

WEST SUSSEX COUNTY COUNCIL (the "Employer")  
 CAPITAL & ASSET MANAGEMENT DATE: January 2012  
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**BCD4 MINOR WORKS BUILDING CONTRACT  
 COMPLETION OF CONTRACT DOCUMENTS AND APPENDICES**

**REFERENCE**

**GENERALLY:**

THIS DIRECTIVE IS APPLICABLE TO THE MAJORITY OF SCHEMES BUT IT WILL NOT NECESSARILY BE APPROPRIATE TO ALL WORKS AND THEREFORE ON EACH SCHEME IT WILL BE NECESSARY TO CHECK THE SPECIFIC REQUIREMENTS.

In order to comply with the Housing Grants, Construction and Regeneration Act 1996 as amended by Part 8 of the Local Democracy, Economic Development and Construction Act 2009, the form of contract to be used on the Employer's schemes will be the Joint Contracts Tribunal Limited (JCT) 2011 suite and will incorporate the latest published amendments current at the date the tender documents are issued.

In order to provide for the Employer's new payment requirements, the payment provisions will be amended by this directive as detailed below in the 'Employer's Schedule of Contract Amendments (January 2012)' (clauses 4.3 - 4.9 inclusive). In accordance with clause 4.3.2, the Contractor's Invoice (and where so required in clause 4.8.2) MUST contain the relevant project purchase order number, the project name and address, the project number and the Project Officer's name and must be sent via e-mail to [ctg.invoicing@westsussex.gov.uk](mailto:ctg.invoicing@westsussex.gov.uk) and copied to [invoices@westsussex.gov.uk](mailto:invoices@westsussex.gov.uk). These amendments comply with the amended Construction Act and as a result, the amended Scheme for Construction Contracts will not apply by default in respect of the payment provisions. The 'Employer's Schedule of Contract Amendments (January 2012)' makes other amendments to the JCT standard form and must be appended to every contract.

Within every contract the following clauses must be inserted within the preambles or preliminaries section.

- i) Before commencing any works on site the contractor must familiarise themselves with any guidance documents, files or procedures relating to health and safety which have been issued by and or apply specifically to the particular Employer Service or premises where the works are to be carried out.
- ii) The Employer reserves the right under any contract for its qualified Health and Safety staff to access the site for the purposes of monitoring and recording the contractor's health and safety provisions and the interaction with existing occupants of the Employer's adjacent premises.

**COMPLETION OF DOCUMENTS:**

Where a deletion is required, the following terms and conditions are applicable to the JCT MINOR WORKS BUILDING CONTRACT 2011 (MW) contract and should be amended as appropriate for other types of JCT Minor Works contract. Guidance should be sought from the Employer if required.

**J.C.T. MINOR WORKS BUILDING CONTRACT (MW) – 2011**

1. **Recitals 1-7**
2. **Articles 1-9**

**BCD4 MINOR WORKS BUILDING CONTRACT**

<p>A If only Regulations 7 and 13 of the CDM Regulations apply, delete articles 4&amp;5.</p> <p>B Article 7 to apply see Contract Particulars.</p> <p>C Insert new Article 9 – see Employer’s Schedule of Contract Amendments (January 2012).</p>	<p><b>REFERENCE Articles 4&amp;5</b></p> <p><b>Article 7, CL 7.3 and Schedule 1 Article 9</b></p> <p><b>Fourth Recital &amp; Schedule 2</b></p> <p><b>4<sup>th</sup> Recital &amp; CL 4.2 7<sup>th</sup> Recital &amp; Schedule 3</b></p> <p><b>Article 7 and Schedule 1</b></p> <p><b>CL 2.2</b></p> <p><b>CL 2.2</b></p> <p><b>CL 2.8</b></p> <p><b>CL 2.10</b></p> <p><b>CL 4.3</b></p> <p><b>CL 4.4</b></p> <p><b>CL 4.8.1</b></p> <p><b>CL 4.11 and Schedule 2</b></p> <p><b>CL 5.3.2</b></p> <p><b>CL 5.4A, 5.4B &amp; 5.4C</b></p>
<p><b>3. Contract Particulars</b></p>	
<p>A Base Date: Insert a finite date. Normally ten days prior to that which the tenders are due to be returned. DO NOT insert a statement that the base date is to be fixed a number of days prior to the date set for the return of tenders.</p> <p>B Construction Industry Scheme: delete ‘is not a Contractor’</p> <p>C Supplemental provisions:   Paragraph 1 Applies  Paragraph 2 Applies  Paragraph 3 Applies  Paragraph 4 Applies  Paragraph 5 Applies  Paragraph 6 Applies The Employer’s Nominee will be ‘Head of Capital and Asset Management’.</p> <p>D Arbitration: Article 7 and Schedule 1 (arbitration) apply – delete ‘do not apply’.</p> <p>E Date for Commencement of the Works: A finite date in accordance with the latest agreed programme is to be inserted prior to the issue of the tendering documents.</p> <p>F Date for Completion: A finite date in accordance with the latest agreed programme is to be inserted prior to the issue of the tendering documents.</p> <p>G Liquidated Damages: Insert a rate per week calculated in accordance with the rules set out in Directive BCD.2.</p> <p>H Rectification Period(s): Normally “3 months”, but “6 months” may be appropriate for some schemes.</p> <p>I Percentage of the total value of work etc: insert 95 per cent.</p> <p>J Percentage of the total amount to be paid to the Contractor: insert 97.5 per cent.</p> <p>K Supply of documentation: Insert 3 months.</p> <p>L Schedule 2 Fluctuations Option: applies.</p> <p>M Percentage addition for Fluctuations Option: Insert “zero per cent”.</p> <p>N Contractor’s Insurance – injury to persons or property (See Directive BCD.1.)</p> <p>O Insurance of the Works: For new buildings clause 5.4A applies, delete clauses 5.4B and 5.4C. For alterations or extensions to an existing building, delete clauses 5.4A, 5.4B and 5.4C and insert new clause: “The Employer will not take out or maintain a separate Joint</p>	<p><b>Fourth Recital &amp; Schedule 2</b></p> <p><b>4<sup>th</sup> Recital &amp; CL 4.2 7<sup>th</sup> Recital &amp; Schedule 3</b></p> <p><b>Article 7 and Schedule 1</b></p> <p><b>CL 2.2</b></p> <p><b>CL 2.2</b></p> <p><b>CL 2.8</b></p> <p><b>CL 2.10</b></p> <p><b>CL 4.3</b></p> <p><b>CL 4.4</b></p> <p><b>CL 4.8.1</b></p> <p><b>CL 4.11 and Schedule 2</b></p> <p><b>CL 5.3.2</b></p> <p><b>CL 5.4A, 5.4B &amp; 5.4C</b></p>

#### BCD4 MINOR WORKS BUILDING CONTRACT

Names Policy for All Risks Insurance of the Works, or a Joint Names Policy to insure the existing structures and their contents owned by him for which he is responsible against loss or damage by the Specified Perils. The Employer does, however, maintain "Works in Progress" insurance cover." (See Directive BCD.1). Alternatively, for alterations or extensions to an existing building, clause 5.4C applies, delete clauses 5.4A and 5.4B.

- P Percentage to cover professional fees: Insert "16%"
- Q Adjudication – Nominator of Adjudicator – President or Vice President: Royal Institute of British Architects". Delete: Others as listed.
4. R Arbitration– Appointer of Arbitrator - President or Vice President: Chartered Institute of Arbitrators. Delete: Others as listed.

#### REFERENCE

CL 5.4A.1 &  
5.4B.1.2  
CL 7.2

Schedule 1  
(paragraph  
2.1)

#### EMPLOYER'S SCHEDULE OF CONTRACT AMENDMENTS (January 2012)

This Contract shall incorporate all the provisions of the JCT Minor Works Building Contract 2011 except that the Recitals, Articles, Contract Particulars and Conditions shall be amended by this Schedule of Employer's Contract Amendments (January 2012) and shall be construed as varied accordingly.

The definitions in the JCT Minor Works Building Contract 2011 edition have the same meaning in this Employer's Schedule of Contract Amendments, unless the meaning given in the JCT Minor Works Building Contract 2011 edition is different to, or conflicts with, the meaning given in this Employer's Schedule of Contract Amendments, in which case this Employer's Schedule of Contract Amendments shall prevail.

Without prejudice to the above, in case of any difference, discrepancy or conflict between this Employer's Schedule of Contract Amendments and the JCT Minor Works Building Contract 2011 edition, this Employer's Schedule of Contract Amendments shall prevail.

#### ARTICLES

##### **INSERT NEW ARTICLE 9:**

##### **"Contractor's Parent Company Guarantee or Performance Bond or Deposit by Way of Security"**

"If the Contract Sum is £250,000 or more, the Contractor shall, no later than the date of this Contract, procure the execution and delivery of a parent company guarantee in favour of the Employer in the form included within the Employer's Requirements. The parent company guarantee shall be executed and delivered by [NAME AND COMPANY NUMBER OF CONTRACTOR'S PARENT COMPANY]. If the Contractor does not procure execution and delivery of the parent company guarantee, then, notwithstanding any other term of this Contract, the Employer may deduct £[AMOUNT] from the sums that would otherwise be due to the Contractor under this Contract."

OR:

"The Contractor shall, no later than the date of this Contract, procure the execution and delivery of a performance bond in favour of the Employer in the form included within the Employer's Requirements. The bond amount shall be no less than 10% of the Contract Sum. The bond shall be executed and delivered by a surety approved by the Employer, acting reasonably. In the event of the Surety becoming bankrupt or insolvent or compounding with his or their creditors, the Contractor shall, upon being required by the

Article 9

**BCD4 MINOR WORKS BUILDING CONTRACT**

Employer to do so, enter into a new bond with a fresh Surety in the same sum. If the Contractor does not procure execution and delivery of the bond, then, notwithstanding any other term of this Contract, the Employer may deduct £[AMOUNT] from the sums that would otherwise be due to the Contractor under this Contract."

"The cost of providing the performance bond is to be entered as a separate total, together with the name and address of the proposed Surety. The name and address of a broker or other intermediary will not be accepted."

**NB** the Employer to select either a bond OR a parent company guarantee for inclusion in the Employer's Requirements having regard to the prevailing financial circumstances. [If the Employer selects a bond, the Contractor may elect to deposit the bond amount with the Employer's bank in lieu of a bond. In such circumstances, the Contractor shall, no later than the date of this Contract, enter into an Agreement for Deposit by Way of Security with the Employer in the form included within the Employer's Requirements to deposit an amount which shall be no less than 10% of the Contract Sum into the Employer's bank account. If the Contractor does not enter into the Agreement for Deposit by Way of Security, notwithstanding any other term of this Contract, the Employer may deduct £[AMOUNT] from the sums that would otherwise be due to the Contractor under this Contract.

Note: the deposit in lieu of a bond is a new initiative for those companies who have excellent cash flow. The Employer's standard wording is available from Legal Services.

Note: the sum capable of being withheld, must be a genuine pre-estimate of the costs of not receiving the PCG/bond/deposit e.g. taking into account the "cost" of the additional insolvency risk or the cost of procuring some alternative protection (such as a bond if a PCG was not provided). If the Employer seeks to withhold a sum that is disproportionate to the value of the PCG/bond/deposit, the deduction may be unenforceable.

**CONDITIONS****SECTION 1 DEFINITIONS AND INTERPRETATION****CLAUSE 1.1**

CL 1.1

Add these definitions:

"Deleterious Materials: materials or equipment that are generally accepted, or generally suspected, in the construction industry at the relevant time as posing a threat to the health and safety of any person; or posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works; or reducing, or possibly reducing, the normal life expectancy of the Works or any part or component of the Works; or not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément. For the avoidance of doubt, Deleterious Materials includes, but is not limited to, the following:

- i) High alumina cement concrete.
- ii) Cement containing added calcium chloride as a setting agent.
- iii) Crocidolite.
- iv) Asbestos products.

## BCD4 MINOR WORKS BUILDING CONTRACT

## REFERENCE

- v) Woodwool slabs in permanent shuttering form.
- vi) Polyisocyanurate or polyurethane foam.
- vii) Calcium chloride in blockwork or brickwork.
- viii) Aggregates which do not comply with BS882 and BS8100 and aggregates susceptible to alkali silica reaction.
- ix) Cement made with aggregate containing silica and/or;
- x) Calcium silicate bricks and tiles.
- xi) Lead or any products containing lead for use in drinking water systems.
- xii) Urea formaldehyde foam.
- xiii) Materials which are generally composed of mineral fibres either manmade or naturally occurring which have a diameter of 3 microns or less and/or a length of 200 microns or less or which contain any fibres not sealed or otherwise stabilised to ensure that fibre migration is prevented."

Note: ensure that Contract Documents are consistent with the Minor Works Building Contract and these amendments e.g. some draft Contract Documents may introduce conflicting requirements on the Contractor relating to Deleterious Materials.

"Environmental Laws: any law, statute, statutory instrument or legislation of the European Union having effect in the United Kingdom concerning the protection of the environment or the generation, transportation, storage, use, treatment or disposal of Hazardous Substances."

"Hazardous Substances: any natural or artificial substances (whether in solid or liquid form or in the form of a gas or vapour and whether alone or in combination with any other substances) capable of causing harm to man or any other living organism supported by the environment or damaging the environment or public health including but not limited to any controlled, hazardous, toxic or dangerous waste."

"Material: all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Works (and completed Works) and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Works (and completed Works)."

"Permitted Uses: the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, funding, disposal, letting, fitting-out, advertisement, demolition, reinstatement, extension and repair of the Works (and the completed Works)."

Note: Amendments use the definition of Material & Permitted Uses in the copyright licence (new clauses 2.12.1, 2.12.2 & 2.12.3)

"Standard of Care: all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works (insofar as the Contractor is

## BCD4 MINOR WORKS BUILDING CONTRACT

responsible for designing the Works) similar in scope and character to the Works including (but without limitation to the generality of the foregoing) not using or causing or permitting to be used any Deleterious Materials or Hazardous Substances in the Works."

### SECTION 2 CARRYING OUT THE WORKS

#### CLAUSE 2.1

Add a new sub-clause 2.1.4:

"The Contractor shall not use or cause or permit the use in the Works of any products or materials, which, at the time of use, are Deleterious Materials or Hazardous Substances. The Contractor shall immediately notify the Architect/Contract Administrator if it becomes aware of any such use."

Note: The Contractor, as the person carrying out the Works, can control what goes into the Works on the site. Therefore, new sub-clause 2.1.4 expressly refers to the Deleterious Materials/Hazardous Materials duties of the Contractor in terms that do not relate only to design liabilities.

Insert new sub-clause 2.1.5:

"The Employer requires that the Contractor complies with the following publications and West Sussex County Council Building Contract Directives (BCD):

- a) WSCC Design Guide for Sustainable Buildings.
- b) WSCC Construction Guides for Building Construction, Mechanical Engineering and Electrical Engineering.
- c) CCTV Code of Practice (revised Edition 2008) issued by Information Commissioners Office.
- d) WSCC General Policy Brief for Education Buildings"

Insert new sub-clause 2.1.6:

"The Contractor shall be deemed to have satisfied itself as to the soil and rock strata comprising the site of the Works and notwithstanding any other provision of this Contract, no matter arising from the state and condition of the soil and rock strata comprising the site Works shall give rise to any adjustment of the Contract Sum, or to any extension of time (whether under Clause 2.7 or otherwise) or to any entitlement on the part of the Contractor to terminate his employment under this Contract."

Insert new sub-clause 2.1.7:

"The Contractor shall not

- .1 do or permit to allow to be done by act or thing or omission in connection with this contract which would either cause or give proper grounds for an action to be brought against the Employer under Section 7 of the Human Rights Act 1998 or any amendment or re-enactment of that Act or
- .2 give grounds for a person to rely upon such act or thing or omission on the part of the Contractor in his defence in any proceedings brought against a third party by the Council."

## REFERENCE

CL 2.1.4

CL 2.1.5

CL 2.1.6

CL 2.1.7

## BCD4 MINOR WORKS BUILDING CONTRACT

## REFERENCE

Insert new clause 2.1.8:

CL 2.1.8

"The Contractor shall not transport to, use, generate, dispose of or install at the site of the Works any Deleterious Materials or Hazardous Substances except in accordance with Environmental Laws applicable at the time of performing the Works. The Contractor shall use the Standard of Care not to cause any release of Deleterious Materials or Hazardous Substances into, or contamination of the environment, including soil, the atmosphere, any water course or ground water, except in accordance with Environmental Laws applicable at the time of performing the Works. It is the Contractor's responsibility to comply with this Clause 2.1.8 based on the Environmental Laws in effect at the time its services are rendered."

### CLAUSE 2.10

In line 4 after "Contractor who" insert "within the following required times"

CL 2.10

Insert after fifth line at end of clause:

"The required times are:

- a) Water ingress or damp from internal services; 8 working hours
- b) Electrical and heating faults; 8 working hours
- c) Blocked drains; 8 working hours
- d) Ill-fitting doors/windows where security affected; 8 working hours
- e) Defective floor coverings or pavings; 7 working days unless in the opinion of the Employer, these represent a possible danger in which case 8 working hours
- f) All other defects which the Architect/Contract Administrator considers require attention before the end of the Rectification Period, which are not listed above, will be attended to within 5 working days or such lesser period as the Architect/Contract Administrator may reasonably require."

### NEW CLAUSE 2.11A

Add a new clause 2.11A after clause 2.11:

CL 2.11A

#### **"Snagging list and defects, shrinkages or other faults remaining at practical completion**

Clauses 2.10 and 2.11 shall apply, all other things being equal, to:

- .1 any items identified on any snagging list issued by the Architect/Contract Administrator at or around practical completion;
- .2 any defects, shrinkages or other faults in the Works at practical completion; and
- .3 any incomplete work, forming part of the Works, remaining at practical completion."

**Note:** Although a snagging list is used to identify minor works that a Contractor should carry out straight after practical completion, the JCT contracts do not include specific drafting to deal with snagging lists or minor items of incomplete work. Therefore, the amendments deal with snagging lists and envisage that any snagging list will be issued at, or straight after, practical completion. The drafting does not envisage that a snagging list is issued after practical completion during the Rectification Period.

## BCD4 MINOR WORKS BUILDING CONTRACT

### NEW CLAUSE 2.12

Insert new clause 2.12:

Clause 2.12.1:

"The Contractor grants to the Employer, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by or on behalf of Contractor for any purpose relating to the Works (and the completed Works) including, without limitation, any of the Permitted Uses."

Clause 2.12.2:

"This licence carries the right to grant sub-licences and is transferable to third parties without the Contractor's consent."

Clause 2.12.3:

"The Contractor shall have no liability for use of the Material for any purpose other than that for which it was prepared and/or provided."

Note: It is helpful to an Employer if the contract confirms that the Employer has an appropriate copyright licence, even if the Contractor has not carried out any design of the Works, it may own copyright in the layout of lists of documents or in the words and layout of an operations/maintenance manual prepared for the H&S file.

### SECTION 3 CONTROL OF THE WORKS

#### CLAUSE 3.1

Delete clause 3.1 and replace with:

##### "Right to assign

.1 The Employer may assign or otherwise transfer the benefit of this Contract to any person taking an interest in the Works or the completed Works. In this Contract, the term "Employer" shall be construed accordingly.

.2 The Employer shall notify the Contractor of any assignment within 14 days. If the Employer fails to do this, the assignment shall still be valid.

.3 The Contractor shall not contend that any person to whom the benefit of this agreement is assigned under this clause 3.1 may not recover any sum under this Contract because that person is an assignee and not a named party to this Contract.

.4 The Contractor shall not assign or charge the benefit of this Contract or any right arising under it without the Employer's prior consent, which the Employer may withhold at its absolute discretion."

Note: Assignment of rights under a contract is the complete transfer of the rights to receive the benefits accruing to one of the parties to that contract. An Assignment only transfers the rights/benefits to a new owner. The original Employer will remain liable to the Contractor for any payments due under the Contract (unless the original Employer's obligations are novated). The words "taking an interest in the Works or the Completed Works" have been included to give the Contractor some legal comfort that the benefit of the Contract will not be assigned to an inappropriate third party.

Note: JCT clause 1.6 requires any notice/communication to be in writing.

### REFERENCE

CL 2.12.1

CL 2.12.2

CL 2.12.3

CL 3.1.1

CL 3.1.2

CL 3.1.3

CL 3.1.4

## BCD4 MINOR WORKS BUILDING CONTRACT

Therefore, the requirement of s136 Law of Property Act 1925, that assignments must be in writing, should be complied with.

## REFERENCE

### NEW CLAUSE 3.11

Insert new clause 3.11:

CL 3.11

#### "Project meetings

The Contractor shall attend project meetings convened by the Architect/Contract Administrator upon reasonable notice and at reasonable intervals and representatives of the Employer and the Employer's professional consultants and any other persons authorised by the Architect/Contract Administrator shall be permitted to attend such meetings."

## SECTION 4 PAYMENT

### PROVISION FOR THE EMPLOYER'S NEW PAYMENT REQUIREMENTS (Clauses 4.3 - 4.9 inclusive)

#### CLAUSE 4.3

Delete existing clause 4.3 and replace with:

CL 4.3.1

.1 The dates for interim payments ("Interim Payment Date") to the Contractor shall be the dates occurring at intervals of 4 weeks calculated from the date of Commencement of the Works. Not later than 5 days after each Interim Payment Date the Architect/Contract Administrator shall issue an interim certificate ("Interim Certificate") for a sum equal to the percentage stated in the Contract Particulars of what he considers to be the total value as at the Interim Payment Date of :

.1 work properly executed, including any amounts ascertained or agreed under clauses 3.6 and 3.7 ; and

CL 4.3.1.1

.2 materials and goods which have reasonably and properly been brought on to the site for the purpose of the Works and are adequately protected against weather and other casualties

CL 4.3.1.2

less the total sums stated as due to the Contractor in previous Interim Certificates and any sums paid in respect of any payment notice ( as referred to Clause 4.5.1) given after the issue of the latest Interim Certificate . The Interim Certificate shall state the sum due from the Employer and the basis on which that sum has been calculated.

.2 The Contractor shall within 5 days of the date of an Interim Certificate send a valid invoice to the Employer or the Architect/Contract Administrator (containing the relevant project purchase order number) confirming the amount due within the Interim Certificate ("Contractor's Invoice"). For the purpose of the Housing Grants, Construction and Regeneration Act 1996 (as amended) the due date for payment in respect an Interim Certificate shall be the date of issue of the Contractor's Invoice.

CL 4.3.2

.3 The final date for payment pursuant to an Interim Certificate shall be 30 days from the date of issue of a Contractor's Invoice.

CL 4.3.3

#### CLAUSE 4.4

Delete existing clause 4.4 and replace with:

CL 4.4

The date for the Interim Certificate following practical completion of the Works shall be 7 days after the date of practical completion and the Architect/Contract Administrator shall not later than 5 days thereafter certify

**BCD4 MINOR WORKS BUILDING CONTRACT**

payment to the Contractor of the percentage stated in the Contract Particulars of the total sum to be paid to the Contractor under this Contract so far as then ascertainable (including any amounts ascertained or agreed under clauses 3.6 and 3.7) less the total sums stated as due to the Contractor in previous Interim Certificates and (where relevant) any sums paid in respect of any such payment notice as referred to in Clause 4.3. Interim Certificates shall thereafter be issued at intervals of 2 months (unless otherwise agreed) up to the expiration of the Rectification Period, each stating the sum due to the Contractor and the basis on which that sum has been calculated. The Contractor shall within 5 days of the date of an Interim Certificate submit a Contractor’s Invoice confirming the amount due in the Interim Certificate. The final date for payment shall be 30 days from the date of issue of the Contractor’s invoice.

**CLAUSE 4.5**

Delete existing clause 4.5 and replace with:

.1 Not later than 5 days after the due date the Employer shall give a notice (“Payment Notice”) to the Contractor and, subject to any Pay Less Notice given by the Employer at Clause 4.5.4, the amount to be paid by the Employer shall be the amount set out in the Contractor’s Notice.

**CL 4.5.1**

.2 If an Interim Certificate is not issued in accordance with clause 4.3 or 4.4, the Contractor may at any time after the 5 day period referred to in those clauses give a payment notice to the Architect/Contract Administrator stating the sum that the Contractor considers to be or have been due to him at the due date and the basis on which that sum has been calculated (“Contractor’s Payment Notice”) which shall contain the relevant project purchase order number. In that event, the sum to be paid by the Employer shall, subject to any notice subsequently given by him under clause 4.5.4, be the sum stated as due in the Contractor’s Payment Notice.

**CL 4.5.2**

.3 Where the Contractor gives a Contractor’s Payment Notice under clause 4.5.2, the final date for payment of the sum specified in it shall for all purposes be regarded as postponed by the same number of days as the number of days after expiry of the 5 day period referred to in clause 4.5.2 that the Contractor’s payment notice is given.

**CL 4.5.3**

.4 If the Employer intends to pay less than the sum stated as due from him in the Payment Notice or, where applicable, the Contractor’s Payment Notice, he shall not later than 5 days before the final date for payment give the Contractor notice (“Pay Less Notice”) of that intention stating the sum that he considers to be due to the Contractor at the date he gives notice under this clause 4.5 and the basis on which that sum has been calculated. Where the Employer gives a Pay Less Notice, the payment to be made on or before the final date for payment shall not be less than the amount stated as due in the Pay Less Notice.

**CL 4.5.4**

.5 A notice to be given by the Employer under clause 4.5.4, 4.8.4 or 4.8.5.3 may be given on his behalf by the Architect/Contract Administrator or by any other person who the Employer notifies the Contractor as being authorised to do so.

**CL 4.5.5**

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

**CL 4.5.6**

**CLAUSE 4.6**

REFERENCE

## BCD4 MINOR WORKS BUILDING CONTRACT

"Delete existing clause 4.6 and replace with:

If the Employer fails to pay a sum, or any part of it, due to the Contractor under clause 4.3 or 4.4 by the final date for its payment, the Employer shall, in addition to any unpaid amount that should properly have been paid, pay the Contractor simple interest on that amount at the interest Rate for the period from the final date for payment until payment is made. Interest under this clause 4.6 shall be a debt due to the Contractor from the Employer. Acceptance of a payment of interest under this clause 4.6 shall not in any circumstances be construed as a waiver of the Contractor's right to proper payment of the principal amount due, to suspend performance under clause 4.7 or to terminate his employment under section 6."

### CLAUSE 4.7

Delete existing clause 4.7 and replace with:

.1 Without affecting the Contractor's other rights and remedies, if the Employer fails to pay the Contractor the sum payable in accordance with clause 4.5 (together with any VAT properly chargeable in respect of such payment) by the final date for payment and the failure continues for 7 days after the Contractor has given notice to the Employer, with a copy to the Architect/Contract Administrator, of his intention to suspend performance of any or all of his obligations under this Contract and the ground or grounds on which it is intended to suspend performance, the Contractor may suspend performance of any or all of those obligations until payment is made in full.

Note: although JCT clause 4.7.1 refers, in its final sentence, to the Contractor suspending "any or all of" its obligations, the Contractor's notice to the Employer of its intention to suspend does not mirror this wording. It would be sensible if the Contractor's notice mirrors the statutory right to suspend. Thus, "any or all of" inserted in amended sub-clause 4.7.1 after "7 days after the Contractor has given notice to the Employer, with a copy to the Architect/Contract Administrator, of his intention to suspend the performance of"

.2 Where the Contractor exercises his right of suspension under clause 4.7.1, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of the exercise of the right.

.3 Applications in respect of any such costs and expenses shall be made to the Architect/Contract Administrator and the Contractor shall with his application submit such details of the costs and expenses as are reasonably necessary to enable his entitlement to be ascertained. When ascertained or agreed, the amount shall be included in the next interim certificate. The Contractor shall, on request, submit such further details as are reasonably requested by the Architect/Contract Administrator or the Quality Surveyor."

Note: in amended sub-clause 4.7.3 "or on request" has been deleted and, at the end of the sub-clause, new sentence: "The Contractor shall, on request, submit such further details as are reasonably requested by the Architect/Contract Administrator or the Quality Surveyor." has been added so that the Contractor provides details of costs and expenses incurred at the same time as the Contractor applies for payment of those costs and expenses.

### CLAUSE 4.8

Delete existing clause 4.8 and replace with:

REFERENCE  
CL 4.6

CL 4.7.1

CL 4.7.2

CL 4.7.3

## BCD4 MINOR WORKS BUILDING CONTRACT

.1 Within the period stated in the Contract Particulars the Contractor shall supply to the Architect/Contract Administrator all documentation reasonably required for computation of the final payment which computation shall be finalised 28 days after either the date of receipt of the documentation or, if later, the date specified in the certificate under clause 2.12 ("Final Payment Computation Date"). Not later than 5 days after the Final Payment Computation Date the Architect/Contract Administrator shall issue a final certificate ("Final Certificate") certifying the sum that he considers due to the Contractor or to the Employer, as the case may be. The Final Certificate shall state the basis on which that sum has been calculated.

**REFERENCE**  
**CL 4.8.1**

.2 Not later than 5 days after the date of the Final Certificate the party to whom the balance is stated to be payable shall issue a valid invoice (containing the information required for the Contractor's Invoice) confirming the amount due within the Final Certificate ("Final Invoice"). For the purposes of the Housing Grants, Construction and Regeneration Act 1996 (as amended) the due date for payment in respect of the final payment shall be the date of issue of the Final Invoice.

**CL 4.8.2**

.3 The final date for payment shall be 28 days from the due date.

**CL 4.8.3**

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

**CL 4.8.4**

.5 If the final certificate is not issued in accordance with clause 4.8.1:

**CL 4.8.5**

.1 the Contractor may give a payment notice to the Employer which shall contain the project purchase order number ("Final Payment Notice") with a copy to the Architect/Contract Administrator stating what the Contractor considers to be the amount of the final payment due to him under this Contract and the basis of which the sum has been calculated and, subject to any notice given under clause 4.8.5.3, the final payment shall be that amount;

**CL 4.8.5.1**

.2 if the Contractor gives a Final Payment Notice under clause 4.8.5.1, the final date for payment of the sum specified in it shall for all purposes be regarded as postponed by the same number of days as the number of days after expiry of the 5 day period referred to in clause 4.8.1 that the Contractor's Final Payment notice is given;

**CL 4.8.5.2**

.3 if the Employer intends to pay less than the sum specified in the Contractor's Final Payment Notice, he shall not later than 5 days before the final date for payment give the Contractor notice of that intention in accordance with clause 4.8.4 and the payment to be made on or before the final date for payment shall not be less than the amount stated as due in the Employer's notice.

**CL 4.8.5.3**

.6 Where the payer does not give a notice under clause 4.8.4 or 4.8.5.3 he shall pay the other Party the sum stated as due to the other Party in the Final Invoice or in the Final Payment Notice under clause 4.8.4.1, as the case may be.

**CL 4.8.6**

## CLAUSE 4.9

## BCD4 MINOR WORKS BUILDING CONTRACT

Delete existing clause 4.9 and replace with:

If the payer fails to pay the final payment, or any part of it, under clause 4.8 by the final date for its payment, he shall, in addition to any unpaid amount that should properly have been paid, pay the other Party simple interest on that amount at the Interest Rate for the period from the final date for payment until payment is made. Acceptance of a payment of interest under this clause 4.9 shall not in any circumstances be construed as a waiver of any right to proper payment of the principal amount due.

(END OF PROVISION FOR THE EMPLOYER'S NEW PAYMENT REQUIREMENTS)

### SECTION 5 INJURY DAMAGE AND INSURANCE

#### **CLAUSE 5.1**

In clause 5.1, after "caused by the carrying out of the Works" insert:

"or of any other obligation pursuant to Section 2 or Section 3 of the Conditions".

**Note:** amendment widens the Contractor's scope of liability. Without amendment, the Contractor is only liable for personal injury or death arising out of the Works. Without amendment, that liability would not necessarily include the Contractor carrying out another obligation, such as a statutory obligation.

#### **CLAUSE 5.2**

In clause 5.2, after "by reason of the carrying out of the Works" insert:

"or of any other obligation pursuant to Section 2 or Section 3 of the Conditions".

**Note:** amendment widens the Contractor's scope of liability. Without amendment, the Contractor is only liable for property damage arising out of the Works. Without amendment, that liability would not necessarily include the Contractor carrying out another obligation, such as a statutory obligation.

#### **CLAUSE 5.2A**

Add new clause 5.2A after clause 5.2:

##### **"Contractor to prevent nuisance and indemnify Employer**

The Contractor shall prevent any nuisance (including any noisy working operations) or other interference with the rights of any adjoining owner, tenant or occupier or any statutory undertaker, of which the Contractor is or ought reasonably to have been aware, arising out of the carrying out of the Works. The Contractor shall assist the Employer in defending any action or proceedings in relation to any such nuisance or interference. The Contractor shall be responsible for and shall indemnify the Employer from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the Contractor in performing its obligations under this clause 5.2A."

**Note:** amendment to help guard against a neighbour delaying or preventing Works by seeking an injunction to prevent a nuisance. The amendment seeks

**REFERENCE**  
**CL 4.9**

**CL 5.1**

**CL 5.2**

**CL 5.2A**

**BCD4 MINOR WORKS BUILDING CONTRACT**  
a full indemnity against a nuisance claim.

**REFERENCE**

**CLAUSE 5.2B**

Add new clause 5.2B after new clause 5.2A:

**CL 5.2B**

**"Contractor to prevent trespass to neighbours**

Without prejudice to clauses 5.1, 5.2 and 5.2A, the Contractor shall ensure that there is no trespass by the Contractor or the Contractor's Persons (including the oversailing of tower crane jibs) on or over any adjoining or neighbouring property arising out of the Works and shall take all reasonable safety and other measures to prevent damage or injury to any persons including the occupiers of adjoining or neighbouring property and members of the public. If carrying out the Works or any obligation pursuant to clause 2.10 would otherwise be an act of trespass, the Contractor shall, at no cost to the Employer, obtain the prior written agreement of the owners or occupiers of any adjoining or neighbouring property to that act. That agreement shall be subject to the Employer's approval before its completion, such approval not to be unreasonably withheld or delayed. The Contractor shall comply with any conditions contained in that agreement, at no cost to the Employer, and shall not be entitled to any extension of time as a result of any conditions contained in that agreement."

**SECTION 6 TERMINATION**

**CLAUSE 6.5**

In sub-clause 6.5.2.3 at the start of the sub-clause, after "the Employer may", insert:

**CL 6.5.2.3**

", at the Contractor's expense,"

**Note:** amendment makes it clear that some of the Employer's costs incurred after the Contractor's insolvency should be paid by the Contractor. In reality, the Contractor is unlikely to pay those sums, but if other sums are due to the Contractor for Works performed prior to insolvency, the Employer may withhold these additional costs and expenses.

**CLAUSE 6.6**

In clause 6.6, after "acting on his behalf", insert:

**CL 6.6**

"or associated with him",

and at the end of the clause, after the full stop, insert:

"For the purposes of this clause 6.6, whether a person is associated with another person shall be determined in accordance with section 8 of the Bribery Act 2010 and a person associated with the Contractor includes, but is not limited to, any sub-contractor of the Contractor."

**Note:** this amendment is intended to help ensure that "associated persons" is interpreted in the same way under the Contract as under the Bribery Act 2010.

**INSERT NEW CLAUSE 6.7.5:**

"Upon any termination of the Contractor's employment or if the Contract is

**CL 6.7.5**

**BCD4 MINOR WORKS BUILDING CONTRACT**

terminated or discharged and notwithstanding that the validity of termination or discharge is disputed by the Contractor, the Contractor shall vacate the site having carried out all necessary measures to ensure the Works and the site are left in a condition whereby:

- i) they present no hazard to any personnel and the general public;
- ii) they are compliant with all Health and Safety legislation; and
- iii) they are suitably secured to prevent unauthorised access and the removal of any unfixed materials and any plant.

The Contractor shall promptly deliver to the Employer possession of the Site and of the Works."

**CLAUSE 6.11**

Delete sub-clause 6.11.2.3

Note: Employer's argument would be that the Contractor will be paid enough, on termination, under sub-clauses 6.11.2.1 and 6.11.2.2 and that paying the Contractor additional "loss and expense" would be too much and could, for example, include a loss of profit claim.

Delete sub-clause 6.11.3.

Note: consequential amendment; clause 6.11.3 is not required as clause 6.11.2.3 has been deleted.

**SECTION 8 FREEDOM OF INFORMATION DATA PROTECTION CRIME AND DISORDER**

Insert new section 8

**CLAUSE 8.1 FREEDOM OF INFORMATION**

Insert new sub-clause 8.1.1:

"The Contractor acknowledges that the Employer is subject to the requirements of the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations and the National Audit Act 1983 and further acknowledges the statutory obligations on and commitment of the Employer to open government and public access to information and, accordingly, shall assist and cooperate with the Employer to enable the Employer to comply with its information disclosure and audit obligations."

Insert new sub-clause 8.1.2:

"The Contractor shall and shall procure that its Sub-contractors shall:

- (a) transfer to the Employer all requests for information that it receives as soon as practicable and in any event within two (2) working days of receiving a request for information;
- (b) provide the Employer with a copy of all Information in its possession or power in the form that the Employer requires within five (5) working days (or such other period as the Employer may

REFERENCE	
CL 6.11.2.3	
CL 6.11.3	
CL 8.1.1	
CL 8.1.2	

**BCD4 MINOR WORKS BUILDING CONTRACT**  
reasonably specify) of the Employer's request; and

(c) provide all necessary assistance as reasonably requested by the Employer to enable the Employer to respond to the request for information within the time for compliance set out in the FOIA or the Environmental Information Regulations or the National Audit Act 1983."

Insert new sub-clause 8.1.3:

"The Employer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the commercially sensitive information and/or any other information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations or the Environmental Information Regulations or the National Audit Act 1983."

Insert new sub-clause 8.1.4:

"In no event shall the Contractor respond directly to a request for information unless expressly authorised to do so by the Employer."

Insert new sub-clause 8.1.5:

"The Contractor acknowledges that (notwithstanding the provisions of this clause 1.5 the Employer may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code") and any directions of the Information Commissioner, be obliged under the FOIA, or the Environmental Information Regulations, or the Environmental Information Regulations or the National Audit Act 1983 to disclose information concerning the Contractor or the Works:

- (a) in certain circumstances without consulting the Contractor; or
- (b) following consultation with the Contractor and having taken their views into account;

provided always that where sub-clause (a) above applies the Employer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure."

Insert new sub-clause 8.1.6:

"The Contractor shall ensure that all Information is retained for disclosure and shall permit the Employer to inspect such records as may be reasonably requested from time to time."

Insert new sub-clause 8.1.7:

"In the event that the Contractor incurs or would incur costs in actively locating, retrieving and extracting information in assisting the Employer to respond to a request for information, the Contractor must inform the Employer of such likely costs and the Employer will inform the Contractor in writing whether or not it still requires the Contractor to assist with complying with the request. If the Employer informs the Contractor to proceed with the request, the Employer will reimburse the Contractor for such reasonable and necessary costs as the Contractor incurs but only to the extent that the Employer itself is entitled to reimbursement of such costs in accordance with and to the level set by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004."

Insert new sub-clause 8.1.8:

REFERENCE
CL 8.1.3
CL 8.1.4
CL 8.1.5
CL 8.1.6
CL 8.1.7
CL 8.1.8

**BCD4 MINOR WORKS BUILDING CONTRACT**

"The Contractor acknowledges that identification of any matter to the Employer by the Contractor as commercially sensitive information is of indicative value only and that the Employer may be obliged to disclose it in accordance with this clause."

Insert new sub-clause 8.1.9:

"The Contractor acknowledges that the Employer is subject to transparency obligations which require the Employer to publish certain contract information and materials. Accordingly, and notwithstanding any other term of this Contract, the Contractor hereby gives its consent for the Council to publish this Contract and its schedules in its entirety, including from time to time agreed changes to the Contract (save and except such matters as the Employer is by law able to exclude as being confidential, commercially sensitive, or otherwise not in the public interest to disclose), to the general public in whatever form the Employer decides. The Contractor shall render such assistance and cooperate with the Employer to enable such publication, including, if the Employer so requires, assisting the Employer at no additional costs to the Employer in the redaction of such contract documents prior to publication to eliminate material considered confidential, commercially sensitive, or otherwise not in the public interest to disclose."

**CLAUSE 8.2 DATA PROTECTION**

Insert new sub-clause 8.2.1:

"The Contractor shall comply in all respects with the provisions of the Data Protection Act 1998 (the Act) and will indemnify the Employer against all actions cost expenses claims proceedings and demands which may be made or brought against the Employer for breach of statutory duty under the Act which arises from the use, disclosure or transfer of personal data by the Contractor and his servants, employees and agents."

Insert new sub-clause 8.2.2:

"The Employer is a Data Controller under the Act and is committed to protect the privacy of all persons by processing personal information in a manner which meets the requirement of the Act."

**CLAUSE 8.3 CRIME AND DISORDER ACT**

Insert new clause 8.3:

"The Contractor shall comply on the Employer's behalf with the provisions of Section 17 of the Crime & Disorder Act 1998 and will indemnify the Employer against all actions, costs, expenses, proceedings and demands which may be brought against the Employer for breach of statutory duty under the Act which arises upon acts or omissions by the Contractor, its servants, employees and agents under the Contract."

5. **EXECUTION OF CONTRACTS:**

Contracts will be executed as a Deed.

**REFERENCE**

**CL 8.1.9**

**CL 8.2.1**

**CL 8.2.2**

**CL 8.3**

**Attestation**

*[Note: (to be deleted):*

*Insert text and delete square brackets/text as appropriate to the individual project requirements and append the completed Employer's Schedule of Contract Amendments to the JCT Contract]*

**EMPLOYER'S SCHEDULE OF CONTRACT AMENDMENTS (January 2012)  
JCT MINOR WORKS BUILDING CONTRACT (MW) 2011**

**[insert PROJECT NAME AND PROJECT NUMBER]**

This Contract shall incorporate all the provisions of the JCT Minor Works Building Contract 2011 except that the Recitals, Articles, Contract Particulars and Conditions shall be amended by this Schedule of Employer's Contract Amendments (January 2012) and shall be construed as varied accordingly.

The definitions in the JCT Minor Works Building Contract 2011 edition have the same meaning in this Employer's Schedule of Contract Amendments, unless the meaning given in the JCT Minor Works Building Contract 2011 edition is different to, or conflicts with, the meaning given in this Employer's Schedule of Contract Amendments, in which case this Employer's Schedule of Contract Amendments shall prevail.

Without prejudice to the above, in case of any difference, discrepancy or conflict between this Employer's Schedule of Contract Amendments and the JCT Minor Works Building Contract 2011 edition, this Employer's Schedule of Contract Amendments shall prevail.

ARTICLES

**INSERT NEW ARTICLE 9:**

**"Contractor's Parent Company Guarantee or Performance Bond or Deposit by Way of Security"**

*["If the Contract Sum is £250,000 or more, the Contractor shall, no later than the date of this Contract, procure the execution and delivery of a parent company guarantee in favour of the Employer in the form included within the Employer's Requirements. The parent company guarantee shall be executed and delivered by [insert name and company number of Contractor's parent company]. If the Contractor does not procure execution and delivery of the parent company guarantee, then, notwithstanding any other term of this Contract, the Employer may deduct £[insert amount] from the sums that would otherwise be due to the Contractor under this Contract."]*

OR:

*["The Contractor shall, no later than the date of this Contract, procure the execution and delivery of a performance bond in favour of the Employer in the form included within the Employer's Requirements. The bond amount shall be no less than 10% of the Contract Sum. The bond shall be executed and delivered by a surety approved by the Employer, acting reasonably. In the event of the Surety becoming bankrupt or insolvent or compounding with his or their creditors, the Contractor shall, upon being required by the Employer to do so, enter into a new bond with a fresh Surety in the same sum. If the Contractor does not procure execution and delivery of the bond, then, notwithstanding any other term of this Contract, the Employer may deduct £[insert amount] from the sums that would otherwise be due to the Contractor under this Contract."]*

*"The cost of providing the performance bond is to be entered as a separate total, together with the name and address of the proposed Surety. The name and address of a broker or other intermediary will not be accepted."*

**NB** The Employer to select either a bond OR a parent company guarantee for inclusion in the Employer's Requirements having regard to the prevailing financial circumstances. If the

Employer selects a bond, the Contractor may elect to deposit the bond amount with the Employer's bank in lieu of a bond. In such circumstances, the Contractor shall, no later than the date of this Contract, enter into an Agreement for Deposit by Way of Security with the Employer in the form included within the Employer's Requirements to deposit an amount which shall be no less than 10% of the Contract Sum into the Employer's bank account. If the Contractor does not enter into the Agreement for Deposit by Way of Security, notwithstanding any other term of this Contract, the Employer may deduct £[insert amount] from the sums that would otherwise be due to the Contractor under this Contract.]

## **CONDITIONS**

### **SECTION 1 DEFINITIONS AND INTERPRETATION**

#### **CLAUSE 1.1**

Add these definitions:

"Deleterious Materials: materials or equipment that are generally accepted, or generally suspected, in the construction industry at the relevant time as posing a threat to the health and safety of any person; or posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works; or reducing, or possibly reducing, the normal life expectancy of the Works or any part or component of the Works; or not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément. For the avoidance of doubt, Deleterious Materials includes, but is not limited to, the following:

- i) High alumina cement concrete.
- ii) Cement containing added calcium chloride as a setting agent.
- iii) Crocidolite.
- iv) Asbestos products.
- v) Woodwool slabs in permanent shuttering form.
- vi) Polyisocyanurate or polyurethane foam.
- vii) Calcium chloride in blockwork or brickwork.
- viii) Aggregates which do not comply with BS882 and BS8100 and aggregates susceptible to alkali silica reaction.
- ix) Cement made with aggregate containing silica and/or;
- x) Calcium silicate bricks and tiles.
- xi) Lead or any products containing lead for use in drinking water systems.
- xii) Urea formaldehyde foam.
- xiii) Materials which are generally composed of mineral fibres either manmade or naturally occurring which have a diameter of 3 microns or less and/or a length of 200 microns or less or which contain any fibres not sealed or otherwise stabilised to ensure that fibre migration is prevented."

"Environmental Laws: any law, statute, statutory instrument or legislation of the European Union having effect in the United Kingdom concerning the protection of the environment or the generation, transportation, storage, use, treatment or disposal of Hazardous Substances."

"Hazardous Substances: any natural or artificial substances (whether in solid or liquid form or in the form of a gas or vapour and whether alone or in combination with any other substances) capable of causing harm to man or any other living organism supported by the environment or damaging the environment or public health including but not limited to any controlled, hazardous, toxic or dangerous waste."

"Material: all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Works (and completed Works) and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Works (and completed Works)."

"Permitted Uses: the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, funding, disposal, letting, fitting-out, advertisement, demolition, reinstatement, extension and repair of the Works (and the completed Works)."

"Standard of Care: all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works (insofar as the Contractor is responsible for designing the Works) similar in scope and character to the Works including (but without limitation to the generality of the foregoing) not using or causing or permitting to be used any Deleterious Materials or Hazardous Substances in the Works."

## SECTION 2 CARRYING OUT THE WORKS

### **CLAUSE 2.1**

Add a new sub-clause 2.1.4:

"The Contractor shall not use or cause or permit the use in the Works of any products or materials, which, at the time of use, are Deleterious Materials or Hazardous Substances. The Contractor shall immediately notify the Architect/Contract Administrator if it becomes aware of any such use."

Insert new sub-clause 2.1.5:

"The Employer requires that the Contractor complies with the following publications and West Sussex County Council Building Contract Directives (BCD):

- a) WSCC Design Guide for Sustainable Buildings.
- b) WSCC Construction Guides for Building Construction, Mechanical Engineering and Electrical Engineering.
- c) CCTV Code of Practice (revised Edition 2008) issued by Information Commissioners Office.
- d) WSCC General Policy Brief for Education Buildings"

Insert new sub-clause 2.1.6:

"The Contractor shall be deemed to have satisfied itself as to the soil and rock strata comprising the site of the Works and notwithstanding any other provision of this Contract, no matter arising from the state and condition of the soil and rock strata comprising the site Works shall give rise to any adjustment of the Contract Sum, or to any extension of time (whether under Clause 2.7 or otherwise) or to any entitlement on the part of the Contractor to terminate his employment under this Contract."

Insert new sub-clause 2.1.7:

"The Contractor shall not

- .1 do or permit to allow to be done by act or thing or omission in connection with this contract which would either cause or give proper grounds for an action to be brought against the Employer under Section 7 of the Human Rights Act 1998 or any amendment or re-enactment of that Act or
- .2 give grounds for a person to rely upon such act or thing or omission on the part of the Contractor in his defence in any proceedings brought against a third party by the Council."

Insert new clause 2.1.8:

"The Contractor shall not transport to, use, generate, dispose of or install at the site of the Works any Deleterious Materials or Hazardous Substances except in accordance with Environmental Laws applicable at the time of performing the Works. The Contractor shall use the Standard of Care not to cause any release of Deleterious Materials or Hazardous Substances into, or contamination of the environment, including soil, the atmosphere, any water course or ground water, except in accordance with Environmental Laws applicable at the time of performing the Works. It is the Contractor's responsibility to comply with this Clause 2.1.8 based on the Environmental Laws in effect at the time its services are rendered."

#### **CLAUSE 2.10**

In line 4 after "Contractor who" insert: "within the following required times"

Insert after fifth line at end of clause:

"The required times are:

- a) Water ingress or damp from internal services; 8 working hours
- b) Electrical and heating faults; 8 working hours
- c) Blocked drains; 8 working hours
- d) Ill-fitting doors/windows where security affected; 8 working hours
- e) Defective floor coverings or pavings; 7 working days unless in the opinion of the Employer, these represent a possible danger in which case 8 working hours
- f) All other defects which the Architect/Contract Administrator considers require attention before the end of the Rectification Period, which are not listed above, will be attended to within 5 working days or such lesser period as the Architect/Contract Administrator may reasonably require."

#### **NEW CLAUSE 2.11A**

Add a new clause 2.11A after clause 2.11:

##### **"Snagging list and defects, shrinkages or other faults remaining at practical completion**

Clauses 2.10 and 2.11 shall apply, all other things being equal, to:

- .1 any items identified on any snagging list issued by the Architect/Contract Administrator at or around practical completion;
- .2 any defects, shrinkages or other faults in the Works at practical completion; and
- .3 any incomplete work, forming part of the Works, remaining at practical completion."

#### **NEW CLAUSE 2.12**

Insert new clause 2.12:

Clause 2.12.1:

"The Contractor grants to the Employer, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by or on behalf of Contractor for any purpose relating to the Works (and the completed Works) including, without limitation, any of the Permitted Uses."

Clause 2.12.2:

"This licence carries the right to grant sub-licences and is transferable to third parties without the Contractor's consent."

Clause 2.12.3:

"The Contractor shall have no liability for use of the Material for any purpose other than that for which it was prepared and/or provided."

### SECTION 3 CONTROL OF THE WORKS

#### **CLAUSE 3.1**

Delete clause 3.1 and replace with:

##### **"Right to assign**

.1 The Employer may assign or otherwise transfer the benefit of this Contract to any person taking an interest in the Works or the completed Works. In this Contract, the term "Employer" shall be construed accordingly.

.2 The Employer shall notify the Contractor of any assignment within 14 days. If the Employer fails to do this, the assignment shall still be valid.

.3 The Contractor shall not contend that any person to whom the benefit of this agreement is assigned under this clause 3.1 may not recover any sum under this Contract because that person is an assignee and not a named party to this Contract.

.4 The Contractor shall not assign or charge the benefit of this Contract or any right arising under it without the Employer's prior consent, which the Employer may withhold at its absolute discretion."

#### **NEW CLAUSE 3.11**

Insert new clause 3.11:

##### **"Project meetings**

The Contractor shall attend project meetings convened by the Architect/Contract Administrator upon reasonable notice and at reasonable intervals and representatives of the Employer and the Employer's professional consultants and any other persons authorised by the Architect/Contract Administrator shall be permitted to attend such meetings."

### SECTION 4 PAYMENT

#### PROVISION FOR THE EMPLOYER'S NEW PAYMENT REQUIREMENTS (Clauses 4.3 - 4.9 inclusive)

#### **CLAUSE 4.3**

Delete existing clause 4.3 and replace with:

.1 The dates for interim payments ("Interim Payment Date") to the Contractor shall be the dates occurring at intervals of 4 weeks calculated from the date of Commencement of the Works. Not later than 5 days after each Interim Payment Date the Architect/Contract Administrator shall issue an interim certificate ("Interim Certificate" ) for a sum equal to the percentage stated in the Contract Particulars of what he considers to be the total value as at the Interim Payment Date of :

- .1 work properly executed, including any amounts ascertained or agreed under clauses 3.6 and 3.7 ; and
- .2 materials and goods which have reasonably and properly been brought on to the site for the purpose of the Works and are adequately protected against weather and other casualties

less the total sums stated as due to the Contractor in previous Interim Certificates and any sums paid in respect of any payment notice ( as referred to Clause 4.5.1) given after the issue of the latest Interim Certificate . The Interim Certificate shall state the sum due from the Employer and the basis on which that sum has been calculated.

.2 The Contractor shall within 5 days of the date of an Interim Certificate send a valid invoice to the Employer or the Architect/Contract Administrator (containing the relevant project purchase order number) confirming the amount due within the Interim Certificate ("Contractor's Invoice"). For the purpose of the Housing Grants, Construction and Regeneration Act 1996 (as amended) the due date for payment in respect an Interim Certificate shall be the date of issue of the Contractor's Invoice.

.3 The final date for payment pursuant to an Interim Certificate shall be 30 days from the date of issue of a Contractor's Invoice.

#### **CLAUSE 4.4**

Delete existing clause 4.4 and replace with:

The date for the Interim Certificate following practical completion of the Works shall be 7 days after the date of practical completion and the Architect/Contract Administrator shall not later than 5 days thereafter certify payment to the Contractor of the percentage stated in the Contract Particulars of the total sum to be paid to the Contractor under this Contract so far as then ascertainable (including any amounts ascertained or agreed under clauses 3.6 and 3.7) less the total sums stated as due to the Contractor in previous Interim Certificates and (where relevant) any sums paid in respect of any such payment notice as referred to in Clause 4.3. Interim Certificates shall thereafter be issued at intervals of 2 months (unless otherwise agreed) up to the expiration of the Rectification Period, each stating the sum due to the Contractor and the basis on which that sum has been calculated. The Contractor shall within 5 days of the date of an Interim Certificate submit a Contractor's Invoice confirming the amount due in the Interim Certificate. The final date for payment shall be 30 days from the date of issue of the Contractor's invoice.

#### **CLAUSE 4.5**

Delete existing clause 4.5 and replace with:

.1 Not later than 5 days after the due date the Employer shall give a notice ("Payment Notice") to the Contractor and, subject to any Pay Less Notice given by the Employer at Clause 4.5.4, the amount to be paid by the Employer shall be the amount set out in the Contractor's Notice.

.2 If an Interim Certificate is not issued in accordance with clause 4.3 or 4.4, the Contractor may at any time after the 5 day period referred to in those clauses give a payment notice to the Architect/Contract Administrator stating the sum that the Contractor considers to be or have been due to him at the due date and the basis on which that sum has been calculated ("Contractor's Payment Notice") which shall contain the relevant project purchase order number. In that event, the sum to be paid by the Employer shall, subject to any notice subsequently given by him under clause 4.5.4, be the sum stated as due in the Contractor's Payment Notice.

.3 Where the Contractor gives a Contractor's Payment Notice under clause 4.5.2, the final date for payment of the sum specified in it shall for all purposes be regarded as postponed by the same number of days as the number of days after expiry of the 5 day

period referred to in clause 4.5.2 that the Contractor's payment notice is given.

.4 If the Employer intends to pay less than the sum stated as due from him in the Payment Notice or, where applicable, the Contractor's Payment Notice, he shall not later than 5 days before the final date for payment give the Contractor notice ("Pay Less Notice") of that intention stating the sum that he considers to be due to the Contractor at the date he gives notice under this clause 4.5 and the basis on which that sum has been calculated. Where the Employer gives a Pay Less Notice, the payment to be made on or before the final date for payment shall not be less than the amount stated as due in the Pay Less Notice.

.5 A notice to be given by the Employer under clause 4.5.4, 4.8.4 or 4.8.5.3 may be given on his behalf by the Architect/Contract Administrator or by any other person who the Employer notifies the Contractor as being authorised to do so.

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

#### **CLAUSE 4.6**

Delete existing clause 4.6 and replace with:

If the Employer fails to pay a sum, or any part of it, due to the Contractor under clause 4.3 or 4.4 by the final date for its payment, the Employer shall, in addition to any unpaid amount that should properly have been paid, pay the Contractor simple interest on that amount at the interest Rate for the period from the final date for payment until payment is made. Interest under this clause 4.6 shall be a debt due to the Contractor from the Employer. Acceptance of a payment of interest under this clause 4.6 shall not in any circumstances be construed as a waiver of the Contractor's right to proper payment of the principal amount due, to suspend performance under clause 4.7 or to terminate his employment under section 6.

#### **CLAUSE 4.7**

Delete existing clause 4.7 and replace with:

.1 Without affecting the Contractor's other rights and remedies, if the Employer fails to pay the Contractor the sum payable in accordance with clause 4.5 (together with any VAT properly chargeable in respect of such payment) by the final date for payment and the failure continues for 7 days after the Contractor has given notice to the Employer, with a copy to the Architect/Contract Administrator, of his intention to suspend performance of any or all of his obligations under this Contract and the ground or grounds on which it is intended to suspend performance, the Contractor may suspend performance of any or all of those obligations until payment is made in full.

.2 Where the Contractor exercises his right of suspension under clause 4.7.1, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of the exercise of the right.

.3 Applications in respect of any such costs and expenses shall be made to the Architect/Contract Administrator and the Contractor shall with his application submit such details of the costs and expenses as are reasonably necessary to enable his entitlement to be ascertained. When ascertained or agreed, the amount shall be included in the next interim certificate. The Contractor shall, on request, submit such further details as are reasonably requested by the Architect/Contract Administrator or the Quality Surveyor."

#### **CLAUSE 4.8**

Delete existing clause 4.8 and replace with:

.1 Within the period stated in the Contract Particulars the Contractor shall supply to the Architect/Contract Administrator all documentation reasonably required for computation of the final payment which computation shall be finalised 28 days after either the date of receipt

of the documentation or, if later, the date specified in the certificate under clause 2.12 ("Final Payment Computation Date"). Not later than 5 days after the Final Payment Computation Date the Architect/Contract Administrator shall issue a final certificate ("Final Certificate") certifying the sum that he considers due to the Contractor or to the Employer, as the case may be. The Final Certificate shall state the basis on which that sum has been calculated.

.2 Not later than 5 days after the date of the Final Certificate the party to whom the balance is stated to be payable shall issue a valid invoice (containing the information required for the Contractor's Invoice) confirming the amount due within the Final Certificate ("Final Invoice"). For the purposes of the Housing Grants, Construction and Regeneration Act 1996 (as amended) the due date for payment in respect of the final payment shall be the date of issue of the Final Invoice.

.3 The final date for payment shall be 28 days from the due date.

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

.5 If the final certificate is not issued in accordance with clause 4.8.1:

.1 the Contractor may give a payment notice to the Employer which shall contain the project purchase order number ("Final Payment Notice") with a copy to the Architect/Contract Administrator stating what the Contractor considers to be the amount of the final payment due to him under this Contract and the basis of which the sum has been calculated and, subject to any notice given under clause 4.8.5.3, the final payment shall be that amount;

.2 if the Contractor gives a Final Payment Notice under clause 4.8.5.1, the final date for payment of the sum specified in it shall for all purposes be regarded as postponed by the same number of days as the number of days after expiry of the 5 day period referred to in clause 4.8.1 that the Contractor's Final Payment notice is given;

.3 if the Employer intends to pay less than the sum specified in the Contractor's Final Payment Notice, he shall not later than 5 days before the final date for payment give the Contractor notice of that intention in accordance with clause 4.8.4 and the payment to be made on or before the final date for payment shall not be less than the amount stated as due in the Employer's notice.

.6 Where the payer does not give a notice under clause 4.8.4 or 4.8.5.3 he shall pay the other Party the sum stated as due to the other Party in the Final Invoice or in the Final Payment Notice under clause 4.8.4.1, as the case may be.

#### **CLAUSE 4.9**

Delete existing clause 4.9 and replace with:

If the payer fails to pay the final payment, or any part of it, under clause 4.8 by the final date for its payment, he shall, in addition to any unpaid amount that should properly have been paid, pay the other Party simple interest on that amount at the Interest Rate for the period from the final date for payment until payment is made. Acceptance of a payment of interest under this clause 4.9 shall not in any circumstances be construed as a waiver of any right to proper payment of the principal amount due.

(END OF PROVISION FOR THE EMPLOYER'S NEW PAYMENT REQUIREMENTS)

## SECTION 5 INJURY DAMAGE AND INSURANCE

### **CLAUSE 5.1**

In clause 5.1, after "caused by the carrying out of the Works" insert:

"or of any other obligation pursuant to Section 2 or Section 3 of the Conditions".

### **CLAUSE 5.2**

In clause 5.2, after "by reason of the carrying out of the Works" insert:

"or of any other obligation pursuant to Section 2 or Section 3 of the Conditions".

### **CLAUSE 5.2A**

Add new clause 5.2A after clause 5.2:

#### **"Contractor to prevent nuisance and indemnify Employer**

The Contractor shall prevent any nuisance (including any noisy working operations) or other interference with the rights of any adjoining owner, tenant or occupier or any statutory undertaker, of which the Contractor is or ought reasonably to have been aware, arising out of the carrying out of the Works. The Contractor shall assist the Employer in defending any action or proceedings in relation to any such nuisance or interference. The Contractor shall be responsible for and shall indemnify the Employer from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the Contractor in performing its obligations under this clause 5.2A."

### **CLAUSE 5.2B**

Add new clause 5.2B after new clause 5.2A:

#### **"Contractor to prevent trespass to neighbours**

Without prejudice to clauses 5.1, 5.2 and 5.2A, the Contractor shall ensure that there is no trespass by the Contractor or the Contractor's Persons (including the oversailing of tower crane jibs) on or over any adjoining or neighbouring property arising out of the Works and shall take all reasonable safety and other measures to prevent damage or injury to any persons including the occupiers of adjoining or neighbouring property and members of the public. If carrying out the Works or any obligation pursuant to clause 2.10 would otherwise be an act of trespass, the Contractor shall, at no cost to the Employer, obtain the prior written agreement of the owners or occupiers of any adjoining or neighbouring property to that act. That agreement shall be subject to the Employer's approval before its completion, such approval not to be unreasonably withheld or delayed. The Contractor shall comply with any conditions contained in that agreement, at no cost to the Employer, and shall not be entitled to any extension of time as a result of any conditions contained in that agreement."

## SECTION 6 TERMINATION

### **CLAUSE 6.5**

In sub-clause 6.5.2.3 at the start of the sub-clause, after "the Employer may", insert:

", at the Contractor's expense,"

### **CLAUSE 6.6**

In clause 6.6, after "acting on his behalf", insert:

“or associated with him”,

and at the end of the clause, after the full stop, insert:

“For the purposes of this clause 6.6, whether a person is associated with another person shall be determined in accordance with section 8 of the Bribery Act 2010 and a person associated with the Contractor includes, but is not limited to, any sub-contractor of the Contractor.”

**INSERT NEW CLAUSE 6.7.5:**

“Upon any termination of the Contractor’s employment or if the Contract is terminated or discharged and notwithstanding that the validity of termination or discharge is disputed by the Contractor, the Contractor shall vacate the site having carried out all necessary measures to ensure the Works and the site are left in a condition whereby:

- i) they present no hazard to any personnel and the general public;
- ii) they are compliant with all Health and Safety legislation; and
- iii) they are suitably secured to prevent unauthorised access and the removal of any unfixed materials and any plant.

The Contractor shall promptly deliver to the Employer possession of the Site and of the Works.”

**CLAUSE 6.11**

Delete sub-clause 6.11.2.3

Delete sub-clause 6.11.3.

**SECTION 8 FREEDOM OF INFORMATION DATA PROTECTION CRIME AND DISORDER**

Insert new section 8

**CLAUSE 8.1 FREEDOM OF INFORMATION**

Insert new sub-clause 8.1.1:

“The Contractor acknowledges that the Employer is subject to the requirements of the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations and the National Audit Act 1983 and further acknowledges the statutory obligations on and commitment of the Employer to open government and public access to information and, accordingly, shall assist and cooperate with the Employer to enable the Employer to comply with its information disclosure and audit obligations.”

Insert new sub-clause 8.1.2:

“The Contractor shall and shall procure that its Sub-contractors shall:

- (a) transfer to the Employer all requests for information that it receives as soon as practicable and in any event within two (2) working days of receiving a request for information;
- (b) provide the Employer with a copy of all Information in its possession or power in the form that the Employer requires within five (5) working days (or such other period as the Employer may reasonably specify) of the Employer’s request; and
- (c) provide all necessary assistance as reasonably requested by the Employer to enable the Employer to respond to the request for information within the time for compliance set out in the FOIA or the Environmental Information Regulations or the National Audit Act 1983.”

Insert new sub-clause 8.1.3:

"The Employer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the commercially sensitive information and/or any other information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations or the Environmental Information Regulations or the National Audit Act 1983."

Insert new sub-clause 8.1.4:

"In no event shall the Contractor respond directly to a request for information unless expressly authorised to do so by the Employer."

Insert new sub-clause 8.1.5:

"The Contractor acknowledges that (notwithstanding the provisions of this clause 1.5 the Employer may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code") and any directions of the Information Commissioner, be obliged under the FOIA, or the Environmental Information Regulations, or the Environmental Information Regulations or the National Audit Act 1983 to disclose information concerning the Contractor or the Works:

- (a) in certain circumstances without consulting the Contractor; or
- (b) following consultation with the Contractor and having taken their views into account;

provided always that where sub-clause (a) above applies the Employer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure."

Insert new sub-clause 8.1.6:

"The Contractor shall ensure that all Information is retained for disclosure and shall permit the Employer to inspect such records as may be reasonably requested from time to time."

Insert new sub-clause 8.1.7:

"In the event that the Contractor incurs or would incur costs in actively locating, retrieving and extracting information in assisting the Employer to respond to a request for information, the Contractor must inform the Employer of such likely costs and the Employer will inform the Contractor in writing whether or not it still requires the Contractor to assist with complying with the request. If the Employer informs the Contractor to proceed with the request, the Employer will reimburse the Contractor for such reasonable and necessary costs as the Contractor incurs but only to the extent that the Employer itself is entitled to reimbursement of such costs in accordance with and to the level set by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004."

Insert new sub-clause 8.1.8:

"The Contractor acknowledges that identification of any matter to the Employer by the Contractor as commercially sensitive information is of indicative value only and that the Employer may be obliged to disclose it in accordance with this clause."

Insert new sub-clause 8.1.9:

"The Contractor acknowledges that the Employer is subject to transparency obligations which require the Employer to publish certain contract information and materials. Accordingly, and notwithstanding any other term of this Contract, the Contractor hereby gives its consent for the Council to publish this Contract and its schedules in its entirety, including from time to time agreed changes to the Contract (save and except such matters as the Employer is by law able to exclude as being confidential, commercially sensitive, or otherwise not in the public interest to disclose), to the general public in whatever form the Employer decides. The

Contractor shall render such assistance and cooperate with the Employer to enable such publication, including, if the Employer so requires, assisting the Employer at no additional costs to the Employer in the redaction of such contract documents prior to publication to eliminate material considered confidential, commercially sensitive, or otherwise not in the public interest to disclose."

#### **CLAUSE 8.2 DATA PROTECTION**

Insert new sub-clause 8.2.1:

"The Contractor shall comply in all respects with the provisions of the Data Protection Act 1998 (the Act) and will indemnify the Employer against all actions cost expenses claims proceedings and demands which may be made or brought against the Employer for breach of statutory duty under the Act which arises from the use, disclosure or transfer of personal data by the Contractor and his servants, employees and agents."

Insert new sub-clause 8.2.2:

"The Employer is a Data Controller under the Act and is committed to protect the privacy of all persons by processing personal information in a manner which meets the requirement of the Act."

#### **CLAUSE 8.3 CRIME AND DISORDER ACT**

Insert new clause 8.3:

"The Contractor shall comply on the Employer's behalf with the provisions of Section 17 of the Crime & Disorder Act 1998 and will indemnify the Employer against all actions, costs, expenses, proceedings and demands which may be brought against the Employer for breach of statutory duty under the Act which arises upon acts or omissions by the Contractor, its servants, employees and agents under the Contract."