This contract has been amended from the original template.

MW 2016
Minor Works Building Contract 2016

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2016

MINOR WORKS BUILDING CONTRACT

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Minor Works Building Contract (MW)

Appropriate:

- where the work involved is simple in character;
- where the work is designed by or on behalf of the Employer;
- where the Employer is to provide drawings and/or a specification and/or work schedules to define adequately the quantity and quality of the work; and
- where an Architect/Contract Administrator is to administer the conditions.

Can be used:

- by both private and local authority employers.

Not suitable:

- where bills of quantities are required;
- where provisions are required to govern work carried out by named specialists;
- where detailed control procedures are needed;
- where the Contractor is to design discrete part(s) of the works, even though all the other criteria are met – consider using the Minor Works Building Contract with contractor's design (MWD).

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For details of 2016 Edition changes, see the Guidance Notes and the Tracked Changed Document.

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Agreement

This Agreement is made the _____ 20_____

Between **The Employer** Bournemouth, Christchurch and Poole Council

of Town Hall, Bourne Avenue, Bournemouth, BH2 6DY

And **The Contractor** TO BE CONFIRMED

(Company No. _____)[1]

of/whose registered office is at _____

_____

_____

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[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.

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Recitals

Whereas

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

Renewal of electrical heaters throughout flats and communal areas. Works to include the replacement of emergency lighting through communal areas.

at

Willow Park, Park Road, Poole, BH14 0JP ('the Works')

under the direction of the Architect/Contract Administrator referred to in Article 3;

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

the drawings listed in _____ ('the Contract Drawings')[3][4]

~~a Specification ('the Contract Specification')[3]~~

~~Work Schedules[3]~~

which for identification have been signed or initialled by or on behalf of each Party; those documents together with this Agreement, the Conditions and, if applicable, a Schedule of Rates as referred to in the Third Recital (collectively 'the Contract Documents')[5] are annexed to this Agreement[6];

Third the Contractor has supplied the Employer with a copy of the priced Contract Specification ~~or Work Schedules or with a Schedule of Rates[3]~~;

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

Fifth for the purposes of the Construction (Design and Management) Regulations 2015 (the 'CDM Regulations') the status of the project that comprises or includes the Works is stated in the Contract Particulars;

Sixth the Contract is not supplemented by a Framework Agreement;

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

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[2] State nature and location of intended works.
[3] Delete as appropriate.
[4] State the identifying numbers of the Contract Drawings or identify the schedule of drawings or other document listing them.
[5] It is envisaged that in those cases where there is an applicable BIM or other communications protocol this will be included within one of the Contract Documents identified in the Second Recital.
[6] Where a Contract Document has been priced by the Contractor it is that version of the document that should be annexed.

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Articles

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 will 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 becomes payable under this Contract.

Article 3: Architect/Contract Administrator

For the purposes of this Contract the Architect/Contract Administrator[7] is

Charlie Adams, Poole Housing Partnership Limited

of

Beech House, 28-30 Wimborne Road, Poole BH15 2BU

or, if he ceases to be the Architect/Contract Administrator, such other person as the Employer nominates (such nomination to be made within 14 days of the cessation). No replacement appointee as Architect and/or Contract Administrator shall be entitled to disregard or overrule any certificate, opinion, decision, approval or instruction given 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.

Article 4: Principal Designer

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

(or)[8] _____

of _____

_____

[7] Unless the person appointed by or under Article 3 is entitled to use the title 'Architect' under the Architects Act 1997, the term 'Architect' shall so long as that person holds that post be deemed deleted throughout this Contract. Any appointee as Contract Administrator should be suitably experienced for the role. Irrespective of experience or qualifications, the Employer should not at any time appoint himself to the role without the Contractor's prior agreement.

[8] Insert the name of the Principal Designer in Article 4 if the Architect/Contract Administrator is not to fulfil that role and that of the Principal Contractor in Article 5 if that is to be a person other than the Contractor.
Under the CDM Regulations 2015, regardless of whether or not a project is notifiable, there is a requirement to appoint a principal designer and a principal contractor in all cases where there is more than one contractor, or if it is reasonably foreseeable that more than one contractor will be working on a project at any time. For these purposes, the term 'contractor' is broadly defined by the regulations and treats the Contractor's sub-contractors as separate contractors.

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

Article 5: Principal Contractor

The Principal Contractor for the purposes of the CDM Regulations is the Contractor or such replacement as the Employer at any time appoints to fulfil that role.

Article 6: Adjudication

If any dispute or difference arises under this Contract either Party may refer it to adjudication in accordance with clause 7·2.[9]

Article 7: Arbitration

Where Article 7 applies[10], then, subject to Article 6 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 Schedule 1 and the JCT 2011 edition of the Construction Industry Model Arbitration Rules (CIMAR)[11]. The exceptions to this Article 7 are:

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

Article 8: Legal proceedings[10]

Subject to Article 6 and (where it applies) to Article 7, the English courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.

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[9] 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 Guidance Notes.

[10] If it is intended, subject to the right of adjudication and exceptions stated in Article 7, that disputes or differences should be determined by arbitration and not by legal proceedings, the Contract Particulars **must** state that the arbitration provisions of Article 7 and Schedule 1 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 8 (see also clause 1·8).

[11] See the Guidance Notes.

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Article 9: Special Conditions

The Special Conditions set out in Schedule 4 shall form part of this Contract. Notwithstanding Clause 1.2, in case of any difference, discrepancy or conflict between the Special Conditions set out in Schedule 4 and the other provisions of the Contract, the Special Conditions set out in Schedule 4 shall prevail.

Contract Particulars

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

Clause etc.	*Subject*		
Fourth Recital and Schedule 2 (paragraphs 1·1, 1·2, 1·5, 1·6, 2·1 and 2·2)	Base Date		TO BE CONFIRMED
Fourth Recital and clause 4·2	Construction Industry Scheme (CIS)	*	Employer at the Base Date is a 'contractor' for the purposes of the CIS
Fifth Recital	CDM Regulations[12]	*	the project is notifiable
Seventh Recital and Schedule 3	Supplemental Provisions[13] *(Where neither entry against one of Supplemental Provisions 1 to 6 below is deleted, that Supplemental Provision applies.)*		
	Collaborative working	*	Supplemental Provision 1 applies
	Health and safety	*	Supplemental Provision 2 applies
	Cost savings and value improvements	*	Supplemental Provision 3 applies
	Sustainable development and environmental considerations	*	Supplemental Provision 4 applies
	Performance Indicators and monitoring		Supplemental Provision 5

[12] Under the CDM Regulations 2015 a project is notifiable if the construction work on a construction site is scheduled either to last longer than 30 working days and have more than 20 workers working simultaneously at any point in the project or to exceed 500 person days.

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

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		* applies
	Notification and negotiation of disputes	Supplemental Provision 6 * applies
	Transparency	Supplemental Provision 7 * applies
	The Public Contracts Regulations 2015	Supplemental Provision 8 * applies
*	*	*
	Where Supplemental Provision 6 applies, the respective nominees of the Parties are	Employer's nominee Steve Richards, Operations Manager, Poole Housing Partnership, Beech House, 28-30 Wimborne Road, Poole BH15 2BU Contractor's nominee TO BE CONFIRMED or such replacement as each Party may notify to the other from time to time
Article 7	Arbitration *(If neither entry is deleted, Article 7 and Schedule 1 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must be stated that Article 7 and Schedule 1 apply.)*[14]	Article 7 and Schedule 1 (*Arbitration*) * apply
2·2	Works commencement date	TO BE CONFIRMED
2·2	Date for Completion	TO BE CONFIRMED or such later date for completion as is fixed under clause 2·7
2·8	Liquidated damages	at the rate of £Not applicable per Not applicable[15]
2·10	Rectification Period *(The period is 3 months unless a different period is stated.)*	6 months[16] from the date of practical completion
4·3	Interim payments – Interim Valuation Dates[17] *(Unless otherwise stated, the first Interim Valuation Date is one month after the Works commencement date specified in these Particulars (against the reference to clause 2·2) and thereafter at monthly intervals.)*	The first Interim Valuation Date is TO BE CONFIRMED and thereafter at intervals of four weeks

[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 Guidance Notes. See also footnote [10].
[15] Insert 'day', 'week' or other period.
[16] An insertion is needed here only if the default position is not to apply. If no retention is required, insert '100' in the percentage entries for clause 4·3.
[17] The first Interim Valuation Date should not be more than one month after the Works commencement date and the intervals between Interim Valuation Dates should not be more than one month.

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4·3	Payments due prior to practical completion – percentage of the total value of work etc. *(The percentage is 95 per cent unless a different rate is stated.)*	95 per cent[16]
4·3	Payments becoming due on or after practical completion – percentage of the total amount to be paid to the Contractor *(The percentage is 97½ per cent unless a different rate is stated.)*	97.5 per cent[16]
4·3 and 4·8	Fluctuations provision *(Unless another provision or entry is selected, Schedule 2 applies.)*	* ~~Schedule 2 (Contribution, levy and tax changes) applies/~~ * no fluctuations provision applies/ * ~~the following fluctuations provision applies~~
4·8·1	Supply of documentation for computation of amount to be finally certified *(The period is 3 months unless a different period is stated.)*	three months[16] from the date of practical completion
5·3	Contractor's Public Liability insurance: injury to persons or property – the required level of cover is not less than	£10,000,000.00 for any one occurrence or series of occurrences arising out of one event
5·4A, 5·4B and 5·4C	Insurance of the Works etc. – alternative provisions[18]	* ~~Clause 5·4A *(Works Insurance by Contractor in Joint Names)* applies/~~ * ~~Clause 5·4B *(Works and existing structures insurance by Employer in Joint Names)* applies/~~ * Clause 5·4C *(Works and existing structures insurance by other means)* applies
5·4C	Insurance arrangements – details of the required policy or policies	are set out in the following document(s) CAR Insurance certificate
7·2	Adjudication[19]	The Adjudicator is
	Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)[20] *(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.)*	* ~~Royal Institute of British Architects~~ * The Royal Institution of Chartered Surveyors * ~~constructionadjudicators.com[21]~~ * ~~Association of Independent Construction Adjudicators[22]~~ * ~~Chartered Institute of Arbitrators~~

[16] An insertion is needed here only if the default position is not to apply. If no retention is required, insert '100' in the percentage entries for clause 4·3.

[18] **As to choice of applicable insurance provisions, see the Guidance Notes.**
Where there are existing structures, it is vital that any prospective Employer – in particular any Employer who is a tenant or a domestic homeowner – who is not familiar with clause 5·4B and the possible solutions under clause 5·4C, or an appropriate member of their professional team, should consult the Employer's insurance advisers prior to the tender stage. Any Employer who is a tenant should also consult his insuring landlord prior to that stage.

[19] The Parties should either name the Adjudicator and select the nominating body or, alternatively, select only the nominating body. The Adjudication Agreement (Adj) and the Adjudication Agreement (Named Adjudicator) (Adj/N) have been prepared by JCT for use when appointing an Adjudicator.

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

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

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

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Schedule 1 (paragraph 2·1)	Arbitration[23] – appointor of Arbitrator (and of any replacement)[24] *(If no appointor is selected, the appointor shall be the President or a Vice-President of the Royal Institute of British Architects)*	President or a Vice-President: * ~~Royal Institute of British Architects~~ * The Royal Institution of Chartered Surveyors * ~~Chartered Institute of Arbitrators~~

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[23] This only applies where the Contract Particulars state (against the reference to Article 7) that Article 7 and Schedule 1 (Arbitration) apply.

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

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Attestation

Note on Execution

This Agreement should be executed by both the Employer and the Contractor either under hand or as a deed. As to the main factor relevant to that choice, see the Guidance Notes.

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.

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Notes on Execution as a Deed

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

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

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

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

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

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

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

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

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

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Executed as a Deed by the Employer

namely [1] Bournemouth, Christchurch and Poole Council

(B) by affixing hereto the common seal **of the Council** ~~**company/other body corporate**~~ [2,4]

in the presence of

Signature ~~*Director*~~*Monitoring Officer/ Deputy Monitoring Officer*

~~*Signature*~~ ~~*Company Secretary/Director*~~

[Common seal of company]

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

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Executed as a Deed by the Contractor

namely [1] TO BE CONFIRMED

(A) acting by a Director and the Company Secretary/two Directors **of the company** [2, 3]

and

(Print name of signatory)	*(Print name of signatory)*
Signature *Director*	*Signature* *Company Secretary/Director*

(B) by affixing hereto the common seal **of the company/other body corporate** [2, 4]

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** [2, 5]

Signature *Director*

in the presence of

Witness' signature _____ *(Print name)* _____

Witness' address _____

(D) by attested signature **of the individual** [6]

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.

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Conditions

Section 1 Definitions and Interpretation

Definitions

1·1 Unless the context otherwise requires or the Agreement or these Conditions specifically provide otherwise, words and phrases defined in the Agreement shall have the same meanings in these Conditions and the following words and phrases, where they appear in capitalised form in these Conditions, shall have the meanings stated or referred to below:

Word or phrase	*Meaning*
Agreement:	the Agreement to which these Conditions are annexed, including its Recitals, Articles and Contract Particulars.
All Risks Insurance[25]:	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 was defective[26]; (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 is 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.
Article:	an article in the **Agreement**.

[25] The definition of All Risks Insurance defines the risks for which insurance is required. Policies issued by insurers are not standardised and the way in which insurance for those risks is expressed varies.

[26] In any policy for All Risks Insurance taken out under clause 5·4A or 5·4B·2, 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 those insurance clauses or of that definition. Wider All Risks cover than that specified may be available, though it is not standard.

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Business Day:	any day which is not a Saturday, a Sunday or a Public Holiday.
CDM Regulations:	the Construction (Design and Management) Regulations 2015.
Conditions:	the clauses set out in sections 1 to 7, together with and including the Schedules hereto.
Construction Industry Scheme (or 'CIS'):	see the **Fourth Recital**.
Construction Phase Plan:	the plan referred to in regulation 2 of the CDM Regulations, including any updates and revisions.
Contract Particulars:	the particulars in the **Agreement** and there described as such, including the entries made by the Parties.
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 Employer, Employer's Persons and any Statutory Undertaker.
Employer's Persons:	all persons employed, engaged or authorised by the Employer, excluding the Contractor, Contractor's Persons, the Architect/Contract Administrator and any Statutory Undertaker.
Excepted Risks:	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, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.
Interest Rate:	a rate 5% per annum above the official bank rate of the Bank of England current at the date that a payment due under this Contract becomes overdue.
Interim Valuation Date:	each date as specified by the **Contract Particulars** (against the reference to **clause 4·3**).
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 recognised as an insured thereunder.
Local or Public Authority:	a body that is a 'contracting authority' as defined by the PC Regulations.
Parties:	the Employer and the Contractor together.
Party:	either the Employer or the Contractor.
PC Regulations:	the Public Contracts Regulations 2015.
Provisional Sum:	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 Contract Documents.
Public Holiday:	Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.[27]
Recitals:	the recitals in the **Agreement**.

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

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Rectification Period:	the period stated as such period in the **Contract Particulars** (against the reference to **clause 2·10**).
Scheme:	Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998.
Site Materials:	all unfixed materials and goods delivered to and placed on or adjacent to the Works which are intended for incorporation therein.
Specified Perils:	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.
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.
VAT:	Value Added Tax.
Works Insurance Policy:	the Joint Names Policy or policies covering the Works and Site Materials to be effected and maintained under whichever of clauses 5·4A, 5·4B and 5·4C applies.

Agreement etc. to be read as a whole

1·2 The Agreement and these Conditions are to be read as a whole. Nothing contained in the Contract Drawings, the Contract Specification or the Work Schedules, nor anything in any Framework Agreement, shall override or modify the Agreement or these Conditions.

Headings, references to persons, legislation etc.

1·3 In the Agreement and these Conditions, unless the context otherwise requires:

·1 the headings, notes and footnotes are included for convenience only and shall not affect the interpretation of this Contract;

·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

1·4 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

1·5 Notwithstanding any other provision of this Contract, 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

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1·6 ·1 Each notice, instruction or other communication referred to in the Agreement or these Conditions shall be in writing.

·2 Unless otherwise stated in these Conditions, any notice or other communication under this Contract may be given to or served on the recipient by any effective means at the address specified in the Agreement or such other address as he shall notify to the other Party. If no such address is then current, the notice or other communication shall be treated as effectively given or served if addressed and sent by pre-paid post to the recipient's last known principal business address or (where a body corporate) its registered or principal office.

Consents and approvals

1·7 ·1 Where consent or approval of either Party or the Architect/Contract Administrator is expressly required under these Conditions and is requested, then, except as provided in clause 1·7·2, such consent or approval shall not be unreasonably delayed or withheld.

·2 In the following cases the giving of consent or approval shall be at the sole discretion of the Party from whom it is sought and clause 1·7·1 shall not apply, namely the Employer's consent under clause 2·10 and either Party's consent under clause 3·1.

Applicable law

1·8 This Contract shall be governed by and construed in accordance with the law of England.[26]

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

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Section 2 Carrying out the Works

Contractor's obligations

2·1 ·1 The Contractor shall carry out and complete the Works in a proper and workmanlike manner and in compliance with the Contract Documents, the Construction Phase Plan and Statutory Requirements, and shall give all notices required by the Statutory Requirements.

·2 Insofar as the quality of materials or standards of workmanship are stated to be a matter for the Architect/Contract Administrator's approval, such quality and standards shall be to his reasonable satisfaction.

·3 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.

Commencement and completion

2·2 The Works may be commenced on and shall be completed by the respective dates stated in the Contract Particulars.

Architect/Contract Administrator's duties

2·3 The Architect/Contract Administrator shall issue any further information and instructions necessary for the proper carrying out of the Works and all certificates required by these Conditions.

Correction of inconsistencies

2·4 Any inconsistency in or between the Contract Drawings, the Contract Specification and the Work Schedules shall be corrected and any such correction which results in an addition, omission or other change shall be treated as a variation under clause 3·6·1.

Divergences from Statutory Requirements

2·5 ·1 If the Contractor becomes aware of any divergence between the Statutory Requirements and the Contract Documents or between the Statutory Requirements and any instruction from the Architect/Contract Administrator, he shall immediately notify the latter, specifying the divergence.

·2 Provided the Contractor is not in breach of clause 2·5·1, the Contractor shall not be liable under this Contract if the Works do not comply with the Statutory Requirements to the extent that the non-compliance results from the Contractor having carried out work in accordance with the Contract Documents or the Architect/Contract Administrator's instructions.

Fees or charges legally demandable

2·6 The Contractor shall pay any fees or charges (including any rates or taxes) legally demandable under any of the Statutory Requirements. Such fees and charges shall not be reimbursable to the Contractor by the Employer unless otherwise agreed.

Extension of time

2·7 If it becomes apparent that the Works will not be completed by the Date for Completion as stated in the Contract Particulars or as later fixed under this clause 2·7, the Contractor shall thereupon notify the Architect/Contract Administrator. Where that delay occurs for reasons beyond the control of the Contractor, including compliance with Architect/Contract Administrator's instructions that are not occasioned by a default of the Contractor, the Architect/Contract Administrator shall give such extension of time for completion as may be reasonable and notify the Parties accordingly. Reasons within the control of the Contractor include any default of the Contractor, of any Contractor's Person or of any of their respective suppliers of goods or materials for the Works.

Damages for non-completion

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2·8 ·1 If the Works are not completed by the Date for Completion as stated in the Contract Particulars or as later fixed under clause 2·7, the Employer may require the Contractor to pay or allow to the Employer liquidated damages at the rate stated in the Contract Particulars between such Date for Completion and the date of practical completion.

·2 Subject to clause 2·8·3, the Employer may deduct the liquidated damages from any sum due to the Contractor under this Contract (provided a notice of that deduction has been given under clause 4·5·4) or recover those damages from the Contractor as a debt.

·3 If the Employer intends to deduct any such damages from the sum stated as due in the final certificate or thereafter recover them as a debt, he shall additionally notify the Contractor of that intention not later than the date of issue of the final certificate.

Practical completion

2·9 The Architect/Contract Administrator shall certify the date when in his opinion the Works have reached practical completion and the Contractor has complied sufficiently with clause 3·9 in respect of the supply of documents and information.

Defects

2·10 If any defects, shrinkages or other faults in the Works appear within the Rectification Period due to materials, goods or workmanship not in accordance with this Contract the Architect/Contract Administrator shall not later than 14 days after the expiry of the Rectification Period notify the Contractor who shall make good such defects, shrinkages or other faults entirely at his own cost unless the Architect/Contract Administrator with the Employer's consent instructs otherwise. If he instructs otherwise, an appropriate deduction may be made from the Contract Sum.

Certificate of making good

2·11 When in his opinion the Contractor's obligations under clause 2·10 have been discharged, the Architect/Contract Administrator shall forthwith issue a certificate specifying the date they were discharged.

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Section 3 Control of the Works

Assignment

3·1 Neither the Employer nor the Contractor shall, without the consent of the other, assign this Contract or any rights thereunder.

Person-in-charge

3·2 The Contractor shall ensure that at all reasonable times he has on the site a competent person in charge. Any instructions given to that person by the Architect/Contract Administrator shall be deemed to have been issued to the Contractor.

Sub-contracting

3·3 ·1 The Contractor shall not without the Architect/Contract Administrator's consent sub-contract the whole or any part of the Works. In no case shall any such consent or any sub-contracting in any way affect the Contractor's obligations under any other provision of this Contract.

·2 Where considered appropriate, the Contractor shall engage the sub-contractor using the JCT Short Form of Sub-Contract. It shall be a condition of any sub-contract that:

·1 The sub-contractor's employment under the sub-contract shall terminate immediately upon the termination (for any reason) of the Contractor's employment under this Contract;

·2 each party to the sub-contract shall in relation to the Works and the site comply with applicable CDM Regulations;

·3 if by a final date for payment under the sub-contract the Contractor fails to pay the sub-contractor any amount that should properly have been paid, the Contractor shall, in addition to that amount, pay simple interest on it at the Interest Rate for the period from the final date for payment until such payment is made, such payment of interest to be on and subject to terms equivalent to those of clause 4·6 of these Conditions.

Architect/Contract Administrator's instructions

3·4 The Architect/Contract Administrator may issue instructions and the Contractor shall forthwith comply with them. If instructions are given orally, they shall not have effect until the Architect/Contract Administrator confirms them in writing.

Non-compliance with instructions

3·5 If within 7 days after receipt of a notice from the Architect/Contract Administrator requiring compliance with an instruction the Contractor does not comply, the Employer may employ and pay other persons to execute work of any kind that may be necessary to give effect to that instruction. The Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and an appropriate deduction may be made from the Contract Sum.

Variations

3·6 ·1 The Architect/Contract Administrator may without invalidating this Contract issue instructions requiring an addition to, omission from, or other change in the Works or the order or manner in which they are to be carried out (a 'variation').

·2 The Architect/Contract Administrator and the Contractor shall endeavour to agree a price prior to the Contractor carrying out the instruction.

·3 Failing agreement under clause 3·6·2, any instructions for a variation and any matters that are to be treated as a variation shall be valued by the Architect/Contract Administrator on a fair and reasonable basis using any relevant prices in the priced Contract Specification/Work Schedules/Schedule of Rates, and the valuation shall include any direct loss and/or expense incurred by the Contractor due to the regular progress of the Works being affected by compliance with the instruction.

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Provisional Sums

3·7 The Architect/Contract Administrator shall issue instructions in regard to the expenditure of any Provisional Sums included in the Contract Documents; failing agreement on price, such instructions shall be valued on the basis set out in clause 3·6·3.

Exclusion from the Works

3·8 The Architect/Contract Administrator may (but shall not unreasonably or vexatiously) issue instructions requiring the exclusion from the site of any person employed thereon.

CDM Regulations

3·9 Each Party undertakes to the other that in relation to the Works and site he will duly comply with applicable CDM Regulations. In particular but without limitation:

·1 the Employer shall ensure that the Principal Designer carries out his duties and, where the Contractor is not the Principal Contractor, shall ensure that the Principal Contractor carries out his duties under those regulations;

·2 the Contractor shall comply with regulations 8 and 15 and, where he is the Principal Contractor, with regulations 12 to 14;[29]

·3 whether or not the Contractor is the Principal Contractor, compliance by the Contractor with his duties under the regulations, including any such directions as are referred to in regulation 15(3), shall be at no cost to the Employer and shall not entitle the Contractor to an extension of time;

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

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[29] Where the Employer is a domestic client, as defined in regulation 2, the Principal Contractor may also be responsible for carrying out certain of the client's duties under regulations 4, 6 and 8.

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Section 4 Payment

VAT

4·1 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.

Construction Industry Scheme (CIS)

4·2 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[30], his obligation to make any payment under this Contract is subject to the provisions of the CIS.

Interim payments – dates and certificates

4·3 During the period up to the due date for the final payment fixed under clause 4·8·1, the due dates for interim payments to the Contractor shall in each case be the date 7 days after the relevant Interim Valuation Date. Not later than 5 days after each due date the Architect/Contract Administrator shall issue an interim certificate for the applicable percentage, as stated in the Contract Particulars, of what he considers to be the total value at the due date of:

·1 work properly executed, adjusted where relevant for any amounts ascertained or agreed under clauses 3·6, 3·7 or 4·7; and

·2 materials and goods reasonably and properly brought on to the site for the purpose of the Works that are adequately protected against weather and other casualties

in both cases calculated as at the Interim Valuation Date and adjusted for any fluctuations provision that is stated by the Contract Particulars to apply, less the total of sums stated as due to the Contractor in previous interim certificates, any sums paid in respect of any payment notice given by the Contractor after the issue of the latest interim certificate and, if applicable, any deduction under clause 2·10 or 3·5. The certificate shall state the sum due from the Employer and the basis on which that sum has been calculated, including the amount of each adjustment. Subject to clause 4·5·3, the final date for payment of each interim payment shall be 14 days from its due date.

Contractor's applications and payment notices

4·4 ·1 In relation to any interim payment the Contractor may not later than its Interim Valuation Date or, in the case of the final payment, may at any time prior to issue of the final certificate make an application to the Architect/Contract Administrator, stating the sum that the Contractor considers to be due to him at the relevant due date in accordance with clause 4·3 or 4·8 and the basis on which that sum has been calculated.

·2 If a certificate is not issued in accordance with clause 4·3 or 4·8, then:

·1 where the Contractor has made an application for that payment in accordance with clause 4·4·1, that application is for the purposes of these Conditions a payment notice; or

·2 where the Contractor has not made such an application, he may at any time after the 5 day period referred to in clause 4·3 or 4·8·2 give a payment notice to the Architect/Contract Administrator, stating the sum that the Contractor considers to have become due to him under clauses 4·3 or 4·8 at the relevant due date and the basis on which that sum has been calculated.

Payments – amount and notices

4·5 ·1 Subject to any notice given by the paying Party under clause 4·5·4, the paying Party shall pay the sum stated as due in the relevant certificate on or before the final date for payment

[30] See the Contract Particulars (Fourth Recital and clause 4·2).

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under clause 4·3 or 4·8.

·2 If that certificate is not issued in accordance with clause 4·3 or 4·8 but a Contractor's payment notice has been or is then given, the Employer shall, subject to any notice subsequently given by him under clause 4·5·4, pay the Contractor the sum stated as due in the Contractor's payment notice.

·3 Where the Contractor gives a payment notice under clause 4·4·2·2, 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 4·4·2·2 that the Contractor's payment notice is given.

·4 Where:

·1 the Employer intends to pay less than the sum stated as due from him in a certificate or, where applicable, the Contractor's payment notice; or

·2 if the final certificate shows a balance due to the Employer, the Contractor intends to pay less than the sum stated as due,

the Party by whom the payment is stated to be payable shall not later than 5 days before the final date for payment give the other Party notice of that intention (a 'pay less notice'), stating the sum (if any) that he considers to be due to the other Party at the date the pay less notice is given and the basis on which that sum has been calculated. Where a pay less notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated in it as due.

·5 A pay less notice to be given by the Employer under clause 4·5·4 may be given on his behalf by the Architect/Contract Administrator or by any other person who the Employer notifies the Contractor as being authorised to do so.

·6 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.

Failure to pay amount due

4·6 ·1 If either Party fails to pay a sum, or any part of it, due to the other Party under these Conditions by its final date for payment, he shall, in addition to any unpaid amount that should properly have been paid, pay the other Party simple interest on that amount at the Interest Rate for the period from the final date for payment until payment is made.

·2 Any such unpaid amount and any interest under clause 4·6·1 shall be recoverable as a debt. Acceptance of a payment of interest shall not in any circumstances be construed as a waiver either of the recipient's right to proper payment of the principal amount due or of the Contractor's rights to suspend performance under clause 4·7 or terminate his employment under section 6.

Contractor's right of suspension

4·7 ·1 If the Employer fails to pay a sum payable to the Contractor in accordance with clause 4·5 (together with any VAT properly chargeable in respect of that payment) by the final date for payment and the failure continues for 7 days after the Contractor has given notice to the Employer, with a copy to the Architect/Contract Administrator, of his intention to suspend performance of his obligations under this Contract and the grounds for such suspension, the Contractor, without affecting his other rights and remedies, may suspend performance of any or all of those obligations until payment is made in full.

·2 Where the Contractor exercises his right of suspension under clause 4·7·1, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of exercising the right.

·3 Applications in respect of any such costs and expenses shall be made to the Architect/Contract Administrator and the Contractor shall with his application or on request submit such details of them as are reasonably necessary for ascertaining the amount in question. When ascertained or agreed, the amount shall be included in the next interim certificate.

Final certificate and final payment

4·8 ·1 Following practical completion the Contractor shall within the period stated in the Contract Particulars supply to the Architect/Contract Administrator all documentation reasonably required for computation of the final payment. The due date for the final payment shall be

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28 days after either the date of receipt of the documentation or, if later, the date specified in the certificate under clause 2·11.

·2 Not later than 5 days after that due date the Architect/Contract Administrator shall issue a final certificate which shall state:

·1 the Contract Sum, as adjusted for the amounts referred to in clause 4·3·1, any fluctuations provision that applies and any deductions made under clause 2·10 or 3·5;

·2 the sum of amounts stated as due in interim certificates plus any amount paid in respect of any Contractor's payment notice in accordance with clause 4·5 that is not reflected in a subsequent certificate,

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 certificate as a balance due to the Contractor from the Employer or vice versa. The certificate shall state the basis on which that amount has been calculated, including the amount of each adjustment.

·3 Subject to clause 4·5·3, the final date for payment of the final payment shall be 14 days from its due date.

Fixed price and fluctuations provisions

4·9 Subject to clauses 3·6, 3·7 and 4·7 and any fluctuations provision that is stated by the Contract Particulars (for clauses 4·3 and 4·8) to apply, no account shall be taken in any payment to the Contractor under this Contract of any change in the cost to the Contractor of the labour, materials, plant and other resources employed in carrying out the Works.

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Section 5 Injury, Damage and Insurance

Contractor's liability – personal injury or death

5·1 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 death of any person arising out of or in the course of or caused by the carrying out of the Works, except to the extent that the same is due to any act or neglect of the Employer, any Employer's Person or any Statutory Undertaker.

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

5·2 Subject to clauses 5·2·1 to 5·2·3, the Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal (other than loss, injury or damage to the Works and/or Site Materials) in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the Works and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor or any Contractor's Person. In respect of existing structures and their contents:

·1 where clause 5·4B applies, the Contractor's liability and indemnity under this clause 5·2 also excludes any loss or damage to those existing structures or to any of their contents that are required to be insured under clause 5·4B·1 that is caused by any of the risks or perils required or agreed to be insured against under clause 5·4B;

·2 the exclusion in clause 5·2·1 shall apply notwithstanding that the loss or damage is or may be due in whole or in part to the negligence, breach of statutory duty, omission or default of the Contractor or any Contractor's Person;

·3 where clause 5·4C applies, the Contractor's liability and indemnity under this clause 5·2 shall, in respect of loss, injury or damage to those existing structures and their contents due to the causes specified in clause 5·2, be subject to any limitations and exclusions specified in the insurance arrangements under clause 5·4C identified in the Contract Particulars.

Contractor's insurance of his liability

5·3 Without limiting or affecting his indemnities to the Employer under clauses 5·1 and 5·2, the Contractor shall effect and maintain (and shall cause any sub-contractor similarly to effect and maintain) insurance in respect of claims arising out of the liabilities referred to in those clauses 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

·2 for all other claims to which clause 5·3 applies[31], shall indemnify the Employer in like manner to the Contractor, but only to the extent that the Contractor may be liable to indemnify the Employer under the terms of this Contract and shall for any one occurrence or series of occurrences arising out of one event be in a sum not less than that stated in the Contract Particulars for clause 5·3.

Joint Names Insurance of the Works by Contractor[32][33]

5·4A If the Contract Particulars state that clause 5·4A applies, the Contractor shall effect and maintain with insurers approved by the Employer a Joint Names Policy for All Risks Insurance for the full reinstatement value of the Works (plus the percentage, if any, stated in the Contract Particulars to

[31] It should be noted that the cover granted under Public Liability policies taken out pursuant to clause 5·3 may not be fully co-extensive with the indemnity given to the Employer in clauses 5·1 and 5·2: for example, each claim may be subject to an excess and cover may not be available in respect of loss or damage due to gradual pollution.

[32] Where the Contractor has in force an All Risks Policy which insures the Works, this Policy may be used to provide the insurance required by clause 5.4A provided the Policy recognises the Employer as a composite insured in respect of the Works.

[33] **As to choice of applicable insurance provisions, see the Guidance Notes.**

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cover professional fees) and 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.

Joint Names Insurance of the Works and existing structures by Employer[33]

5·4B If the Contract Particulars state that clause 5·4B applies, the Employer shall effect and maintain:

·1 a Joint Names Policy in respect of the existing structures together with the contents of them owned by him or for which he is responsible, for the full cost of reinstatement, repair or replacement of loss or damage due to any of the Specified Perils;

·2 a Joint Names Policy for All Risks Insurance for the full reinstatement value of the Works (plus the percentage, if any, stated in the Contract Particulars to cover professional fees)

and shall maintain such Joint Names Policies 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.

Insurance of the Works and existing structures by other means[33]

5·4C If the Contract Particulars state that clause 5·4C applies, the insurance arrangements identified by those particulars shall apply and each Party shall effect and maintain the policy or policies for which he is stated to be responsible or shall ensure that such policy or policies are effected and maintained, in each case in and on the specified terms.

Evidence of insurance

5·5 Where a Party is required by this Contract to effect and maintain an insurance policy or cover under any of clauses 5·3, 5·4A, 5·4B and 5·4C, or is responsible for ensuring that it is effected and maintained, that Party shall within 7 days of a request of the other Party supply such documentary evidence as the other Party may reasonably require that the policy or cover has been effected and remains in force.

Loss or damage – insurance claims and reinstatement

5·6 ·1 If during the carrying out of the Works any loss or damage affecting any executed work or Site Materials is occasioned by any of the risks covered by the Works Insurance Policy or an Excepted Risk or there is any loss of or damage of any kind to any existing structure or its contents, the Contractor shall forthwith notify the Architect/Contract Administrator and the Employer.

·2 Subject to clauses 5·6·5·1 and 5·6·6, the occurrence of such loss or damage to executed work or Site Materials shall be disregarded in calculating any amounts payable to the Contractor under this Contract.

·3 The Contractor, for himself and his sub-contractors, shall authorise the insurers to pay to the Employer all monies from the Works Insurance Policy, and from any policies covering existing structures or their contents that are effected by the Employer.

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

·5 Where clause 5·4A applies or where clause 5·4C applies and the Contractor is responsible for effecting the Works Insurance Policy:

·1 the Employer shall pay all monies from such insurance to the Contractor by instalments under separate reinstatement work certificates issued by the Architect/Contract Administrator at the same dates as those for interim certificates

[33] **As to choice of applicable insurance provisions, see the Guidance Notes.**

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under clause 4·3 but without deduction of Retention and less only the amounts referred to in clause 5·6·5·2;

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

·3 in respect of reinstatement work, the Contractor shall not be entitled to any payment other than amounts received under the Works Insurance Policy.

·6 Where clause 5·4B applies, where clause 5·4C applies and the Employer is responsible for effecting the Works Insurance Policy or where loss or damage is caused by an Excepted Risk, reinstatement work shall be treated as a variation under clause 3·6.

Loss or damage to existing structures – right of termination

5·7 If there is material loss of or damage to any existing structure, the Employer shall be under no obligation to reinstate that structure, but either Party may, if it is just and equitable, terminate the Contractor's employment under this Contract by notice given to the other within 28 days of the occurrence of that loss or damage. If such notice is given, then:

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

·2 upon the giving of that notice or, where a dispute resolution procedure is invoked within that period, upon any final upholding of the notice, the provisions of clause 6·11 (except clause 6·11·2·3) shall apply.

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Section 6 Termination

Meaning of insolvency

6·1 For the purposes of these Conditions a person becomes insolvent on:

·1 the making of an administration, bankruptcy or winding-up order against him, appointment of an administrative receiver, receiver or manager of his property, his passing of a resolution for voluntary winding-up without declaration of solvency or any other event referred to in section 113, sub-sections (2) to (5), of the Housing Grants, Construction and Regeneration Act 1996;

·2 otherwise entering administration within the meaning of Schedule B1 to the Insolvency Act 1986;

·3 entering 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

·4 (in the case of a partnership) each partner being the subject of an individual arrangement or any other event or proceedings referred to in this clause 6·1.

Notices under section 6

6·2 ·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 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.

Other rights, reinstatement

6·3 ·1 The provisions of clauses 6·4 to 6·7 are without prejudice to any other rights and remedies of the Employer. The provisions of clauses 6·8 and 6·9 and (in the case of termination under either of those clauses) the provisions of clause 6·11, 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.

Default by Contractor

6·4 ·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

·2 fails to proceed regularly and diligently with the Works; or

·3 fails to comply with clause 3·9,

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

·2 If the Contractor continues a specified default for 7 days from receipt of the notice under clause 6·4·1, the Employer may on, or within 10 days from, the expiry of that 7 day period by a further notice to the Contractor terminate the Contractor's employment under this Contract.

Insolvency of Contractor

6·5 ·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 As from the date the Contractor becomes insolvent, whether or not the Employer has given such notice of termination:

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·1 clauses 6·7·2 to 6·7·4 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 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 and regulation 73(1)(b) of the PC Regulations

6·6 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 or Public Authority, shall have given any fee or reward the receipt of which is an offence under sub-section (2) of section 117 of the Local Government Act 1972, or, where this Contract is one to which regulation 73(1) of the PC Regulations applies, the circumstances set out in regulation 73(1)(b) of the PC Regulations apply.

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

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

·1 the Employer may employ and pay other persons to carry out and complete the Works, 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 no further sum shall become due to the Contractor under this Contract other than any amount that may become due to him under clause 6·7·4 and the Employer need not pay any sum that has already become due either:

·1 insofar as the Employer has given or gives a notice under clause 4·5·4; 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 6·1·1 to 6·1·3;

·3 following the completion of the Works and the making good of defects in them (or of instructions otherwise, as referred to in clause 2·10), 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 6·7·1 and, where applicable, clause 6·5·2·3, 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;

·4 if the sum of the amounts stated under clauses 6·7·3·1 and 6·7·3·2 exceeds the amount stated under clause 6·7·3·3, 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.

Default by Employer

6·8 ·1 If the Employer:

·1 does not pay by the final date for payment the amount due to the Contractor in accordance with clause 4·5 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 3·9,

the Contractor may give to the Employer a notice specifying the default or defaults (a '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 one month or

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more by reason of:

·1 Architect/Contract Administrator's instructions under clause 3·6; and/or

·2 any impediment, prevention or default, whether by act or omission, by the Employer, the Architect/Contract Administrator or any Employer's Person

(but in either case excluding such instructions as are referred to in clause 6·10·1·2), then, unless in either case that is caused by the negligence or default of the Contractor or any Contractor's Person, the Contractor may give to the Employer a notice specifying the event or events (a 'specified' suspension event or events).

·3 If a specified default or a specified suspension event continues for 7 days from the receipt of notice under clause 6·8·1 or 6·8·2, the Contractor may on, or within 10 days from, the expiry of that 7 day period by a further notice to the Employer terminate the Contractor's employment under this Contract.

Insolvency of Employer

6·9 ·1 If the Employer is insolvent, the Contractor may by notice to the Employer terminate the Contractor's employment under this Contract;

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

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

6·10 ·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 one month or more by reason of one or more of the following events:

·1 force majeure;

·2 Architect/Contract Administrator's instructions under clause 3·6 issued as a result of the negligence or default of any Statutory Undertaker;

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

·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 or any Local or Public Authority of any statutory power that is not occasioned by a default of the Contractor or any Contractor's Person but which directly affects the execution of the Works,

then either Party, subject to clause 6·10·2, 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 6·10·1 in respect of the matter referred to in clause 6·10·1·3 where the loss or damage to the Works was caused by the negligence or default of the Contractor or any Contractor's Person.

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

Consequences of termination under clauses 6·8 to 6·10

6·11 If the Contractor's employment is terminated under any of clauses 6·8 to 6·10 or under clause 5·7:

·1 no further sums shall become due to the Contractor otherwise than in accordance with this clause 6·11;

·2 the Contractor shall as soon as reasonably practicable prepare an account. The account shall set out the amounts referred to in clauses 6·11·2·1 and 6·11·2·2 and, if applicable, clause 6·11·2·3, 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

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employment had not been terminated, together with any other amounts due to the Contractor under these Conditions;

·2 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;

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

·3 the account shall include the amount, if any, referred to in clause 6·11·2·3 only where the Contractor's employment is terminated either:

·1 under clause 6·8 or 6·9; or

·2 under clause 6·10·1·3, if the loss or damage to the Works was caused by the negligence or default of the Employer or any Employer's Person;

·4 after taking into account amounts previously paid to the Contractor under this Contract, the Employer shall pay to the Contractor the amount properly due in respect of the account within 28 days of its submission by the Contractor to the Employer, without deduction of any retention. Payment by the Employer for any such materials and goods as are referred to in clause 6·11·2·2 shall be subject to those materials and goods thereupon becoming the property of the Employer.

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Section 7 Settlement of Disputes

Mediation

7·1 Subject to Article 6, 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.

Adjudication

7·2 If a dispute or difference arises under this Contract which either Party wishes to refer to adjudication, the Scheme shall apply except 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.

Arbitration

7·3 For the purposes of Article 7, if it applies, the procedures for arbitration are set out in Schedule 1.[34]

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

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Schedules

Schedule 1 Arbitration

(Clause 7·3)

Conduct of arbitration

1 Any arbitration pursuant to Article 7 shall be conducted in accordance with the JCT 2016 edition of the Construction Industry Model Arbitration Rules (CIMAR), provided that if any amendments to that edition of the Rules have been issued by the JCT the Parties may, by a joint notice to the Arbitrator, state that they wish the arbitration to be conducted in accordance with the Rules as so amended. References in this Schedule 1 to a Rule or Rules are references to such Rule(s) as set out in the JCT 2016 edition of CIMAR.

Notice of reference to arbitration

2 ·1 Where pursuant to Article 7 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.

·3 After the Arbitrator has been appointed either Party may give a further notice of arbitration to the other Party and to the Arbitrator referring any other dispute which falls under Article 7 to be decided in the arbitral proceedings and Rule 3.3 shall apply.

Powers of Arbitrator

3 Subject to the provisions of Article 7 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

4 Subject to paragraph 5 the award of the Arbitrator shall be final and binding on the Parties.

Appeal – questions of law

5 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

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

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Schedule 2 Fluctuations – Contribution, levy and tax changes

(Clauses 4·3 and 4·8)

Not applicable.

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Schedule 3 Supplemental Provisions

(Seventh Recital)

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

Collaborative working

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

Health and safety

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

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

·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;

·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

·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 date for completion or otherwise.

·2 The Contractor shall provide details of his proposed changes, identifying them as suggested under this Supplemental Provision 3, together with his assessment of the benefit he believes the Employer may obtain, expressed in financial terms, and a quotation.

·3 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 date for completion. 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 date for completion.

·4 Original proposals by the Contractor under this Supplemental Provision 3 may only be instructed in accordance with it, provided always that nothing shall prevent the Employer from utilising other contractors to implement such changes after practical completion of the Works.

Sustainable development and environmental considerations

4 ·1 The Contractor is encouraged to suggest economically viable amendments to the Works which, if instructed as a variation under clause 3·6·1, may result in an improvement in environmental performance in the carrying out of the Works or of the completed Works.

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

Transparency

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

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

·2 the Employer shall promptly inform the Contractor of any request for disclosure that he receives in relation to this Contract.

The Public Contracts Regulations 2015

8 Where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations[35]:

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

·2 the Contractor shall include in any sub-contract entered into by him provisions requiring the sub-contractor:

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

·2 to include in any sub-subcontract he in turn enters into provisions to the same effect as required under paragraph 8.2.1 of Supplemental Provision 8;

·3 ·1 the Contractor shall include in any sub-contract entered into by him provisions that shall entitle him to terminate the sub-contractor's employment where there are grounds for excluding the sub-contractor under regulation 57;

·2 in the event the Employer requires the Contractor to terminate a sub-contractor's

[35] For an explanatory summary of those provisions in the PC Regulations that are reflected in this Contract, see the Guidance Notes. Provisions relating to the PC Regulations are also set out in section 6 (Termination) of this Contract. The JCT Short Form of Sub-Contract (ShortSub) meets the requirements of Supplemental Provision 8.

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

SCHEDULE 4 SPECIAL CONDITIONS (Article 7)

Contained on the disc annexed to this Contract

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Guidance Notes

Use of Minor Works Building Contract

1 The Contract should only be used where the employer has engaged an architect or other professionally qualified person to advise on and administer its terms.

2 The criteria for determining the suitability of the Contract are set out on the inside of the front cover.

3 For Works which do not fulfil these criteria, reference should be made to www.jctltd.co.uk for guidance as to the appropriate contract.

4 The Contract is predicated upon a lump sum offer being obtained, based on drawings and/or a specification and/or work schedules, but without detailed measurements. Those documents should therefore be in a form sufficient to enable the Contractor accurately to identify the work to be done without the need for the Employer to provide bills of quantities. In those cases where there is a relevant BIM protocol, it is assumed that it will be included in the Contract Documents.

5 The Contract is not suitable for use where the Works are of a complex nature.

6 The payment provisions in the Contract comply with the requirements of the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 ('the Construction Act'). In addition to the statutory requirements regarding payment procedures, the Construction Act provides a statutory right for either Party to refer disputes or differences to adjudication.

7 However, not all building contracts are subject to the Construction Act; for example, a contract with a residential occupier within the meaning of section 106 of the Act is excluded and therefore it does not need to contain adjudication provisions, but, unless amendments are made, a residential occupier in entering into a Minor Works Building Contract will be accepting adjudication as a means of resolving disputes.

8 For some projects where it is intended to use the Contract, the Employer may wish to control the selection of sub-contractors for specialist work. This may be done by naming a person or company in the tender documents or in instructions on the expenditure of a Provisional Sum. There are, however, no provisions in the Contract to deal with the consequences of such naming and control of specialist work may be better achieved by the Employer entering into a direct contract with his chosen specialist.

Outline of the Contract

Architect/Contract Administrator

9 This is the professional whom the Employer has appointed to advise on and administer the Contract. If the appointee is not an architect, he is taken to be referred to in the Contract as the 'Contract Administrator', but, irrespective of the Architect/Contract Administrator's profession, their duties under the Contract are the same.

Role of the Architect/Contract Administrator

10 The Architect/Contract Administrator is paid by the Employer, advises the Employer on all matters in connection with the building work and administers the Contract on behalf of the Employer with a view to securing completion of the work in an efficient and economical manner. However, in relation to decisions in that administrative role that require professional skill and judgment, he should act fairly and independently as between the Employer and the Contractor, in particular when:

- issuing payment certificates;
- valuing any variations or any work instructed in respect of Provisional Sums (see "Terms used") included in the Contract Documents;
- giving any extension to the time stated in the Contract Particulars for the completion of the building work;
- certifying the date of practical completion (see "Terms used") and the date when in his opinion

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all defects which appear during the Rectification Period (see "Terms used") have been made good.

Instructions

11 Under the Contract only the Architect/Contract Administrator can issue instructions to the Contractor; although the Employer is paying for the building work he is not entitled to give any instructions direct to the Contractor in connection with it. If the Employer wishes to make any change to the work or the manner in which it is being carried out, he must ask the Architect/Contract Administrator to give the necessary instructions to the Contractor.

Price

12 This is the lump sum stated in the Contract, plus any VAT properly chargeable on the building work. The precise sum may be increased or decreased depending on any changes to the work or the order or period in which it is carried out, the value of work instructed by the Architect/Contract Administrator in respect of any Provisional Sums included in the Contract Documents and, where applicable, any increase or decrease in contributions, levies and taxes for which the Contractor is liable.

Time-scale for the work

13 If it becomes apparent that the work cannot be finished within the original time stated in the Contract Particulars the Contractor is required to notify the Architect/Contract Administrator straightaway. If the delay arises for reasons beyond the control of the Contractor, the Architect/Contract Administrator is then required to give such extension of time as is reasonable.

If the work is not finished by the Date for Completion (see "Terms used") after taking into account any extensions of time, the Employer can recover liquidated damages (see "Terms used") from the Contractor.

Payment

14 In the 2016 edition there are revisions to and simplification of the section 4 payment provisions including the establishment of Interim Valuation Dates that are also to apply at JCT sub-contract and sub-subcontract levels.

The revisions include modifications to the interim payment due date provisions of clause 4·3. Under the revised provisions of clause 4·3, during the period up to the due date for the final payment, the due dates for interim payments are in each case the date 7 days after the relevant Interim Valuation Date. There are new entries in the Contract Particulars (for clause 4·3) which require the first Interim Valuation Date and the intervals that will apply for subsequent Interim Valuation Dates to be specified. The first Interim Valuation Date should not be more than one month after the Works commencement date and the intervals between Interim Valuation Dates should not be more than one month. If these entries are not completed, the relevant default provisions set out in the Contract Particulars for clause 4·3 apply.

Interim payments are to be made against interim certificates issued by the Architect/Contract Administrator up to the date for issue of the final certificate when the final balance becomes due. The Construction Act requires interim and final certificates to be issued not later than 5 days after their due date and clauses 4·3 and 4·8 comply with these requirements. The final date for payment of each certificate, together with any VAT chargeable to the Employer, is 14 days from the due date for payment.

Unless a percentage for payment other than 95 per cent is inserted in the Contract Particulars for clause 4·3, interim certificates for the period up to practical completion will reflect the Employer's entitlement to retain 5 per cent. For the period between practical completion and the final certificate, the Contract envisages that the percentage retained will be halved.

The interim payment due date provisions referred to above are followed at clause 4·4 by a general provision governing Contractor's payment applications (and, in default of a payment certificate, their role as a payment notice) which apply with respect to the final payment as well as to interim payments.

There is some consolidation of the provisions dealing with the notice requirements of the Construction Act. The provisions regarding payment and pay less notices, amounts to be paid and default interest are set out in clauses 4·5 and 4·6 and as the text of each indicates, these clauses apply with respect to the final payment as well as to interim payments.

Clause 4·8 still covers the final certificate and final payment, but some of its former content has been included in clause 4·5 (Payments – amount and notices) as part of the consolidation exercise referred to above.

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If the Employer fails to pay an amount due to the Contractor by the final date for its payment, interest at a rate of 5% per annum over the official bank rate of the Bank of England is payable by the Employer for the period until payment is made.

If the Employer gives a pay less notice and pays the lesser amount specified in the pay less notice, the Contractor's right under the Construction Act to suspend for non-payment does not arise. However, the JCT provision for interest is intended to preserve the Contractor's right to interest on the additional amount that he should have been paid, insofar as there was no sustainable basis for a withholding by the Employer and regardless of any pay less notice that the latter has given.

Suspension

15 If the Employer does not give a pay less notice and does not pay the amount due to the Contractor by the final date for its payment, or, having given a pay less notice, then fails to pay the amount specified in it, the Contractor, after giving a 7 day notice, has the right to suspend performance of some or all of his obligations under the Contract until payment of the appropriate amount is made. The Contractor also has a statutory right to recover reasonable costs and expenses that he incurs as a result of that suspension.

Termination

16 Either Party may end the Contractor's employment if the other Party is in breach of certain obligations (in the case of the Contractor those mentioned in clauses 6·4 and 6·6; in the case of the Employer those in clause 6·8) or becomes insolvent. There is also a right under clause 6·10 for either Party to terminate in the case of prolonged suspension resulting from certain neutral causes.

Dealing with disputes

17 Either Party may at any time refer any dispute to adjudication for a 'fast track' decision; the adjudicator's decision is binding unless and until the dispute is decided by an arbitrator or the court. Residential occupiers wishing to use the Contract should also refer to paragraph 7 above. The Contract Particulars enable the Parties to nominate an individual adjudicator in advance, should they wish. However, an individual should not be named in the Contract without his prior agreement. It has also to be recognised that those of sufficient standing to merit nomination are generally busy people and that when a dispute arises they may not be available.

The Parties may also agree to mediate a dispute.

For final dispute resolution in cases where either or both Parties are dissatisfied with the results of adjudication or mediation (or neither Party wished to have the dispute adjudicated), the choice is between court litigation and arbitration. Since 2005 litigation has been the default option under JCT contracts. If arbitration is the agreed choice, it should be selected through the appropriate entry in the Contract Particulars.

The JCT 2016 edition of the Construction Industry Model Arbitration Rules (CIMAR), which includes the JCT Supplementary and Advisory Procedures, will govern any arbitration that is commenced. It is recommended that anyone considering instituting arbitration proceedings should obtain a copy of the rules and, as with litigation, should take competent professional advice before taking steps to institute proceedings.

In making the choice between arbitration and litigation, in addition to the adjudication option, one should consider a range of other factors. Arbitration provides the ability to choose an arbitrator from any relevant profession, greater freedom of choice procedurally and confidentiality, whereas in litigation there is the wider power of the court. In the case of contracts where claims either way are likely to be small, it may be considered desirable to keep open the potentially cheaper route of using the County Court small claims track; any agreement to arbitrate, unless suitably qualified, would normally operate as a bar to using that route if the other Party did not agree.

Rights and remedies generally

18 Statutory and common law rights are not restricted by the terms of the Contract. The limitation period for a contract that is simply signed by the Parties is 6 years from the date of the breach or, where it is executed as a deed, 12 years. The limitation period should not be confused with the Rectification Period, which is provided to facilitate the remedying of the Contractor's defective work by allowing him to return to site to make good.

Supplemental Provisions

19 Schedule 3 includes six optional Supplemental Provisions which build upon the traditional JCT

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approach and reflect principles adopted by the Office of Government Commerce in the Achieving Excellence in Construction initiatives. They are for use where appropriate; the extent of such use may depend upon factors such as the scope of the project, the participants and the type of relationship that the Parties wish to have. The choice as to which provisions apply is made in the Contract Particulars. If no choice is made in relation to a provision, it will apply, since the provisions are generally intended to be disapplied only where there is a Framework Agreement or other contract documentation that covers the same ground.

Schedule 3 also contains new Supplemental Provisions 7 and 8. Supplemental Provision 7 contains provisions relevant to the Freedom of Information Act 2000 ('FOIA') and will only apply in the event that the Employer is a Local or Public Authority or other body to whom the FOIA applies. Supplemental Provision 8, and section 6 (Termination), contain provisions relevant to the Public Contracts Regulations 2015 ('the PC Regulations') which will only be applicable where the Employer is a Local or Public Authority and the Contract is subject to the PC Regulations. For some background information on the PC Regulations and a summary of those provisions in the PC Regulations that are reflected in Supplemental Provision 8 and section 6 (Termination), please go to www.jctltd.co.uk.

Terms used

20 As part of his duties to the Employer, the Architect/Contract Administrator should be prepared to explain the general meanings of the various terms used in the Contract. For example:

Base Date

21 The Base Date is stated in the Contract Particulars. The date often selected is 7 days or thereabouts before the date for submission of tenders so as to avoid any need for tenderers to deal with last minute changes. In the Minor Works Building Contract, however, Base Date plays a comparatively minor role, acting as the date of record for the Employer's status under the CIS scheme and for determining what fluctuations are payable.

CDM Regulations

22 Regulations made under Act of Parliament to improve health and safety standards on construction sites. For guidance on the CDM Regulations 2015, please go to www.jctltd.co.uk.

Principal Designer and Principal Contractor

23 The respective persons named in the Agreement or subsequently appointed as such, as required by the CDM Regulations. With a view to minimising health and safety risks, the Regulations require the Employer to appoint a Principal Designer to control the pre-construction phase where there is more than one contractor, or it is reasonably foreseeable that more than one contractor will be working on the project at any time. One of the contractors must also be appointed as Principal Contractor in those circumstances. (For these purposes the term 'contractor' includes sub-contractors.)

Health and safety file

24 A manual which the Principal Designer prepares with assistance from the Principal Contractor, containing health and safety information necessary for anyone undertaking work on the site post-completion of the Works, which he passes on to the Principal Contractor if his appointment terminates before the end of the project and is to be delivered to the Employer on completion.

Date for Completion

25 The date by which the Contractor is required to finish the work, as stated in the Contract Particulars or subsequently extended by the Architect/Contract Administrator.

Date of practical completion

26 The date when, in the Architect/Contract Administrator's opinion, the Contractor has to all practical intents and purposes completed the Works.

Rectification Period

27 Unless otherwise agreed, the Rectification Period is 3 months from the date of practical completion. The Contractor is required to put right any defects in the work which appear during

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the Rectification Period before he is entitled to be paid the final balance of the Contract price. The Architect/Contract Administrator is required to notify the Contractor of any such defects not later than 14 days after the expiry of the Rectification Period.

Insurance in Joint Names

28 The works and existing structures insurance provisions have in this 2016 edition been made more flexible through a widening of clause 5·4C and consequential amendments to the clause 5·2 provisions relating to Contractor's liability for loss, injury or damage to property.

Clause 5·4A remains intended for use where there are no existing structures and the contractor is to arrange a Joint Names, All Risks policy, under which each Party is covered as a 'composite insured'. This may take the form of a specific project policy or through equivalent coverage under the Contractor's annual CAR policy.

Clause 5·4B is for use where there are existing structures and the Employer is able to cover the works on a Joint Names, All Risks basis and, in addition to his own cover for existing structures, is able to extend at least Specified Perils cover to the Contractor in respect of the existing structures.

However, that existing structures cover for the Contractor is not always readily available to Employers at reasonable cost, in particular where the Employer is a domestic homeowner or where he is only a tenant and structures cover is effected by the freeholder or an intermediate lessor and clause 5·4C is designed for cases in these latter categories.

The freeholder Employer may cover the Works in Joint Names and continue with his own cover under his household or existing structures policy, with the Contractor covering his liability for any damage to existing structures under the Public Liability cover required under clause 5·3·2 or an appropriate extension of it. Alternatively, the Contractor's insurers may be prepared to cover both the Works and those structures under the Works policy.

In the case of tenant Employers, it is necessary to involve the insuring landlord and in all cases, in particular those involving existing structures, it is essential that Employers and Architect/Contract Administrators, prior to the tender stage, take appropriate specialist insurance advice, consult the Employer's household or existing structures insurers and, where relevant, the landlord. They should also then liaise with the prospective Contractor and his advisers at the earliest opportunity, specify any further cover required from him and check that that is in place before work commences on site.

In the case of the Works insurance, care should also be taken in determining the full reinstatement value (including any applicable VAT) and to ensure that the policy gives appropriate cover for items such as the additional costs of materials, working and removal of debris etc. that are likely to arise from loss or damage to the Works.

Liquidated damages

29 The rate per day/week/month stated in the Contract Particulars by the Employer, to compensate him for the Contractor's failure to finish the work on time. The prudent Employer will be alert to the legal principles and rules governing the enforceability of liquidated damages provisions and will approach calculation of the rate with these in mind. It is suggested the Employer records an explanation of the rate and why it represents (i) a genuine pre-estimate of the loss that he is likely to suffer or (ii) a reasonable and proportionate protection of his legitimate commercial interest(s) in timely completion, which he can use to respond to any challenge. It is for the Employer to decide whether to deduct any liquidated damages that he might be entitled to from any amount certified as due to the Contractor; such deduction is not taken into account by the Architect/Contract Administrator in the calculation of any certificate and the appropriate notice must be given by the Employer under clauses 2·8 and 4·5·4.

Provisional Sum

30 A sum included for work which the Employer may or may not decide to have carried out, or which cannot be accurately specified in the original contract documents. For instance, where the Employer is undecided whether all, some or none of the outside of the premises will need to be re-decorated, the pricing documents may say "Allow £X for complete external redecoration of the premises." If the Employer then decides any redecoration is necessary, the specification required is instructed by the Architect/Contract Administrator and the price to be paid is either agreed between the Architect/Contract Administrator and the Contractor or valued by the Architect/Contract Administrator.

Variation

31 A change to the work that the Architect/Contract Administrator instructs on behalf of the Employer.

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The variation may be an addition to or an omission from the work as originally specified or to the order or manner in which it is to be carried out.

MW User Checklist

A checklist of the key information that will help you to complete the Agreement may be downloaded from the JCT website.

Care has been taken in preparing these Guidance Notes but they should not be treated as a definitive legal interpretation or commentary. Users are reminded that the effect in law of the provisions of the Minor Works Building Contract 2016 Edition is, in the event of a dispute as to that effect, a matter for decision in adjudication, arbitration or litigation.

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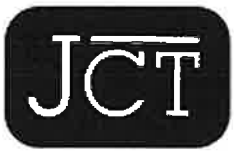

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