ACA Form of Building Agreement 1982
## ACA FORM OF BUILDING AGREEMENT 1982

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Guidance notes on the completion of this Agreement are given in italics in the right-hand margin of each page.

Clauses or items which may be deleted are shown within square brackets.

Numbers of working days, shown in boxes and indicated by * in the right-hand margin, may be changed if not appropriate.
THIS AGREEMENT is made the __________ day of __________ 20________

BETWEEN:

(1) ____________________________________________
of/or whose registered office is situate at ____________________________

(referred to in this Agreement as “the Employer”); and

(2) ____________________________________________
of/or whose registered office is situate at ____________________________

(referred to in this Agreement as “the Contractor”).

WHEREAS:

A The Employer has requested the Contractor to execute and complete ____________________________

(referred to in this Agreement as “the Works”) at ____________________________

(referred to in this Agreement as “the Site”).

B The Contractor has offered to execute and complete the Works for the sum of £__________ (referred to in this Agreement as “the Contract Sum”) together with such additions or deductions as may be made under the provisions of this Agreement (referred to in this Agreement as “the Final Contract Sum”). The Contract Sum and the Final Contract Sum are exclusive of value added tax.

C Certain drawings, a time schedule, [and a schedule of rates and prices ] [and a specification ] [and bills of quantities ] have been prepared for this Agreement which are annexed and signed by the parties (referred to in this Agreement as “the Contract Drawings”, “the Time Schedule” [and “the Schedule of Rates”, ] [and “the Specification”, ] [and “the Contract Bills”, ] respectively and collectively referred to as “the Contract Documents”). Where Contract Bills are included in the Contract Documents, all references in this Agreement to the Schedule of Rates shall be deemed to be references to the rates contained in the Contract Bills.

D The Contract Documents shall form part of this Agreement and the term “this Agreement” shall be construed accordingly.
E ALTERNATIVE 1

The term “the Architect” in this Agreement shall mean

of

or such other person notified in writing by the Employer to the Contractor from time to time to act as Architect in place of the Architect so designated provided that the Employer shall not appoint any person or firm to whom the Contractor shall make reasonable objection within 5 working days of the Employer’s notice.

E ALTERNATIVE 2

The Employer has appointed

of


to act as Supervising Officer for the Works and all references in this Agreement to the Architect shall be deemed to be references to the Supervising Officer or such other person notified in writing by the Employer to the Contractor from time to time to act as Supervising Officer in place of the Supervising Officer so designated, provided that the Employer shall not appoint any person or firm to whom the Contractor shall make reasonable objection within 5 working days of the Employer’s notice.

F ALTERNATIVE 1

The Architect shall prepare or cause to be prepared all further drawings and details which are, in the Architect’s opinion, reasonably necessary for the execution of the works in accordance with the provisions of Clause 2.1

F ALTERNATIVE 2

The Architect shall prepare only further drawings and details as are specified in the Contract Documents in accordance with the provisions of Clause 2.1 and the Contractor shall provide all further drawings, details, documents and information for the execution of the Works in accordance with the provisions of Clause 2.2.

G The term “working day” in this Agreement shall mean Monday to Friday inclusive but shall exclude any day which is a recognised public holiday in the country in which the Works are to be executed and any day which is a holiday under the Building and Civil Engineering Annual Holiday with Pay Scheme from time to time in force.

H The Works are divided into sections, the work included in each such section is identified in the Contract Documents and the date for completion of each section is shown separately on the Time Schedule. Each such section is referred to in this Agreement as “the Section”.

I Pursuant to the Construction (Design and Management) Regulations 1994, or any amendment thereof, hereinafter called the CDM Regulations:

The Employer (the ‘Client’) has appointed

* Delete where Alternative 2 is appropriate

* Delete where Alternative 1 is appropriate

Delete where Clause 2 Alternative 2 is appropriate

Delete where Clause 2 Alternative 1 is appropriate

Delete if the Works are not divided into sections

Insert name and address

Insert name and address

Delete where Alternative 1 is appropriate

Delete where Alternative 2 is appropriate

Delete if the Works are not divided into sections
of

to act as Planning Supervisor or such other person as shall be notified in writing by
the Employer, provided that the Employer shall not appoint any person or firm to
whom the Contractor shall make reasonable objection within 5 working days
of the Employer’s notice.

The term ‘Principal Contractor’ shall mean the Contractor, or in the event of his
cessing to be the Principal Contractor, such other contractor (as defined by the
CDM Regulations) as the Employer shall appoint as Principal Contractor pursuant to
Regulation 6(5) of the CDM Regulations.

Nothing in this Contract confers or purports to confer on any third party any benefit
or right to enforce any term of this Agreement pursuant to the Contracts (Rights of

NOW IT IS HEREBY AGREED as follows:

1. CONTRACTOR'S GENERAL OBLIGATIONS

1.1 In consideration of the payments to be made by the Employer to the Contractor
under this Agreement, the Contractor shall execute and complete the Works in strict
accordance with the Contract Documents and shall comply with and adhere strictly to
the Architect’s instructions issued under this Agreement.

1.2 Without prejudice to any express warranties or conditions imposing strict obligations
upon the Contractor, the Contractor shall exercise in the performance of his obliga-
tions under this Agreement all the skill, care and diligence to be expected of a properly
qualified and competent contractor experienced in carrying out work of a similar
scope, nature and size to the Works.

1.3 The provisions of this Form of Agreement shall prevail over the provisions contained
in any other of the Contract Documents, save only the following provisions which shall prevail over anything contained in
this Agreement:

1.4 Where the Contract Bills form part of this Agreement, any mistake in the quantities
or omission or mis-description of items in the Contract Bills shall be corrected by
the Architect who shall determine and certify a fair and reasonable adjustment to the
Contract Sum based on the rates in the Contract Bills to take account of the correction
of such mistake, omission or mis-description.

1.5 The Architect may issue an instruction as to the manner in which any ambiguity or
discrepancy between or contained in any of the drawings and documents comprising
the Contract Documents which may become apparent shall be resolved. If the
Contractor shall find any such ambiguity or discrepancy he shall immediately notify
the Architect who shall upon receipt of such notice issue such an instruction. Subject
to Clause 1.4, the provisions of Clause 8.2 shall apply in respect of compliance by
the Contractor with such Architect’s instruction unless such ambiguity or discrepancy
could reasonably have been found or foreseen at the date of this Agreement by a contractor exercising the standard of skill, care and diligence described in Clause 1.2.

1.6 Save where Clause 2.5 applies, if it becomes apparent that the execution and completion of the Works in accordance with the Contract Documents and any drawings, details or instructions issued by the Architect under this Agreement will cause an infringement of the requirements of any Act of Parliament, or of any instrument rule or order made under any Act of Parliament, or of any regulation or bye-law or requirement of any local authority or of any statutory undertaker or private utility which has jurisdiction with regard to the Works or with whose systems the same are or will be connected (referred to in this Agreement as “the Statutory Requirements”), the Architect shall issue an instruction as to the manner in which such infringement shall be resolved. If in the opinion of the Contractor such an infringement will or is likely to be caused, he shall immediately notify the Architect who shall, upon receipt of such notice, issue an instruction. The provisions of Clause 8.2 shall apply in respect of compliance by the Contractor with such Architect’s instruction.

1.7 Unless the Architect instructs the Contractor to the contrary, the Contractor shall make all applications, give all notices and pay all fees required by and shall fully comply with the provisions of the Statutory Requirements. Subject to Clause 1.6, the Contractor shall indemnify the Employer against all damage loss and/or expense which may be incurred by the Employer in respect of any breach by the Contractor of this Clause 1.7. All such sums as the Architect shall certify to have been properly paid by the Contractor in respect of the fees referred to in this Clause 1.7 shall be added to the Contract Sum (except where provided for elsewhere in the Contract Documents). Where the Architect instructs the Contractor not to make application or give notice and the fees for the same are included in the Contract Sum, then the Architect shall deduct an amount in respect of such fees from the amount which would otherwise be stated as due to the Contractor on an interim certificate and the Contract Sum shall be reduced accordingly.

1.8 Within ______ days of a request from the Employer, the Contractor shall execute and deliver to the Employer a Deed of Collateral Warranty
(a) In favour of any organisation providing finance in connection with the Works in the form of the latest edition of the CIC/Cons WA/F and
(b) any purchaser or tenant of the whole or any part of the Works in the form of the latest edition of the CIC form CIC/ConsWA/P&T
in each case with such amendments only as the employer shall approve. If the Contractor fails to execute such a deed, the Employer may execute it on behalf of the Contractor and for such purpose the Contractor irrevocably appoints the Employer as the Contractors attorney for the purpose of executing the same and agrees to ratify and confirm any action taken by the Employer by virtue of this power of attorney.

1.9 Within ______ days of a request by the Employer, the Contractor shall execute and deliver to the Employer a performance bond and/or parent company guarantee in the forms annexed to this contract with such amendments as the Employer shall approve.

2. DRAWINGS, DETAILS, DOCUMENTS AND INFORMATION

ALTERNATIVE 1

2.1 The Architect without charge to the Contractor shall, immediately after the execution of this Agreement, supply the Contractor with two copies of the Contract Documents. The Architect without charge to the Contractor shall supply him with two copies (or a negative or by electronic means) of such drawings or details as are, in the Architect’s opinion, reasonably necessary either to explain and amplify the Contract Drawings or to enable the Contractor to execute and complete the Works in accordance with this Agreement on the dates shown on the Time Schedule or, where no such date is shown, as and when it is reasonably necessary for the Contractor to receive it.
Part of Works 2.2 The work shown on all drawings or details supplied by the Architect under Clause 2.1 shall become part of the Works.

ALTERNATIVE 2

Architect's drawings: details 2.1 The Architect without charge to the Contractor shall, immediately after the execution of this Agreement, supply the Contractor with two copies of the Contract Documents. The Architect without charge to the Contractor shall supply him with two copies (or a negative or by electronic means) of such drawings or details which the Contract Documents expressly state will be prepared by the Architect on the dates shown on the Time Schedule.

Submission of Contractor’s drawings etc. to Architect 2.2 The Contractor shall submit to the Architect two copies (or a negative or by electronic means) of all other drawings, details, documents or information which are:

(a) reasonably necessary from time to time to explain and amplify the Contract Drawings; or
(b) reasonably necessary to enable the Contractor to execute and complete the Works or to comply with any instruction issued by the Architect; or
(c) stated in the Contract Documents to be provided by the Contractor;

on the dates shown on the Time Schedule or, if no date is shown on the Time Schedule, on a date which is prior to and, having regard to the Time Schedule, proximate to the date on which it is reasonably necessary for the Architect to examine them having regard to his duties under Clause 2.3.

Return of the Contractor’s drawings etc. by the Architect 2.3 The Architect shall, within [10] working days of receipt of any such drawing, detail, document or information (or within such other period as may be stated in relation to such drawing, detail, document or information in the Time Schedule), return one copy of the same to the Contractor together with his comments on it or endorsed with no comment provided that the Architect shall not comment adversely on any such drawing, detail, document or information which complies with the Statutory Requirements and with the standards of workmanship and materials specified in or to be reasonably inferred from the Contract Documents.

Architect’s comments 2.4 If the Architect returns any drawing, detail, document or information under Clause 2.3, together with his comments, the Contractor shall immediately take account of such comments in such drawing, detail, document or information and shall re-submit it to the Architect for his comment in accordance with the provisions of Clause 2.2.

Part of Works 2.5 The work shown on all drawings, details, documents and information supplied by the Architect under Clause 2.1 or returned by the Architect endorsed with no comment under the provisions of Clause 2.3 shall become part of the Works. The Contractor shall ensure that all work shown on drawings, details, documents and information submitted by him complies with the Statutory Requirements and the provisions of Clause 1.6 shall not apply.

Ground conditions and artificial obstructions 2.6 If, during the execution of the Works, the Contractor shall encounter adverse ground conditions or artificial obstructions at the Site not identified in the Health and Safety Plan, the Contractor shall immediately notify the Architect and shall include in such notice full and detailed particulars of the measures he is proposing to take to overcome the same. Upon receipt of such notice, the Architect shall issue an instruction as to the manner in which such ground conditions and/or artificial obstructions shall be dealt with. The provisions of Clause 8.2 shall apply in respect of compliance by the Contractor with such Architect’s instruction unless such ground conditions and/or artificial obstructions could reasonably have been foreseen at the date of this Agreement by a contractor exercising the standard of skill, care and diligence described in Clause 1.2 or unless an adjustment is made to the Contract Sum in respect of such compliance pursuant to Clause 1.4.
3. OBLIGATIONS IN RESPECT OF DRAWINGS, DETAILS, DOCUMENTS AND INFORMATION

3.1 The Contractor shall be responsible for all mistakes, inaccuracies, discrepancies and omissions in all drawings, details, documents and information (if any) provided by him in accordance with the provisions of Clause 2. Without prejudice to any express warranties or conditions, the Contractor warrants that:

(a) it shall use the skill and care and diligence referred to in clause 1.2 to check the design and calculations contained in the Contract Documents and in any instructions issued to the contractor under clauses 8.1(e) and (f);

(b) the Works will comply with any performance specification or requirement contained in the Contract Documents; and

(c) those parts of the Works to be designed by the Contractor will be fit for the purposes for which they are required.

3.2 The Time Schedule shall be deemed to take account of the provisions of Clauses 2.2 to 2.4 and, subject to Clause 17.1, unless the Architect fails to comply with such provisions, no alteration or adjustment to the Time Schedule or to the Contract Sum will be made in respect of compliance with them.

3.3 The Contractor and the Employer shall not divulge to any third party or make use of any drawing, detail, document or information prepared by or on behalf of the other or of any confidential information of the other except for the purposes of the Works save that the Employer may use any drawing, detail, document or information prepared by or on behalf of the Contractor for the purposes of the execution, completion, maintenance, repair, advertisement, letting or sale of the Works. The Employer and the Contractor shall treat as confidential the prices contained in the Schedule of Rates.

3.4 No comments from the Architect under Clause 2 or otherwise in connection with any drawings, details, documents or information provided by the Contractor shall in any way relieve the Contractor from his responsibility for the same.

3.5 The Architect may instruct the Contractor at any time to provide samples of the quality of any goods and/or materials or standards of workmanship to be used in the Works. The provisions of Clause 8.2 shall apply in respect of compliance by the Contractor with such Architect’s instructions. The Contractor may request the Architect to accept such samples in substitution for any drawing, detail, document or information to be provided by him pursuant to Clause 2.2 (Alternative 2). If the Architect gives his written consent to the Contractor’s request (such consent not to be unreasonably withheld or delayed), the Contractor shall, at his own cost, comply with the procedures set out in the Architect’s consent for submission of such samples to the Architect and for obtaining his comments.

4. VISITS TO THE WORKS BY THE ARCHITECT

4.1 The Contractor shall give and shall procure that any of his servants, agents, suppliers or sub-contractors give to the Architect and his representatives full access to the Works and to the workshops or other places where design or work is being prepared, or goods or materials are being manufactured, for the Works so that the Architect and his representatives may test, inspect or examine the same.

4.2 The Architect may, if he so wishes, visit the Site and the Workshops and other places referred to in Clause 4.1 from time to time or as may be specified in the Contract Documents and the Contractor shall do all things necessary to assist the Architect and his representatives during the course of such visits.
5. SUPERVISION OF THE WORKS BY THE CONTRACTOR

5.1 The Contractor shall undertake all necessary inspection, superintendence, supervision, planning and management for the duration of this Agreement to ensure the proper performance of the Contractor’s obligations under this Agreement.

5.2 The Contractor shall, prior to the commencement of the Works on the Site, appoint a manager, to whose appointment the Architect shall have previously consented in writing, to act as the full-time representative of the Contractor on Site in charge of the Works. The Contractor shall not remove or replace the manager so appointed without the prior written consent of the Architect, such consent not to be unreasonably withheld or delayed.

5.3 As and when requested so to do by the Architect, the manager referred to in Clause 5.2 and such other of the Contractor’s servants, agents, suppliers or sub-contractors as may from time to time be necessary shall attend meetings convened by the Architect in connection with the Works. The said manager shall keep complete and accurate records in accordance with the requirements set out in the Contract Documents and shall make the same available for inspection by the Architect at all reasonable times.

5.4 The Contractor shall employ for the purposes of the Works such persons as are so skilled, qualified and experienced in their respective trades and callings as may be necessary properly and fully to discharge the Contractor’s obligations under this Agreement.

6. VESTING OF PROPERTY, CONTRACTOR’S INDEMNITY AND INSURANCE

6.1 The property in any goods and materials intended for the Works shall vest in the Employer when they have been incorporated into the Works or when the Contractor has received payment therefor pursuant to Clause 16, whichever is the earlier. Where the value of any goods and materials is included in an interim certificate, the Contractor shall ensure that such goods and materials are not removed from the places where they are situated at the date of such certificate except for delivery to the site.

6.2 The risk of loss or damage to any Section or to the Works and to any goods and materials intended for the Works shall remain with the Contractor until the Taking-Over of such Section or of the Works, as the case may be.

6.3 The Contractor shall be liable for, and shall indemnify the Employer against, and shall take out and maintain, and shall ensure that all of his sub-contractors take out and maintain, such insurances as are necessary to cover the liability of the Contractor or, as the case may be, of such sub-contractor, against:

(a) any liability, damage, loss, expense, cost, claim or proceedings under any statute or at common law in respect of personal injury to or the death of any person arising out of or in connection with the execution of the Works, and whether arising on or off the Site, provided always that the Contractor’s liability to indemnify the Employer shall be reduced proportionately to the extent that the negligence, omission or default of the Employer or the Architect or their respective servants or agents may have contributed to the injury or death; and

(b) any liability, damage, loss, expense, cost, claim or proceedings in respect of injury or damage to any property (save to the extent that such property is required to be insured under Clause 6.4), real or personal, arising out of or in connection with the execution of the Works, and whether arising on or off the Site, provided always that the same is due to any negligence, omission or default of the Contractor or of any sub-contractor or their respective servants or agents and provided also that the Contractor’s liability to indemnify the Employer shall be reduced proportionately to the extent that the negligence,
omission or default of the Employer or the Architect or their respective servants or agents may have contributed to the injury or damage;

and, without prejudice to the generality of the foregoing, the Contractor shall take out and maintain, and shall ensure that any sub-contractor takes out and maintains, insurance cover for not less than the sums stated in the Contract Documents for one occurrence or series of occurrences arising out of one event.

**ALTERNATIVE 1**

The Contractor shall in the joint names of the Employer and the Contractor insure all work executed or in the course of execution and any goods and materials which have become the property of the Employer pursuant to Clause 6.1 for their full reinstatement value plus percentage to cover the Architect’s and other consultants’ fees until the date of issue of the Taking-Over Certificate for the Works against the contingencies covered by the Contractor’s policy, number at the date of this Agreement.

Such insurance shall also cover the Works, after the date of issue of the Taking-Over Certificate, against any such contingency occurring prior to such date and against any such contingency occasioned by the Contractor in the course of any operation carried out by him for the purpose of complying with his obligations under Clause 12.2. The Contractor shall procure that all monies received from such insurances shall be paid to the Employer.

Provided always that if the date of issue of the Taking-Over Certificate for any Section or any part of the Works shall occur prior to the issue of such Certificate for the Works, the Contractor may reduce the value insured by the reinstatement value of any such Section or part.

Upon the occurrence of any event giving rise to a claim under the insurance mentioned in this clause 6.4 the Contractor shall give immediate notice to the Employer and the insurers of such an event and following any inspections by the insurers, and subject to any instructions given by the Architect the Contractor shall without delay, restore and repair the Works, replace any goods and materials which have been damaged or destroyed, remove all debris from the Site and continue with the execution and completion of the Works or with his obligations under Clause 12.2, as the case may be. The Employer shall pay all monies received by him from insurers to the Contractor by instalments on certificates issued under Clause 16.2. The Contractor shall not be entitled to any payment in respect of the matters referred to in this Clause 6.4, other than the monies received by the Employer from insurers and fees due to consultants.

**ALTERNATIVE 2**

The Employer shall in the joint names of the Contractor and the Employer insure any existing structures on the Site (together with the contents thereof) owned by the Employer or for which he is responsible and all work executed or in the course of execution and any goods and materials which have become the property of the Employer pursuant to Clause 6.1 for their full reinstatement value against the contingencies covered by the Employer’s policy number at the date of this Agreement.

Such insurance shall also cover the Works, after the date of issue of the Taking-Over Certificate, against any such contingency occurring prior to such date and against any such contingency occasioned by the Contractor in the course of any operation carried out by him for the purpose of complying with his obligations under Clause 12.2. Provided always that if the date of issue of the Taking-Over Certificate for any Section or any part of the Works shall occur prior to the issue of such Certificate, the Employer may reduce the value insured by the reinstatement value of any such Section or part.
Upon the occurrence of any event giving rise to a claim under the insurance mentioned in this clause 6.4 the Contractor shall give immediate notice to the Employer and the insurers of such an event and following any inspections by the insurers, and subject to any instructions given by the Architect the Contractor shall without delay restore and repair the Works, replace any goods and materials which have been damaged or destroyed, remove all debris from the Site and continue with the execution and completion of the Works or with his obligations under Clause 12.2, as the case may be. The Contractor shall not be entitled to any payment in respect of the matters referred to in this clause 6.4 other than the monies received by the Employer from the insurers.

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<th>Insurance against collapse, subsidence</th>
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| 6.5 Where the Contract Documents so require, the Contractor shall maintain in the joint names of the Employer and the Contractor insurance cover for the sum stated in the Contract Documents against any liability, damage, loss, expense, cost, claim or proceeding suffered or incurred by the Employer in respect of damage to any property (other than the Works to the extent insured under Clause 6.4 until the date of issue of the Taking-Over Certificate of the Works or any Section or part) caused by collapse, subsidence, heave, vibration, weakening or removal of support or lowering of ground water arising out of or in connection with the execution of the Works except damage:
| (a) caused by the negligence, omission or default of the Contractor or of any sub-contractor, or their respective servants or agents; |
| (b) attributable to errors or omissions in the designing of the Works; |
| (c) which can reasonably be foreseen to be inevitable having regard to the nature of the work to be executed or the manner of its execution; |
| (d) arising from a nuclear risk or war risk or sonic boom. |

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<tr>
<th>Design indemnity insurance</th>
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<tr>
<td>6.6 Without prejudice to his obligations under this Agreement or otherwise at law, the Contractor shall take out and maintain insurance cover with a limit of indemnity of not less than the sum stated and for the period required in the Contract Documents in respect of any negligence by the Contractor or of any sub-contractor or supplier or his or their respective servants or agents in the design of any work, goods and/or materials pursuant to this Agreement.</td>
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<th>Contractor’s insurances</th>
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<tr>
<td>6.7 All the Contractor’s insurances referred to in Clauses 6.3, 6.4, 6.5 and 6.6 shall be placed with such insurers and upon such terms and conditions as shall have been approved by the Employer (such approval not to be unreasonably withheld or delayed).</td>
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<th>Premiums</th>
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<tr>
<td>6.8 The Contractor will pay promptly all premiums in respect of all insurances required to be taken out by him and will when required so to do produce to the Employer documentary evidence that each such insurance is properly maintained. Where the Contractor is required to ensure that any sub-contractor shall take out and maintain insurance, the Contractor shall procure that all such sub-contractors observe the same obligations as to the payment of premiums and the production of documentary evidence as are by this Clause 6.8 undertaken by the Contractor.</td>
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<th>Breach by Contractor</th>
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<td>6.9 Should the Contractor or any sub-contractor be in breach of Clauses 6.3, 6.4, 6.5, 6.6 or 6.8, the Employer may himself insure and may deduct the cost of so insuring, together with any damage, loss and/or expense suffered or incurred by him arising from such breach, from the Contract Sum.</td>
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<th>Claims by Employer</th>
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<td>6.10 If, upon the occurrence of any event which gives rise, or which may give rise to, a claim under Clause 6.4, the Contractor shall fail to make a claim, the Employer may deduct from the Contract Sum any damage, loss and/or expense suffered or incurred by him by reason of such failure and in making any claim on his own behalf.</td>
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</table>
7. **EMPLOYER’S LIABILITY**

7.1 Save in the case of Architect’s instructions (to which the provisions of Clause 17 shall apply), if any act, omission, default or negligence of the Employer or of the Architect, or a failure to comply with their duties under the CDM Regulations with all reasonable diligence by the Planning Supervisor, the Principal Contractor (if not the Contractor), or a Designer (not being the Contractor or a sub-contractor or supplier), disrupts the regular progress of the Works or of any Section or delays the execution of them in accordance with the dates stated in the Time Schedule and, in consequence of such disruption or delay, the Contractor suffers or incurs damage, loss and/or expense, he shall be entitled to recover the same in accordance with the provisions of this Clause 7.

7.2 Upon it becoming reasonably apparent that any event giving rise to a claim under Clause 7.1 is likely to occur or has occurred, the Contractor shall immediately give notice to the Architect of such event and shall, on presentation of his interim application pursuant to Clause 16.1 next following the giving of such notice, submit to the Architect an estimate of the adjustment to the Contract Sum which the Contractor requires to take account of such damage, loss and/or expense suffered or incurred by him in consequence of such event prior to the date of submission of his estimate.

7.3 Following the submission of an estimate under Clause 7.2, the Contractor shall, for so long as the Contractor suffers or incurs loss and/or expense in consequence of such event, on presentation of each interim application pursuant to Clause 16.1, submit to the Architect an estimate of the adjustment to the Contract Sum which the Contractor requires to take account of such damage, loss and/or expense suffered or incurred by him since the submission of his previous estimate.

7.4 Any estimate submitted by the Contractor pursuant to Clause 7.2 or 7.3 shall be supported by such documents, vouchers and receipts as shall be necessary for computing the same or as may be required by the Architect. Within [20] working days of receipt of any such estimate duly supported as aforesaid, the Architect shall give notice of acceptance or rejection of the said estimate. If the estimate is accepted the Contract Sum shall be adjusted accordingly and no further or other additions or payments shall be made in respect of the damage, loss and/or expense suffered or incurred by the Contractor during the period and in consequence of the event in question.

7.5 If the Contractor fails to comply with the provisions of Clause 7.2 or 7.3, then the Architect shall have no power or authority to make, and the Contractor shall not be entitled to any adjustment to the Contract Sum in respect of the damage, loss and/or expense to which such failure relates on any certificate issued under this Agreement prior to the Final Certificate. Such adjustment shall not in such event include an addition in respect of loss of interest or financing charges suffered or incurred by the Contractor between the date of the Contractor’s failure so to comply and the date of the Final Certificate.

8. **ARCHITECT’S INSTRUCTIONS**

8.1 The Architect shall have authority to issue instructions at any time up to the Taking-Over of the Works and the Contractor shall (subject to Clause 17.1) immediately comply with all instructions issued to him by the Architect in regard to any of the following matters:

(a) the removal from the Site of any work, materials or goods which are not in accordance with this Agreement or the CDM Regulations;

(b) the dismissal from the Works of any person employed on them if, in the opinion
of the Architect, such person misconducts himself or is incompetent or negligent in the performance of his duties;

(c) the opening up for inspection of any work covered up or the carrying out of any test of any materials or goods or of any executed work;

(d) the addition, alteration or omission of any obligations or restrictions in regard to any limitations of working space or working hours, access to the Site or use of any parts of the Site;

(e) the alteration or modification of the design, quality or quantity of the Works as described in the Contract Documents, including the addition, omission or substitution of any work, the alteration of any kind or standard of any materials or goods to be used in the Works and the removal from the Site of any materials or goods brought onto it by the Contractor for the Works;

(f) any matter connected with the Works; and

(g) pursuant to Clauses 1.5, 1.6, 1.7, 2.6 (if applicable), 3.5, 9.4, 9.5, 10.2, 11.8, 12.2 and 14.

After Taking-Over of the Works the Architect shall have authority to issue instructions at any time up to completion by the Contractor of his obligations under Clause 12.2 and the Contractor shall (subject to Clause 17.1) immediately comply with all instructions issued to him by the Architect in regard to any of the matters referred to in Clauses 8.1(a), (b), (c) and (d).

8.2 If any instruction issued under Clauses 1.6, 3.5, 8.1(c), (d), (e) or (f) or 14 or any instruction issued under Clause 1.5 or 2.6 (if applicable) to which this Clause 8.2 shall apply, shall require the Contractor to undertake work or do any other thing not provided for in, or to be reasonably inferred from, the Contract Documents, or shall require the omission of any work or of any obligation or restriction, and provided the same shall not have arisen out of or in connection with, or shall not reveal, any negligence, omission or default of the Contractor or of any sub-contractor or supplier or his or their respective servants or agents, the provisions of Clause 17 shall apply. Otherwise, no adjustment shall be made to the Contract Sum in respect of compliance by the Contractor with any such instruction.

8.3 Notwithstanding the provisions of Clauses 17 and 23, in an emergency the Architect may issue an oral instruction under Clause 8.1. Such oral instruction shall be confirmed in writing by the Architect within 5 working days of being issued. The Contractor shall immediately comply with such an oral instruction.

8.4 The Contractor shall at no time accept instructions from any person other than the Architect. Any such instructions shall immediately be reported to the Architect and confirmed to him in writing. The Contractor shall not act on such instructions until they are confirmed by the Architect.

9. ASSIGNMENT AND SUB-LETTING

9.1 Neither party shall, without the prior written consent of the other, assign or transfer or purport to assign or transfer any of his rights or obligations under this Agreement: Provided that this shall not affect any right of the Contractor to assign by way of charge any monies due or to become due under this Agreement or any right of the Employer to assign or transfer all or any of his rights under this Agreement after the Taking-Over of the Works.

9.2 Subject to Clauses 9.3, 9.4 and 9.5, the Contractor shall not without the prior consent of the Architect, which consent shall not be unreasonably withheld or delayed, sub-let any portion of the Works.
9.3 Where the Contract Documents provide that certain work or certain goods and/or materials priced by the Contractor shall be carried out by or obtained from a person or one of a list of persons named in the Contract Documents, then the Contractor shall sub-let such work to or obtain such materials and/or goods from the person or one of the persons so named.

9.4 Where the Contract Documents provide that certain work or certain goods and/or materials priced by way of a provisional sum shall be carried out by or obtained from a person or one of a list of persons named in the Contract Documents in respect of such provisional sum, then the Architect shall, if he so requires, issue an instruction to the Contractor requiring him to sub-let such work to and obtain such materials and/or goods from the person or one of the persons so named.

9.5 Where the Contract Documents provide that certain work or certain goods and/or materials priced by way of a provisional sum shall be carried out by or obtained from such sub-contractor or supplier as the Architect shall instruct, the Architect shall, if he so requires, issue an instruction to the Contractor requiring him to sub-let such work and obtain such materials and/or goods from the person stated in the Architect’s instruction. The Contractor shall immediately comply with such instruction unless he shall raise reasonable objection to the person named in the Architect’s instruction within 5 working days of the date of it. * If the Contractor so objects, the Architect shall issue an instruction naming another person.

9.6 Where the Contractor is instructed under the provisions of Clause 9.4 or 9.5 to enter into a sub-contract with a person named in such instruction and/or in the Contract Documents, the Contractor shall negotiate and agree a price with the sub-contractor or supplier so named in respect of the work, materials and/or goods priced by way of provisional sum on terms and conditions compatible with those contained in this Agreement. The Contractor shall notify the Architect of, and invite the Architect to, all meetings and discussions in connection with such negotiations which the Architect shall, at his discretion, be entitled to attend and the Contractor shall supply him with copies of all documents and correspondence in relation to them and copies of all sub-contracts entered into with each such sub-contractor and supplier. The Contractor shall keep proper and detailed accounts and records of all payments to all sub-contractors and suppliers to which this Clause 9.6 applies and shall make the same available for inspection by the Architect at all times. If, for any reason beyond the control of the Contractor, the Contractor is unable to enter into a sub-contract with any person referred to in Clause 9.3 or selected by the Contractor pursuant to Clause 9.4 or named in any instruction under Clause 9.5, the Contractor shall select another person to carry out the work or the supply of the goods and/or materials to a standard and quality equivalent to that which would have been provided by the person referred to in Clause 9.3 or selected by the Contractor pursuant to Clause 9.4 or named in the instruction under Clause 9.5, as the case may be, for the consent of the Architect, such consent not to be unreasonably withheld or delayed. No adjustment shall be made to the Contract Sum or the Time Schedule and the Contractor shall not be entitled to claim any damage, loss and/or expense arising out of or in connection with any of the matters referred to in this Clause 9.6.

9.7 If any sub-contract between the Contractor and any person referred to in Clause 9.3 or selected by the Contractor pursuant to Clause 9.4 or 9.6 or named in any instruction under Clause 9.5 is determined or discharged, the Contractor shall select another person to carry out and complete the execution of the work or the supply of the goods and/or materials to a standard and quality equivalent to that which would have been provided by the person referred to in Clause 9.3 or selected by the Contractor pursuant to Clause 9.4 or 9.6, or named in any instruction under Clause 9.5, as the case may be, for the consent of the Architect, such consent not to be unreasonably withheld or
delayed. No adjustment shall be made to the Contract Sum and the Contractor shall not be entitled to claim any damage, loss and/or expense arising out of or in connection with any of the matters referred to in this Clause 9.7.

9.8 Where any sub-contractor or supplier carries out any design of any work, materials or goods, the Contractor shall be fully responsible for that design and, where appropriate, for compliance with any performance specification, and for the co-ordination of that design and the execution and completion of such work or the supply of such materials and goods with the design, execution and completion of the Works.

9.9 No sub-letting by the Contractor and no instruction or consent of the Architect under Clauses 9.4, 9.5, 9.6, or 9.7 and nothing contained in the Contract Documents requiring the Contractor to sub-let any work or to obtain any materials and/or goods from any person or persons named therein shall in any way relieve the Contractor from his responsibility for the due execution and completion of the Works in accordance with this Agreement for the Final Contract Sum.

10. EMPLOYER’S LICENSEES

10.1 The Contractor shall permit the execution of work on Site not forming part of this Agreement by the Employer or his employees, agents and contractors as provided in the Contract Documents.

10.2 The Architect may issue an instruction to the Contractor at any time requiring him to permit the execution of work or the installation of any materials, goods, equipment or other articles not forming part of this Agreement by others: Provided that the Contractor shall not be under any obligation to comply with such instruction if he shall make reasonable objection to it within 5 working days.

10.3 The Contractor shall permit the execution of work on Site not forming part of this Agreement by statutory undertakers and private utilities in pursuance of their statutory obligations in relation to the Works.

10.4 Where the execution of any work or the installation of any materials, goods, equipment or other articles by any person referred to in Clause 10.1 or 10.2 disrupts the regular progress of the Works or of any Section or delays the execution of them in accordance with the dates stated in the Time Schedule and, in consequence of such disruption or delay, the Contractor suffers or incurs damage, loss and/or expense, he shall be entitled to recover the same in accordance with the provisions of Clause 7 unless, in the case of any person referred to in Clause 10.1, such disruption or delay could reasonably have been foreseen at the date of this Agreement by a contractor exercising the standard of skill, care and diligence described in Clause 1.2. Otherwise, no adjustment shall be made to the Contract Sum and the Contractor shall not be entitled to make any claim arising out of or in connection with compliance by the Contractor with this Clause 10.

11. COMMENCEMENT AND DELAYS IN THE EXECUTION OF THE WORKS

11.1 Subject to Clauses 11.6 and 22.4 and any provisions to the contrary referred to in Clause 1.3, the Employer shall give to the Contractor possession of the Site, or such part or parts of it as may be specified, on the date or dates stated in the Time Schedule. The Contractor shall then immediately commence the execution of the Works and shall proceed with the same regularly and diligently and in accordance with the Time Schedule so that the Works and each Section are fit and ready for Taking-Over by the Employer in accordance with the provisions of Clause 12.1 on the date or dates for the Taking-Over of the same stated in the Time Schedule, subject to the provisions of Clauses 11.6 and 11.7, and to the Architect’s powers pursuant to Clause 11.8.
11.2 If any Section is, or the Works are, not fit and ready for Taking-Over by the Employer in accordance with Clause 11.1, the Architect shall issue a certificate to that effect.

**ALTERNATIVE 1**

11.3 If the Architect issues a certificate under Clause 11.2 in respect of any Section or of the Works, the Contractor shall pay or allow to the Employer liquidated and ascertained damages at the rate or rates stated in the Time Schedule for the period between the date stated in the Time Schedule for the Taking-Over of such Section or of the Works, or such other date as may have been granted or adjusted under Clauses 11.6 or 11.8, and the Taking-Over of the same and, if having given due notice the Employer so requires, the Employer may, subject to the prior issue of the certificate under Clause 11.2, deduct such damages from the amount which would otherwise be payable to the Contractor on any certificate or the Employer may recover them from the Contractor as a debt. If a deduction is to be made from any amount due, the Employer shall give the prior written notice referred to in Clause 16.6.

**ALTERNATIVE 2**

11.3 If the Architect issues a certificate under Clause 11.2 in respect of any Section or of the Works, the Employer shall be entitled to recover from the Contractor such damage, loss and/or expense as may be suffered or incurred by him arising out of or in connection with the Contractor’s breach of his obligations under Clause 11.1. The Employer may deduct such damage, loss and/or expense from the amount which would otherwise be payable to the Contractor on any certificate. If a deduction is to be made from any amount due, the Employer shall give the prior written notice referred to in Clause 16.6.

11.4 If, after the issue of a certificate under Clause 11.2, the Architect fixes a later date for the Taking-Over of any Section or of the Works under Clause 11.6 or 11.7, the Employer shall pay or repay to the Contractor any amounts paid, allowed or recovered by the Employer under Clause 11.3.

**ALTERNATIVE 1**

11.5 Subject to Clause 11.8, no extension of time shall be granted to the Contractor except in the case of any failure to comply with their duties under the CDM Regulations, with all reasonable diligence by the Planning Supervisor or the Principal Contractor (in either case if not the Contractor) or a Designer (not being a sub-contractor or supplier), or any act, instruction, default or omission of the Employer, his servants or his agents or of the Architect on his behalf, whether authorised by or in breach of this Agreement, which in the reasonable opinion of the Architect causes the Taking-Over of the Works or of any Section by the date or dates for Taking-Over stated in the Time Schedule to be prevented. The Contractor shall immediately upon it becoming reasonably apparent that the Taking-Over of the Works or of any Section is being or is likely to be so prevented submit to the Architect a notice specifying such act, instruction, default or omission and, as soon as possible thereafter, submit full and detailed particulars of the extension of time to which the Contractor may consider himself entitled and the Contractor shall keep such particulars up-to-date by submitting such further particulars which may be necessary or may be requested from time to time by the Architect, so as to enable the Architect fully and properly to discharge his duties under this Clause 11.6 at the times specified for the discharge of the same.

**ALTERNATIVE 2**

11.5 Subject to Clause 11.8, no extension of time shall be granted to the Contractor except in the case of:

(a) force majeure;

Delete where Alternative 2 is appropriate

Adjustment of damages for delay

Delete where Alternative 1 is appropriate
(b) loss or damage to the Works by fire, lightning, explosion, storm, tempest, flood, bursting or over-flowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion;

(c) war, hostilities (whether war be declared or not), invasion, act of foreign enemies, rebellion, revolution, insurrection, military or usurped power, civil war, riot, commotion or disorder;

(d) delay or default by a governmental agency, local authority or statutory undertaker or private utility in carrying out work in pursuance of its statutory obligations in relation to the Works or the exercise after the date of this agreement of any statutory power which restricts the availability or use of labour or prevents or delays the Contractor obtaining goods, materials, fuels or energy;

(e) any act, instruction, default or omission of the Employer, or of the Architect or of their servants or their agents on his behalf, whether authorised by or in breach of this Agreement;

(f) failure to comply with their duties under the CDM Regulations with all reasonable diligence by the Planning Supervisor, or the Principal Contractor (in either case if not the Contractor) or a Designer (not being a sub-contractor or supplier);

(g) discovery of antiquities. Any instruction issued to the Contractor under clause 14.2

(h) determination or discharge of any sub-contract of the kind referred to in Clause 9.7 as a result of any breach or repudiation of such sub-contract by the sub-contractor.

and only then to the extent that the Contractor shall prove to the satisfaction of the Architect that the Taking-Over of the Works or of any Section by the date or dates stated in the Time Schedule is prevented.

Provided that no account shall be taken of any of these circumstances (except in the case of the circumstances referred to in Clause 11.5(e)) unless the Contractor:

immediately upon it becoming reasonably apparent that the Taking-Over of the Works or of any Section is being or is likely to be so prevented, shall have submitted to the Architect a notice specifying the circumstance or circumstances; and

as soon as possible thereafter, shall have submitted full and detailed particulars of the extension of time to which the Contractor may consider himself entitled; and

shall have kept such particulars up-to-date by submitting such further particulars which may be necessary or may be requested from time to time by the Architect;

so as to enable the Architect fully and properly to discharge his duties under Clause 11.6 at the times specified for the discharge of the same.

11.6 Either:

(a) so soon as may be practicable, but in any event not later than 60 days after the receipt of all of the particulars referred to in Clause 11.5; or

(b) in the case of any act, instruction, default or omission of the Employer, or of the Architect on his behalf or their servants or their agents and where the Contractor has failed to provide such particulars, at any time, the Architect shall grant to the Contractor such extension of time for the Taking-Over of the Works and/or of any Section as he then estimates to be fair and reasonable:

Provided always that an extension of time for the Taking-Over of one Section shall
not as a necessary consequence entitle the Contractor to an extension of time for the Taking-Over of any other Section and/or of the Works and provided further that the Contractor shall not be entitled to any extension of time in respect of any delay attributable to any negligence, default or improper conduct by him or by his subcontractors or suppliers at any tier or his or their servants or agents. The Architect shall be entitled to take into account at any time before the Taking-Over of any Section or of the Works, the effects of any omission from such Section or from the Works.

11.7 Within a reasonable time after the Taking-Over of the Works, the Architect shall confirm the dates for the Taking-Over of the Works or any Section previously stated, adjusted or fixed or may fix a date for the Taking-Over of the Works or of any Section which is later than previously stated, adjusted or fixed, whether as a result of reviewing all or any previous decisions under Clause 11.6 given prior to the date stated in the certificate issued under Clause 11.2 or as a result of any act, instruction, default, or omission of the Employer, or of the Architect or their servants or their agents on his behalf, whether authorised by or in breach of this Agreement, having occurred after the date stated in the certificate issued under Clause 11.2. The Architect shall notify the Contractor of his final decision under this Clause 11.7.

11.8 The Architect may at any time, but not unreasonably, issue an instruction to the Contractor to bring forward or postpone the dates shown on the Time Schedule for the Taking-Over of the Works, any Section or any part of the Works and the Contractor shall immediately take such measures as are necessary to comply with such instructions and the provisions of Clause 11.3 shall apply to the adjusted date. The Architect shall ascertain and certify a fair and reasonable adjustment (if appropriate) to the Contract Sum in respect of compliance by the Contractor with such instructions and any damage, loss and/or expense suffered or incurred by the Contractor arising out of or in connection with it: Provided that if prior to giving any such instruction the Architect requires the Contractor to give an estimate of the adjustment to the Contract Sum, the provisions of Clause 17 (other than the provisions relating to extensions of time therein contained) shall apply as if an instruction given under this Clause 11.8 were included in Clause 17.1.

11.9 If the Architect shall adjust the date for the Taking-Over of the Works or any Section under Clause 11.6 or shall issue an instruction under Clause 11.8, the Contractor shall submit to the Architect a time schedule revised to take account of such adjustment or instruction for the Architect’s consent, within 10 working days of the date of the Architect’s notice or instruction or the Adjudicator’s decision (as the case may be) and, upon the Architect giving his consent to the same, such revised time schedule shall be the Time Schedule.

12. TAKING-OVER AND DEFECTIVE WORK

12.1 When, in the opinion of the Contractor, the Works are, or will be, subject to the completion of any outstanding items of work, fit and ready for Taking-Over by the Employer, he shall so notify the Architect. Such notification shall, if appropriate, be accompanied by a list (referred to as “the Contractor’s List”) of any outstanding items of work required to render the Works fit and ready for Taking-Over by the Employer. The Architect within 10 working days of receipt of such notification may then (subject always to the first proviso to this Clause 12.1) either:

(a) issue a certificate that the Works are fit and ready for Taking-Over by the Employer. Such certificate is referred to in this Agreement as a “Taking-Over Certificate”; or

(b) notify the Contractor of any items of work which are in the Architect’s reasonable opinion required to render the Works fit and ready for Taking-Over by the
Employer (referred to as the “Architect’s List”); or

(c) approve the Contractor’s List; and/or

(d) at any time before issuing a Taking-Over Certificate add to the Contractor’s List any items of work which are in the Architect’s reasonable opinion required to render the Works fit and ready for Taking-Over by the Employer.

If any items of work are required under paragraphs (b), (c) and/or (d) above, the Architect shall forthwith issue a Taking-Over Certificate when the Contractor shall have completed the same. “Taking-Over” of the Works shall be deemed to have occurred on the date stated in the Taking-Over Certificate.

Provided that the Architect may in his absolute discretion issue a Taking-Over Certificate if the Contractor gives to the Architect a written undertaking addressed to the Employer to complete with all due diligence any items of work contained in the Contractor’s List or Architect’s List immediately upon the issue of such certificate.

And provided that the expression “the Works” shall for the purposes of this Clause 12.1 include any Section (as defined in Recital H) except where the contrary is expressed. Where the Works are divided into Sections, Taking-Over of the Works shall be deemed to have occurred on the date stated in the Taking-Over Certificate for the last Section in time.

No Taking-Over Certificate shall be issued until the Health and Safety File has been submitted and approved.

12.2 To the intent that the Works or any Section shall at or as soon as may be possible after the expiry of the Maintenance Period stated in the Time Schedule be in the condition required by this Agreement, the Contractor shall with all due diligence complete any items of work outstanding at Taking-Over and shall, if the Architect so instructs at any time during the Maintenance Period or within [0] working Days after it has expired, immediately carry out all necessary repairs, replacements and remedial work and make good all defects, shrinkages or other faults which may appear during the Maintenance Period.

12.3 All such work referred to in Clause 12.2 shall be carried out by the Contractor at his own expense unless the necessity for such work shall, in the opinion of the Architect, be due to the Employer’s use or occupation of the Works or any Section or to any negligence, omission or default on the part of the Employer or of the Architect or their servants or their agents, in which case the Architect shall ascertain and certify a fair and reasonable adjustment to the Contract Sum based (where appropriate) on the Schedule of Rates in respect of such work.

12.4 Without prejudice to his other rights and remedies, if the Contractor shall be in breach of or shall neglect or fail to carry out any of his obligations under this Agreement, the Employer shall be entitled to employ and pay other persons to carry out the same and all damage, loss and/or expense suffered or incurred by the Employer in so doing shall be borne by the Contractor and may be deducted from the Contract Sum: Provided that the Employer shall give the Contractor notice of such breach, neglect or failure and if the Contractor fails to remedy or take steps to remedy the same within [5] working days of service of such notice, or if the Contractor at any time after service of such notice commits any further substantially similar breach, neglect or failure, the Employer may forthwith employ such other persons.

13. TAKING-OVER OF PART OF THE WORKS

13.1 The Employer may request the Contractor to give his consent to the Taking-Over of any part of the Works or any part of any Section by the Employer prior to the issue of a
Taking-Over Certificate in respect of the same. The Contractor shall not unreasonably
withhold or delay giving his consent to any such request of the Employer.

| Date of Taking-Over of part | 13.2 | Taking-Over of the said part shall be deemed to have occurred on the date on which it
|                             |      | was taken over by the Employer and such part shall, after Taking-Over, be treated as a
|                             |      | Section for the purposes of Clauses 6 and 12.

| Reduction of damages | 13.3 | If the Employer takes over any part, the Architect shall within \[10\] working days
|                     |      | of the date of Taking-Over of the same issue a certificate describing the part taken
|                     |      | over and stating a fair and reasonable reduction to the sum in respect of liquidated
|                     |      | and ascertained damages under Clause 11.3 for the Section which contained the said
|                     |      | part or for the Works.

14. ANTIQUITIES

14.1 All fossils, antiquities, structures, remains and other objects of geological or archeo-
logical interest or value which may be found on the Site shall as between the Employer
and the Contractor be deemed to be the property of the Employer.

14.2 Upon finding any of the items referred to in Clause 14.1 the Contractor shall not
disturb or damage the same and shall immediately notify the Architect who shall upon
receipt of such notice issue an instruction. The provisions of Clause 8.2 shall apply in
respect of compliance by the Contractor with such Architect’s instruction.

15. THE CONTRACT SUM

15.1 The Contract Sum shall not be adjusted or altered except in accordance with
the express provisions of Clauses 1.4, 1.7, 6.4, 6.9, 6.10, 7.4, 11.8, 12.3, 12.4,
16.6, 16.7, 17, and 18.

15.2 The term “the Quantity Surveyor” in this Clause 15 shall mean

of/whose registered office is situate at

| Quantity Surveyor | 15.2 | or such other person, firm or company appointed from time to time by the Employer
|                  |      | and notified in writing to the Contractor to act as Quantity Surveyor in place of the
|                  |      | Quantity Surveyor so designated.

15.3 The Quantity Surveyor shall carry out only such duties assigned to the Architect under
the clauses referred to in Clause 15.1 and under Clauses 9.6 and 16 as the Architect
shall instruct and which relate to the ascertainment or agreement of any cost or any
damage, loss and/or expense or the valuation of any work, materials or goods (but not
to the issue of any instruction or certificate under the said clauses) and the Quantity
Surveyor shall advise the Architect of all sums so ascertained, agreed or valued. All
references to the Architect in the said Clauses shall be deemed to include references
to the Quantity Surveyor and the Contractor shall carry out his obligations under this
Agreement accordingly.

16. PAYMENT

16.1 Interim payments shall be made by the Employer to the Contractor in accordance with
Alternative A (monthly valuations) or Alternative B (stage payments) as appropriate.

ALTERNATIVE A - MONTHLY VALUATIONS

16.1A On the last working day of each calendar month, up to and including the calendar
month in which Taking-Over of the Works occurs and thereafter as and when further
amounts become due to the Contractor under this Agreement,
the Contractor shall present to the Architect an interim application stating the total amount due to the Contractor calculated in accordance with the provisions of Clause 16.2A supported by such documents, vouchers and receipts as shall be necessary for computing the same or as may be required by the Architect.

**16.2A** Within a working days of receipt by the Architect of the application and documents referred to in Clause 16.1A, the Architect shall issue an interim certificate specifying the amount due to the Contractor from the Employer which shall, subject to adjustments under Clause 18 if applicable be:

(a) the total value of work properly executed calculated in accordance with the Schedule of Rates (excluding, but without limitation, the value of any work which in the reasonable opinion of the Architect shall not have been executed in accordance with this Agreement); and

(b) the total value of any goods and materials intended for but not incorporated into the Works where the Contract Documents expressly provide that payment shall be made for such goods and materials before incorporation into the Works (excluding the value of any such goods and materials where the Architect is not satisfied on the basis of the documents referred to in Clause 16.1 that property in such goods and materials is vested in the Contractor and the conditions for payment set out in the Contract Documents have been complied with); and

(c) the amount of any adjustments to the Contract Sum agreed or certified or otherwise ascertained under this Agreement to the extent that such adjustment is in respect of work already executed or damage, loss and/or expense already incurred;

up to and including a date not more than a working days before the date of the said certificate, less retention monies and all amounts previously stated as due under this Clause 16.2A. Each interim certificate shall specify the basis on which the amount due has been calculated by reference to the matters referred to in sub-paragraphs (a), (b) and (c) above.

**ALTERNATIVE B - STAGE PAYMENTS**

**16.1B** On completion of each stage set out in the Stage Payment Schedule the Contractor shall present to the Architect an application stating the total amount due to the Contractor calculated in accordance with the provisions of Clause 16.2B supported by such documents, vouchers and receipts as shall be necessary for computing the same or as may be required by the Architect.

**16.2B** Within a working days of receipt by the Architect of the said application, the Architect shall issue an interim certificate specifying the amount due to the Contractor from the Employer which shall, subject to adjustments under Clause 16.6 and Clause 18, if applicable be

(a) the cumulative value at the relevant stage:

(b) the amount of any adjustments to the Contract Sum agreed or certified or otherwise ascertained under this Agreement to the extent that such adjustment is in respect of work already executed or damage, loss and/or expense already incurred less all amounts previously stated as due under this Clause 16.2A(c) less retention monies.

**16.3** Subject to Clauses 16.6 and 16.7 the Contractor shall be entitled to payment of the amount stated as due on any interim certificate on the working day after the date of such interim certificate which shall be the final date of payment of the said amount.

**16.4** The Employer shall hold % of the amount which would otherwise have been stated as due on any interim certificate as trustee for the Contractor and shall, at the date of each payment under Clause 16.3, place the amount so retained in a separate bank account in the Employer’s name.
The Employer shall be under no obligation to account to the Contractor for any interest accruing in such account.

16.5 The first half of the retention shall become due to the Contractor on the next interim certificate issued by the Architect following the Taking-Over Certificate. The second half of the retention shall become due upon the issue of the Final Certificate. Where the Works are divided into sections, retention in respect of each section shall be included in equivalent certificates in respect of each section.

16.6 Not later than [5] working days before the final date for payment of any amount due to the Contractor under this Agreement the Employer may give a written notice to the Contractor specifying the amount he proposes to withhold and/or deduct from any amount due and the grounds for withholding and/or deducting payment and the amount attributable to each ground. Notwithstanding the trustee status of retention monies as stated in Clause 16.4 the Employer may exercise any right of withholding and/or deduction under this Agreement from such retention monies.

16.7 The Contract Sum shall be adjusted by the deduction of any provisional sum specified in the Contract Documents and by the addition of the price agreed in accordance with Clause 9.6 by the Contractor with any sub-contractor or supplier in respect of the work, materials and/or goods priced by such provisional sum, or by such other sum as shall become properly due and shall be payable by the Employer in accordance with the terms of the Contractor’s agreement with such sub-contractor or supplier.

16.8 The Employer shall pay to the Contractor the total amount of value added tax properly chargeable by the Contractor on the supply to the Employer of any goods or services under this Agreement.

17. VALUATION OF ARCHITECT’S INSTRUCTIONS

17.1 Where, in the opinion of the Contractor or of the Architect, any instructions issued by the Architect to the Contractor under Clause 1.6, 3.5, 8.1(c), (d), (e) or (f) or 14 or any instructions issued under Clauses 1.5 or 2.6 (if applicable) to which Clause 8.2 shall apply, will require an adjustment to the Contract Sum and/or affect the Time Schedule, the Contractor shall not comply with them (subject to Clauses 8.3 and 17.5) but shall first furnish the Architect within [10] working days (or within such other period as may be agreed between the Contractor and the Architect) of receipt of the instruction with estimates of:

(a) the value of the adjustment (providing him with all necessary supporting calculations by reference to the Schedule of Rates or otherwise); and

(b) the length of any extension of time to which he may be entitled under Clause 11.5; and

(c) the amount of any loss and/or expense which may be suffered or incurred by him arising out of or in connection with such instruction.

17.2 The Contractor and the Architect shall then take reasonable steps to agree the Contractor’s estimates and any agreement so reached shall be binding upon the Contractor and the Employer. The Contractor shall immediately thereafter comply with the instruction and the Architect shall grant an extension of time under Clause 11.6 of the agreed length (if any) and the agreed adjustments (if any) in relation to the Contractor’s estimates under Clauses 17.1(a) and/or 17.1(c) shall be made to the Contract Sum.

17.3 If agreement cannot be reached within [5] working days of receipt by the Architect of the Contractor’s estimates on all or any of the matters set out in them,
then

(a) the Architect may nevertheless instruct the Contractor to comply with the instruction in which case the provisions of Clause 17.5 shall apply as if the Architect had dispensed with the Contractor’s obligation under Clause 17.1; or

(b) the Architect may instruct the Contractor not to comply with the instruction.

17.4 If the Architect instructs the Contractor not to comply under Clause 17.3(b), the Contractor shall have no claim arising out of or in connection with such instruction or with any failure to reach agreement.

17.5 The Architect may, by notice to the Contractor before or after the issue of any instruction, dispense with the Contractor’s obligation under Clause 17.1, in which case the Architect shall, within a reasonable time after the issue of such instruction, ascertain and certify a fair and reasonable adjustment to the Contract Sum based on (where appropriate) the Schedule of Rates in respect of compliance by the Contractor with such instruction and any loss and/or expense suffered or incurred by the Contractor arising out of or in connection with it and a fair and reasonable extension of time shall be granted under Clause 11.6.

17.6 If the Contractor fails to comply with any one or more of the provisions of Clause 17.1 where the Architect has not dispensed with compliance under Clause 8.3 or Clause 17.5, the Architect shall have no power or authority to make, and the Contractor shall not be entitled to, any addition to the Contract Sum in respect of any instructions issued by the Architect to which this Clause 17 relates on any certificate issued under this Agreement prior to the Final Certificate. Such addition shall not in any such event include any adjustment in respect of loss of interest or financing charges suffered or incurred by the Contractor prior to the issue of the Final Certificate.

18. FLUCTUATIONS

18.1 When calculating the amount due under Clause 16.2 in interim certificates issued up to the Taking-Over of the Works, the amount otherwise due (less the value of any item established by reference to the cost current at the time of its execution) shall be increased or decreased in proportion to 80% of the increase or decrease in the ACA Index published for the month prior to the date on which the Architect receives the documents referred to in Clause 16.1 (or for the month prior to the date on which a certificate under Clause 11.2 is issued, whichever results in the lower index) compared with that published for the month prior to the date fixed for the return of tenders and the Contract Sum shall be adjusted accordingly.

18.2 When calculating the amount due under Clause 16.2 in interim certificates issued after the Taking-Over of the Works and when calculating the Final Contract Sum, the amount calculated otherwise than in accordance with this Clause 18.2 (less the value of any item established by reference to the cost current at the time of its execution) shall be increased or decreased in the same proportion as the total of the adjustments made under Clause 18.1 bears to the total value of the amounts upon which those adjustments have been made and, in respect of amounts due in interim certificates, the Contract Sum shall be adjusted accordingly.

18.3 If for any reason the ACA Indices are not published or their publication is delayed but the “Monthly Bulletin: Construction Indices for the use with the National Consultative Council’s Standing Committee on Indices for Building contracts price adjustment formulae for building contracts” is published, then the Architect shall calculate substitute indices having regard to the make-up of the ACA Index. If both the ACA Indices and the “Monthly Bulletin” are not published or their publication is delayed,
then the Architect shall make an adjustment to the amount which would otherwise be due on each interim certificate issued during such period calculated on a fair and reasonable basis and the Contract Sum shall be adjusted accordingly. If prior to the issue of the Final Certificate publication of the ACA Indices and/or the “Monthly Bulletin” is recommenced, adjustment shall be made in the next interim certificate or the Final Certificate as if publication had not ceased or been delayed.

19. PAYMENT OF THE FINAL CONTRACT SUM

Final Account 19.1 The Contractor shall submit to the Architect within 30 working days after the expiry of the Maintenance Period the Contractor’s final account for the Works and all documents, vouchers and receipts as shall be necessary for computing the Final Contract Sum or as may be required by the Architect.

Issue of Final Certificate 19.2 The Architect shall issue the Final Certificate within 30 working days after completion by the Contractor of all his obligations in accordance with this Agreement.

Final Payment 19.3 The Final Certificate shall state:

(a) the Final Contract Sum; and

(b) the total amount already paid to the Contractor under Clause 16.3;

and the difference (if any) between (a) and (b) shall be stated in the Final Certificate as a balance due to the Contractor from the Employer or to the Employer from the Contractor as the case may be and shall from the 10th working day after issue of the Final Certificate which shall be the final date for payment of such balance be a debt payable by the Employer or the Contractor as the case may be.

Delivery of Documents 19.4 Prior to the issue of the Final Certificate, the Contractor shall deliver to the Employer all drawings, details, documents and information prepared by or on behalf of the Contractor for the Works and the provisions of Clause 3.3 shall apply unless either the Employer or the Contractor shall give the notice referred to in Clause 16.6 no later than 5 working days before the said final date for payment of such balance.

Effect of certificates 19.5 No certificate (including the Final Certificate) issued by the Architect under this Agreement shall relieve the Contractor from any liability arising out of or in connection with this Agreement. The Architect may by any certificate correct or modify any sum previously certified by him.

20. TERMINATION

Termination by the Employer 20.1 Upon the happening of one or more of the following events, namely if the Contractor:

(a) without reasonable cause (and subject always to Clause 21 of this Agreement) substantially suspends the execution of the Works or any Section before the Taking-Over of the same;

(b) fails or neglects to comply with his obligations under Clause 9.1 or 9.2 of this Agreement;

(c) without reasonable cause fails to proceed regularly and diligently with the Works or any Section;

(d) refuses or neglects to comply with any instruction which the Architect is empowered by this Agreement to give;

(e) shall otherwise be in breach of this Agreement;

then the Employer may, in addition to any other power enabling him to terminate this Agreement, serve notice (referred to as “the Default Notice”) on the Contractor.
specifying the event and requiring its remedy and if the Contractor fails to remedy the same within 10 working days of service of the Default Notice or if the Contractor, at any time after service of the Default Notice, commits any further substantially similar breach of this Agreement, the Employer may by further notice (referred to as “the Termination Notice”) forthwith terminate the employment of the Contractor:

Provided always that if either party shall refer any dispute or difference under this Clause 20.1 to the Adjudicator within 10 working days of service of the Default Notice and provided that the Adjudicator shall give his decision in accordance with the provisions of Clause 25B, then the Employer shall not be entitled to serve the Termination Notice until the Adjudicator shall have given such decision:

Provided further that if no reference is made to the Adjudicator before service of the Termination Notice by the Employer, then the Employer’s entitlement to terminate the Contractor’s employment under this Clause 20.1 shall not be open to challenge in any proceedings between the parties whether by way of arbitration or otherwise.

20.2 Upon the happening of one or more of the following events, namely if the Employer:

(a) does not pay to the Contractor the amount properly due and payable on any certificate (subject to any deductions which the Employer may be entitled to make);

(b) obstructs the issue of any certificate due under this Agreement;

(c) is otherwise in breach of this Agreement and such breach has prevented the Contractor from carrying out any of his obligations for a continuous period of 20 working days,

then the Contractor may, in addition to any other power enabling him to terminate this Agreement, serve notice (referred to as “the Default Notice”) on the Employer specifying the event and requiring its remedy and if the Employer fails to remedy the same within 10 working days of service of the Default Notice, the Contractor may by further notice (referred to as “the Termination Notice”) forthwith terminate his employment:

Provided always that if either party shall refer any dispute or difference under this Clause 20.2 to the Adjudicator within 10 working days of service of the Default Notice and provided that the Adjudicator shall give his decision in accordance with the provisions of Clause 25B, then the Contractor shall not be entitled to serve the Termination Notice until the Adjudicator shall have given such decision:

Provided further that, if no reference is made to the Adjudicator before service of the Termination Notice, then the Contractor’s entitlement to terminate his employment under this Clause 20.2 shall not be open to challenge in any proceedings between the parties, whether by way of arbitration or otherwise.

20.3 Either party may terminate the Contractor’s employment by notice to the other forthwith if any distress or execution shall be levied upon such other party’s property or assets or if such other party shall make or offer to make any arrangement or composition with his creditors or commit an act of bankruptcy or if any petition or receiving order in bankruptcy shall be presented or made against him or (if he is a limited company) any resolution or petition to wind up such company’s business (other than for the purpose of a bone fide reconstruction or amalgamation without insolvency) shall be passed or presented or if a receiver of such company’s undertaking property or assets or any part of them shall be appointed.
21. **TERMINATION DUE TO CAUSES OUTSIDE THE CONTROL OF BOTH PARTIES**

If the Contractor shall be prevented or delayed from executing the Works for a period of 60 consecutive working days or more by:

(a) force majeure; or

(b) loss or damage to the Works by fire, lightning, explosion, storm, tempest, flood, bursting or over-flowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion;

(c) war, hostilities, (whether war be declared or not), invasion, act of foreign enemies, rebellion, revolution, insurrection, military or usurped power, civil war, riot, commotion or disorder;

then either party may by notice to the other forthwith terminate the Contractor’s employment under this Agreement.

22. **CONSEQUENCES OF TERMINATION**

22.1 If the Contractor’s employment is terminated by the Employer under Clause 20.1 or 20.3, the Employer shall not be bound to make any further payment to the Contractor until the full and final cost of completion of the Works by others has been ascertained but upon such cost being ascertained, the Architect shall certify the amount of any damage, loss and/or expense suffered or incurred by the Employer, and if such amount when added to the monies paid to the Contractor before the date of termination exceeds the total amount due to the Contractor calculated in accordance with Clause 16.2 up to the date of termination, the difference shall be a debt payable to the Employer by the Contractor.

22.2 If the Contractor’s employment is terminated by the Contractor under Clause 20.2 or 20.3, the Architect shall ascertain and certify under Clause 16.2 the total amount properly due to the Contractor up to the date of termination (including, but without limitation, the Contractor’s costs of protecting and securing the Works as required by Clause 22.4) and the Employer shall pay such amount to the Contractor within 10 working days of certification of it.

22.3 If the Contractor’s employment is terminated by either party under Clause 21, the provisions of Clause 22.2 shall apply but neither party shall have any claim against the other for any damage, loss and/or expense arising out of or in connection with such termination.

22.4 Upon service of a Termination Notice by either party under Clauses 20 or 21 and notwithstanding that the validity of such termination is disputed by the Contractor, the Contractor shall immediately deliver to the Employer possession of the Site and shall properly protect and secure the Works.

22.5 Subject to Clause 22.3, termination of the Contractor’s employment by either party shall not prejudice the rights of either party to sue for and recover any damage, loss and/or expense suffered or incurred by him arising out of or in connection with any breach by the other of this Agreement prior to such termination and generally to enforce any of his rights and remedies in relation to anything done prior to such termination.

22.6 Upon any termination of the Contractor’s employment, the Contractor shall deliver to the Employer all drawings, details, documents and information prepared by or on behalf of the Contractor for the Works and the provisions of Clause 3.3 shall apply.
Upon any termination of the Contractor’s employment and, if the Employer so requires, the Contractor hereby agrees and consents to the novation to the Employer, without payment, of the Contractor’s entire benefit, right and interest in and under any sub-contract between the Contractor and any sub-contractor or supplier and the Contractor agrees, forthwith upon receipt of a written request from the Employer, to do all acts and execute all documents necessary to make such novation effective.

NOTICES AND INTERPRETATION

All certificates, notices, comments, instructions, consents, applications, orders or approvals to be given or made by either party or by the Architect under the terms of this Agreement shall be given in writing (subject to the provisions of Clause 8.3) and shall be served on the Architect and/or Employer and/or Contractor, by sending the same by pre-paid first class post to or delivering the same to the addresses stated in this Agreement (except as otherwise provided in the Contract Documents) and, if so posted, shall be deemed to have been given working days after the date when posted.

Words denoting the singular only in this Agreement shall include the plural (and vice versa) and words denoting persons shall include firms and corporations. The headings and marginal notes are inserted for convenience only and shall not affect the construction of this Agreement.

CONSTRUCTION INDUSTRY SCHEME (CIS)

The provisions of Appendix 'A' hereto relating to the CIS shall apply.

DISPUTES

CONCILIATION

The term “the Conciliator” in this Agreement shall mean

or if no individual is named herein, a person to be agreed upon by the parties, or failing agreement within 10 working days after either party has given the other a written request to concur in the appointment of a Conciliator, a person to be appointed on the request of either party by the President or Vice-President for the time being of the Association of Consultant Architects of 98 Hayes Road, Bromley, Kent BR2 9AB. If requested by the parties the Conciliator may suggest a settlement.

If at any time before a notice is given requiring reference of any matter to adjudication under Clause 25B or arbitration under Clause 25C Alternative 2 – Arbitration, or litigation is commenced under Clause 25C Alternative 1 – Litigation, the parties agree to conciliation in respect of that matter, they shall apply jointly to the Conciliator who will conduct the conciliation in accordance with the edition of the ACA Conciliation Procedure current at the date of the application, a copy of which can be found at Appendix B of this Agreement.

Any written agreement signed by the parties which records the terms of any settlement reached during the conciliation shall be final and binding upon the parties who will give effect to such settlement in accordance with its terms. If either party fails to do so, the other party shall be entitled, notwithstanding Clause 25C Alternative 2 – Arbitration (if applicable), to take legal proceedings to secure such compliance.
25B  ADJUDICATION

25.4 The term “the Adjudicator” in this Agreement shall mean

or if no individual is named herein, such other person as shall be appointed from time to time in accordance with the edition of the Model Adjudication Procedure published by the Construction Industry Council of 26 Store Street, London WC1E 7BT currently in force at the date of the notice.

25.5 The Employer and the Contractor each has the right to refer a dispute or difference arising under this Agreement for adjudication by giving notice at any time of his intention to do so. The notice shall be given and the adjudication shall be conducted under the said Model Adjudication Procedure.

25.6 Without prejudice to their rights under this Agreement the parties shall comply with decisions of the Adjudicator. If either party fails to do so, the other party shall be entitled, notwithstanding Clause 25C Alternative 2 – Arbitration (if applicable) to take legal proceedings to secure such compliance pending final determination of the dispute and the term ‘summary enforcement’ in Clause 30 of the Model Adjudication Procedure shall be read accordingly.

25.7 The Adjudicator’s decision shall be final and binding upon the parties unless within 20 working days of receipt of the same legal proceedings have been commenced under Clause 25C Alternative 1 – Litigation or a reference to arbitration has been given under Clause 25C Alternative 2 – Arbitration by either party in respect of the said decision.

25C  ALTERNATIVE 1 – LITIGATION

ENGLISH LAW

The English courts shall have jurisdiction over any dispute or difference which shall arise between the Employer or the Architect and the Contractor arising out of or in connection with this Agreement or the carrying out of the Works. The law of England shall be the proper law of this Agreement.

SCOTTISH LAW

The Scottish courts shall have jurisdiction over any dispute or difference which shall arise between the Employer or the Architect and the Contractor arising out of or in connection with this Agreement or the carrying out of the Works. The law of Scotland shall be the proper law of this Agreement.

25C  ALTERNATIVE 2 - ARBITRATION

25.8 If upon receipt of an Adjudicator’s decision either party is dissatisfied with the same such party may, subject to the provisions of Clauses 20.1 and 20.2, within 20 working days of receipt of the Adjudicator’s decision give notice to the other requiring that the matter should be referred to the arbitration of a person to be appointed under Clause 25.9.

25.9 All disputes and differences in respect of which a decision of the Adjudicator has not become final and binding under Clause 25.3 or 25.7 and all disputes or difference arising out of or in connection with this Agreement or the carrying out of the Works as to any matter or thing of whatsoever nature (including any matter or thing left to the discretion of the Architect or to the withholding by the Architect of any certificate
which the Contractor may claim to be entitled to or any issue as to whether or not any certificate is in accordance with the provisions of this Agreement) shall, unless the parties agree to the contrary, be referred to the arbitration and final decision of a person to be agreed between the parties, or, failing agreement within 10 working days after either party has given to the other a written request to concur in the appointment of an arbitrator, a person to be appointed on the request of either party by the President or Vice-President for the time being of the Chartered Institute of Arbitrators. Such reference shall not be opened until after the Taking-Over or alleged Taking-Over of the Works or termination or alleged termination of the Contractor’s employment except with the written consent of the Employer and the Contractor: Provided always that if, in the Employer’s opinion, any dispute or difference to be referred to arbitration under this Agreement raises matters which are connected with matters raised in another dispute between the Contractor and any of his sub-contractors or suppliers and provided that such other dispute has not already been referred to an arbitrator, the Employer and the Contractor agree that such other dispute shall be referred to the arbitrator appointed under this Agreement and such arbitrator shall have power to deal with such disputes as he thinks most just and convenient.

25.10 The Arbitrator appointed under Clause 25.9 shall have full power to open up review and revise any decision, opinion, direction, certificate or valuation of the Architect or of the Adjudicator and the award of such arbitrator shall be final and binding on the parties.

ENGLISH LAW

25.11 The law of England and Wales shall be the proper law of this Agreement and the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof shall apply to any arbitration under this Agreement and such arbitration shall take place in England under the Construction Industry Model Arbitration Rules 1998.

SCOTTISH LAW

25.11 The law of Scotland shall be the proper law of this Agreement and the provisions of the Arbitration (Scotland) Act, 1894 or any statutory modification or re-enactment thereof shall apply to any arbitration under this Agreement. Such arbitration shall take place in Scotland and be conducted in accordance with the then current edition of the Scottish Arbitration Code.

The parties agree that the procedures contained in the Administration of Justice Act, 1972 Section 3 shall not apply to any question of law arising out of the awards of such arbitrator.

26. CDM REGULATIONS

Duties of Principal Contractor

26.1 Where the Contractor is appointed as the Principal Contractor, the Contractor shall:

(a) carry out the duties of the Principal Contractor under the CDM Regulations so as to comply with the requirements of the Time Schedule;

(b) if the Contractor becomes aware of anything which might affect the Health and Safety Plan referred to in the CDM Regulations;

(i) immediately notify the Planning Supervisor; and

(ii) discuss appropriate amendments to the Health and Safety Plan with the Planning Supervisor; and

(iii) following and taking into account such discussions make appropriate amendments to the Health and Safety Plan.
26.2 Without derogating from Clause 26.1 where the Contractor is the Principal Contractor the Contractor shall:

(a) Ensure that his Time Schedule allows sufficient time for the Planning Supervisor and all the designers referred to in the CDM Regulations to comply with their respective obligations under the CDM Regulations.

(b) Comply (and ensure so far as is reasonably practicable, that every sub-contractor and every employee at work in connection with the Works complies) with the Health and Safety Plan.

(c) In respect of any design work undertaken by the Contractor co-operate (and ensure that any sub-contractor who is a designer co-operates) with the Planning Supervisor and any other designer and allow them reasonable access to all design documents to enable their respective duties under the CDM Regulations to be discharged and so that the Works are completed in accordance with the Time Schedule.

(d) Provide, (and ensure that any sub-contractor provides) such information to the Planning Supervisor (unless the Contractor is the Planning Supervisor) as the Planning Supervisor reasonably requires for his preparation of the Health and Safety File referred to in the CDM Regulations, by the date of the Contractor’s notification under clause 12.1 at the latest, and so that the Health & Safety File can be completed by the Taking Over of the Works.

(e) Comply with all the reasonable requirements of the Planning Supervisor and the Principal Contractor (if not the Contractor) necessary for compliance with the CDM Regulations.

26.3 Notwithstanding the date for possession given in the Appendix, the Contractor shall not commence work on site until the Principal Contractor has prepared a Health and Safety Plan complying with Regulation 15(4) of the CDM Regulations.

26.4 Where the Employer appoints a successor to the Contractor as the Principal Contractor, the Contractor shall comply at no cost to the Employer with all the reasonable requirements of the Principal Contractor as necessary for compliance with the CDM Regulations; and notwithstanding Clauses 11 and 17, no extension of time shall be given in respect of such compliance.

26.5 The Contractor shall give and shall procure that any of his sub-contractor designers shall give to the Planning Supervisor full access to the Works and to the other places where design is being prepared for the Works.

26.6 Where an instruction issued by the Architect under clause 8.1(e) might affect the Health and Safety Plan the Contractor shall promptly implement the procedure set out in clause 26.1(b) and shall not execute the instruction until such implementation has taken place.
ALTERNATIVE 1

IN WITNESS whereof this Deed has been executed by the parties hereto and delivered the day and year first before written.

EITHER:
The Common Seal of the Employer was affixed in the presence of:

Director _______________________________
Secretary _______________________________

OR:
Executed as a Deed by the Employer acting by:

Director _______________________________
Director/Secretary _______________________

EITHER:
The Common Seal of the Contractor was affixed in the presence of:

Director _______________________________
Secretary _______________________________

OR:
Executed as a Deed by the Contractor acting by:

Director _______________________________
Director/Secretary _______________________

ALTERNATIVE 2

AS WITNESS the hands of the parties hereto the day and year first before written.

Signed by _______________________________
Duly authorised for and on behalf of the Employer in the presence of:

Signed by _______________________________
Duly authorised for and on behalf of the Contractor in the presence of:
THE TIME SCHEDULE

ALTERNATIVE 1
(for use where there is to be no possession of the Site in parts or completion by Sections)

1. Possession of the Site by the Contractor (Clause 11.1)
   Date

2. Taking-Over of the Works by the Employer and commencement of Maintenance Period (Clause 11.1)
   Date

3. Rate of liquidated and ascertained damages (Clause 11.3) at £_________ per week
   Period

4. Maintenance Period (Clause 12.2)

ALTERNATIVE 2
(for use where possession of the Site is to be given in parts and/or the Works are to be completed by Sections)

1. Possessions of Sections of the Site by the Contractor (Clause 11.1)
   (see attached plan)
   Date

   Description of Section
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2. Taking-Over of Sections of the Works by the Employer and commencement of Maintenance Period for each Section (Clause 11.1)

3. Rate of liquidated and ascertained damages for each Section (Clause 11.3)

4. Maintenance Period for each Section (Clause 12.2)

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Delete 3 where Clause 11.3 Alternative 2 applies

Alternative 2 continued

Columns to be completed as appropriate
## ISSUE OF INFORMATION (Clause 2)

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<tr>
<th>Description of drawing, detail, document or information to be supplied by the Architect to the Contractor or submitted by the Contractor to the Architect.</th>
<th>By the Architect or by the Contractor</th>
<th>Date for supply or submission</th>
<th>Period for return by the Architect if other than that stated in Clause 2.3</th>
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STAGE PAYMENT – SCHEDULE

The stages referred to in Clause 16.1B are as follows:

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<th>Stages</th>
<th>Cumulative Value*</th>
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*[Note: the cumulative value of the final stage must equal the Contract Sum]*
APPENDIX 'A'

CLAUSE 24 - CONSTRUCTION INDUSTRY SCHEME (CIS)

Definitions

24.1 In this Clause 24:

'the Act' means the Income and Corporation Taxes Act 1988 or any statutory amendment or modification thereof;

'Authorisation' means either:

'CIS 4', the registration card designated 'CIS 4(T)' and which has an expiry date to
'CIS 4(P), in the form provided by regulations 7 and 7C of the Regulations appearing as shown in Schedule 1 of the Regulations and issued by the Inland Revenue;

or

'CIS 5' or 'CIS 6', the certificates in the form provided by Regulation 24 of the Regulations and appearing as shown in Schedule 1 of the Regulations and issued by the Inland Revenue;

or

a 'certifying document' created on the Contractor's letter headed stationery not a fax or photocopy, in the form prescribed by Regulation 34 of the Regulations;

'construction operations' means those operations defined in s.567 of the Act as construction operations;

'contractor' means a person who is a contractor for the purposes of the Act and the Regulations;

'the direct cost of materials' means the direct cost of the Contractor or to any other person of materials used or to be used in carrying out the construction operations to which the contract under which the payment is made relates as provided in regulation 7 of the Regulations;

'the Regulations' means the Income Tax (Sub-Contractors in the Construction Industry) Regulations 1993 S.I. No. 743 as amended by the Income Tax (Sub-Contractors in the Construction Industry) (Amendment) Regulations 1998 S.I. No. 2622 or any amendment or re-making thereof;

'statutory deduction' means the deduction which is in force at the time of payment referred to in s.559(4) and (4A) of the Act;

'sub-contractor' means a person who is a sub-contractor for the purposes of the Act and the Regulations;

'voucher' means either:

a tax payment voucher in the form CIS 25 provided by regulation 7 and appearing as shown in Schedule 1 of the Regulations and issued by the Inland Revenue;

or

a gross payment voucher CIS 24 in the form provided by regulation 29 and appearing as shown in Schedule 1 of the Regulations and issued by the Inland Revenue.

24.2 Where the Employer is not a 'contractor' Clauses 24.3 to 24.14 shall not apply. Nevertheless if, at any time up to the final payment to the Contractor under this Agreement, the Employer becomes such a 'contractor', the Employer shall so inform the Contractor and the provisions of Clauses 24.3 to 24.14 shall thereupon become operative.
## Payment by Employer - valid Authorisation essential

### Validity of Authorisation - Employer's query

#### 24.3 The Employer shall not make any payment under or pursuant to this Agreement unless a valid Authorisation has been provided to him or his nominated representative by the Contractor.

#### 24.4.1 If the Employer or his nominated representative is not satisfied with the validity of the Authorisation provided by the Contractor, he shall thereupon notify the contractor in writing of his grounds for considering that the Authorisation is not valid.

#### 24.4.2 Where a notification has been given under Clause 24.4.1, the Employer shall not make any payment under or pursuant to this Agreement until either:

1. the Employer or his nominated representative has received an Authorisation which he considers to be valid;
2. or the Contractor has re-submitted the Authorisation with a letter from the Contractor's tax office, confirming that Authorisation is valid.

### Authorisation: CIS 4 registration card

#### 24.5.1 Where the Authorisation is a CIS 4 registration card, then 7 days before the final date for payment of any sum due:

1. the Contractor shall give to the Employer a statement showing the direct cost of materials to the Contractor and to any other persons to be included in the payment; and
2. the Employer shall make the statutory deduction from that part of the payment which is not in respect of the direct cost of materials as stated by the Contractor pursuant to Clause 24.5.1.1.

#### 24.5.2 Where the Contractor complies with Clause 24.5.1.1 he shall indemnify the Employer against any loss or expense caused to the Employer by any incorrect statement of the amount of direct cost referred to in Clause 24.5.1.1.

#### 24.5.3 Where the Contractor fails to comply with Clause 24.5.1.1, or where the Employer has reasonable grounds to believe that any statement provided in compliance with Clause 24.5.1.1 is incorrect, the Employer shall make a fair estimate of the direct cost of materials.

### Authorisation: CIS 5 or CIS 6 or a certifying document

#### 24.6 Where the Authorisation is a valid CIS 5 or CIS 6 or a certifying document the Employer shall pay any amount due without making the statutory deduction.

#### 24.7 Where the Authorisation is a CIS 4 but the Contractor is subsequently issued with a CIS 5 or CIS 6 by the Inland Revenue, the Contractor shall immediately inform the Employer and either present the CIS 5 or CIS 6 in person to the Employer or his nominated representative or send to the Employer or his nominated representative a certifying document. Provided the Employer or his nominated representative is satisfied with the validity of the changed Authorisation, clause C6 shall thereupon apply.

#### 24.8 If an Authorisation CIS 5 or CIS 6 is withdrawn by the Inland Revenue for any reason, the Contractor shall thereupon notify the Employer or his authorised representative and the Employer shall make no further payments to the Contractor under or pursuant to this Agreement until the Contractor provides the Employer or his authorised representative with a valid Authorisation CIS 4. After such provision Clauses 24.5.1, 24.5.2 and 24.5.3 shall apply.

#### 24.9 If an Authorisation CIS 5 or CIS 6 expires, the Employer shall make no further payments to the Contractor under or pursuant to this Agreement until the Contractor either:

- shows in person to the Employer or his nominated representative an Authorisation CIS 4 and if so Clauses 24.5.1, 24.5.2 and 24.5.3 shall apply;
or provides to the Employer or his nominated representative an Authorisation CIS 5 or CIS 6 or a certifying document and if so Clause 24.6 shall apply.

24.10 Where Authorisation CIS 4 applies and the Employer has made payments to the Contractor, the Employer shall by the 19th day of the month following the month in which the payment is made provide the Contractor with a copy of the CIS 25 voucher that he has sent to the Inland Revenue showing all the payments made in the tax month concerned and the total tax deducted.

24.11 Where Authorisation CIS 6 applies and the Employer has made payments to the Contractor, the Contractor shall be the 19th day of the month following the month in which the payment is made provide the CIS 24 voucher to the Employer who shall add thereto his tax reference and send the voucher to the Inland Revenue with a copy to the Contractor.

24.12 Where the Employer has made an error or omission in calculating the statutory deduction, he may correct the error by repayment or further deduction from payments due to the Contractor, subject only to an instruction by the Inland Revenue to the Employer not to make such a correction.

24.13 If compliance with this Supplemental Condition involves the Employer or the Contractor in not complying with any other of the Conditions, then the provisions of this Clause shall prevail.

24.14 The relevant procedures applicable under this Agreement to the resolution of disputes or differences between the Employer and the Contractor shall apply to any dispute or difference between the Employer and the Contractor as to the operation of this Supplemental Condition except where the Act or the Regulations or any other Act of Parliament or statutory instrument, rule or order made under any Act of Parliament provide for some other method of resolving such dispute or difference.
1.00 INTRODUCTORY NOTES

1.01 Conciliation is available for parties to an ACA Contract (ACA refers herein to The Association of Consultant Architects Limited) in which an Architect is either a party to that contract or who is acting on behalf of one of the parties to that contract.

1.02 Conciliation is an alternative to Adjudication, Litigation or Arbitration and is a first step procedure to resolving any dispute or difference. It is an informal and confidential process which does not impose on the parties a resolution to a dispute unless mutually acceptable. Instead it allows the parties the freedom to explore ways of settling the dispute with the assistance of an impartial and independent person (the Conciliator). Being confidential, nothing said during the process can be used at a later date in any form of legal proceedings. Furthermore, information given to the Conciliator in confidence by Party A cannot be disclosed to Party B without the express permission of Party A and vice versa.

1.03 The Conciliator will attempt to define and if possible narrow the issues. If requested to do so by the parties, he may assist in proposing a resolution as to how the dispute or difference might be settled. Conciliation is essentially a process in which the Conciliator assists in negotiations between the parties to arrive at a binding settlement which they consider to be mutually and commercially acceptable.

1.04 Evidence is not given under oath nor affirmation. The Conciliator is not bound by the rules of the Courts or of natural justice and can only be guided by what the parties choose to tell him and by his own professional knowledge and experience.

1.05 Conciliation is only suitable where the parties have a genuine wish to settle. It is not suitable where the parties are seeking to resolve a dispute solely on the basis of their legal rights.

1.06 Conciliators are selected from ACA members approved by the President of the ACA for appointment under the scheme.

1.07 In selecting a location for the Conciliation, facilities should be available for the parties to confer separately.

1.08 Those wishing to take advantage of the scheme should apply to the Secretary General of the ACA at 98 Hayes Road, Bromley, Kent BR2 9AB Tel: 020 8325 1402 Fax: 020 8466 9079).

2.00 THE ACA CONCILIATION PROCEDURE RULES AND CONDITIONS

Where the context so requires ‘party’ shall mean ‘parties’ and ‘he’ shall mean ‘she’.

PRELIMINARIES

2.01 The Scheme is administered by the Secretary General of the ACA. Parties wishing to apply for Conciliation under the Scheme will apply jointly to the Secretary General of the ACA setting out in concise terms the nature of the difference or dispute. The application should be accompanied by the prescribed administrative fee.

2.02 When the Secretary General is satisfied that both parties have agreed to the ACA Conciliation Procedure, (hereinafter called ‘the Procedure’) and that the dispute or difference is suitable for Conciliation, the President of the ACA will appoint a Conciliator who will proceed with the case with a minimum of delay upon the signing of the Conciliator’s Agreement and the payment of the Conciliator’s preliminary fee.

COSTS

2.03 Costs will be as follows and are subject to adjustment from time to time:

Registration charge upon making the application: £30.00 from each of the parties (total £60.00).

Conciliator’s charges: £............. per day or part of a day. Charges for the first day are payable in advance.
In addition the Conciliator is entitled to charge for his time in reading documentation together with time and expenses for travelling, subsistence, telephone, fax, e-mail, photocopying and postal charges.

All charges and expenses will be subject to VAT where applicable. The parties shall be jointly and severally responsible for the payment of the charges and expenses and will normally be expected to share them equally. Each party will be responsible for its own costs.

PROCEDURE

2.04 Prior to the Conciliation all parties will have submitted to the Conciliator and will have exchanged copies of written summaries of their cases and any relevant documentation together with the names of their representatives and any advisers who will attend the Conciliation.

2.05 The representatives of the Parties at the Conciliation must have full authority to settle the dispute or difference.

2.06 The Conciliation will take place on a day and at a location to be agreed between the Parties and the Conciliator and such additional days as shall be agreed.

2.07 The procedure at the Conciliation shall be determined by the Conciliator and may include the submission of additional evidence whether documentary or oral and site inspections. The Conciliator may also require to meet the parties separately. In such circumstances the Conciliator may not disclose to the other party any information given to him without consent.

2.08 The Conciliator may obtain legal and/or technical advice with the consent of the parties.

THE CONCLUSION OF THE CONCILIATION

2.09 If at the conclusion of the Conciliation a settlement is reached between the Parties, the terms of the settlement will be set down in writing and signed by the Parties. The Parties will undertake to give effect to such settlement forthwith in accordance with its terms. Copies of the agreement will be retained by each of the parties, the Conciliator and the Secretary General of the ACA.

2.10 If a settlement is not reached or one of the Parties withdraws, or in the opinion of the Conciliator is unlikely to be achieved, this shall be confirmed in writing by the Conciliator and the Conciliation abandoned.

2.11 All Parties reserve their respective rights should a settlement not be reached.

CONFIDENTIALITY AND IMMUNITY

2.12 The Parties and the Conciliator undertake to each other and agree that:

i. the entire Conciliation procedure will be kept confidential.

ii. the Parties, their representatives and advisers and the Conciliator shall keep confidential all statements and all other matters whether written or oral including any settlement agreement relating to the Conciliation except insofar as disclosure is necessary to implement and enforce the settlement agreement.

iii. the process of the Conciliation shall be treated on a without prejudice basis. All submissions and statements whether written or oral and produced for the purposes of the Conciliation shall be inadmissible and not subject to discovery in any subsequent proceedings. Evidence which is otherwise admissible or discoverable will not be subject to this exclusion. The Parties shall not have access to any notes made by the Conciliator during the course of the proceedings.

2.13 The Conciliator shall not be required to act as an Adjudicator or Arbitrator in any subsequent proceedings nor shall he be called as a witness in any subsequent proceedings.

2.14 The Parties also agree that neither the ACA nor the Conciliator nor their agents or employees shall be liable for anything done or omitted in the discharge or purported discharge of their functions.
THE CONCILIATOR’S AGREEMENT

This AGREEMENT is made on the ............................................ day of ....................................................... 20.........

Between .................................................................................................................................................................( first party)
of ...........................................................................................................................................................................
and ...........................................................................................................................................................................
(second party)
of ...........................................................................................................................................................................
and (where there is a third party) ...............................................................................................................................
of ...............................................................................................................................................................................

(hereinafter called ‘the Parties’) of the one part
and...........................................................................................................................................................................

of ...............................................................................................................................................................................
(herinafter called ‘the Conciliator’) of the other part.

A dispute or difference having arisen between the Parties in connection with ..............................................
..............................................................................................................................................................................

The Parties have agreed that the dispute or difference shall be considered under the Rules and Conditions of the ACA
Conciliation Procedure (1998) and have agreed to the appointment of the Conciliator and have asked him to act under
the Rules and Conditions of the Procedure.

This agreement shall be governed by and construed in accordance with English law under the jurisdiction of the
English Courts.

IT IS NOW AGREED as follows:-

(i) The Conciliator hereby accepts the appointment and agrees to conduct the Conciliation in
accordance with the said Procedure.
(ii) The Conciliator shall be paid at the rate of £.............. per day or part of a day during the
course of the Conciliation. An amount of £............. will become due upon the signing of
this agreement.
(iii) The Conciliator shall be reimbursed in respect of all disbursements properly incurred in
connection with the Conciliation.
(iv) The Parties will be jointly and severally responsible for the payment of the costs and
disbursements.

SIGNED

First Party................................................................. Second Party.................................................................
on behalf of:............................................................... on behalf of:...............................................................
Witness:........................................................................ Witness:........................................................................

Third Party
(where applicable)................................................................. The Conciliator.................................................................
on behalf of:.................................................................
Witness:........................................................................

APPENDIX B