when he grants a trust deed for his creditors.

·4 a Party also becomes Insolvent if:

·1 he enters into an arrangement, compromise or composition in satisfaction of his debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction); or

·2 (in the case of a Party which is a partnership) each partner is the subject of an individual arrangement or any other event or proceedings referred to in this clause 8·1.

Each of clauses 8·1·1 to 8·1·4 also includes any analogous arrangement, event or proceedings in any other jurisdiction.

Notices under section 8

8·2 ·1 Notice of termination of the Contractor’s employment shall not be given unreasonably or vexatiously.

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

·3 Each notice referred to in this section shall be given in accordance with clause 1·7·4.
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.

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

Default by Contractor

8·4 1 If, before practical completion of the Works, the Contractor:

1 without reasonable cause wholly or substantially suspends the carrying out of the Works or the design of the Contractor’s Designed Portion; or

2 fails to proceed regularly and diligently with the Works or the design of the Contractor’s Designed Portion; or

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

4 fails to comply with clause 3·7 or 7·1; or

5 fails to comply with clause 3·23,

the Architect/Contract Administrator may give to the Contractor a notice specifying the default or defaults (the ‘specified default or defaults’).

2 If the Contractor continues a specified default for 14 days from receipt of the notice under clause 8·4·1, the Employer may, 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.

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.

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.

2 The Contractor shall immediately notify the Employer if he makes any proposal, gives notice of any meeting or becomes the subject of any proceedings or appointment relating to any of the matters referred to in clause 8·1.

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

1 clauses 8·7·3 to 8·7·5 and (if relevant) clause 8·8 shall apply as if such notice had been given;

2 the Contractor’s obligations under Article 1 and these Conditions to carry out and complete the Works and the design of the Contractor’s Designed Portion shall be suspended; and

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

8·6 The Employer shall be entitled by notice to the Contractor to terminate the Contractor’s employment under this or any other contract with the Employer if, in relation to this or any other such contract, the Contractor or any person employed by him or acting on his behalf shall have committed an offence under the Bribery Act 2010, or, where the Employer is a Local 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.

Consequences of termination under clauses 8·4 to 8·6

8·7 If the Contractor’s employment is terminated under clause 8·4, 8·5 or 8·6:

1 the Employer may employ and pay other persons to carry out and complete the Works and/or (where applicable) the design for the Contractor’s Designed Portion and to make good any defects of the kind referred to in clause 2·38, and he and they may enter upon and take possession of the site and the Works and (subject to obtaining any necessary third party consents) may use all temporary buildings, plant, tools, equipment and Site Materials for those purposes;

2 the Contractor shall:

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

2 (where there is a Contractor’s Designed Portion) without charge provide the Employer with copies of all Contractor’s Design Documents then prepared, whether or not previously provided;

3 if so required by the Employer (or by the Architect/Contract Administrator on his behalf) within 14 days of the date of termination, assign (so far as assignable and so far as he may lawfully be required to do so) to the Employer, without charge, the benefit of any agreement for the supply of materials or goods and/or for the execution of any work for the purposes of this Contract[^63];

3 no further sum shall become due to the Contractor under this Contract other than any amount that may become due to him under clause 8·7·5 or 8·8·2 and the Employer need not pay any sum that has already become due either:

1 insofar as the Employer has given or gives a Pay Less Notice under clause 4·12·5; or

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;

4 following the completion of the Works and the making good of defects in them (or of instructions otherwise, as referred to in clause 2·38), an account of the following shall within 3 months thereafter be set out in a certificate issued by the Architect/Contract Administrator or a statement prepared by the Employer:

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;

2 the amount of payments made to the Contractor; and

3 the total amount which would have been payable for the Works in accordance with this Contract;

[^63]: Clause 8·7·2·3 may not be effectual in cases of Contractor’s insolvency.
continued 8·7

·5 if the sum of the amounts stated under clauses 8·7·4·1 and 8·7·4·2 exceeds the amount stated under clause 8·7·4·3, the difference shall be a debt payable by the Contractor to the Employer or, if that sum is less, by the Employer to the Contractor.

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, he shall forthwith notify the Contractor. Within a reasonable time from the date of such notification, or if no notification is given but within that 6 month period the Employer does not commence to make arrangements for such carrying out and completion, then within 2 months of the expiry of that 6 month period, the Employer shall send to the Contractor a statement setting out:

·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

·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.

·2 After taking into account amounts previously paid to the Contractor under this Contract, if the amount stated under clause 8·8·1·2 exceeds the amount stated under clause 8·8·1·1, the difference shall be a debt payable by the Contractor to the Employer or, if the clause 8·8·1·2 amount is less, by the Employer to the Contractor.

Termination by Contractor

Default by Employer

8·9

·1 If the Employer:

·1 does not pay by the final date for payment the amount due to the Contractor in accordance with clause 4·12 and/or any VAT properly chargeable on that amount; or

·2 interferes with or obstructs the issue of any certificate due under this Contract; or

·3 fails to comply with clause 7·1; or

·4 fails to comply with clause 3·23,

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

·2 If before practical completion of the Works the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for a continuous period of the length stated in the Contract Particulars by reason of:

·1 Architect/Contract Administrator’s instructions under clause 2·15, 3·14 or 3·15; and/or

·2 any impediment, prevention or default, whether by act or omission, by the Employer, the Architect/Contract Administrator, the Quantity Surveyor or any of the Employer’s Persons

(but in either case excluding such instructions as are referred to in clause 8·11·1·2), then, unless in either case that is caused by the negligence or default of the Contractor or of any of the Contractor’s Persons, the Contractor may give to the Employer a notice specifying the event or events (the ‘specified suspension event or events’).

·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, or within 21 days from, the expiry of that 14 day period by a further notice to the Employer terminate the Contractor’s employment under this Contract.

·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):
continued 8·9·4

·1 the Employer repeats a specified default; or

·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.

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;

·2 the Employer shall immediately notify the Contractor if he makes any proposal, gives notice of any meeting or becomes the subject of any proceedings or appointment relating to any of the matters referred to in clause 8·1;

·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 and the design of the Contractor’s Designed Portion shall be suspended.

Termination by either Party

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:

·1 force majeure;

·2 Architect/Contract Administrator’s instructions under clause 2·15, 3·14 or 3·15 issued as a result of the negligence or default of any Statutory Undertaker;

·3 loss or damage to the Works occasioned by any of the Specified Perils;

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

·5 the exercise by the United Kingdom Government of any statutory power which directly affects the execution of the Works,

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, he may terminate the Contractor’s employment under this Contract. Failing such cessation within that 7 day period, he may then by further notice terminate that employment.

·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 occasioned by a Specified Peril was caused by the negligence or default of the Contractor or of any of the Contractor's Persons.

Consequences of Termination under clauses 8·9 to 8·11, etc.

8·12

If the Contractor’s employment is terminated under any of clauses 8·9 to 8·11, under clause 6·11·2·2 or under paragraph C·4·4 of Schedule 3:

·1 no further sums shall become due to the Contractor otherwise than in accordance with this clause 8·12;

·2 the Contractor shall:

·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
continued 8·12·2

·2 (where there is a Contractor’s Designed Portion) without charge provide to the Employer copies of the documents referred to in clause 2·40 then prepared;

·3 where the Contractor’s employment is terminated under clause 8·9 or 8·10, the Contractor shall as soon as reasonably practicable prepare and submit an account or, where terminated under clause 8·11 or 6·11·2·2 or under paragraph C·4·4 of Schedule 3, the Contractor shall at the Employer’s option either prepare and submit that account or, not later than 2 months after the date of termination, provide the Employer with all documents necessary for the Employer to do so, which the Employer shall do with reasonable dispatch (and in any event within 3 months of receipt of such documents). The account shall set out the amounts referred to in clauses 8·12·3·1 to 8·12·3·4 and, if applicable, clause 8·12·3·5, namely:

·1 the total value of work properly executed at the date of termination of the Contractor’s employment, ascertained in accordance with these Conditions as if the employment had not been terminated, together with any other amounts due to the Contractor under these Conditions;

·2 any sums ascertained in respect of direct loss and/or expense under clause 4·23 (whether ascertained before or after the date of termination);

·3 the reasonable cost of removal under clause 8·12·2;

·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;

·5 any direct loss and/or damage caused to the Contractor by the termination;

·4 the account shall include the amount, if any, referred to in clause 8·12·3·5 only where the Contractor’s employment is terminated either:

·1 under clause 8·9 or 8·10; or

·2 under clause 8·11·1·3, if the loss or damage to the Works occasioned by any of the Specified Perils was caused by the negligence or default of the Employer or of any of the Employer’s Persons;

·5 after taking into account amounts previously paid to the Contractor under this Contract, the Employer shall pay to the Contractor (or vice versa) the amount properly due in respect of the account within 28 days of its submission to the other Party, without deduction of any Retention. Payment by the Employer for any such materials and goods as are referred to in clause 8·12·3·4 shall be subject to such materials and goods thereupon becoming the Employer’s property.
Section 9  Settlement of Disputes

Mediation

9·1 Subject to Article 7, if a dispute or difference arises under this Contract which cannot be resolved by direct negotiations, each Party shall give serious consideration to any request by the other to refer the matter to mediation.⁶⁴

Adjudication

9·2 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:

·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;

·2 where the dispute or difference is or includes a dispute or difference relating to clause 3·18·4 and as to whether an instruction issued thereunder is reasonable in all the circumstances:

·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;

·2 if the Adjudicator does not have the appropriate expertise and experience, the Adjudicator shall appoint an independent expert with such expertise and experience to advise and report in writing on whether or not the instruction under clause 3·18·4 is reasonable in all the circumstances.

Arbitration

Conduct of arbitration

9·3 Any arbitration pursuant to Article 8 shall be conducted in accordance with the JCT 2011 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 9·4 to a Rule or Rules are references to such Rule(s) as set out in the JCT 2011 edition of CIMAR.⁶⁵

Notice of reference to arbitration

9·4  1 Where pursuant to Article 8 either Party requires a dispute or difference to be referred to arbitration, that Party shall serve on the other Party a notice of arbitration to such effect in accordance with Rule 2.1 identifying the dispute and requiring the other Party to agree to the appointment of an arbitrator. The Arbitrator shall be an individual agreed by the Parties or, failing such agreement within 14 days (or any agreed extension of that period) after the notice of arbitration is served, appointed on the application of either Party in accordance with Rule 2.3 by the person named in the Contract Particulars.

·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.

⁶⁴ See the Standard Building Contract Guide.

⁶⁵ 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.
continued 9·4

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

Powers of Arbitrator

9·5 Subject to the provisions of Article 8 and clause 1·9, the Arbitrator shall, without prejudice to the generality of his powers, have power to rectify this Contract so that it accurately reflects the true agreement made by the Parties, to direct such measurements and/or valuations as may in his opinion be desirable in order to determine the rights of the Parties and to ascertain and award any sum which ought to have been the subject of or included in any certificate and to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice had been given.

Effect of award

9·6 Subject to clause 9·7 the award of the Arbitrator shall be final and binding on the Parties.

Appeal – questions of law

9·7 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):

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

Arbitration Act 1996

9·8 The provisions of the Arbitration Act 1996 shall apply to any arbitration under this Contract wherever the same, or any part of it, shall be conducted.
Schedules

Schedule 1  Contractor’s Design Submission Procedure
(Clauses 2.9.5)

1 The Contractor shall prepare and submit each of the Contractor’s Design Documents to the
Architect/Contract Administrator 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
Architect/Contract Administrator to be incorporated prior to the relevant Contractor’s Design
Document being used for procurement and/or in the carrying out of the CDP Works. Where the
means and format are not so stated, then, unless and until otherwise agreed with the
Architect/Contract Administrator, the Contractor shall submit 2 copies of each of the Contractor’s
Design Documents to him.

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 Architect/Contract Administrator 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 Architect/Contract Administrator considers that it is not in accordance with this
Contract.

3 If the Architect/Contract Administrator 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 Architect/Contract Administrator marks a Contractor’s Design Document ‘B’ or ‘C’, he
shall identify by means of a written comment why he considers that it is not in accordance with this
Contract.

5 When a Contractor’s Design Document is returned by the Architect/Contract Administrator:

1. if it is marked ‘A’, the Contractor shall carry out the CDP Works in strict accordance with that
document;

2. if it is marked ‘B’, the Contractor may carry out the CDP Works in accordance with that
document, provided that the Architect/Contract Administrator’s comments are incorporated
into it and an amended copy of it is promptly submitted to the Architect/Contract Administrator;
or

3. if it is marked ‘C’, the Contractor shall take due account of the Architect/Contract
Administrator’s comments on it and shall either forthwith resubmit it to the Architect/Contract
Administrator in amended form for comment in accordance with paragraph 1 or notify the

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 CDP 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 Architect/Contract Administrator and considers
that the Contractor’s Design Document in question is in accordance with this Contract, he shall within
7 days of receipt of the comment notify the Architect/Contract Administrator that he considers that
compliance with the comment would give rise to a Variation. Such notification shall be accompanied
by a statement setting out the Contractor’s reasons. Upon receipt of such a notification the
Architect/Contract Administrator 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.
Provided always that:

1. confirmation or withdrawal of a comment in accordance with paragraph 7 shall not signify acceptance by either the Employer or the Architect/Contract Administrator that the relevant Contractor’s Design Document or amended document is in accordance with this Contract or that compliance with the Architect/Contract Administrator’s comment would give rise to a Variation;

2. where in relation to a comment by the Architect/Contract Administrator the Contractor does not notify him in accordance with paragraph 7, the comment in question shall not be treated as giving rise to a Variation; and

3. neither compliance with the design submission procedure in this Schedule nor with the Architect/Contract Administrator’s comments shall diminish the Contractor’s obligations to ensure that the Contractor’s Design Documents and CDP Works are in accordance with this Contract.
Variation Quotation

1.1 Any instruction of the Architect/Contract Administrator requesting a Variation Quotation shall provide sufficient information\(^{[66]}\) to enable the Contractor to provide that quotation to the Quantity Surveyor in accordance with paragraph 1.2. If the Contractor reasonably considers that the information provided is not sufficient, then, not later than 7 days from the receipt of the instruction, he shall notify the Architect/Contract Administrator who shall supply the information that he reasonably requires.

1.2 The Variation Quotation shall separately comprise:

1. The amount of the adjustment to the Contract Sum, excluding any loss and/or expense referred to in paragraph 1.2.3, but including the effect of the instruction on any other work (supported by all necessary calculations, which shall be made by reference, where relevant, to the rates and prices in the Contract Bills) and including also, where appropriate, allowances for any adjustment of preliminary items;

2. any adjustment to the time required for completion of the Works and/or any Section (including, where relevant, a Completion Date earlier than the Date for Completion given in the Contract Particulars) to the extent that such adjustment is not included in any revision of the Completion Date made by the Architect/Contract Administrator under clause 2.28 or in any other Confirmed Acceptance;

3. 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 4.23 or 5.3.3;

4. a fair and reasonable amount in respect of the cost of preparing the quotation;

5. where specifically required by the instruction, indicative statements on:
   
   1. the additional resources (if any) required to carry out the Variation; and
   
   2. the method of carrying out the Variation;

6. (where applicable) the base date for the purpose of clause 4.22.

Each part of the quotation shall contain supporting information that is reasonably sufficient to enable that part to be evaluated by or on behalf of the Employer.

3. The Variation for which the Contractor has submitted a Variation Quotation shall not be carried out until he receives a Confirmed Acceptance of it under paragraph 4 or an instruction under paragraph 5.1.1.

Acceleration Quotation

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

1. provide an Acceleration Quotation to the Architect/Contract Administrator 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 paragraphs 1.2.3 and 1.2.4) and any other conditions attached; or

\[^{[66]}\] The information provided to the Contractor should normally be in a similar format to that provided at the tender stage. If an addendum bill is provided, see clauses 2.13 and 2.14.
continued 2.1

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

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

·3 Without affecting his obligations under clauses 2.1 and 2.4, the Contractor shall be under no obligation to accelerate, or take any steps for that purpose, until he receives a Confirmed Acceptance of his Acceleration Quotation under paragraph 4.

Time for submission and acceptance

3

·1 Unless otherwise agreed, the Variation Quotation or Acceleration Quotation shall be submitted in compliance with the instruction or invitation not later than 21 days from the later of:

·1 the date of receipt of the instruction or invitation; or

·2 the date of receipt by the Contractor of information sufficient to enable him to prepare the quotation.

·2 The quotation shall remain open for acceptance by the Employer for not less than 7 days from its receipt by the Quantity Surveyor or Architect/Contract Administrator.

·3 The Parties may agree to increase or reduce any of the periods referred to in clause 5.3.1 or this Schedule; confirmation of such agreement shall be notified to the Contractor by or on behalf of the Employer.

Acceptance of the quotation

4

If the Employer wishes to accept a Variation Quotation or Acceleration Quotation, the Architect/Contract Administrator shall on his behalf within the period for acceptance confirm such acceptance by an instruction to the Contractor (a 'Confirmed Acceptance') stating:

·1 the adjustment of the Contract Sum (including any amounts to which paragraphs 1.2.3 and 1.2.4 refer) to be made for complying with the instruction;

·2 the adjustment to the time required by the Contractor for completion of the Works and/or Section and the resultant revised Completion Date(s) (which, where relevant, may be a date earlier than the Date for Completion);

·3 (in the case of a Variation Quotation) the base date referred to in paragraph 1.2.6, if any; and

·4 (in the case of an Acceleration Quotation) any such conditions as are referred to in paragraph 2.1.1.

Non-acceptance of the quotation

5

1 If a Variation Quotation is not accepted by the expiry of the period for acceptance, the Architect/Contract Administrator shall on the expiry of that period either:

·1 instruct that the Variation is to be carried out and is to be valued under the Valuation Rules (clauses 5.6 to 5.10); or

·2 instruct that the Variation is not to be carried out.

·2 If a Variation Quotation or 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.

·3 Unless the Architect/Contract Administrator issues a Confirmed Acceptance, neither the Employer nor the Contractor may use the quotation for any purpose whatsoever.
Schedule 3
Insurance Options
(Clauses 6·7)

Insurance Option A

(New Buildings – All Risks Insurance of the Works by the Contractor)[67]

Contractor to take out and maintain a Joint Names Policy

A·1 The Contractor shall take out and maintain with insurers approved by the Employer a Joint Names Policy for All Risks Insurance with cover no less than that specified in clause 6·8[68] 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)[69] and (subject to clause 2·36) shall maintain such Joint Names Policy up to and including the date of issue of the Practical Completion Certificate or, if earlier, the date of termination of the Contractor’s employment (whether or not the validity of that termination is contested).

The obligation to maintain the Joint Names Policy shall not apply in relation to a Section after the date of issue of the Section Completion Certificate for that Section.

Insurance documents – failure by Contractor to insure

A·2 The Contractor shall send to the Architect/Contract Administrator for deposit with the Employer the Joint Names Policy referred to in paragraph A·1, each premium receipt for it and any relevant endorsements of it. If the Contractor defaults in taking out or in maintaining the Joint Names Policy as required by paragraph A·1 (or fails to maintain a policy in accordance with paragraph A·3), the Employer may himself take out and maintain a Joint Names Policy against any risk in respect of which the default has occurred and the amount paid or payable by him in respect of premiums may be deducted by him from any sums due or to become due to the Contractor under this Contract or shall be recoverable from the Contractor as a debt.

Use of Contractor’s annual policy – as alternative

A·3 If and so long as the Contractor independently of this Contract maintains an insurance policy which in respect of the Works or Sections:

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

·2 is a Joint Names Policy,

[67] Insurance Option A is applicable to the erection of new buildings where the Contractor is required to take out a Joint Names Policy for All Risks Insurance of the Works and 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 it, the Employer is required to take out a Joint Names Policy for All Risks Insurance for the Works and also a Joint Names Policy to insure the existing structures and their contents owned by him or for which he is responsible against loss or damage by the Specified Perils. Some Employers (e.g. tenants and homeowners) may not be able readily to obtain the Joint Names cover, in particular that under paragraph C·1. If so, Option C should not be stated to apply and consequential amendments may be necessary. See the Standard Building Contract Guide.

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

[69] As to reinstatement value, irrecoverable VAT and other costs, see the Standard Building Contract Guide. As respects sub-contractors, note also the provisions of clause 6·9.
such policy shall satisfy the Contractor's obligations under paragraph A·1. The Employer may at any reasonable time inspect the policy and premium receipts for it or require that they be sent to the Architect/Contract Administrator for such inspection. So long as the Contractor, as and when reasonably required to do so, supplies the documentary evidence that the policy is being so maintained, the Contractor shall not be obliged under paragraph A·2 to deposit the policy and premium receipts with the Employer. The annual renewal date of the policy, as supplied by the Contractor, is stated in the Contract Particulars.

Loss or damage, insurance claims and Contractor's obligations

A·4

·1 If loss or damage affecting any executed work or Site Materials is occasioned by any risk covered by the Joint Names Policy, then, upon its occurrence or later discovery, the Contractor shall forthwith give notice both to the Architect/Contract Administrator and to the Employer of its extent, nature and location.

·2 Subject to clause 6·11·5·2 and paragraph A·4·4, the occurrence of such loss or damage shall be disregarded in computing any amounts payable to the Contractor under this Contract.

·3 After any inspection required by the insurers in respect of a claim under the Joint Names Policy has been completed, the Contractor shall with due diligence restore the damaged work, replace or repair any lost or damaged Site Materials, remove and dispose of any debris and proceed with the carrying out and completion of the Works.

·4 The Contractor, for himself and for all his sub-contractors who pursuant to clause 6·9 are recognised as an insured under the Joint Names Policy, shall authorise the insurers to pay all monies from such insurance to the Employer. The Employer shall pay all such amounts to the Contractor (without deduction of Retention and less only the amount stated in paragraph A·4·5) by instalments under Architect/Contract Administrator's certificates issued on the dates fixed for the issue of Interim Certificates.

·5 The Employer may retain from the monies paid by the insurers the amount properly incurred by the Employer in respect of professional fees up to an amount which shall not exceed the amount of the additional percentage cover for those fees or (if less) the amount paid by insurers in respect of those fees.

·6 In respect of the restoration, replacement or repair of such loss or damage and (when required) the removal and disposal of debris, the Contractor shall not be entitled to any payment other than amounts received under the Joint Names Policy or payable to him under clause 6·11·5·2, where applicable.
Insurance Option B

(New Buildings – All Risks Insurance of the Works by the Employer)\[67\]

Employer to take out and maintain a Joint Names Policy

B·1 The Employer shall take out and maintain a Joint Names Policy for All Risks Insurance with cover no less than that specified in clause 6·8\[68\] 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)\[69\] and (subject to clause 2·36) shall maintain such Joint Names Policy up to and including the date of issue of the Practical Completion Certificate or, if earlier, the date of termination of the Contractor’s employment (whether or not the validity of that termination is contested).

The obligation to maintain the Joint Names Policy shall not apply in relation to a Section after the date of issue of the Section Completion Certificate for that Section.

Evidence of Insurance

B·2 ·1 Except where the Employer is a Local Authority:

·1 the Employer shall, as and when reasonably required by the Contractor, produce documentary evidence and receipts showing that the Joint Names Policy has been taken out and is being maintained; and

·2 if the Employer defaults in taking out or in maintaining the Joint Names Policy, the Contractor may himself take out and maintain a Joint Names Policy against any risk in respect of which the default has occurred and the amount paid or payable by him in respect of the premiums shall be added to the Contract Sum.

·2 Where the Employer is a Local Authority, the Employer shall, as and when reasonably required by the Contractor, produce to the Contractor a copy of the cover certificate issued by the insurer named in the Joint Names Policy certifying that Terrorism Cover is being provided under that policy.

Loss or damage, insurance claims, Contractor’s obligations and payment by Employer

B·3 ·1 If loss or damage affecting any executed work or Site Materials is occasioned by any risk covered by the Joint Names Policy, then, upon its occurrence or later discovery, the Contractor shall forthwith give notice both to the Architect/Contract Administrator and to the Employer of its extent, nature and location.

·2 Subject to clause 6·11·5·2 and paragraph B·3·5, the occurrence of such loss or damage shall be disregarded in computing any amounts payable to the Contractor under this Contract.

·3 After any inspection required by the insurers in respect of a claim under the Joint Names Policy has been completed, the Contractor shall with due diligence restore the damaged work, replace or repair any lost or damaged Site Materials, remove and dispose of any debris and proceed with the carrying out and completion of the Works.

·4 The Contractor, for himself and for all his sub-contractors who pursuant to clause 6·9 are recognised as an insured under the Joint Names Policy, shall authorise the insurers to pay all monies from such insurance to the Employer.

·5 The restoration, replacement or repair of such loss or damage and (when required) the removal and disposal of debris shall be treated as a Variation.
Insurance Option C

(Insurance by the Employer of Existing Structures and Works in or Extensions to them)[67]

Existing structures and contents – Joint Names Policy for Specified Perils

C·1 The Employer shall take out and maintain a Joint Names Policy in respect of the existing structures (which from the Relevant Date shall include any Relevant Part to which clause 2·33 refers) together with the contents thereof owned by him or for which he is responsible, for the full cost of reinstatement, repair or replacement of loss or damage due to any of the Specified Perils up to and including the date of issue of the Practical Completion Certificate or last Section Completion Certificate, or (if earlier) the date of termination of the Contractor’s employment (whether or not the validity of that termination is contested). The Contractor shall authorise the insurers to pay all monies from such insurance to the Employer.

The Works – Joint Names Policy for All Risks

C·2 The Employer shall take out and maintain a Joint Names Policy for All Risks Insurance with cover no less than that specified in clause 6·8[68] 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[69] and (subject to clause 2·36) shall maintain such Joint Names Policy up to and including the date of issue of the Practical Completion Certificate or, if earlier, the date of termination of the Contractor’s employment (whether or not the validity of that termination is contested).

The obligation to maintain the Joint Names Policy under this paragraph C·2 shall not apply in relation to any Section after the date of issue of the Section Completion Certificate for that Section.

Evidence of Insurance

C·3 ·1 Except where the Employer is a Local Authority:

·1 the Employer shall, as and when reasonably required by the Contractor, produce documentary evidence and receipts showing that the Joint Names Policies required under paragraphs C·1 and C·2 have been taken out and are being maintained;

·2 if the Employer defaults in taking out or in maintaining either of those Joint Names Policies, the Contractor may himself take out and maintain a Joint Names Policy against any risk in respect of which the default has occurred and for that purpose, in relation to any default under paragraph C·1, shall have such right of entry and inspection as may be required to make a survey and inventory of the existing structures and the relevant contents; and

·3 in the event of any such default, a sum equivalent to the premiums paid or payable by the Contractor pursuant to paragraph C·3·1·2 shall be added to the Contract Sum.

·2 Where the Employer is a Local Authority, the Employer shall, as and when reasonably required by the Contractor, produce to the Contractor copies of the cover certificates issued by the insurers named in the Joint Names Policies under paragraphs C·1 and C·2 which certify that Terrorism Cover is being provided under each policy.

Loss or damage – insurance claims and Contractor’s obligations

C·4 ·1 If during the carrying out of the Works there is any loss of or damage of any kind to any of the existing structures or their contents and/or if loss or damage affecting any executed work or Site Materials is occasioned by any of the risks covered by the Joint Names Policy referred to in paragraph C·2 or C·3 then, upon its occurrence or later discovery, the Contractor shall forthwith give notice both to the Architect/Contract Administrator and to the Employer of its extent, nature and location.

·2 Subject to clause 6·11·5·2 and paragraph C·4·5·2, the occurrence of such loss or damage to executed work or Site Materials shall be disregarded in computing any amounts payable to the Contractor under this Contract.
continued C-4

3 The Contractor, for himself and for all his sub-contractors who pursuant to clause 6.9 are recognised as an insured under the Joint Names Policy referred to in paragraph C-2, shall authorise the insurers to pay all monies from the insurances referred to in paragraphs C-2 and C-3 to the Employer.

4 If there is material loss of or damage to any of the existing structures and it is just and equitable, the Contractor’s employment under this Contract may within 28 days of the occurrence of such loss or damage be terminated at the option of either Party by notice given to the other in accordance with clause 17.4. If such notice is given:

1 either Party may within 7 days of receiving such a notice (but not thereafter) invoke the dispute resolution procedures that apply under this Contract in order that it may be decided whether the termination is just and equitable; and

2 upon the giving of such notice of termination or, where those dispute resolution procedures have been invoked, upon any final upholding of the notice of termination, the provisions of clauses 8.12.2 to 8.12.5 (except clause 8.12.3.5) shall apply.

5 If no notice of termination is served under paragraph C-4.4, or if the notice of termination is disputed and is not upheld, then:

1 after any inspection required by the insurers under the Joint Names Policy referred to in paragraph C-2 has been completed, the Contractor shall with due diligence restore the damaged work, replace or repair any lost or damaged Site Materials, remove and dispose of any debris and proceed with the carrying out and completion of the Works; and

2 the restoration, replacement or repair of such loss or damage and (when required) the removal and disposal of debris shall be treated as a Variation.
The purpose of the Code is to assist in the fair and reasonable operation of the requirements of clause 3.18.4.

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

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

2. The need to discover whether any non-compliance in a primary structural element is a failure of workmanship and/or materials such that rigorous testing of similar elements must take place; or, where the non-compliance is in a less significant element, 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 Contract Documents or in an instruction of the Architect/Contract Administrator;

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

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

11. Current recognised testing procedures;

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

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

14. Any proposals of the Contractor; and

15. Any other relevant matters.
Schedule 5  Third Party Rights
(Clauses 7A and 7B)

Preliminary – Definitions

The terms ‘the Consultants’ and ‘the Sub-Contractors’ shall for the purposes of this Schedule mean the persons respectively identified as such in or by the P&T Rights Particulars or the Funder Rights Particulars, as the case may be.

Part 1: Third Party Rights for Purchasers and Tenants

(P&T Rights)

1·1 The Contractor warrants as at and with effect from practical completion of the Works (or, where there are Sections, practical completion of the relevant Section) that he has carried out the Works or, as the case may be, that Section, in accordance with this Contract. In the event of any breach of this warranty and subject to paragraphs 1·2, 1·3 and 1·4:

·1 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

·2 (if paragraph 1·1·2 is stated in the P&T Rights Particulars to apply) 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 P&T Rights Particulars.

1·2 If in or by the P&T Rights Particulars paragraph 1·1·2 is stated or deemed not to 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 following assumptions, namely that:

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

·2 the Sub-Contractor(s) has or have provided contractual undertakings to or conferred third party rights on the Purchaser or Tenant in respect of design of the Sub-Contract Works that he or they has or have carried out and for which there is no liability of the Contractor to the Employer under this Contract; and

·3 that the Consultant(s) and the Sub-Contractor(s) have paid to the Purchaser or Tenant such proportion of the Purchaser’s or Tenant’s losses as it would be just and equitable for them to pay having regard to the extent of their responsibility for the Purchaser’s or Tenant’s losses.

1·4 The Contractor shall be entitled in any action or proceedings by the Purchaser or Tenant to rely on any term in this Contract and to raise the equivalent rights in defence of liability as he would have against the Employer under this Contract.

1·5 The obligations of the Contractor under or pursuant to this paragraph 1 shall not be released or diminished by the appointment of any person by the Purchaser or Tenant to carry out any independent enquiry into any relevant matter.
The Contractor further warrants that unless required by this Contract or unless otherwise authorised in writing by the Employer or by the Architect/Contract Administrator named in or appointed pursuant to this Contract (or, where such authorisation is given orally, confirmed in writing by the Contractor to the Employer and/or the Architect/Contract Administrator), he has not used and will not use materials in the Works other than in accordance with the guidelines contained in the edition of ‘Good Practice in Selection of Construction Materials’(Ove Arup & Partners) current at the date of this Contract. In the event of any breach of this warranty the provisions of paragraph 1 shall apply.

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

Where the Works include a Contractor’s Designed Portion, the Purchaser or Tenant, insofar as it is the purchaser or tenant of any part(s) of the site falling within the Contractor’s Designed Portion, 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 2.41, but subject to similar conditions, limitations and exclusions as apply thereunder to the Employer.

Where the Works include a Contractor’s Designed Portion and this Contract so provides, the Contractor warrants that he has and shall maintain Professional Indemnity insurance in and on the terms and for the period referred to in clause 6.12 and its related Contract Particulars.[70] The Contractor shall immediately give written notice to the Purchaser or Tenant if such insurance ceases to be available at commercially reasonable rates 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 his Professional Indemnity insurance is being maintained.

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.

Any notice to be given by the Purchaser or Tenant to the Contractor or by the Contractor to the Purchaser or Tenant shall be duly given if delivered by hand or sent by Recorded Signed for or Special Delivery post to the recipient at such address as he may from time to time notify to the sender or (if no such address is then current) his last known principal business address or (where a body corporate) its registered or principal office. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.

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

-1 where this Contract is executed under hand, 6 years; and

-2 where this Contract is executed as a deed, 12 years.

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.

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.

[70] For Contractors who do not carry Professional Indemnity insurance, see the Standard Building Contract Guide.
Part 2: Third Party Rights for a Funder

('Funder Rights')

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

-1 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 following assumptions, namely that:

-1 the Consultant(s) has or have provided contractual undertakings to or conferred third party rights on the Funder that he or they has or have and will perform his or their services in connection with the Works in accordance with the terms of his or their respective consultancy agreements and that there are no limitations on liability as between the Consultant and the Employer in the consultancy agreement(s);

-2 the Sub-Contractor(s) has or have provided contractual undertakings to or conferred third party rights on the Funder in respect of design of the Sub-Contract Works that he or they has or have carried out and for which there is no liability of the Contractor to the Employer under this Contract;

-3 the Consultant(s) and the Sub-Contractor(s) 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;

-2 the Contractor shall be entitled in any action or proceedings by the Funder to rely on any term in this Contract and to raise the equivalent rights in defence of liability as he would have against the Employer under this Contract;

-3 the obligations of the Contractor under or pursuant to this paragraph 1 shall not be released or diminished by the appointment of any person by the Funder to carry out any independent enquiry into any relevant matter.

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

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

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

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

6 ·1 The Contractor shall not exercise any right of termination of his employment under this Contract without having first:

·1 copied to the Funder any notices required by this Contract to be sent to the Architect/Contract Administrator or to the Employer prior to the Contractor being entitled to give notice under this Contract that his employment under this Contract is terminated, and
2 The Contractor shall not treat this Contract as having been repudiated by the Employer without having first given to the Funder written notice that he intends so to notify the Employer.

3 The Contractor shall not:

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

2 notify the Employer that he is treating this Contract as having been repudiated by the Employer as referred to in paragraph 6.2 before the lapse of 14 days from receipt by the Funder of the notice by the Contractor which the Contractor is required to give under paragraph 6.1.2 or 6.2.

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

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

8 Where the Works include a Contractor’s Designed Portion and subject to the Contractor having been paid all sums due and payable under this Contract, the Funder 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 2.41, but subject to similar conditions, limitations and exclusions as apply thereunder to the Employer.

9 Where the Works include a Contractor’s Designed Portion the Contractor warrants that he has and shall maintain Professional Indemnity insurance in and on the terms and for the period referred to in clause 6.12 and its related Contract Particulars. The Contractor shall immediately give written notice to the Funder if such insurance ceases to be available at commercially reasonable rates 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 his 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 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 delivered by hand or sent by Recorded Signed for or Special Delivery post to the recipient at such address as he may from time to time notify to the sender or (if no such address is then current) his last known principal business address or (where a body corporate) its registered or principal office. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.
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 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:

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

·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. 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 ·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.

·2 Following the giving of any notice by the Funder pursuant to paragraph 5 or 6, any dispute or difference which shall arise between the Contractor and the Funder (including any appointee or permitted assignee) shall be subject to the provisions of Article 7 and (where they apply) Article 8 and clauses 9.3 to 9.8.
Part 1: Advance Payment Bond

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:

   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;

   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. 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.

[71] Not applicable where the Employer is a Local Authority.
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:

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;
2. any modification or changes to the Contract; and/or
3. the granting of any extensions of time to the Contractor without affecting the terms of clause 7.3 below.

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.

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

1. the date on which the Advance Payment is reduced to nil as certified in writing to the Surety by the Employer;
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
3. [longstop date to be given],

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

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

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 who is not a party to it.

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’ name

____________________________

witness’ address

____________________________

Date: ____________________________
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 his behalf:

Signed by _____________________________________________________________

Name: ___________________________ Official Position: _______________________

Signed by _____________________________________________________________

Name: ___________________________ Official Position: _______________________

The above signatures to be authenticated by the Employer’s bankers
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:

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

·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 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:
·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;

·2 any modification or changes to the Contract; and/or

·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:

·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

·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 who 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 him for maximum payments to the Contractor for the Listed Items that will have been made and not delivered to the site at any one time.

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’ name

__________________________
witness’ address

Date: ______________________
Schedule to Bond

(clause 4 of the Bond)

Notice of Demand

Date of Notice: ____________________________

Date of Bond: ____________________________

Employer: ________________________________

Surety: ________________________________

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

Address for payment: ____________________________

__________________________

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

Signed by ________________________________

Name: ________________________________

Official Position: ________________________________

Signed by ________________________________

Name: ________________________________

Official Position: ________________________________

The above signatures to be authenticated by the Employer’s bankers
Part 3: Retention Bond

BOND dated the ___________ day of __________________________ 20 ___

issued by ____________________________________________

of ____________________________________________________

_____________________________________________________ ('the Surety')

in favour of ____________________________________________

of ____________________________________________________

_____________________________________________________ ('the Employer')

1 By a contract ('the Contract') between the Employer and

_______________________________________________________

of ____________________________________________________

_______________________________________________________ ('the Contractor')

the Employer has agreed that he will not exercise his right under the Contract to deduct Retention from amounts included in Interim Certificates provided the Contractor has taken out this Bond in favour of the Employer.

2 The Surety is hereby bound to the Employer in the maximum aggregate sum of ____________________________ (figures and words) until the Surety is notified by the Employer in writing of the date of issue of the next Interim Certificate after practical completion when the maximum aggregate sum shall be reduced by 50 per cent.

3 The Employer shall, on a demand which complies with the requirements in clause 4 below, be entitled to receive from the Surety the sum therein demanded.

4 Any demand by the Employer under clause 3 above shall:

·1 be in writing addressed to the Surety at its office at

_____________________________________________________

refer to this Bond, and with the signature(s) therein authenticated by the Employer’s bankers; and

·2 state the amount of the Retention that would have been held by the Employer at the date of the demand had Retention been deductible; and

·3 state the amount demanded, which shall not exceed the amount stated pursuant to clause 4·2 above, and identify for which one or more of the following such amount is demanded:

[72] Not applicable where the Employer is a Local Authority.
·1 the costs actually incurred by the Employer by reason of the failure of the Contractor to comply with the instructions of the Architect/Contract Administrator under the Contract; and be accompanied by a statement by the Architect/Contract Administrator which confirms that this failure by the Contractor has occurred;

·2 the insurance premiums paid by the Employer pursuant to the Contract because the Contractor has not taken out and/or not maintained any insurance of the building works which he was required under the Contract to take out and/or maintain;

·3 liquidated and ascertained damages which under the Contract the Contractor is due to pay or allow to the Employer; and be accompanied by a copy of the certificate of the Architect/Contract Administrator which under the Contract he is required to issue and which certifies that the Contractor has failed to complete the works by the contractual Completion Date;

·4 any expenses or any direct loss and/or damage caused to the Employer as a result of the termination of the Contractor’s employment by the Employer;

·5 any costs, other than the amounts referred to in clauses 4·3·1 to 4·3·4 above, which the Employer has actually incurred and which, under the Contract, he is entitled to deduct from monies otherwise due or to become due to the Contractor; and identify his entitlement;

and

·4 incorporate a certification that the Contractor has been given 14 days’ written notice of his liability for the amount demanded hereunder by the Employer and that the Contractor has not discharged that liability; and that a copy of this notice has at the same time been sent to the Surety at its office at

Such demand as above shall, for the purposes of this Bond but not further or otherwise, be conclusive evidence (and admissible as such) that the amount demanded is properly due and payable to the Employer by the Contractor.

5 If the Contract is to be assigned or otherwise transferred with the benefit of this Bond, the Employer shall be entitled to assign or transfer this Bond only with the prior written consent of the Surety, such consent not to be unreasonably delayed or withheld.

6 The Surety, in the absence of a prior written demand made, shall be released from its liability under this Bond upon the earliest occurrence of either:

·1 the date of issue under the Contract of the Certificate of Making Good as confirmed by the Employer to the Surety; or

·2 satisfaction of a demand(s) up to the maximum aggregate under the Bond; or

·3 ________________________________ (insert calendar date).

7 Any demand made hereunder must be received by the Surety accompanied by the documents as required by clause 4 above on or before the earliest occurrence as stated above, when this Bond will terminate and become of no further effect whatsoever.

8 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 who is not a party to it.

9 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’ name

witness’ address

Date: __________________________________________________________

Notes[73]

1 The terms of this Retention Bond have been agreed with the British Bankers’ Association and discussed with the Surety Panel of the Association of British Insurers. The JCT understands that a Bond which embodies the terms of this Part 3 of Schedule 6 is, at the proposed Surety’s discretion, available to a Contractor where the Employer has incorporated into a building contract in the JCT Standard Building Contract 2011 Edition, optional clause 4·19.

2 In clause 2 the figure to be inserted here is the amount stated in the Contract Particulars pursuant to clause 4·19. It is understood that a Surety will, at additional cost to the Contractor, and which may be subject to other terms and conditions of the Surety, provide for a greater sum than that stated in clause 2 of the Bond if, due to variations, and had Retention been applicable, that amount would have increased. The reduction by 50% of the maximum aggregate sum at the date of issue of the next Interim Certificate after practical completion matches a similar reduction had Retention been applicable.

3 The inclusion in the last paragraph of clause 4 of the words “but not further or otherwise” is to make clear that the Contractor would not be prevented by the terms of clause 4 from alleging, under the Contract, that the Contractor was not in breach on any of the matters stated in clauses 4·3·1 to 4·3·5 of the Bond.

Any demand by the Employer under clause 4 of the Bond must not exceed the costs actually incurred by the Employer and is not to be in excess of the amount stated pursuant to clause 4·2.

4 The Surety will require an actual expiry date to be stated in clause 6·3 of the Bond or (if earlier) a date that is capable of being ascertained on the face of the Bond. Where this is not possible, alternative terms should be discussed with the Surety.

[73] These Notes will not appear on the Bond issued by the Surety.
Schedule 7  Fluctuations Options
(Clauses 4·21 and 4·22)

Fluctuations Option A

(Contribution, levy and tax fluctuations)

Deemed calculation of Contract Sum – labour

A·1 The Contract Sum shall be deemed to have been calculated in the manner set out below and shall be subject to adjustment in the events specified hereunder.

·1 The Contract Sum is based upon the types and rates of contribution, levy and tax payable by a person in his capacity as an employer and which at the Base Date are payable by the Contractor. A type and a rate so payable are in paragraph A·1·2 referred to as a ‘tender type’ and a ‘tender rate’.

·2 If any of the tender rates other than a rate of levy payable by virtue of the Industrial Training Act 1982 is increased or decreased, or if a tender type ceases to be payable, or if a new type of contribution, levy or tax which is payable by a person in his capacity as an employer becomes payable after the Base Date, then in any such case the net amount of the difference between what the Contractor actually pays or will pay in respect of:

·1 workpeople engaged upon or in connection with the Works either on or adjacent to the site; and

·2 workpeople directly employed by the Contractor who are engaged upon the production of materials or goods for use in or in connection with the Works and who operate neither on nor adjacent to the site and to the extent that they are so engaged

or because of his employment of such workpeople and what he would have paid had the alteration, cessation or new type of contribution, levy or tax not become effective shall, as the case may be, be paid to or allowed by the Contractor.

·3 There shall be added to the net amount paid to or allowed by the Contractor under paragraph A·1·2, in respect of each person employed by the Contractor who is engaged upon or in connection with the Works either on or adjacent to the site and who is not within the definition of workpeople in paragraph A·11·3, the same amount as is payable or allowable in respect of a craftsman under paragraph A·1·2 or such proportion of that amount as reflects the time (measured in whole working days) that each such person is so employed.

·4 For the purposes of paragraph A·1·3:

·1 no period of less than 2 whole working days in any week shall be taken into account and periods of less than a whole working day shall not be aggregated to amount to a whole working day;

·2 “the same amount as is payable or allowable in respect of a craftsman” shall refer to the amount in respect of a craftsman employed by the Contractor (or by any sub-contractor under a sub-contract to which paragraph A·3 refers) under the rules or decisions or agreements of the Construction Industry Joint Council or other wage-fixing body and, where those rules or decisions or agreements provide for more than one rate of wage, emolument or other expense for a craftsman, shall refer to the amount in respect of a craftsman employed as aforesaid to whom the highest rate is applicable; and

·3 “employed by the Contractor” shall mean an employment to which the Income Tax (Pay As You Earn) Regulations 2003 apply.
·5 The Contract Sum is based upon the types and rates of refund of the contributions, levies and taxes payable by a person in his capacity as an employer and upon the types and rates of premium receivable by a person in his capacity as an employer being in each case types and rates which at the Base Date are receivable by the Contractor. Such a type and such a rate are in paragraph A·1·6 referred to as a ‘tender type’ and a ‘tender rate’.

·6 If any of the tender rates is increased or decreased or if a tender type ceases to be payable or if a new type of refund of any contribution, levy or tax payable by a person in his capacity as an employer becomes receivable or if a new type of premium receivable by a person in his capacity as an employer becomes receivable after the Base Date, then in any such case the net amount of the difference between what the Contractor actually receives or will receive in respect of workpeople as referred to in paragraphs A·1·2·1 and A·1·2·2 or because of his employment of such workpeople and what he would have received had the alteration, cessation or new type of refund or premium not become effective shall, as the case may be, be paid to or allowed by the Contractor.

·7 The references in paragraphs A·1·5 and A·1·6 to premiums shall be construed as meaning all payments howsoever they are described which are made under or by virtue of an Act of Parliament to a person in his capacity as an employer and which affect the cost to an employer of having persons in his employment.

·8 Where employer’s contributions are payable by the Contractor in respect of workpeople as referred to in paragraphs A·1·2·1 and A·1·2·2 whose employment, is contracted-out employment within the meaning of the Pension Schemes Act 1993, the Contractor shall for the purpose of recovery or allowance under this paragraph A·1 be deemed to pay employer’s contributions as if that employment were not contracted-out employment.

·9 The references in paragraph A·1 to contributions, levies and taxes shall be construed as meaning all impositions payable by a person in his capacity as an employer howsoever they are described and whoever the recipient which are imposed under or by virtue of an Act of Parliament and which affect the cost to an employer of having persons in his employment.

Deemed calculation of Contract Sum – materials

A·2 The Contract Sum shall be deemed to have been calculated in the manner set out below and shall be subject to adjustment in the events specified hereunder.

·1 The Contract Sum is based upon the types and rates of duty, if any, and tax, if any (other than any VAT which is treated, or is capable of being treated, as input tax by the Contractor), by whomsoever payable which at the Base Date are payable on the import, purchase, sale, appropriation, processing, use or disposal of the materials, goods, electricity, fuels, materials taken from the site as waste or any other solid, liquid or gas necessary for the execution of the Works by virtue of any Act of Parliament. A type and a rate so payable are in paragraph A·2·2 referred to as a ‘tender type’ and a ‘tender rate’.

·2 If, in relation to any materials or goods or any electricity or fuels or materials taken from the site as waste or any other solid, liquid or gas necessary for the execution of the Works including temporary site installations for those Works, a tender rate is increased or decreased or a tender type ceases to be payable or a new type of duty or tax (other than any VAT which is treated, or is capable of being treated, as input tax by the Contractor) becomes payable on the import, purchase, sale, appropriation, processing, use or disposal of any of the above things after the Base Date, then in any such case the net amount of the difference between what the Contractor actually pays in respect of those materials, goods, electricity, fuels, materials taken from the site as waste or any other solid, liquid or gas and what he would have paid in respect of them had the alteration, cessation or imposition not occurred shall, as the case may be, be paid to or allowed by the Contractor. In this paragraph A·2·2 “a new type of duty or tax” includes an additional duty or tax and a duty or tax imposed in regard to any of the above in respect of which no duty or tax whatever was previously payable (other than any VAT which is treated, or is capable of being treated, as input tax by the Contractor).

Sub-contract work – incorporation of provisions to like effect

A·3 ·1 If the Contractor sub-contracts any portion of the Works to a sub-contractor he shall incorporate in the sub-contract provisions to the like effect as the provisions of Fluctuations Option A (excluding this paragraph A·3) including the percentage stated in the Contract Particulars pursuant to paragraph A·12 which are applicable for the purposes of this Contract.
2 If the price payable under such a sub-contract as referred to in paragraph A·3·1 is increased above or decreased below the price in such sub-contract by reason of the operation of the said incorporated provisions, then the net amount of such increase or decrease shall, as the case may be, be paid to or allowed by the Contractor under this Contract.

**Notification by Contractor**

**A·4**

1 The Contractor shall notify the Architect/Contract Administrator of the occurrence of any of the events referred to in such of the following provisions as are applicable for the purposes of this Contract:

1 paragraph A·1·2;
2 paragraph A·1·6;
3 paragraph A·2·2;
4 paragraph A·3·2.

2 Any notification required to be given under paragraph A·4·1 shall be given within a reasonable time after the occurrence of the event to which it relates, and notification in that time shall be a condition precedent to any payment being made to the Contractor in respect of the event in question.

**Agreement – Quantity Surveyor and Contractor**

**A·5**

The Quantity Surveyor and the Contractor may agree what shall be deemed for all the purposes of this Contract to be the net amount payable to or allowable by the Contractor in respect of the occurrence of any event such as is referred to in any of the provisions listed in paragraph A·4·1.

**Fluctuations added to or deducted from Contract Sum**

**A·6**

Any amount which from time to time becomes payable to or allowable by the Contractor by virtue of paragraphs A·1 and A·2 or paragraph A·3 shall, as the case may be, be added to or deducted from:

1 the Contract Sum; and

2 any amounts payable to the Contractor and which are calculated in accordance with clause 8·12·3·1.

The addition or deduction to which this paragraph A·6 refers shall be subject to the provisions of paragraphs A·7 to A·9·1.

**Evidence and computations by Contractor**

**A·7**

As soon as is reasonably practicable the Contractor shall provide such evidence and computations as the Architect/Contract Administrator or the Quantity Surveyor may reasonably require to enable the amount payable to or allowable by the Contractor by virtue of paragraphs A·1 and A·2 or paragraph A·3 to be ascertained; and in the case of amounts payable to or allowable by the Contractor under paragraph A·1·3 (or paragraph A·3 for amounts payable to or allowable under the provisions in the sub-contract to the like effect as paragraphs A·1·3 and A·1·4) – employees other than workpeople – such evidence shall include a certificate signed by or on behalf of the Contractor each week certifying the validity of the evidence reasonably required to ascertain such amounts.

**No alteration to Contractor’s profit**

**A·8**

No addition to or deduction from the Contract Sum made by virtue of paragraph A·6 shall alter in any way the amount of profit of the Contractor included in that Sum.

**Position where Contractor in default over completion**

**A·9**

1 Subject to the provisions of paragraph A·9·2 no amount shall be added or deducted in the computation of the amount stated as due in an Interim Certificate or in the Final Certificate in respect of amounts otherwise payable to or allowable by the Contractor by virtue of paragraphs A·1 and A·2 or paragraph A·3 if the event (as referred to in the provisions listed in paragraph A·4·1) in respect of which the payment or allowance would be made occurs after the Completion Date.
continued A·9  

-2 Paragraph A·9·1 shall not be applied unless:

-1 the printed text of clauses 2·26 to 2·29 is unamended and forms part of the Conditions;  

and

-2 the Architect/Contract Administrator has, in respect of every notification by the Contractor under clause 2·28, fixed or confirmed such Completion Date as he considers to be in accordance with that clause.

Work etc. to which paragraphs A·1 to A·3 not applicable

A·10 Paragraphs A·1 to A·3 shall not apply in respect of:

-1 work for which the Contractor is allowed daywork rates under clause 5·7;

-2 changes in the rate of VAT charged on the supply of goods or services by the Contractor to the Employer under this Contract.

Definitions for use with Fluctuations Option A

A·11 In Fluctuations Option A:

-1 the Base Date means the date stated as such in the Contract Particulars;

-2 “materials” and “goods” include timber used in formwork but do not include other consumable stores, plant and machinery;

-3 “workpeople” means persons whose rates of wages and other emoluments (including holiday credits) are governed by the rules or decisions or agreements of the Construction Industry Joint Council or some other wage-fixing body for trades associated with the building industry;

-4 “wage-fixing body” means a body which lays down recognised terms and conditions of workers;

-5 “recognised terms and conditions” means terms and conditions of workers in comparable employment in the trade or industry, or section of trade or industry, in which the employer in question is engaged which have been settled by an agreement or award to which the parties are employers’ associations and independent trade unions which represent (generally, or in the district in question, as the case may be) a substantial proportion of the employers and of the workers in the trade, industry or section being workers of the description to which the agreement or award relates.

Percentage addition to fluctuation payments or allowances

A·12 There shall be added to the amount paid to or allowed by the Contractor under:

-1 paragraph A·1·2,

-2 paragraph A·1·3,

-3 paragraph A·1·6,

-4 paragraph A·2·2

the percentage stated in the Contract Particulars.
Fluctuations Option B

(Labour and materials cost and tax fluctuations)

Deemed calculation of Contract Sum – labour rates etc.

B·1

The Contract Sum shall be deemed to have been calculated in the manner set out below and shall be subject to adjustment in the events specified hereunder.

1. The Contract Sum (including the cost of employer’s liability insurance and of third party insurance) is based upon the rates of wages and the other emoluments and expenses (including holiday credits) which will be payable by the Contractor to or in respect of:

   1. workpeople engaged upon or in connection with the Works either on or adjacent to the site; and

   2. workpeople directly employed by the Contractor who are engaged upon the production of materials or goods for use in or in connection with the Works and who operate neither on nor adjacent to the site and to the extent that they are so engaged,

in accordance with:

   3. the rules or decisions of the Construction Industry Joint Council or other wage-fixing body which will be applicable to the Works and which have been promulgated at the Base Date;

   4. any incentive scheme and/or productivity agreement under the Working Rule Agreement of the Construction Industry Joint Council or provisions on incentive schemes and/or productivity agreements contained in the rules or decisions of some other wage-fixing body; and

   5. the terms of the Building and Civil Engineering Annual and Public Holidays Agreements (or the terms of agreements to similar effect in respect of workpeople whose rates of wages and other emoluments and expenses (including holiday credits) are in accordance with the rules or decisions of a wage-fixing body other than the Construction Industry Joint Council) which will be applicable to the Works and which have been promulgated at the Base Date;

and upon the rates or amounts of any contribution, levy or tax which will be payable by the Contractor in his capacity as an employer in respect of, or calculated by reference to, the rates of wages and other emoluments and expenses (including holiday credits) referred to herein.

2. If any of the said rates of wages or other emoluments and expenses (including holiday credits) are increased or decreased by reason of any alteration in the said rules, decisions or agreements promulgated after the Base Date, then the net amount of the increase or decrease in wages or other emoluments and expenses (including holiday credits) together with the net amount of any consequential increase or decrease in the cost of employer’s liability insurance, of third party insurance and of any contribution, levy or tax payable by a person in his capacity as an employer shall, as the case may be, be paid to or allowed by the Contractor.

3. There shall be added to the net amount paid to or allowed by the Contractor under paragraph B·1·2, in respect of each person employed by the Contractor who is engaged upon or in connection with the Works either on or adjacent to the site and who is not within the definition of workpeople in paragraph B·1·2, the same amount as is payable or allowable in respect of a craftsman under paragraph B·1·2 or such proportion of that amount as reflects the time (measured in whole working days) that each such person is so employed.

4. For the purposes of paragraphs B·1·3 and B·2·3:

   1. no period of less than 2 whole working days in any week shall be taken into account and periods of less than a whole working day shall not be aggregated to amount to a whole working day;

   2. “the same amount as is payable or allowable in respect of a craftsman” shall refer to the amount in respect of a craftsman employed by the Contractor (or by any sub-contractor under a sub-contract to which paragraph B·4 refers) under the rules or decisions or
agreements of the Construction Industry Joint Council or other wage-fixing body and, where those rules or decisions or agreements provide for more than one rate of wage, emolument or other expense for a craftsman, shall refer to the amount in respect of a craftsman employed as aforesaid to whom the highest rate is applicable; and

-3 "employed by the Contractor" shall mean an employment to which the Income Tax (Pay As You Earn) Regulations 2003 apply.

-5 The Contract Sum is based upon:

-1 the transport charges referred to in a basic transport charges list submitted by the Contractor and attached to the Contract Documents and incurred by the Contractor in respect of workpeople engaged in either of the capacities referred to in paragraphs B·1·1·1 and B·1·1·2; or

-2 the reimbursement of fares which will be reimbursable by the Contractor to workpeople engaged in either of the capacities referred to in paragraphs B·1·1·1 and B·1·1·2 in accordance with the rules or decisions of the Construction Industry Joint Council which will be applicable to the Works and which have been promulgated at the Base Date or, in the case of workpeople so engaged whose rates of wages and other emoluments and expenses are governed by the rules or decisions of some wage-fixing body other than the Construction Industry Joint Council, in accordance with the rules or decisions of such other body which will be applicable and which have been promulgated as aforesaid.

-6 If:

-1 the amount of transport charges referred to in the basic transport charges list is increased or decreased after the Base Date; or

-2 the reimbursement of fares is increased or decreased by reason of any alteration in the said rules or decisions promulgated after the Base Date or by any actual increase or decrease in fares which takes effect after the Base Date,

then the net amount of that increase or decrease shall, as the case may be, be paid to or allowed by the Contractor.

Deemed calculation of Contract Sum – labour levies and taxes

B·2 The Contract Sum shall be deemed to have been calculated in the manner set out below and shall be subject to adjustment in the events specified hereunder.

1 The Contract Sum is based upon the types and rates of contribution, levy and tax payable by a person in his capacity as an employer and which at the Base Date are payable by the Contractor. A type and a rate so payable are in paragraph B·2·2 referred to as a ‘tender type’ and a ‘tender rate’.

2 If any of the tender rates other than a rate of levy payable by virtue of the Industrial Training Act 1982 is increased or decreased, or if a tender type ceases to be payable, or if a new type of contribution, levy or tax which is payable by a person in his capacity as an employer becomes payable after the Base Date, then in any such case the net amount of the difference between what the Contractor actually pays or will pay in respect of workpeople as referred to in paragraphs B·1·1·1 and B·1·1·2 or because of his employment of such workpeople and what he would have paid had the alteration, cessation or new type of contribution, levy or tax not become effective shall, as the case may be, be paid to or allowed by the Contractor.

3 There shall be added to the net amount paid to or allowed by the Contractor under paragraph B·2·2, in respect of each person employed by the Contractor who is engaged upon or in connection with the Works either on or adjacent to the site and who is not within the definition of workpeople in paragraph B·1·2·3, the same amount as is payable or allowable in respect of a craftsman under paragraph B·2·2 or such proportion of that amount as reflects the time (measured in whole working days) that each such person is so employed. The provisions of paragraph B·1·4 shall apply to this paragraph B·2·3.

4 The Contract Sum is based upon the types and rates of refund of the contributions, levies and taxes payable by a person in his capacity as an employer and upon the types and rates of premium receivable by a person in his capacity as an employer being in each case types and rates which at the Base Date are receivable by the Contractor. Such a type and such a rate are in paragraph B·2·5 referred to as a ‘tender type’ and a ‘tender rate’.
If any of the tender rates is increased or decreased or if a tender type ceases to be payable or if a new type of refund of any contribution, levy or tax payable by a person in his capacity as an employer becomes receivable or if a new type of premium receivable by a person in his capacity as an employer becomes receivable after the Base Date, then in any such case the net amount of the difference between what the Contractor actually receives or will receive in respect of workpeople as referred to in paragraphs B·1·1·1 and B·1·1·2 or because of his employment of such workpeople and what he would have received had the alteration, cessation or new type of refund or premium not become effective shall, as the case may be, be paid to or allowed by the Contractor.

The references in paragraphs B·2·4 and B·2·5 to premiums shall be construed as meaning all payments howsoever they are described which are made under or by virtue of an Act of Parliament to a person in his capacity as an employer and which affect the cost to an employer of having persons in his employment.

Where employer’s contributions are payable by the Contractor in respect of workpeople as referred to in paragraphs B·1·1·1 and B·1·1·2 whose employment is contracted-out employment within the meaning of the Pension Schemes Act 1993, the Contractor shall, subject to the proviso hereeto, for the purpose of recovery or allowance under paragraph B·2 be deemed to pay employer’s contributions as if that employment were not contracted-out employment; provided that this paragraph B·2·7 shall not apply where the occupational pension scheme, by reference to membership of which the employment of workpeople is contracted-out employment, is established by the rules of the Construction Industry Joint Council or of some other wage-fixing body so that contributions to such occupational pension scheme are within the payment and allowance provisions of paragraph B·1.

The references in paragraphs B·2·1 to B·2·5 and B·2·7 to contributions, levies and taxes shall be construed as meaning all impositions payable by a person in his capacity as an employer howsoever they are described and whoever the recipient which are imposed under or by virtue of an Act of Parliament and which affect the cost to an employer of having persons in his employment.

Deemed calculation of Contract Sum – materials, goods, electricity and fuels

The Contract Sum shall be deemed to have been calculated in the manner set out below and shall be subject to adjustment in the events specified hereunder.

1. The Contract Sum is based upon the market prices which were current at the Base Date of the materials, goods, electricity, fuels or any other solid, liquid or gas necessary for the execution of the Works, and upon the duty or tax payable at that date on the disposal of waste from the site.

2. If after the Base Date the market price of any of the above things increases or decreases, or the duty or tax on the disposal of waste from the site increases or decreases, then the net amount of the difference shall, as the case may be, be paid to or allowed by the Contractor.

3. The references in paragraphs B·3·1 and B·3·2 to market price(s) shall be construed as including any duty or tax (other than any VAT which is treated, or is capable of being treated, as input tax by the Contractor) by whomsoever payable which is payable under or by virtue of any Act of Parliament on the import, purchase, sale, appropriation, processing, use or disposal of any of the things described in paragraph B·3·1.

Sub-contract work – incorporation of provisions to like effect

1. If the Contractor sub-contracts any portion of the Works to a sub-contractor he shall incorporate in the sub-contract provisions to the like effect as the provisions of Fluctuations Option B (excluding this paragraph B·4) including the percentage stated in the Contract Particulars pursuant to paragraph B·13 which are applicable for the purposes of this Contract.

2. If the price payable under such a sub-contract as referred to in paragraph B·4·1 is increased above or decreased below the price in such sub-contract by reason of the operation of the said incorporated provisions, then the net amount of such increase or decrease shall, as the case may be, be paid to or allowed by the Contractor under this Contract.
Notification by Contractor

B-5 1 The Contractor shall notify the Architect/Contract Administrator of the occurrence of any of the events referred to in such of the following provisions as are applicable for the purposes of this Contract:

1 paragraph B·1·2;
2 paragraph B·1·6;
3 paragraph B·2·2;
4 paragraph B·2·5;
5 paragraph B·3·2;
6 paragraph B·4·2.

2 Any notification required to be given under paragraph B·5·1 shall be given within a reasonable time after the occurrence of the event to which it relates, and notification in that time shall be a condition precedent to any payment being made to the Contractor in respect of the event in question.

Agreement – Quantity Surveyor and Contractor

B-6 The Quantity Surveyor and the Contractor may agree what shall be deemed for all the purposes of this Contract to be the net amount payable to or allowable by the Contractor in respect of the occurrence of any event such as is referred to in any of the provisions listed in paragraph B·5·1.

Fluctuations added to or deducted from Contract Sum

B-7 Any amount which from time to time becomes payable to or allowable by the Contractor by virtue of paragraphs B·1 to B·3 or paragraph B·4 shall, as the case may be, be added to or deducted from:

1 the Contract Sum; and
2 any amounts payable to the Contractor and which are calculated in accordance with clause 8·12·3·1.

The addition or deduction to which this paragraph B·7 refers shall be subject to the provisions of paragraphs B·8 to B·10·1.

Evidence and computations by Contractor

B-8 As soon as is reasonably practicable the Contractor shall provide such evidence and computations as the Architect/Contract Administrator or the Quantity Surveyor may reasonably require to enable the amount payable to or allowable by the Contractor by virtue of paragraphs B·1 to B·3 or paragraph B·4 to be ascertained; and in the case of amounts payable to or allowable by the Contractor under paragraph B·1·3 (or paragraph B·4 for amounts payable to or allowable under the provisions in the sub-contract to the like effect as paragraphs B·1·3 and B·1·4) – employees other than workpeople – such evidence shall include a certificate signed by or on behalf of the Contractor each week certifying the validity of the evidence reasonably required to ascertain such amounts.

No alteration to Contractor’s profit

B-9 No addition to or deduction from the Contract Sum made by virtue of paragraph B·7 shall alter in any way the amount of profit of the Contractor included in that Sum.

Position where Contractor in default over completion

B-10 1 Subject to the provisions of paragraph B·10·2 no amount shall be added or deducted in the computation of the amount stated as due in an Interim Certificate or in the Final Certificate in respect of amounts otherwise payable to or allowable by the Contractor by virtue of paragraphs B·1 to B·3 or paragraph B·4 if the event (as referred to in the provisions listed in paragraph B·5·1) in respect of which the payment or allowance would be made occurs after the Completion Date.
Paragraph B·10·1 shall not be applied unless:

·1 the printed text of clauses 2·26 to 2·29 is unamended and forms part of the Conditions; and

·2 the Architect/Contract Administrator has, in respect of every notification by the Contractor under clause 2·28, fixed or confirmed such Completion Date as he considers to be in accordance with that clause.

Work etc. to which paragraphs B·1 to B·4 not applicable

Paragraphs B·1 to B·4 shall not apply in respect of:

·1 work for which the Contractor is allowed daywork rates under clause 5·7;

·2 changes in the rate of VAT charged on the supply of goods or services by the Contractor to the Employer under this Contract.

Definitions for use with Fluctuations Option B

In Fluctuations Option B:

·1 the Base Date means the date stated as such in the Contract Particulars;

·2 "materials" and "goods" include timber used in formwork but do not include other consumable stores, plant and machinery;

·3 "workpeople" means persons whose rates of wages and other emoluments (including holiday credits) are governed by the rules or decisions or agreements of the Construction Industry Joint Council or some other wage-fixing body for trades associated with the building industry;

·4 "wage-fixing body" means a body which lays down recognised terms and conditions of workers;

·5 "recognised terms and conditions" means terms and conditions of workers in comparable employment in the trade or industry, or section of trade or industry, in which the employer in question is engaged which have been settled by an agreement or award to which the parties are employers’ associations and independent trade unions which represent (generally, or in the district in question, as the case may be) a substantial proportion of the employers and of the workers in the trade, industry or section being workers of the description to which the agreement or award relates.

Percentage addition to fluctuation payments or allowances

There shall be added to the amount paid to or allowed by the Contractor under:

·1 paragraph B·1·2,

·2 paragraph B·1·3,

·3 paragraph B·1·6,

·4 paragraph B·2·2,

·5 paragraph B·2·5,

·6 paragraph B·3·2

the percentage stated in the Contract Particulars.
Fluctuations Option C

(Formula adjustment)

Adjustment of Contract Sum – Formula Rules

C·1 The Contract Sum shall be adjusted in accordance with the provisions of Fluctuations Option C and the Formula Rules current at the Base Date issued for use with Fluctuations Option C by the JCT (‘the Formula Rules’).

C·2 Any adjustment under Fluctuations Option C shall be to sums exclusive of VAT and nothing in Fluctuations Option C shall affect in any way the operation of clause 4·6.

C·2 The Definitions in rule 3 of the Formula Rules shall apply to Fluctuations Option C.

C·3 The adjustment referred to in Fluctuations Option C shall be effected (after taking into account any Non-Adjustable Element[74]) in all certificates for payment issued under the provisions of the Conditions.

C·4 If any correction of amounts of adjustment under Fluctuations Option C included in previous certificates is required following any operation of rule 5 of the Formula Rules, such correction shall be given effect in the next certificate for payment to be issued.

Interim valuations

C·2 Interim valuations shall be made before the issue of each Interim Certificate.

Fluctuations – articles manufactured outside the United Kingdom

C·3 For any article to which rule 4(ii) of the Formula Rules applies the Contractor shall insert in a list attached to the Contract Documents the market price of the article in sterling (that is the price delivered to the site) current at the Base Date. If after that date the market price of the article inserted in that list increases or decreases then the net amount of the difference between the cost of purchasing at the market price inserted in such list and the market price payable by the Contractor and current when the article is bought shall, as the case may be, be paid to or allowed by the Contractor. The reference to market price in this paragraph C·3 shall be construed as including any duty or tax (other than any VAT which is treated, or is capable of being treated, as input tax by the Contractor) by whomsoever payable under or by virtue of any Act of Parliament on the import, purchase, sale, appropriation or use of the article specified as aforesaid.

Power to agree – Quantity Surveyor and Contractor

C·4 The Quantity Surveyor and the Contractor may agree any alteration to the methods and procedures for ascertaining the amount of formula adjustment to be made under Fluctuations Option C, and the amounts ascertained after the operation of such agreement shall be deemed for all the purposes of this Contract to be the amount of formula adjustment payable to or allowable by the Contractor in respect of the provisions of Fluctuations Option C. Provided always:

C·4·1 that no alteration to the methods and procedures shall be agreed unless it is reasonably expected that the amount of formula adjustment so ascertained will be the same or approximately the same as that ascertained in accordance with Part I or Part II of section 2 of the Formula Rules whichever Part is stated to be applicable in the Contract Documents; and

C·4·2 that any agreement under paragraph C·4 shall not have any effect on the determination of any adjustment payable by the Contractor to any sub-contractor.

Position where Monthly Bulletins are delayed, etc.

C·5·1 If at any time prior to the issue of the Final Certificate formula adjustment is not possible because of delay in, or cessation of, the publication of the Monthly Bulletins, adjustment of the Contract Sum shall be made in each Interim Certificate during such period of delay on a fair and reasonable basis.

[74] Applies to Local Authorities only.
continued C·5

·2 If publication of the Monthly Bulletins is recommenced at any time prior to the issue of the Final Certificate, the provisions of Fluctuations Option C and the Formula Rules shall apply for each Valuation Period as if no delay or cessation had occurred and the adjustment under Fluctuations Option C and the Formula Rules shall be substituted for any adjustment under paragraph C·5·1.

·3 During any such period of delay or cessation the Contractor and the Employer shall operate such parts of Fluctuations Option C and the Formula Rules as will enable the amount of formula adjustment due to be readily calculated upon recommencement of publication of the Monthly Bulletins.

Formula adjustment – failure to complete

C·6

·1 ·1 If the Contractor fails to complete the Works by the Completion Date, formula adjustment of the Contract Sum under Fluctuations Option C shall be effected in all Interim Certificates issued after the Completion Date by reference to the Index Numbers applicable to the Valuation Period in which the Completion Date falls.

·2 If for any reason the adjustment included in the amount certified in any Interim Certificate which is or has been issued after the Completion Date is not in accordance with paragraph C·6·1·1, such adjustment shall be corrected to comply with that paragraph.

·2 Paragraph C·6·1 shall not be applied unless:

·1 the printed text of clauses 2·26 to 2·29 is unamended and forms part of the Conditions; and

·2 the Architect/Contract Administrator has, in respect of every notification by the Contractor under clause 2·28, fixed or confirmed such Completion Date as he considers to be in accordance with that clause.
Each provision applies unless otherwise stated in the Contract Particulars.

**Collaborative working**

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

**Health and safety**

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

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

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

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

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

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

**Cost savings and value improvements**

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

3.2 The Contractor shall provide details of his proposed changes, identifying them as suggested under this paragraph 3, together with his assessment of the benefit he believes the Employer may obtain, expressed in financial terms, and a quotation.

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

3.4 Original proposals by the Contractor under this paragraph 3 may only be instructed in accordance with it, provided always that nothing shall prevent the Employer from utilising other contractors to implement such changes after practical completion of the Works.

**Sustainable development and environmental considerations**

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

Performance Indicators and monitoring

5 1 The Employer shall monitor and assess the Contractor’s performance by reference to any performance indicators stated or identified in the Contract Documents.

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

3 Where the Employer considers that a target for any of those performance indicators may not be met, he may inform the Contractor who shall submit his proposals for improving his performance against that target to the Employer.

Notification and negotiation of disputes

6 With a view to avoidance or early resolution of disputes or differences (subject to Article 7), each Party shall promptly notify the other of any matter that appears likely to give rise to a dispute or difference. The senior executives nominated in the Contract Particulars (or if either is not available, a colleague of similar standing) shall meet as soon as practicable for direct, good faith negotiations to resolve the matter.
All parties must rely exclusively upon their own skill and judgment or upon those of their advisers when using this document and neither Thomson Reuters (Professional) UK Limited nor its associated companies assume any liability to any user or any third party in connection with such use.