



**40 Queen's Grove
BUILDING CONTRACT**

This contract has been amended from the original template.

MP

2005

Major Project Construction Contract

Revision 2 2009

Major Project Construction Contract

Major Project Construction Contract (MP)**Appropriate:**

- for major works where the Employer regularly procures large-scale construction work and where the Contractor to be appointed is experienced and able to take greater risk than would arise under other JCT contracts;
- where the parties have their own detailed procedures and where limited procedures only need be set out in the contract conditions;
- where the Employer has prepared his requirements and provided these to the Contractor;
- where the Contractor is not only to carry out and complete the works, but also to complete the design; and
- the Employer employs a representative to exercise the powers and functions of the Employer under the Contract.

Can be used:

- where the works are to be carried out in sections.

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For Revision 2 changes, see the Major Project Construction Contract Guide (MP/G).

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Conditions

This Contract is made the 21 July 2010

Between **The Employer** Sir Stuart and Lady Ruth Lipton

of 40 Queen's Grove, London NW8 6HH

And **The Contractor** Mace Limited

(Company No. 02410626)⁽¹⁾

whose registered office is at Atelier House, 64 Pratt Street, London NW1 0LF

⁽¹⁾ Where the Employer or Contractor is neither a company incorporated under the Companies Acts nor a company registered under the laws of another country, delete the references to Company number and registered office. In the case of a company incorporated outside England and Wales, particulars of its place of incorporation should be inserted immediately before its Company number.

Definitions

- 1 Unless the context otherwise requires or this Contract specifically provides otherwise, the following words and phrases, where they appear in capitalised form in this Contract (excluding the Requirements and the Proposals), shall have the meanings stated or referred to below:

<i>Word or phrase</i>	<i>Meaning</i>
Base Date:	the date identified in the Contract Particulars .
Base Rate:	the rate set from time to time by the Bank of England's Monetary Policy Committee, or any successor.
CDM Co-ordinator:	the person appointed for the Project in accordance with regulation 14(1) of the CDM Regulations.
CDM Regulations:	the Construction (Design and Management) Regulations 2007.
Change:	<ul style="list-style-type: none"> any alteration in the Requirements and/or Proposals that gives rise to an alteration in the design, quality or quantity of anything that is required to be executed in accordance with this Contract; or any alteration by the Employer of any restriction or obligation set out in the Requirements and/or Proposals as to the manner in which the Contractor is to execute the Project, or the imposition of additional restrictions or obligations; or any matter that this Contract requires to be treated as giving rise to a Change. <p>Provided always that the alteration or matter referred to above is not required as a result of any negligence or default on the part of the Contractor.</p>
CIS:	the current Construction Industry Scheme under the Finance Act 2004.
Completion Date:	the Completion Date stated in the Contract Particulars or fixed from time to time in accordance with clause 18 (<i>Extension of time</i>). Where the Contract Particulars identify that there is more than one Section then references to the Completion Date are to the Completion Date of the relevant Section.
Contract:	these Conditions, the Contract Particulars , Schedule 1, Schedule 2 and its annexes, the applicable Supplemental Provisions, the Requirements and the Proposals.
Contractor:	the Party to this Contract named as such or any assignee to whom the Employer has consented in accordance with clause 35 (<i>Assignment</i>).
Contract Sum:	the amount stated in the Contract Particulars .
Defect:	any fault in the Project that arises as a consequence of a failure by the Contractor to comply with his obligations under this Contract, together with the consequences of that fault.
Design Documents:	drawings, specifications, details, schedules of levels, setting out dimensions and the like which are required to be prepared by the Contractor for the purposes of explaining and amplifying the Requirements and/or Proposals, which are necessary to enable the Contractor to execute the Project or which are required by any provision in the Requirements.
Employer:	the Party to this Contract named as such or any assignee permitted by clause 35 (<i>Assignment</i>).

Finance Agreement:	the agreement between the Funder and the Employer for the provision of finance for the Project.
Funder:	the person or syndicate providing funding for the purposes of the Project, as identified in the Contract Particulars.
HGCRA 1996:	the Housing Grants, Construction and Regeneration Act 1996.
Insolvent:	<p>either Party is Insolvent when he makes a composition or arrangement with his creditors, or becomes bankrupt, or, being a company:</p> <ul style="list-style-type: none">• makes a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement to be approved in accordance with the Companies Act 1985 or Insolvency Act 1986 as the case may be; or• has a provisional liquidator appointed; or• has a winding up order made; or• passes a resolution for voluntary winding up (except for the purposes of amalgamation or reconstruction); or• under the Insolvency Act 1986 has an administrator or an administrative receiver appointed.
Joint Fire Code:	the edition of the 'Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Renovation', published by the Construction Confederation and the Fire Protection Association, that is current at any particular time.
Material Breach:	<p>by the Contractor:</p> <ul style="list-style-type: none">• failure to proceed regularly and diligently with the performance of his obligations under this Contract;• failure to comply with an instruction;• suspension of the Project or any part thereof, otherwise than in accordance with HGCRA 1996 or the circumstances described in clause 40-1;• breach of the CDM Regulations;• breach of the requirements of CIS;• breach of any of the provisions of this Contract relating to Named Specialists or Pre-Appointed Consultants. <p>by the Employer:</p> <ul style="list-style-type: none">• failure to issue a payment advice in the manner required by this Contract. <p>by either Party:</p> <ul style="list-style-type: none">• failure to make payment in the manner required by any payment advice issued under this Contract;• failure to insure, as established in accordance with clause 33-3;• any repudiatory breach of this Contract.
Model Form:	where applicable, the model form of novation agreement that forms a part of the Requirements.
Named Specialist:	a subcontractor or consultant that is either identified by name in the Requirements or that is to be selected by the Contractor from a list of specialists contained in the Requirements.
Others:	persons whose presence on the Site has been authorised by the

	Employer, other than the Contractor, his sub-contractors and suppliers and any other persons under the control and direction of the Contractor.
Party:	either the Employer or the Contractor.
Practical Completion:	<p>Practical Completion takes place when the Project is complete for all practical purposes and, in particular:</p> <ul style="list-style-type: none">• the relevant Statutory Requirements have been complied with and any necessary consents or approvals obtained;• neither the existence nor the execution of any minor outstanding works would affect its use;• any stipulations identified by the Requirements as being essential for Practical Completion to take place have been satisfied; and• the health and safety file and all "as built" information and operating and maintenance information required by this Contract to be delivered at Practical Completion has been so delivered to the Employer. <p>Where the Contract Particulars identify that there is more than one Section then, unless stated otherwise, references to Practical Completion are to be read as references to the Practical Completion of the relevant Section.</p>
Practical Completion of the Project:	Practical Completion of the Project occurs upon Practical Completion or, when there is more than one Section, when all the Sections have achieved Practical Completion.
Pre-Appointed Consultant:	a consultant identified in the Requirements as having been appointed by the Employer with the intention that the appointment be novated to the Contractor in accordance with clause 24 (<i>Pre-Appointed Consultants</i>).
Pricing Document:	the provisions of Schedule 2 together with the annexes identified therein containing the contract sum analysis and particulars of the manner in which the Contract Sum is to be paid to the Contractor.
Principal Contractor:	the person appointed for the Project in accordance with regulation 14(2) of the CDM Regulations.
Project:	the works to be undertaken in accordance with this Contract, as defined in the Contract Particulars.
Proposals:	the documents identified in the Contract Particulars that have been prepared by the Contractor in order to set out the manner in which he intends to satisfy the Requirements.
Purchasers:	any and all first purchasers of all or any part of the Project.
Rectification Period:	the 12 month period commencing on the date Practical Completion of the Project occurs.
Requirements:	the documents identified in the Contract Particulars that have been prepared by the Employer in order to set out his requirements for the Project and identify the boundaries of the Site.
Section:	where the Contract Particulars identify more than one Section, the parts of the Project so defined by the Requirements.
Site:	the area where the Project is to be constructed and whose boundaries are defined in the Requirements.
Specified Peril:	fire, lightning, explosion, storm, tempest, flood, escape of water from any water tank, apparatus or pipe, earthquake, aircraft or

other aerial devices or articles dropped therefrom, riot or civil commotion.

Statutory Requirements:

in relation to the Project:

- any Act of Parliament and any instrument, rule or order made under any Act of Parliament;
- any regulation or bye-law of any local authority or of any statutory undertaker which has jurisdiction with regard to the Project or with whose systems those of the Project are or will be connected; and
- any directive of the European Community having the force of law.

Supplemental Provisions:

the provisions of Schedule 3.

Tenants:

any and all first tenants of all or any part of the Project.

Terrorism Cover:

cover under any policy required to be provided by this Contract against the physical loss or damage to work executed or site materials caused by an act of terrorism.

The Scheme:

The Scheme for Construction Contracts made in accordance with the provisions of section 114 of the HGCRA 1996.

VAT:

Value Added Tax.

Interpretation

Headings, references to persons, legislation etc.

2 In these Conditions and Schedules, unless the context otherwise requires:

- 1 the headings are included for convenience only and shall not affect the interpretation of this Contract;
- 2 the singular includes the plural and vice versa;
- 3 a gender includes any other gender;
- 4 a reference to a 'person' includes any individual, firm, partnership, company and any other body corporate; and
- 5 a reference to a statute, statutory instrument or other subordinate legislation ('legislation') is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification.

Reckoning periods of days

- 3 Where under this Contract an act is required to be done within a specified period of days (but not weeks, months or years) after or from a specified date, the period shall begin immediately after that date. Where the period would include Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales, that day shall be excluded.

Contracts (Rights of Third Parties) Act 1999

- 4 Other than such rights of any Purchasers, Tenants and/or Funder as take effect pursuant to clause 36, nothing in this Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

Communications

- 5 -1 Save as provided in clause 5-2 all communications required to be made by one Party to the other in accordance with this Contract shall be in writing and shall be sent or transmitted by the means (electronic or otherwise) and in such format as the Parties from time to time agree in writing for the purposes of this Contract.¹² All communications shall be sent to either the address notified from time to time by a Party for the purposes of communications or, if no address has been notified, the address given in these Conditions.
- 2 Any notice required to be given by Schedule 1 (*Third Party Rights*) or by clauses 38 to 40 (*Termination*) shall be delivered by hand or sent by Recorded Signed for or Special Delivery post and shall take effect upon delivery.

Applicable law

- 6 This Contract shall be governed by and construed in accordance with the law of England and the English courts shall have jurisdiction over any dispute or difference that may arise.¹³

General Obligations

General obligations of the Contractor

- 7 -1 The Contractor shall execute and complete the Project in accordance with this Contract, including the completion of the design, the specification or selection of materials and the execution of the construction works.
- 2 The Contractor is appointed as both CDM Co-ordinator and Principal Contractor, and the Contractor shall notify the Health and Safety Executive in accordance with regulation 21 of the CDM Regulations. The CDM Co-ordinator previously appointed by the Employer (if any) is identified in the Contract Particulars.
- 3 The Contractor warrants that he has the competence and will allocate the resources necessary to fulfil the roles of CDM Co-ordinator, Principal Contractor and designer in the manner referred to in the CDM Regulations.
- 4 The Contractor shall take all reasonable steps to encourage employees and agents of the Contractor and sub-contractors employed in the execution of the Project to be registered cardholders under the Construction Skills Certification Scheme (CSCS) or qualified under an equivalent recognised qualification scheme.

Instructions

- 8 -1 The Contractor shall comply with all instructions issued by the Employer in connection with the design, execution and completion of the Project, except to the extent that the terms of this Contract restrict the Employer's right to issue any particular instruction.
- 2 Where this Contract provides that an instruction is not to be treated as giving rise to a Change, the Contractor shall not be entitled to any additional payment or adjustment to the Completion Date as a consequence of complying with the instruction and the issue of the instruction shall not relieve the Contractor of any of his obligations under this Contract.
- 3 Where the Contractor fails to comply with an instruction, the Employer may engage others to give effect to the instruction provided he has first given 7 days' notice in writing to the Contractor of his intention to do so. The Contractor shall be liable to pay the Employer the costs of engaging others, after taking into account any sums that would have been payable to the Contractor under the terms of this Contract had the Contractor complied with the instruction.

Statutory Requirements

- 9 -1 The Contractor shall make any applications, give any notices required by and comply with the Statutory Requirements. The Contractor shall provide the Employer with copies of all applications made and notices given, and pass to the Employer all approvals, rejections or other communications received in connection with the Statutory Requirements.
- 2 Unless the Requirements state that specific fees and charges have been or are to be paid by the Employer, the Contractor shall pay all fees or charges payable in connection with the

¹² The Parties should agree a communications protocol on or before entering into the Contract, or as soon thereafter as is practicable. See the Major Project Construction Contract Guide.

Statutory Requirements.

Conflict and discrepancy

- 10
- 1 If either Party identifies any discrepancy within or between the Requirements, the Proposals and/or the Statutory Requirements, including any discrepancy that arises as a consequence of an alteration to the Statutory Requirements, he shall immediately notify the other Party accordingly.
 - 2 Where a discrepancy is identified within the Requirements, the Contractor shall notify the Employer which of the discrepant provisions he intends to adopt and proceed accordingly. If the Employer wishes the Contractor to proceed otherwise, he shall so instruct the Contractor and that instruction will be treated as giving rise to a Change.
 - 3 Where a discrepancy is identified within the Proposals, the Employer shall instruct the Contractor which of the discrepant provisions he wishes the Contractor to adopt and that instruction will not be treated as giving rise to a Change.
 - 4 Where a discrepancy is identified between the Requirements, the Proposals and/or the Statutory Requirements the Employer shall instruct which of the discrepant provisions he wishes the Contractor to adopt and that instruction will not, subject to clause 10-5, be treated as giving rise to a Change. No instruction shall require the Contractor to act otherwise than in accordance with the Statutory Requirements.
 - 5 If the Statutory Requirements alter after the Base Date in a manner that necessitates an amendment to either the Requirements or the Proposals, the Employer shall instruct the necessary amendments. That instruction shall be treated as giving rise to a Change where the alteration to the Statutory Requirements had not been announced at the Base Date. In any other case the instruction shall not be treated as giving rise to a Change.

Standards of design, materials and workmanship

- 11
- 1 The Contractor shall not be responsible for the contents of the Requirements or the adequacy of the design contained within the Requirements.
 - 2 Subject to clause 11-1 the Contractor warrants that the design of the Project will:
 - 1 comply with the Statutory Requirements;
 - 2 satisfy any performance specification contained within the Requirements; and
 - 3 use materials selected in accordance with 'Good practice in the selection of construction materials', prepared by Ove Arup & Partners and sponsored by the British Council for Offices and the British Property Federation, as current at the Base Date.
 - 3 The Contractor warrants that he will exercise in the performance of his obligations in relation to the design of the Project the skill and care to be expected of a professional designer appropriately qualified and competent in the discipline to which such design relates and experienced in carrying out work of a similar scope, nature and size to the Project. The Contractor does not warrant that the Project, when constructed in accordance with his designs, will be suitable for any particular purpose.^[2]
 - 4 The Contractor shall use in the execution of the Project materials and goods of the kinds and standards described in this Contract or, if no such kinds or standards are described, materials and goods that are reasonably fit for their intended purpose. All materials and goods used for the Project shall be of satisfactory quality. Where materials or goods of the kinds and standards described in this Contract are not procurable the Contractor shall propose for the acceptance of the Employer an alternative that is wherever possible of an equivalent or better kind or standard, such acceptance not to be unreasonably delayed or withheld. The use of any alternative shall not be treated as giving rise to a Change unless the alternative accepted by the Employer is of a lesser kind or standard to that described in this Contract, in which case the provisions of clause 26 (*Changes*) shall apply as though the Employer had instructed a Change.
 - 5 All workmanship shall be of the standards described in this Contract or, if no such standards are described, shall be executed in a good and workmanlike manner.

^[2] Where the Parties do not wish the law applicable to this Contract to be the law of England appropriate amendments should be made.

Design submission procedure

- 12
- 1 The Contractor shall prepare the Design Documents.
 - 2 The Contractor shall submit the Design Documents to the Employer in the quantities and format identified in the Contract Particulars on the dates or on or before the expiry of the periods shown on the design programme contained in the Requirements or the Proposals or, if no date or period is shown, in sufficient time to allow any comments made by the Employer in accordance with clause 12 to be incorporated prior to the Design Document being required for procurement and/or execution of the Project.
 - 3 The Employer shall within 14 days of receipt of any Design Document, or before the expiry of 14 days from the date or the expiry of the period for submission of the same shown on the design programme contained in the Requirements or the Proposals, whichever is the later, return one copy of the Design Document to the Contractor marked 'A Action', 'B Action' or 'C Action' provided that the Employer shall only mark a Design Document 'B Action' or 'C Action' where he considers the Design Document is not in accordance with this Contract.
 - 4 If the Employer does not respond to a Design Document in accordance with the procedures in clause 12-3, the Employer shall be regarded as having marked that Design Document 'A Action'.
 - 5 Where the Employer marks a Design Document as 'B Action' or 'C Action', he shall also identify by means of a written comment why he considers that the Design Document is not in accordance with this Contract.
 - 6 When the Employer returns any Design Document under clause 12-3, the Contractor shall take the following action in relation to such Design Document:
 - 1 if it is marked 'A Action', the Contractor shall execute the Project in strict accordance with such Design Document;
 - 2 if it is marked 'B Action', the Contractor shall execute the Project in accordance with such Design Document, provided that the Employer's comments are incorporated into such Design Document and a further copy of it is promptly submitted to the Employer;
 - 3 if it is marked 'C Action', the Contractor shall take account of the Employer's comments on such Design Document and shall forthwith resubmit it to the Employer for comment in accordance with the provisions of clause 12-2. The Contractor shall not execute the Project in accordance with any Design Document marked 'C Action'.
 - 7 The Employer shall not be liable to pay for any work executed otherwise than in accordance with Design Documents marked 'A Action' or 'B Action' in accordance with clause 12-3 or 12-4.
 - 8 If the Contractor disagrees with a comment and considers that the Design Document is in accordance with this Contract he shall, within 7 days of receipt of the comment, notify the Employer that he considers compliance with the comment would give rise to a Change. Such notification shall be accompanied by a statement from the Contractor setting out the reasons why he considers that compliance with such comment would give rise to a Change. Upon receipt of such a notification the Employer shall within 7 days either confirm or withdraw the comment and, where the comment is confirmed, the Contractor shall amend his Design Document accordingly. The confirmation or withdrawal of a comment in accordance with clause 12-8 does not signify acceptance by the Employer that the Design Document, or amended Design Document, is in accordance with this Contract or that compliance with his comment would give rise to a Change.
 - 9 Where the Contractor does not notify the Employer in accordance with clause 12-8, any comment by the Employer will not be treated as giving rise to a Change.
 - 10 Compliance with the design submission procedure in clause 12 and/or with any comments from the Employer under it shall not diminish the Contractor's responsibility for ensuring both that any Design Document he prepares is in accordance with this Contract and that the Project, when completed, is in accordance with this Contract.

Copyright

- 13
- 1 The copyright in all Design Documents prepared by the Contractor in accordance with this Contract shall remain vested in the Contractor but the Contractor grants to the Employer an irrevocable, royalty-free non-exclusive licence to copy and use the Design Documents and to reproduce the designs and content of them for any purpose relating to the Project including, without limitation, the design, execution, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Project. Such

licence shall enable the Employer to copy and use the Design Documents for the purposes of an extension to the Project, but such use shall not include a licence to reproduce the designs contained in them for any extension to the Project. The Contractor agrees that the Employer may grant sub-licences to other persons to use and to reproduce the Design Documents and the designs and content of them for any purposes relating to the Project.

- 2 To the extent that the Contractor does not have ownership of the copyright in any Design Document the Contractor shall procure from the copyright holder a licence with full title guarantee to the Employer in respect of that Design Document in the same terms as are set out in clause 13.1.
- 3 The Contractor shall not be liable for any use made of the Design Documents that is outside of the scope of the licence granted by clause 13.

Ground conditions

- 14 -1 If the Contractor encounters ground conditions or man-made obstructions in the ground that necessitate an amendment to the Requirements and/or Proposals he shall notify the Employer of the amendments he proposes for the agreement of the Employer, such agreement not to be unreasonably delayed or withheld. Unless clause 14.2 applies, such amendment shall not be treated as giving rise to a Change.
- 2 When the Contract Particulars state that clause 14.2 applies, any amendment agreed by the Employer under clause 14.1 shall be treated as giving rise to a Change to the extent that the ground conditions or man-made obstructions in the ground could not reasonably have been foreseen by an experienced and competent contractor on the Base Date, having regard to any information concerning the Site that the Contractor had or ought reasonably to have obtained.

Time

Commencement and completion

- 15 -1 The Employer shall give the Contractor access to the Site on the date stated in the Contract Particulars and shall give to the Contractor access to such part or parts of the Site at such times and for such periods as may be reasonably necessary to enable the Contractor to execute and complete the Project in accordance with this Contract. Access to the Site shall be subject to any restrictions set out in the Requirements. The Contractor shall not be entitled to exclusive possession of the Site.
- 2 Upon access to the Site being given under clause 15.1, the Contractor shall commence the execution of the Project and shall proceed regularly and diligently with the Project so as to achieve Practical Completion on or before the Completion Date.
- 3 The Contractor shall at all times use his reasonable endeavours to prevent or reduce delay to the progress of the Project or to completion of the Project.
- 4 The Contractor shall notify the Employer when in his opinion Practical Completion has occurred and, if he agrees, the Employer shall issue a statement recording the date of Practical Completion. Where the Employer does not agree that Practical Completion has occurred, he shall notify the Contractor of the work that he requires to be completed before Practical Completion will occur. When the Contractor considers such work has been completed, he shall notify the Employer and, when satisfied that it has been completed, the Employer shall issue a statement recording the date of Practical Completion.

Damages for delay

- 16 -1 If the Contractor fails to achieve Practical Completion by the Completion Date, he shall be liable to pay the Employer liquidated damages calculated at the rate stated in the Contract Particulars for the period from the Completion Date to the date of Practical Completion.
- 2 Where liquidated damages have been paid to the Employer and the Completion Date is subsequently adjusted in accordance with clause 18 (*Extension of time*), the Employer shall be liable to repay to the Contractor any liquidated damages to which the Employer is no longer entitled.

Taking over parts of the Project

- 17 -1 The Employer may take over any part or parts of the Project prior to Practical Completion of the same with the consent of the Contractor, which consent shall not be unreasonably delayed or withheld.

- 2 Where the Employer takes over any part of the Project prior to Practical Completion, he shall issue a statement identifying the part of the Project taken over, the date when it was taken over and the value of that part.
- 3 From the date identified in the statement issued under clause 17.2, the part of the Project that is taken over shall be treated as having achieved Practical Completion and the rate of liquidated damages stated in the Contract Particulars in respect of the Project or the Section or Sections of which it forms part (where applicable) shall reduce by the same proportion that the value of the part bears to the Contract Sum or the value of the Section or Sections, as stated in or calculated in accordance with the Pricing Document.

Extension of time

- 18 -1 The Contractor shall be entitled to an adjustment to the Completion Date to the extent that, having regard to the principles set out in clause 18.7, completion of the Project or any Section (if applicable) is or is likely to be delayed by:
 - 1 force majeure;
 - 2 the occurrence of one or more of the Specified Perils;
 - 3 the exercise after the Base Date by the United Kingdom Government of any statutory power that directly affects the execution of the Project, other than alterations to Statutory Requirements as referred to by clause 10.5 ;
 - 4 the use or threat of terrorism and/or the activities of the relevant authorities in dealing with such a threat;
 - 5 any Change;
 - 6 interference with the Contractor's regular progress of the Project by Others on the Site;
 - 7 the valid exercise by the Contractor of his rights under section 112 of the HGCRA 1996; or
 - 8 any other breach or act of prevention by the Employer or his representative or advisers appointed pursuant to clause 21.2.

Provided always that there shall be no adjustment to the Completion Date in respect of any matter where it is specifically stated by this Contract that such matter will not give rise to a Change.

- 2 Whenever the Contractor becomes aware that the progress of the Project is being or is likely to be delayed due to any cause, he shall forthwith notify the Employer of the cause of the delay and its anticipated effect upon the progress and completion of the Project or any Section (if applicable).
- 3 Where the Contractor considers the cause of the delay is one of those identified in clauses 18.1.1 to 18.1.8 he shall also:
 - 1 provide supporting documentation to demonstrate to the Employer the effect upon the progress and completion of the Project or any Section (if applicable); and
 - 2 revise any documentation provided so that the Employer is at all times aware of the anticipated or actual effect of the cause of delay upon progress and completion of the Project or any Section (if applicable).
- 4 Where the Contractor has notified the Employer under clause 18.2 and the cause of delay is identified as being one of those in clauses 18.1.1 to 18.1.8 the Employer shall, within 42 days of receipt of the notification, either:
 - 1 notify the Contractor of such adjustment to the Completion Date as he then calculates to be fair and reasonable; or
 - 2 notify the Contractor why he considers that the Completion Date should not be adjusted.

Any adjustment made to the Completion Date shall be calculated by reference to the documentation provided by the Contractor in accordance with clause 18.3. The Employer may take account of other information available to him.

- 5 Any notification given under clause 18.4 may be reviewed by the Employer at any time in the light of further documentation from the Contractor or when the effects of any identified cause of delay become more apparent.
- 6 No later than 42 days after Practical Completion of the Project the Contractor shall provide documentation to support any further adjustment to the Completion Date that he considers

fair and reasonable. Within 42 days of receipt of that documentation the Employer shall undertake a review of his previous adjustments to the Completion Date. The review shall have regard to that documentation and the Employer shall either notify such further adjustment to the Completion Date as is fair and reasonable or confirm the Completion Date previously notified.

- 7 In considering any adjustment to the Completion Date the Employer shall:
 - 1 implement any agreements about the Completion Date reached in accordance with clauses 19 (*Acceleration*), 25 (*Cost savings and value improvements*) and 26 (*Changes*);
 - 2 have regard to any breach by the Contractor of clause 15·3 ;
 - 3 make a fair and reasonable adjustment to the Completion Date notwithstanding that completion of the Project may also have been delayed due to the concurrent effect of a cause of delay that is not listed in clauses 18·1·1 to 18·1·8.
- 8 Except by agreement with the Contractor, no adjustment to the Completion Date shall give rise to an earlier Completion Date than one that has already been notified.

Acceleration

- 19 ·1 Where the Employer wishes to investigate the possibility of achieving Practical Completion before the Completion Date he may invite proposals from the Contractor. The Contractor shall either:
 - 1 make such proposals accordingly, identifying the time that will be saved and any additional costs that would be incurred; or
 - 2 explain why it is impracticable to achieve Practical Completion at an earlier date.
- 2 The Employer may accept any proposals made by the Contractor or seek revised proposals. If the Employer accepts any proposals he shall issue an instruction identifying the agreed adjustment to the Completion Date and additional costs (if any), and that instruction shall be treated as giving rise to a Change.
- 3 Save as set out in clauses 19 (*Acceleration*) and 25 (*Cost savings and value improvements*) the Employer may not instruct the Contractor to achieve Practical Completion before the Completion Date.

Bonus

- 20 If the date of Practical Completion is earlier than the Completion Date the Employer shall be liable to pay to the Contractor a bonus calculated at the rate set out in the Contract Particulars for the period from the date of Practical Completion to the Completion Date.

Control

The Employer's representative

- 21 ·1 The Employer shall ensure that at all times a person is appointed to act as his representative who shall exercise all of the powers and functions of the Employer under this Contract. The appointment of a representative shall take effect upon, and may be revoked at any time by, notification to the Contractor.
- 2 The Employer may appoint advisers in connection with the Project and may notify the Contractor of their appointment and their role on the Project. The Contractor shall co-operate with such advisers but they shall have no authority to act on behalf of the Employer.

Testing and compliance

- 22 ·1 Where the Employer instructs the Contractor to open up for inspection or to test any work executed or materials or goods supplied for the Project and that opening up, inspection or test is not provided for by this Contract, the instruction shall be treated as giving rise to a Change unless the opening up, inspection or test discloses that the work, materials or goods are not in accordance with this Contract. Where the work, materials or goods are found not to be in accordance with this Contract the instruction shall not be treated as giving rise to a Change.
- 2 Where work, materials or goods are not in accordance with this Contract the Employer may:

- 1 instruct their removal from the Site, either wholly or partially;
 - 2 after consultation with the Contractor, instruct that they may be used on the Project, but subject to the Contractor becoming liable to pay the Employer an appropriate amount calculated in accordance with the prices and principles set out in the Pricing Document and without the Contractor having any entitlement to an adjustment to the Completion Date and/or to the payment of loss and/or expense;
 - 3 after consultation with the Contractor, instruct such further works as are necessary as a consequence of the removal or use of the non-conforming work, materials or goods;
 - 4 instruct such further opening up, testing or inspection as is reasonable in all the circumstances to establish to the reasonable satisfaction of the Employer that other similar work, materials or goods are in accordance with this Contract.
- 3 No instruction issued under clause 22.2 shall be treated as giving rise to a Change.

Rectification of Defects

- 23
- 1 During the Rectification Period the Employer may instruct the Contractor to remedy any Defect. The Contractor shall comply with any instructions within a reasonable time and at no cost to the Employer and, should he not do so, the Employer may engage others in accordance with clause 8.3.
 - 2 After the expiry of the Rectification Period and when all Defects that the Contractor has been instructed to remedy under clause 23.1 have been remedied the Employer shall issue a statement to that effect.
 - 3 Where there are Defects that the Contractor has been instructed to remedy under clause 23.1 but which have not been remedied within a reasonable period of the expiry of the Rectification Period the Employer shall issue a statement identifying:
 - 1 those Defects that he intends to engage others to rectify, together with a proper estimate of the cost of undertaking those rectification works; and
 - 2 those Defects that he does not intend to rectify, together with particulars of the appropriate deduction he intends to make in the calculation of the amount due to the Contractor.
 - 4 The provisions of clause 23 are without prejudice to any other rights or remedies the Parties may possess.

Pre-Appointed Consultants and Named Specialists

- 24
- 1 The provisions of clause 24 relating to Pre-Appointed Consultants apply only where so stated in the Contract Particulars.
 - 2 Immediately upon entering into this Contract the Parties shall take all steps necessary to execute a Model Form in respect of all Pre-Appointed Consultants.
 - 3 The Contractor shall appoint a Named Specialist to prepare any designs or execute any works that are identified by the Requirements as having to be undertaken by a Named Specialist. The Contractor shall immediately notify the Employer of the identity of any Named Specialist upon their appointment and shall supply to the Employer a copy of the contract entered into by the Contractor with the Named Specialist (other than the financial details contained in it).
 - 4 Subject to clause 11.1 the Contractor shall be solely responsible under this Contract for the services provided by any Pre-Appointed Consultant whether before or after the date of this Contract and the works undertaken by any Named Specialist or replacement specialist appointed in accordance with clause 24.8.
 - 5 If the Contractor either fails to execute a Model Form in the manner provided by clause 24.2 or fails to appoint a Named Specialist in the manner provided by clause 24.3 the Employer shall not be liable to pay the Contractor in respect of services that were to be provided by that Pre-Appointed Consultant or works that were to be undertaken by the Named Specialist.
 - 6 The Contractor shall not without the prior written consent of the Employer amend his contract with any Pre-Appointed Consultant or Named Specialist or waive strict compliance by a Pre-Appointed Consultant or Named Specialist with the performance of his obligations under such contract or estop himself from enforcing such obligations, such consent not to be unreasonably delayed or withheld. Where the Contractor amends or waives or estops himself from enforcing his contract with any Pre-Appointed Consultant or Named Specialist

other than in accordance with this clause then the Employer shall not be liable to pay the Contractor in respect of services that are no longer being provided by the Pre-Appointed Consultant or Named Specialist.

- 7 The Contractor shall not terminate his contract with any Pre-Appointed Consultant or Named Specialist without the prior written consent of the Employer, such consent not to be unreasonably delayed or withheld. When the Contractor terminates his contract with a Pre-Appointed Consultant or Named Specialist he shall immediately notify the Employer of the termination.
- 8 Either before or as soon as possible after the termination of the contract of a Pre-Appointed Consultant or Named Specialist the Contractor shall notify the Employer of his proposed replacement consultant or specialist. Where possible the replacement specialist shall be selected from any list contained within the Requirements. The proposed replacement consultant or specialist shall be appointed by the Contractor unless the Employer raises reasonable objection within 7 days of the notification. Where a reasonable objection is raised by the Employer the Contractor shall propose a further replacement for consideration by the Employer in accordance with this provision.
- 9 The Contractor shall immediately supply to the Employer a copy of the contract entered into with any replacement consultant or specialist (other than the financial details contained in it).
- 10 The Contractor's liabilities and obligations under this Contract shall not be affected by the appointment of a replacement consultant or specialist and the Contractor shall be entirely responsible for any delay or additional cost incurred as a consequence of the appointment of a replacement consultant or specialist.
- 11 No variation or alteration in the services to be provided by the Pre-Appointed Consultant or Named Specialist to the Contractor and no waiver or forgiveness or other action or inaction by the Contractor shall serve to alter or diminish the Contractor's liability to the Employer in respect of the services provided under this Contract.

Cost savings and value improvements

- 25 ·1 The Contractor is encouraged to suggest amendments to the Requirements and/or the Proposals which, if instructed as a Change, would result in a financial benefit to the Employer. The benefit may arise in the form of:
 - 1 a reduction in the cost of the Project;
 - 2 a reduction in the life cycle costs associated with the Project;
 - 3 the achievement of Practical Completion at a date earlier than the Completion Date; and/or
 - 4 any other financial benefit to the Employer.
- 2 The Contractor shall provide details of his suggested amendments to the Requirements and/or Proposals together with a quotation as provided in clause 26.4 and his calculation of the benefit he believes the Employer will obtain, expressed in financial terms.
- 3 Where the Employer wishes to implement an amendment suggested by the Contractor the Parties shall negotiate with a view to agreeing the Contractor's quotation and the financial benefit to the Employer. Such agreement shall be confirmed by the Employer by an instruction identifying the agreed value of the Change, any agreed adjustment to the Completion Date and the agreed financial benefit to the Employer.
- 4 Upon Practical Completion of the Project the Employer shall be liable to pay the Contractor the proportion identified in the Contract Particulars of the agreed financial benefit.
- 5 Any amendment suggested by the Contractor in accordance with clause 25.2 shall be clearly identified as being an amendment suggested under the provisions of clause 25. Where the Contractor has suggested amendments in this manner, the Employer may only instruct those amendments in accordance with the procedures set out in clause 25, provided always that nothing shall prevent the Employer from utilising other contractors to implement suggested amendments after Practical Completion of the Project.

Valuation and Payment

Changes

- 26 ·1 Each Party shall immediately notify the other:
 - 1 whenever he considers that an instruction gives rise to a Change; and/or

- 2 of the occurrence of any event that under this Contract is required be treated as giving rise to a Change.
- 2 Other than in respect of Changes instructed in accordance with the provisions of clause 19 (*Acceleration*) or 25 (*Cost savings and value improvements*), the consequences of any Change shall be determined in accordance with the provisions of clause 26 so that either:
 - 1 the value of the Change and any adjustment to the Completion Date is agreed in accordance with clause 26-5 prior to an instruction being issued; or
 - 2 a fair valuation of the Change is made in accordance with clause 26-6 and any adjustment to the Completion Date is notified in accordance with clause 18 (*Extension of time*).
- 3 Prior to instructing any Change the Employer may provide details of the proposed Change and request the Contractor to submit a quotation in respect of the Change. The Contractor shall provide the quotation within 14 days of the request, or within such longer period as the Employer states in his request.
- 4 The quotation provided by the Contractor shall:
 - 1 give a valuation of the Change calculated in accordance with the principles set out in clause 26-6;
 - 2 identify any adjustment to the Completion Date that will be required as a consequence of the Change;
 - 3 be in sufficient detail for the Employer to assess the amounts and periods required and, in particular, shall state separately any amounts included in respect of loss and/or expense;
 - 4 identify the period, being not less than 14 days, for which the quotation remains open for acceptance.
- 5 The Employer may accept the quotation or request the Contractor to submit a revised quotation. When the Employer accepts a quotation he shall issue an instruction identifying the quotation that is being accepted, the agreed value and any agreed adjustment to the Completion Date.
- 6 Where agreement is not reached under clause 26-5, a fair valuation of any Change shall be made by the Employer. Such valuation shall have regard to the following:
 - 1 the nature and timing of the Change;
 - 2 the effect of the Change on other parts of the Project;
 - 3 the prices and principles set out in the Pricing Document, so far as applicable; and
 - 4 any loss and/or expense that will be incurred as a consequence of the Change, provided always that the fair valuation shall not include any element of loss and/or expense if that element was contributed to by a cause other than a Change or a matter set out in clause 27-2.
- 7 Within 14 days of a Change being identified by either Party the Contractor shall provide to the Employer details of his proposed valuation of the Change together with such information as is reasonably necessary to permit a fair valuation to be made.
- 8 Within 14 days of receipt of the information referred to by clause 26-7 the Employer shall notify the Contractor of his valuation of the Change, that valuation being calculated by reference to the information provided by the Contractor. The valuation shall be in sufficient detail to permit the Contractor to identify any differences between it and the Contractor's proposed valuation.
- 9 No later than 42 days after Practical Completion of the Project the Contractor shall provide particulars of any further valuation he considers should be made in respect of any Change. Within 42 days of the receipt of those particulars the Employer shall undertake a review of his previous valuations of each Change to which those particulars relate and notify the Contractor of such further valuation as he considers appropriate.

Loss and/or expense

- 27 -1 No Change or matter that is required by this Contract to be treated as giving rise to a Change shall, either individually or in conjunction with other Changes, give rise to an entitlement to be reimbursed for loss and/or expense under clause 27.
- 2 Subject to clause 27-1 the only matters for which the Employer will be liable to the Contractor in respect of loss and/or expense are:

- 1 a breach or act of prevention on the part of the Employer or his representative or advisers appointed pursuant to clause 21.2, other than any matters or actions that are expressly permitted by this Contract and that are stated not to give rise to a Change;
- 2 interference with the Contractor's regular progress of the Project by Others on the Site;
- 3 the valid exercise by the Contractor of his rights under section 112 of HGCRA 1996.
- 3 As soon as the Contractor becomes aware that the regular progress of the Project is or is likely to be materially affected as a consequence of any of the matters set out in clause 27.2 so as to cause loss and/or expense to be incurred he shall notify the Employer. The Contractor shall take all practicable steps to reduce the loss and/or expense to be incurred.
- 4 The Contractor shall provide to the Employer his assessment of the loss and/or expense incurred or to be incurred as a consequence of any matter notified in accordance with clause 27.3 together with such information as is reasonably necessary to enable the Employer to ascertain the loss and/or expense incurred. Such assessment and information shall be updated at monthly intervals until such time as the Contractor has provided all of the information that is reasonably necessary to allow the whole of the loss and/or expense that has been incurred to be ascertained.
- 5 Upon receipt of any information referred to by clause 27.4 regarding loss and/or expense that has been incurred the Employer shall within 14 days notify the Contractor of his ascertainment of the loss and/or expense incurred, that ascertainment being made by reference to the information provided by the Contractor and being in sufficient detail to permit the Contractor to identify any differences between it and the Contractor's assessment of the loss and/or expense incurred.
- 6 No later than 42 days after Practical Completion of the Project the Contractor shall provide documentation in support of any further ascertainment he considers should be made in respect of any matter notified in accordance with clause 27.3. Within 42 days of receipt of such documentation the Employer shall undertake a review of his previous ascertainment in respect of each matter for which further documentation has now been provided and notify the Contractor of any further ascertainment that he considers appropriate.
- 7 The Employer shall be liable to pay the Contractor any loss and/or expense that has been ascertained in accordance with clause 27.
- 8 No ascertainment of loss and/or expense under clause 27 shall include any element of loss and/or expense to the extent that that element was contributed to by any cause which is neither a Change nor a matter set out in clause 27.2. Any loss and/or expense incurred as a consequence of a Change is to be included in a valuation made under clause 26 (Changes).

Payments

- 28 -1 No later than 7 days before any date when the Contractor considers an interim payment advice should be issued by the Employer he shall submit a detailed application for payment to the Employer setting out the amounts he considers should be included within a payment advice and the amount that he considers due.
- 2 Prior to Practical Completion of the Project the Employer shall issue to the Contractor on the dates stated in the Contract Particulars interim payment advices setting out the amount due from one Party to the other. After Practical Completion of the Project the Employer shall issue further interim payment advices at intervals of not less than one month but shall not be obliged to issue a payment advice where the amount identified as due to either Party would be less than the amount stated in the Contract Particulars.
- 3 A payment advice shall set out, or be accompanied by a statement setting out, the amount of the payment proposed to be made, and the basis on which that amount was calculated.
- 4 Any amount stated by a payment advice as being payable to the Contractor shall become due for payment upon the receipt of a VAT invoice for that amount by the Employer. Any amount stated by a payment advice as being payable to the Employer shall be due upon the issue of the payment advice. Subject to clause 38.4.4 the final date for payment shall be 14 days after the amount to be paid becomes due.
- 5 Each interim payment advice shall state:
 - 1 the proportion of the Contract Sum to which the Contractor is entitled, calculated in the manner set out in the Pricing Document;
 - 2 the value of any Changes executed by the Contractor;

- 3 the amount of any reductions made as a consequence of the provisions of clause 12·7, 24·5 or 24·6; and
- 4 any amounts that either Party is liable to pay the other in accordance with the provisions of this Contract.

Payments previously made shall be deducted in order to determine the amount due from one Party to the other.

- 6 Upon the issue by the Employer of the statement referred to in either clause 23·2 or clause 23·3, the Employer shall issue a final payment advice in respect of the total amount to which the Contractor is entitled. This total amount shall include:
 - 1 the Contract Sum;
 - 2 the matters set out in clauses 28·5·2 to 28·5·4;
 - 3 the appropriate deduction recorded by any statement issued under the provisions of clause 23·3 in respect of Defects that the Employer does not intend to rectify.

Payments previously made shall be deducted in order to determine the amount due from one Party to the other.

- 7 The final payment advice shall be final and binding upon the Parties in relation to amounts due from the Employer to the Contractor under or in connection with this Contract, including any sums due to the Contractor as a consequence of claims for breach of contract, breach of statutory duty, negligence or otherwise, unless within 28 days of the final payment advice being issued the Contractor disputes any aspect of it by reference to adjudication or litigation as provided in clause 41 (*Resolution of disputes*).
- 8 Notwithstanding anything to the contrary elsewhere in this Contract, where the Employer has notified the Contractor that he is a "contractor" for the purposes of the CIS the Contractor shall provide vouchers in accordance with the requirements of the CIS in respect of all payments received. If the Contractor fails to do so the Employer shall not be obliged to make any further payment to the Contractor until such time as the failure is remedied.

Withholding

- 29 ·1 Provided that an effective notice of withholding has been given, the Employer may withhold from any payment that is due to the Contractor:
 - 1 any amount that the Contractor is liable to pay the Employer in accordance with the terms of this Contract;
 - 2 any sums owed to the Employer by the Contractor as a consequence of any breach of this Contract; and/or
 - 3 where a final payment advice has been issued, a proper estimate of the cost to the Employer of rectifying any Defects referred to in clause 23·3·1.
- 2 To be effective any notice of withholding must be given to the Contractor no later than 7 days before the final date for payment of the sum from which the withholding is to be made and must identify the ground or grounds upon which the withholding is proposed to be made and the amount of withholding attributable to each ground.

Interest

- 30 ·1 If either Party fails to make payment in accordance with this Contract the other Party shall be entitled to simple interest on the amounts outstanding calculated at a rate of 5% per annum in excess of the Base Rate for the period until payment is made.
- 2 It is agreed that the provisions of clause 30·1 constitute a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.

VAT

- 31 ·1 All amounts within this Contract are exclusive of any VAT that may be due to the Contractor in respect of the Project.
- 2 Where required by applicable legislation VAT shall be added to any payment by either Party to the other and the Party receiving payment shall provide any documentation reasonably necessary in order to permit such a payment to be properly made.

Indemnities and Insurance

Indemnities

- 32 -1 The Contractor shall be liable for and shall indemnify the Employer against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of:
- 1 the personal injury to or the death of any person; and
 - 2 the loss, injury or damage to any property real or personal,
- to the extent that such expense, liability, loss, claim or proceedings arise out of or in the course of carrying out of the Project and is not as a consequence of some act or neglect on the part of the Employer or any person for whom the Employer is responsible (excluding the Contractor but including Others on the Site) but excluding any amount recoverable (or which but for any default by the Employer, policy excess or insurer's insolvency would have been recoverable) by the Employer under any policy required by clause 33.
- 2 The Employer shall be liable for and shall indemnify the Contractor against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of:
- 1 the personal injury to or the death of any person; and
 - 2 the loss, injury or damage to any property real or personal,
- to the extent that such expense, liability, loss, claim or proceedings arise out of or in the course of carrying out of the Project as a consequence of some act or neglect on the part of the Employer or any person for whom the Employer is responsible (excluding the Contractor but including Others on the Site) but excluding any amount recoverable (or which but for any default by the Contractor, policy excess or insurer's insolvency would have been recoverable) by the Contractor under any policy required by clause 33.

Insurances

- 33 -1 Policies of insurance shall be provided and maintained in the manner indicated by the Contract Particulars and each Party shall comply with the terms and conditions of those policies to which he is a party including, where applicable, compliance with the Joint Fire Code. Where either Party is notified of any remedial measures considered necessary by an insurer as a consequence of non-compliance with the Joint Fire Code, the other Party shall be notified and the Contractor shall implement the remedial measures without delay and this shall not be treated as giving rise to a Change.
- 2 Where a Party is required by this Contract to provide and maintain a policy of insurance, the other Party may request the production of documentary evidence that the policy has been taken out and remains in force and, apart from any policy required by clause 34 (*Professional Indemnity*), may also request a copy of the policy document.
- 3 If a Party fails to provide the documentary evidence referred to by clause 33.2 within 7 days of a request being made, the other Party may assume that there has been a failure to insure. Where there has been a failure to insure by one Party the other Party may insure against any risk to which he is exposed as a consequence and the Party that has failed to insure will be liable to pay the other any costs incurred in taking out and maintaining that insurance.
- 4 Upon the occurrence of an event giving rise to a claim under any policy of insurance required to be provided by this Contract the Party intending to make the claim shall notify the other Party.
- 5 The occurrence of an event giving rise to a claim shall be disregarded in the computation of the amount due to the Contractor in accordance with this Contract and, subject to clauses 32 (*Indemnities*) and 33-6, neither the Employer nor the Contractor shall be entitled to receive any payment from the other in respect of the event giving rise to the claim.
- 6 Where any policy of insurance required to be provided by this Contract contains a policy excess, the Party making a claim under the policy shall pay or bear the policy excess stated in the Contract Particulars.¹⁴
- 7 Where any part of the Terrorism Cover ceases to be available the Party responsible for providing and maintaining the relevant policy shall immediately notify the other.
- 8 From the later of the date of the cessation of such Terrorism Cover or the date of any required notification to the Employer by the Contractor under clause 33.7 the risk of any loss that would otherwise have been covered by a policy of insurance required by this

¹⁴ See the Major Project Construction Contract Guide which sets out alternative model clauses.