

## JCT 2011 INTERMEDIATE BUILDING CONTRACT WITH CONTRACTOR'S DESIGN

### ARTICLES OF AGREEMENT AND CONDITIONS OF CONTRACT

The Articles of Agreement and Conditions of Contract will be those of the Joint Contracts Tribunal (JCT) Intermediate Building Contract with contractor's design 2011 Edition.

### SCHEDULE OF AMENDMENTS TO THE STANDARD FORM OF CONTRACT

#### RECITALS

Seventh **Contractor's Proposals**

**Insert** at the end of the recital the sentence "For the avoidance of doubt, the Employers Requirements take precedence over the Contractor's Proposals

Ninth **Information Release Schedule**

**Delete** the recital.

Eleventh **Work Sections**

**Delete** the recital

#### ARTICLES

10 **Contractor's Parent Company Guarantee**

**Insert** the article:

~~"The Contractor shall if so requested by the Employer, within 14 days of receiving such a request, provide a 'Parent Company Guarantee' from the ultimate holding company of the Contractor in the form of the pro forma attached to the Conditions. In the event of delay by the Contractor or the ultimate holding company in providing such a guarantee to the Employer then the Employer shall be entitled to withhold any payment to which the Contractor would otherwise be entitled under the Contract until such a guarantee has been provided to the Employer."~~

11 **Performance Bond**

**Insert** the article:

"The Contractor shall if so requested by the Employer, within 14 days of receiving such a request, provide a 'Performance Bond' in the sum of **10%** per cent of the Contract Sum from a surety approved by the Employer and in the form of the pro forma attached to the Conditions. In the event of delay by the Contractor or the said surety in providing such a bond to the Employer then the Employer shall be entitled to withhold any payment to which the Contractor would otherwise be entitled under the Contract until such a bond has been provided to the Employer."

12 **Incorporation of Amendments**

**Insert** the article:

"The 'Schedule of Amendments to the Standard Form of Contract' attached to the Conditions is deemed incorporated into this Contract and the Articles of Agreement and the Conditions shall have effect as so modified."

## ATTESTATION

Execution as a Deed Unless otherwise informed, the Contract shall be executed as a deed.

## CONTRACT PARTICULARS

Note: An asterisk \* indicates text that is to be deleted as appropriate.

### Part 1: General

Clause etc.	Subject	
Fourth Recital	Employer's Requirements	Included within the tender documentation
Sixth Recital	Contractor's Proposals	To be provided
Sixth Recital	CDP Analysis	To be provided
Eighth Recital and clause 4.4	Construction Industry Scheme (CIS)	Employer at the Base Date *is a 'contractor'/ <del>is not a 'contractor'</del> for the purposes of the CIS
Tenth Recital	CDM Regulations	The project *is/ <del>is not</del> notifiable
Eleventh Recital	Description of Sections (if any)	n/a
Twelfth Recital	Framework Agreement (if applicable)	n/a
Thirteenth Recital and Schedule 5	Supplemental Provisions	
	Collaborative working	Paragraph 1 *applies/ <del>does not apply</del>
	Health and safety	Paragraph 2 *applies/ <del>does not apply</del>
	Cost savings and value improvements	Paragraph 3 *applies/ <del>does not apply</del>
	Sustainable development and environmental considerations	Paragraph 4 *applies/ <del>does not apply</del>
	Performance Indicators and monitoring	Paragraph 5 * <del>applies</del> /does not apply
	Notification and negotiation of disputes	Paragraph 6 *applies/ <del>does not apply</del>

Clause etc.	Subject	
	Where paragraph 6 applies, the respective nominees of the Parties are	Employer's nominee Sean Parsons Contractor's nominee TBC or such replacement as each Party may notify to the other from time to time
Article 8	Arbitration	Article 8 and clauses 9.3 to 9.8 (Arbitration) <del>*apply</del> /do not apply
1.1	Base Date	10 days before the tender return date
1.1	CDM Planning Period	shall mean the period of .....2.....* days/weeks *ending on the Date of Possession/ <del>*beginning/ending on ..... 20 ..</del>
1.1	Date for Completion of the Works	01/06/2018
	Sections: Dates for Completion of Sections	N/A
1.7	Addresses for service of notices by the Parties	Employer: Sean Parsons Contractor:
2.4	Date of Possession of the site	02/02/2018
	Sections: Dates of Possession of Sections	N/A
2.5	Deferment of possession of the site	Clause 2.5 <del>*applies/does not apply</del> Maximum period of deferment (if less than 6 weeks) is 6 weeks
2.5	Sections: deferment of possession of Sections	Clause 2.5 <del>*applies</del> /does not apply Maximum period of deferment (if less than 6 weeks) is
2.23.2	Liquidated damages	at the rate of £285.00 per day

Clause etc.	Subject		
	Sections: rate of liquidated damages for each Section	N/A	
2.29	Sections: Section Sums	N/A	
2.30	Rectification Period	12 (Twelve) months from the date of practical completion of the Works	
	Sections: Rectification Periods	N/A	
2.34.3	Contractor's Designed Portion: limit of Contractor's liability for loss of use etc. (if any)	£ 1,000,000 (One Million)	
4.6	Advance payment	<p><del>Clause 4.6</del> *applies/does not apply</p> <p>If applicable: the advance payment will be</p> <p>£ ...../..... per cent of the Contract Sum and will be paid to the Contractor on .....</p> <p>it will be reimbursed to the Employer in the following amount(s) and at the following time(s)</p> <p>.....</p> <p>.....</p>	
4.6	Advance Payment Bond	An advance payment bond <del>is</del> /is not required	
4.7.1	Interim payments – due dates	<p>The first due date is:</p> <p>one month after commencement and thereafter the same date in each month or the nearest Business Day in that month</p>	

Clause etc.	Subject	
4.8.1	<p>Interim payments – percentages of value</p> <p>Where the Works, or those works in a Section, have not achieved practical completion, the percentage of total value in respect of the works that have not achieved practical completion is (The percentage is 95 per cent unless a different rate is stated)</p> <p>Where the Works, or those works in a Section, have achieved practical completion, the percentage in respect of the completed works is (The percentage is 97 ½ per cent unless a different rate is stated)</p>	<p>.....95..... per cent</p> <p>.....97½ ... per cent</p>
4.9.4	Listed Items - uniquely identified	<p>*For uniquely identified Listed Items a bond in respect of payment for such items is required for</p> <p>£ .....</p> <p>None identified</p>
4.9.5	Listed Items - not uniquely identified	<p>*For Listed Items that are not uniquely identified a bond in respect of payment for such items is required for</p> <p>£ .....</p> <p>None identified</p>
4.15 and Schedule 4	Contribution, levy and tax fluctuations	Schedule 4 (Fluctuations Option) does not apply
	<del>Percentage addition for Fluctuations Option, paragraph 12</del>	..... per cent
6.4.1.2	Contractor's insurance: injury to persons or property - insurance cover	£ Refer to Standard Selection Questionnaire Document section 8.1

Clause etc.	Subject	
6.5.1	Insurance - liability of Employer	Insurance <del>*may be required</del> /is not required  Minimum amount of indemnity for any one occurrence or series of occurrences arising out of one event  £
6.7 and Schedule 1	Insurance of the Works - Insurance Options	Schedule 1: <del>*Insurance Option A applies/</del> <del>*Insurance Option B applies/</del> *Insurance Option C applies
6.7 and Schedule 1 Insurance Option A (paragraphs A.1 and A.3), B (paragraph B.1) or C (paragraph C.2)	Percentage to cover professional fees	.....18..... per cent
6.7 and Schedule 1 Insurance Option A (paragraph A.3)	Annual renewal date of insurance	to be provided
6.10 and Schedule 1	Terrorism Cover – details of the required cover	..... ..... ..... .....
6.12	Joint Fire Code	The Joint Fire Code <del>*applies/does not apply</del>
	If the Joint Fire Code applies, state whether the insurer under Schedule 1, Insurance Option A, B or C (paragraph C.2) has specified that the Works are a 'Large Project':	*Yes/No
6.15	Joint Fire Code - amendments/revisions	The cost, if any, of compliance with amendment(s) or revision(s) to the Joint Fire Code shall be borne by <del>*the Employer</del> /the Contractor
6.16	Contractor's Designed Portion (GDP) Professional Indemnity insurance	

Clause etc.	Subject	
	Level of cover	Amount of indemnity required *relates to claims or series of claims arising out of one event/ <del>*is the aggregate amount for any one period of insurance</del>  and is  £ 1,000,000 (One Million)
	Cover for pollution and contamination claims	* is required, with a sub-limit of indemnity of  £ 1,000,000 (Two Million)  <del>* is not required</del>
	Expiry of required period of CDP Professional Indemnity insurance is	<del>* 6 years/</del> * 12 years/ <del>* ..... years (not exceeding 12 years)</del>
8.9.2	Period of suspension	2 months
8.11.1.1 to 8.11.1.5	Period of suspension	2 months
9.2.1	Adjudication	The Adjudicator is President or Vice President of the RICS
	Nominating body - where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)	<del>*Royal Institute of British Architects</del> *The Royal Institution of Chartered Surveyors <del>*constructionadjudicators.com</del> *Association of Independent Construction Adjudicators <del>*Chartered Institute of Arbitrators</del>
9.4.1	Arbitration - appointor of Arbitrator (and of any replacement)	<del>President or a Vice-President:</del> <del>*Royal Institute of British Architects</del> <del>*The Royal Institution of Chartered Surveyors</del> <del>*Chartered Institute of Arbitrators</del>

**Part 2: Collateral Warranties**

**Purchaser and Tenant Warranties**

**(A) Identity of Purchasers/Tenants in whose favour Collateral Warranties may be required**

Name, class or description of person	The part of the Works to be purchased or let
<del>Insert: "All purchasers."</del>	<del>Insert: "All of the Works or any part of the Works"</del>
<b>Insert: "All tenants".</b>  (The Contractor may be required to provide a collateral warranty in favour of the proposed tenant)	<b>Insert: "All of the Works"</b>

**Insert:**

"All collateral warranties shall be in the form provided in the Contract and if these are not provided then in a form instructed by the Architect/Contract Administrator. The Contractor will be responsible for the engrossment of such collateral warranties"

<b>(B) Contractor's Warranties – Purchasers and Tenants</b>
<b>Delete</b> the entirety of Part 2(B) and <b>insert</b> "Does not apply"  <b>(NOTE:</b> Part 2 (B) refer to incorporated amendments, note a Contractor warranty may be required in favour of the proposed tenant. The Contractor will be responsible for the engrossment of such collateral warranties)

**Funder Warranties**

<b>(C) Identity of Funder</b>	
	<del>Insert</del> the words: "All funders of the project.  The Contractor is responsible for the engrossment of such collateral warranties."
<b>(D) Contractor Warranties - Funder</b>	
<b>Delete</b> the entirety of Part (D) and <b>insert</b> "Does not apply"	

**(E) Collateral Warranties from Sub-Contractors**

Sub-contractors from whom Warranties may be required	Type(s) of warranty	Levels of Professional Indemnity Insurance required (if applicable)
<p><b>Insert:</b> "Any sub-contractor or sub-consultant with design responsibility <u>plus</u> all sub-contractors providing:</p> <p>M&amp;E Fixings and bracketry</p> <p><b>The Contractor is responsible for the purchase and engrossment of such collateral warranties."</b></p>	<p><b>Insert:</b> "All collateral warranties shall be in the form provided in the contract and if these are not provided then in a form instructed by the Architect/Contract Administrator"</p> <p>SCWa/E</p>	<p><b>Insert:</b> "Unless otherwise stated, the level of Professional Indemnity Insurance shall be one million pounds on a per claim basis"</p> <p>£1,000,000 (One Million)</p>
<p><b>Or Insert:</b> "Any Sub-contractor or sub-consultant.</p> <p>The Contractor is responsible for the engrossment of such collateral warranties."</p>		

<b><u>CONDITIONS</u></b>	
<b>Section 1 Definitions and Interpretation</b>	
1.9.1.1	<b>Delete</b> the clause wording and <b>insert</b> "Number not used".
1.10	<b>Delete</b> the words "Save as stated in clause 1.9 no" and <b>insert</b> "No".
<b>Section 2 Carrying out the Works</b>	
2.12.2	In lines 2 and 3, <b>delete</b> the words in parenthesis and the parenthesis.
2.12.2	<b>Delete</b> the entire last sentence "Where the description ... provide that information."
2.12.3	<b>Insert</b> the new clause:  "Where and to the extent that quantities are contained in the Specification/Work Schedules, and there are no Contract Bills, the said quantities are deemed to be indicative only, and the quality and quantity of the work included in the Contract Sum shall be deemed to be that in the Contract Documents taken together; provided that if work stated or shown on the Contract Drawings is inconsistent with the description, if any, of that work in the Specification/Schedules of Work then that which is stated or shown on the Contract Drawings shall prevail for the purposes of this clause."
2.19.4	In line 1 <b>delete</b> the words "the Contractor shall"
2.19.4.1	In line 1 <b>insert</b> "the Contractor shall" before "constantly use"
2.19.4.2	In line 1 <b>insert</b> "the Contractor shall" before "provide such information"
2.19.4.3	<b>Insert</b> the new clause:  "any adjustment of the Completion Date or extensions of time pursuant to the provisions of clause 2.20 shall exclude delay to the extent that such delay is due to or caused by the negligence or default of the Contractor or the Contractor's Persons other than delay due to or caused by the Employer or the Employer's Persons or Statutory Undertaker executing work solely in pursuance of its statutory obligations."
2.20.6	In line 1, after the word "omission", <b>insert</b> the words:  "or breach of this Contract".
2.20.6	In line 3, after the word "omission", <b>insert</b> the words:  "or breach of this Contract".
2.20.12	In line 1, after the words "Base Date", <b>insert</b> the words:  "and which could not reasonably have been foreseen at the Base Date by the Contractor"
2.21A	<b>Insert</b> after clause 2.21, the new clause:  "The Architect/Contract Administrator may at his discretion issue the Practical Completion Certificate or the Section Completion Certificate to the effect that

	<p>practical completion of the Works or the Section is achieved as referred to in clause 2.21, notwithstanding that there are items of work that still remain to be carried out and/or completed which in the opinion of the Architect/Contract Administrator are of a minor nature and do not unduly impair the beneficial use and/or occupation of the Works or the Section and/or which when being carried out and completed will not cause undue disturbance or disruption to the occupier and/or users of the Works or the Section and/or where applicable the readiness of the Works or the Section for fitting out by others. The items of work remaining to be carried out and/or completed shall be listed in a schedule to be attached to the Practical Completion Certificate or the Section Completion Certificate and shall be carried out and completed within the time agreed between the Architect/Contract Administrator and the Contractor which shall be stated in the schedule or if no time is agreed within a reasonable time. If the Contractor fails to carry out such work within the agreed time or within a reasonable time (if applicable), then the Architect/Contract Administrator may arrange for others to complete this work and deduct such costs from the Contractor's account."</p>
2.21B	<p><b>Insert</b> after clause 2.21A, the new clause:</p> <p>"The items of work which pursuant to clause 2.21A remain to be carried out and/or completed after the day named in the Practical Completion Certificate or Section Completion Certificate shall for the purposes of this Contract be deemed to have formed a part of the Works referred to in the Practical Completion Certificate or Section Completion Certificate issued under clause 2.21."</p>
2.33.1	<p><b>Delete</b> the existing clause and <b>insert</b> the new clause:</p> <p>"The Contractor hereby grants to the Employer a royalty-free, non-exclusive and irrevocable licence to use and reproduce for any purpose all drawings, specifications and other documents (and any design contained therein) which has been or shall hereafter be prepared or provided by or on behalf of the Contractor in connection with the Works, insofar as the beneficial ownership of copyright in the same is vested in the Contractor such licence shall also carry the right to grant sub-licences and shall be transferable to third parties."</p>
2.33.3	<p><b>Insert</b> the new clause:</p> <p>"Where the beneficial ownership of copyright in the drawings, specifications and other documents (and any designs contained therein) as referred to in clause 2.32 is not vested in the Contractor, the Contractor shall use his best endeavours to ensure that the beneficial owner of the copyright grants to the Employer a royalty-free, non-exclusive and irrevocable licence to use and reproduce the same for any purpose. Such licence shall also carry the right to grant sub-licences and shall be transferable to third parties."</p>
2.35	<p><b>Insert</b> the new clause heading and clause:</p> <p><b>"Utilities and Services</b></p> <p>The Contractor shall notify all local authorities, statutory undertakers and private utility companies of the dates and times when he will require their work to be carried out and shall be responsible for the co-ordination of such works with the remainder of the Works and shall also use all reasonable endeavours to ensure that their works are carried out so as to prevent any delay to the progress of the Works."</p>
<p><b>Section 3 Control of the Works</b></p>	
3.18	<p><b>Delete</b> clause wording of 3.18.1 and <b>insert</b> "Number not used".</p>

<b>Section 4 Payment</b>	
4.8.1.2	<p>In line 1, after the word "included" <b>delete</b> "if they are ... Works prematurely; and" and <b>insert</b> the new clauses:</p> <p>"4.8.1.2.1 if such materials and goods are reasonably, properly and not prematurely so delivered and are adequately protected against weather and other casualties, and</p> <p>4.8.1.2.2 the Contractor has satisfied himself that full title and ownership in the materials and goods has vested in him and will provide reasonable proof thereof to the Architect/Contract Administrator when so required; and"</p>
4.11.1	<p>In line 2, <b>delete</b> the words "its due date" and <b>insert</b> the words:</p> <p>"receipt by the Employer of the Contractor's VAT invoice in respect of the sum to be paid in accordance with the provisions of this clause 4.11".</p> <p><b>Delete if not required – see response in the questionnaire.</b></p>
4.11.4	<p>In lines 2 to 4 <b>delete</b> the words "for all purposes ..... Interim Payment Notice is given" and <b>insert</b> the words:</p> <p>"be 14 days from receipt by the Employer of the Contractor's VAT invoice in respect of the sum to be paid in accordance with the provisions of this clause 4.11".</p>
4.14.3	<p>In line 3, after the words "payment shall" <b>insert</b> the words:</p> <p>"where a balance is due to the Contractor from the Employer be 28 days from the date of receipt by the Employer of the Contractor's VAT invoice in respect of the sum to be paid in accordance with the provisions of this clause 4.15, and where a balance is due to the Employer from the Contractor".</p> <p><b>Delete if not required – see response in the questionnaire.</b></p>
4.14.6.2	<p>In lines 2 to 4 <b>delete</b> the words "for all purposes ..... Final Payment Notice is given" and <b>insert</b> the words:</p> <p>"where a balance is due to the Contractor from the Employer be 28 days from the date of receipt by the Employer of the Contractor's VAT invoice in respect of the sum to be paid in accordance with the provisions of this clause 4.14, and where a balance is due to the Employer from the Contractor be 28 days from its due date".</p>
4.15	<b>Delete</b> the clause wording of 4.15 and <b>insert</b> "Number not used".
4.16	<p><b>Delete</b> the existing clause and <b>insert</b> the new clause:</p> <p>"The Contract Sum, less any amount that may be included for work to be executed by a Named Sub-Contractor, shall be deemed to have been calculated on a fully fixed price basis and shall not be subject to adjustment for fluctuations in accordance with Fluctuations Option.</p> <p>All references to clause 4.16 elsewhere in this Contract shall be deemed deleted or modified as necessary to reflect the aforementioned amendment."</p>
4.17A	<p><b>Insert</b> after clause 4.17, the new clause:</p> <p>"The Contractor shall not be entitled to any loss and/or expense under clause 4.17 incurred by the Contractor to the extent that it is attributable to or caused by the</p>

	negligence or default of the Contractor or Contractor's Persons other than the Employer or Employer's Persons or any Statutory Undertaker executing work solely in pursuance of its statutory obligations."
4.18.4	In line 1, after the word "omission", <b>insert</b> the words:  "or breach of this Contract".
4.18.4	In line 3, after the word "omission", <b>insert</b> the words:  "or breach of this Contract".
<b>Section 5 Variations</b>	
5.4.1	<b>Delete</b> the existing clause and <b>insert</b> the new clause 5.4.1:  "the prime cost of labour calculated in accordance with the all-inclusive rates set out by the Contractor in the Priced Document;"
5.4.2	<b>Delete</b> the existing clause and <b>insert</b> the new clause 5.4.2:  "the prime cost of materials and plant calculated in accordance with the 'Definition of Prime Cost of Daywork carried out under a Building Contract' issued by the Royal Institution of Chartered Surveyors and the Building Employers Confederation which was current at the Base Date, together with the percentage additions to material and plant sections of the prime cost at the rates set out by the Contractor in the Priced Document; or"
5.4.3	<b>Insert</b> the new clause 5.4.3:  "where the prime cost of materials and plant is within the province of any specialist trade and the said Institution and the appropriate body representing the employers in that trade have agreed and issued a definition of prime cost of daywork <sup>[46]</sup> , the prime cost of such materials and plant calculated in accordance with that definition which was current at the Base Date together with percentage additions on the prime cost at the rates set out by the Contractor in the Priced Document."
Footnote <sup>[46]</sup>	In the first line of footnote <sup>[46]</sup> , <b>delete</b> "5.4.2" and <b>insert</b> "5.4.3".
<b>Section 6 Injury, Damage and Insurance</b>	
6.1	In line 3, after the word "Works" <b>insert</b> the words:  "or out of the presence on site of any person or persons for any other reason".
6.2	In line 1, after the words "liability, loss" <b>insert</b> the words:  "including consequential loss"
6.2	In line 4, after the word "negligence" <b>insert</b> the words:  "including but not limited to obstruction trespass nuisance or interference with any rights of way, light, air or water,"
6.2	In line 5, after the words "Contractor's Persons" <b>insert</b> the words:  "or out of the presence on site of any person or persons for any other reason".

6.4.2	At the beginning of line 1, <b>delete</b> the word "As" and <b>insert</b> the words:  "The insurances referred to in clause 6.4.1 shall be maintained until the day named in the certificate of making good and shall be placed with insurers to be approved by the Employer and as".
6.5.1	In line 4, after the words "liability, loss" <b>insert</b> the words:  "including consequential loss"
6.5.2	In line 1, after the words "shall be", <b>insert</b> the words:  "maintained up to the date of issue of the certificate of making good and shall be".
6.5.2	In line 1, after the word "Employer", <b>insert</b> the words:  "which insurers shall, if so required by the Employer, be the insurers of the public liability risk under clause 6.4.1".
6.8	In line 2 of paragraph (b) of the definition of All Risks Insurance, after the word "workmanship" <b>delete</b> the words "or any other ... was defective" and <b>insert</b> the words:  "but this exclusion shall not apply to any other work executed or Site Materials which is lost or damaged in consequence thereof".
<b>Section 7 Assignment and Collateral Warranties</b>	
7.1	<b>Delete</b> the existing clause and <b>insert</b> the new clause:  "The Employer may, at any time, assign or charge this Contract or any or all of its interests rights and benefits there under. The Contractor may with the prior written consent of the Employer but not otherwise assign or charge this Contract or any or all of its interests rights and benefits thereunder."
7.2 to 7.6	<b>Delete</b> the existing clauses 7.2 to 7.6 and <b>insert</b> the new clause 7.2:  "The Contractor shall if so requested by the Employer or Architect/Contract Administrator, within 14 days of receiving such a request, provide a collateral warranty from the Contractor or the Contractor's Persons to the required parties identified in Part 2 of the Contract Particulars in the form of the pro forma attached to the Conditions. In the event of delay by the Contractor in providing such a collateral warranty to the Employer then the Employer shall be entitled to withhold any payment to which the Contractor would otherwise be entitled under the Contract until such a collateral warranty has been provided to the Employer. For the avoidance of doubt the Contractor is responsible for the engrossment of such collateral warranties."
7.3	<b>Insert</b> the new clause:  "In the event that the Contractor upon being so requested fails to procure and provide to the Employer any collateral warranty from a sub-contractor then the Employer may withhold from amounts due pursuant to Section 4 the value of the works properly executed and/or materials or goods supplied by that sub-contractor until such collateral warranty is procured. For the avoidance of doubt the Contractor is responsible for the engrossment of such collateral warranties."

<b>Section 8 Termination</b>	
8.9.4	<b>Delete</b> the clause wording and <b>insert</b> "Not used".

<b><u>SCHEDULES</u></b>	
<b>Schedule 4 Fluctuations Option – Contribution, levy and tax fluctuations</b>	
Schedule 4	<b>Delete</b> the Schedule and <b>insert</b> "Not used".