

## **CAPITAL & ASSET MANAGEMENT**

### **BUILDING CONTRACT DIRECTIVE**

DATE: January 2013

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**REFERENCE**

#### **TRUSTEE STATUS OF RETENTION MONIES**

1. **JCT 2011 Standard Building Contract With or Without Quantities and Design and Build Contract**

Councils using the JCT 2011 Standard Building Contract With or Without Quantities and Design and Build Contract are, by virtue of clauses 4.13.2 & 4.18(SBC) and clauses 4.10.5 & 4.16(DB) trustees for contractors in respect of retention monies.

The County Council wishes to avoid being placed in a position where the need to set up separate accounts for retention funds on contracts is a requirement. Therefore incorporate the relevant amendment set out in the attached Appendix A on all future contracts entered into with the County Council under the above contracts.

2. **Intermediate Building Contract and Minor Works Building Contract including with Contractor's Design versions.**

No amendment is required on contracts entered into with the County Council under the Intermediate Building Contracts and the Minor Building Works Contracts, where the retention fund is not given trustee status.

**CONCLUSION**  
*(Appendix A follows)*

**NOTE:**

**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.**

**A20 THE CONTRACT  
JCT 2011 STANDARD BUILDING CONTRACT  
WITH/WITHOUT QUANTITIES**

(Note: In the preliminaries and general conditions section of the Bills of Quantities or Schedules of Work list of contract conditions, the following words are to be included under the reference to Section 4.)

THE CONDITIONS:

**CLAUSE 4.13.2**

In clause 4.13.2, delete: , “Notwithstanding his fiduciary interest in the Retention as stated in clause 4.18, the” and replace ‘the’ with ‘The’

**CLAUSE 4.18**

Delete clause 4.18 and replace with:

“With regard to the Retention, which the Employer may deduct and retain as referred to in clause 4.9.2.1, the Employer shall be:

.1 under no fiduciary obligation to the Contractor or any third party;

.2 under no obligation to set aside in a separate bank account any amount representing the Retention; and

.3 entitled to the full beneficial interest in any interest accruing on the Retention and shall be under no obligation to account to the Contractor for any such interest.”

**A20 THE CONTRACT  
JCT 2011 DESIGN AND BUILD CONTRACT**

(Note: In the preliminaries and general conditions section of the Employers Requirements, the following words are to be included under the reference to Section 4.)

THE CONDITIONS:

**CLAUSE 4.10.5**

Delete “Notwithstanding his fiduciary interest in the Retention as stated in clause 4.16, the” and replace with: “The”.

**CLAUSE 4.16**

Delete clause 4.16 and replace with:

“With regard to the Retention, which the Employer may

deduct and retain as referred to in clause 4.7.2.1, the Employer shall be:

.1 under no fiduciary obligation to the Contractor or any third party;

.2 under no obligation to set aside in a separate bank account any amount representing the Retention; and

.3 entitled to the full beneficial interest in any interest accruing on the Retention and shall be under no obligation to account to the Contractor for any such interest.”

To collection

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