

Contract shall rest with the Employer. Any additional works necessary to complete the Project as a consequence of a loss due to terrorism that would otherwise have been covered by a policy of insurance required by this Contract shall be treated as a Change.

#### Professional Indemnity

- 34
- 1 The provisions of clause 34 only apply when so stated in the Contract Particulars.
  - 2 The Contractor shall take out a Professional Indemnity insurance policy with limits of indemnity of the types and in amounts not less than those stated in the Contract Particulars. Thereafter, provided it is available at commercially reasonable rates, such insurance shall be maintained until the expiry of 12 years from the date of Practical Completion of the Project.
  - 3 Where the Contractor considers that any insurance required by clause 34·2 is no longer generally available at commercially reasonable rates he shall notify the Employer and co-operate with the Employer in seeking means by which the Contractor can be protected against professional liability claims arising out of the Project.

#### Assignment and Third Party Rights

##### Assignment

- 35
- 1 The Contractor may not assign either the benefit or the burden of this Contract without the consent of the Employer.
  - 2 The Employer may assign the benefit of this Contract at any time without the consent of the Contractor.
  - 3 The Contractor hereby consents to an assignment by the Employer of both the benefit and the burden of this Contract to the Funder at any time.

##### Third Party Rights from Contractor

- 36
- 1 The rights set out in Part 1 of Schedule 1 shall vest in a Purchaser or Tenant on the date on which the Employer serves on the Contractor a notice identifying such person and the nature of his interest in the Project.
  - 2 The rights of the Employer and/or the Contractor
    - 1 to terminate the Contractor's employment under this Contract (whether pursuant to clauses 38 to 40 (*Termination*) or otherwise) or to agree to rescind this Contract;
    - 2 to agree to amend or otherwise vary or to waive any terms of this Contract; or
    - 3 to agree to settle any dispute or other matter arising out of or in connection with this Contract, in each case in or on such terms as they in their absolute discretion shall think fit,
 shall not be subject to the consent of any Purchaser or Tenant.
  - 3 Notwithstanding the provisions of clause 36·2, where rights have vested in any Purchaser or Tenant under clause 36·1 the Employer and the Contractor shall not be entitled without the consent of such Purchasers or Tenants to amend or vary the express provisions of clauses 36·1 to 36·3 or of Part 1 of Schedule 1.
  - 4 The rights set out in Part 2 of Schedule 1 are hereby vested in the Funder.
  - 5 Where rights have vested in the Funder pursuant to clause 36·4:
    - 1 no amendment or variation shall be made to the express terms of clause 36·4 or 36·5 or of Part 2 of Schedule 1 without the prior written consent of the Funder; and
    - 2 neither the Employer nor the Contractor shall agree to rescind this Contract and the rights of the Contractor to terminate his employment thereunder or to treat this Contract as repudiated shall in all respects be subject to the provisions of paragraphs 5·1 to 5·3 of Part 2 of Schedule 1
 but, subject thereto, unless and until the Funder gives notice pursuant to paragraph 4 or 5·4 of Part 2 of Schedule 1, the Contractor shall remain free without the consent of the Funder to agree with the Employer to amend or otherwise vary or to waive any term of this Contract and to settle any dispute or other matter arising out of or in connection with this Contract in each case in such terms as they think fit without any requirement on the part of the Contractor to obtain any consent from the Funder.

## Default and Dispute Resolution

### Provisions applicable to termination generally

- 37 The provisions of clauses 38 to 40 (*Termination*) are without prejudice to any other rights or remedies that the Parties may possess.

### Termination by Employer

- 38
- 1 If the Contractor commits a Material Breach of this Contract the Employer may give the Contractor a notice identifying the Material Breach and stating that he may terminate the Contractor's employment under this Contract if he fails to remedy the Material Breach within 14 days of the notice.
  - 2 If the Material Breach has not been remedied within 14 days of the Employer's notice under clause 38.1 the Employer may by a further notice issued at any time within the subsequent 14 days terminate the Contractor's employment under this Contract.
  - 3 In the event that the Contractor becomes Insolvent the Employer may at any time by notice to the Contractor terminate the Contractor's employment under this Contract.
  - 4 If the Contractor's employment is terminated under clause 38:
    - 1 the Contractor shall not remove any materials, plant or equipment from the Site unless expressly permitted to do so by the Employer;
    - 2 the Contractor shall provide to the Employer all Design Documents prepared in connection with the Project;
    - 3 the Employer may make such other arrangements as he considers appropriate to complete the Project;
    - 4 the Employer shall not be obliged to make any further payment to the Contractor other than in accordance with clause 38.
  - 5 Subject to clause 38.7, when the Project has been completed and the defects rectification provisions of this Contract fulfilled the Employer shall issue a payment advice setting out:
    - 1 the additional costs incurred by the Employer in undertaking the Project compared with the costs that would have been incurred had the Project been completed by the Contractor in accordance with this Contract; and
    - 2 any loss and/or damage suffered by the Employer and for which the Contractor is liable, whether arising as a consequence of the termination or otherwise.
  - 6 The Employer may issue to the Contractor interim payment advices in respect of amounts that are due to him under clause 38.5 as and when they are incurred.
  - 7 If the Employer does not commence to make other arrangements for the completion of the Project within a 6 month period commencing on the date of termination the Employer shall issue a payment advice setting out:
    - 1 the amount that the Employer was liable to pay the Contractor at the date of termination, calculated in accordance with this Contract as if the Contractor's employment had not been terminated; and
    - 2 any loss and/or damage suffered by the Employer and for which the Contractor is liable, whether arising as a consequence of the termination or otherwise.
- Allowance shall be made for payments made to date in order to determine the amount payable by one Party to the other.
- 8 Any amount stated as payable by a payment advice issued under clause 38 shall become due on its issue and shall have a final date for payment 14 days later.

### Termination by Contractor

- 39
- 1 If the Employer commits a Material Breach of this Contract the Contractor may give a notice to the Employer identifying the Material Breach and stating that the Contractor may terminate his employment under this Contract if the Employer fails to remedy the Material Breach within 14 days of the notice.
  - 2 If the Material Breach has not been remedied within 14 days of the Contractor's notice under clause 39.1 the Contractor may by a further notice issued at any time within the subsequent 14 days terminate his employment under this Contract.

- 3 In the event that the Employer becomes Insolvent the Contractor may at any time by notice to the Employer terminate his employment under this Contract.
- 4 In the event that the Contractor's employment is terminated under clause 39 the Contractor shall:
  - 1 remove all of his materials, plant or equipment from the Site without delay;
  - 2 prepare an account setting out his valuation of his entitlements under this Contract at the date of termination (including any entitlements in respect of Changes and other amounts for which the Employer is liable) together with his reasonable costs of removal from the Site as a consequence of the termination and any loss and/or damage suffered by the Contractor and for which the Employer is liable, whether arising as a consequence of the termination or otherwise;
  - 3 issue a statement that compares the total amount included in the above account with the total payments previously received by the Contractor in order to determine the balance that is to be paid by one Party to the other.
- 5 Any amount identified by the statement issued under clause 39-4-3 as properly payable to the Contractor shall become due for payment upon the receipt of a VAT invoice by the Employer and any amount identified as payable to the Employer shall become due upon the issue of the statement. The final date for payment shall be 14 days after the amount to be paid becomes due.

#### Termination by either Party

- 40 -1 If the carrying out of the Project or a substantial proportion of the Project is suspended for the period stated in the Contract Particulars as a consequence of force majeure, the occurrence of any Specified Peril or hostilities involving the United Kingdom, or the use or threat of terrorism, either Party may issue to the other a notice specifying the circumstances of the suspension and stating that if the circumstances continue for a further 14 days he may terminate the Contractor's employment under this Contract.
- 2 If the circumstances continue for a further 14 days the Party that issued the notice may by a further notice at any time within the subsequent 14 days terminate the Contractor's employment under this Contract.
- 3 Where Terrorism Cover is no longer available the Employer may, by notice, terminate the Contractor's employment under this Contract.
- 4 If the Contractor's employment is terminated under clause 40 the Contractor shall:
  - 1 remove all of his materials, plant or equipment from the Site without delay;
  - 2 provide to the Employer all Design Documents prepared in connection with the Project;
  - 3 prepare an account setting out his valuation of his entitlements under this Contract at the date of termination (including any entitlements in respect of Changes and other amounts for which the Employer is liable) together with his reasonable costs of removal from the Site as a consequence of the termination;
  - 4 issue a statement that compares the total amount included in the above account with the total payments previously received by the Contractor in order to determine the balance that is to be paid by one Party to the other.
- 5 Any amount identified by the statement issued under clause 40-4-4 as properly payable to the Contractor shall become due for payment upon the receipt of a VAT invoice by the Employer and any amount identified as payable to the Employer shall become due upon the issue of the statement. The final date for payment shall be 14 days after the amount to be paid becomes due.

#### Resolution of disputes

- 41 Should any dispute or difference arise between the Parties in relation to this Project:
  - 1 where the Parties agree to do so, the dispute or difference may be submitted to mediation in accordance with the provisions of clause 42 (*Mediation*);
  - 2 the dispute or difference may be referred to adjudication in accordance with the provisions of clause 43 (*Adjudication*);
  - 3 the dispute or difference may be resolved by legal proceedings.

**Mediation**

- 42
- 1 Either Party may identify to the other any dispute or difference as being a matter that he considers to be capable of resolution by mediation and, upon being requested to do so, the other Party shall within 7 days indicate whether or not he consents to participate in a mediation with a view to resolving the dispute. The objective of mediation under clause 42 shall be to reach a binding agreement in resolution of the dispute.
  - 2 The mediator or selection method for the mediator shall be determined by agreement between the Parties.

**Adjudication**

- 43
- 1 Either Party may at any time refer any dispute or difference arising under this Contract to adjudication in accordance with the provisions of The Scheme.
  - 2 The Adjudicator shall be the person named in the Contract Particulars. Where no person is named or where the named Adjudicator is unable to act the Adjudicator shall be selected in the manner set out in the Contract Particulars.

## Contract Particulars

*Note: An asterisk \* indicates where selection has been or should have been made.*

Clause etc.	Subject	
1	Base Date	<u>12 August 2010</u>
1	Completion Date (where completion by Sections does not apply)	<u>24 August 2011</u> or such other date as may be established by the operation of clause 18 (Extension of time)
1	Contract Sum	<u>£2,923,530.94</u>
1	Funder (if any)	
1	Project	<u>40 Queen's Grove, London. Demolition and reconstruction of private residence.</u> as more fully described by the Requirements and the Proposals
1	Proposals	<u>See 40 Queen's Grove, London Construction Management Plan</u>
1	Requirements	<u>See Planning Drawings and Outline Architectural Specification</u>
7-2	CDM Co-ordinator previously appointed by the Employer (if any)	Not applicable.
12	Design Documents	shall be submitted to the Employer for review in the following quantities and format <u>Electronic pdf format</u>
14-2	Ground conditions (If no alternative is selected, clause 14-2 does not apply.)	* Clause 14-2 applies
15-1	Date on which the Contractor will be given access to the Site	<u>12 August 2010</u>
16-1	Daily rate of liquidated damages (where completion by Sections does not apply)	<u>£714 per day</u>
20	Daily rate of bonus for early Practical Completion (where completion by Sections does not apply) (Where no rate is specified, the rate shall be	£-

NIL.)

24	Pre-Appointed Consultants (Where no selection is made, the provisions shall not apply.)	The provisions of clause 24 in relation to Pre-Appointed Consultants apply
25.4	Proportion of any benefit to be paid to the Contractor (Where no proportion is specified, the proportion shall be 50 per cent.)	<u>0 per cent</u>
28.2	Dates of issue of interim payment advices (Where no date is stated, the payment advice shall be issued on the 28th of each month.)	Prior to Practical Completion of the Project the Employer shall issue an interim payment advice each month on the <u>28th of the month</u>
28.2	Interim payment advice after Practical Completion of the Project (Where no amount is stated, the amount is to be £10,000.00.)	The Employer shall not be obliged to issue an interim payment advice after Practical Completion of the Project where the amount stated as due to either Party is less than <u>£5,000</u>
33.1	Policies of insurance (The policies of insurance to be provided and maintained in accordance with this Contract are those defined by the documents listed in the following table, copies of which documents are annexed to this Contract. The Party responsible for providing and maintaining each policy of insurance is identified below.)	Type of insurance: <u>Employer's Liability</u> <u>As detailed in annexed documents reference:</u>  <u>Insurance to be provided and maintained by</u> <u>Mace Limited</u> <u>Amount of policy excess (Clause 33.6)<sup>m</sup></u>  Type of insurance: <u>Professional Indemnity</u> <u>As detailed in annexed documents reference:</u>  <u>Insurance to be provided and maintained by</u> <u>Mace Limited</u> <u>Amount of policy excess (Clause 33.6)<sup>m</sup></u>  Type of insurance: <u>Public Liability Insurance</u> <u>As detailed in annexed documents reference:</u>  <u>Insurance to be provided and maintained by</u> <u>Mace Limited</u> <u>Amount of policy excess (Clause 33.6)<sup>m</sup></u>

Type of insurance:

Contractor's All Risks

As detailed in annexed documents reference:

Insurance to be provided and maintained by

Mace Limited

Amount of policy excess (Clause 33-6)<sup>m</sup>

34-1	Professional Indemnity (Where no selection is made, clause 34 does not * apply.)	Clause 34 applies
34-2	Level of cover (If an alternative is not selected the amount shall * be the aggregate amount for any one period of insurance. A period of insurance for these purposes shall be one year unless otherwise stated.)	Amount of indemnity required relates to claims or series of claims arising out of one event
	(If no amount is stated, insurance under clause 34-2 shall not be required.)	and is <u>£10,000,000</u>
Sub-limits within the overall level of cover		
	Cover for pollution and contamination claims (If no amount is stated, such cover shall not be * required; unless otherwise stated, the required limit of indemnity is an annual aggregate amount.)	is not required
	Cover for asbestos claims (If no amount is stated, such cover shall not be * required; unless otherwise stated, the required limit of indemnity is an annual aggregate amount.)	is not required
	Cover for fungal mould claims	* is required/ * is not required
40	Period of suspension before a notice may be issued in accordance with clause 40-1 (Where none is stated, the period is to be 13 weeks.)	<u>4 weeks</u>

<sup>m</sup> See the Major Project Construction Contract Guide.

The Adjudicator is a partner/director in Gardiner & Theobald Fairway Limited as may be appointed by the senior partner/managing director from time to time to act as Adjudicator in place of the Adjudicator so appointed

Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)<sup>(9)</sup>  
*(Where an Adjudicator is not named and a nominating body has not been selected, the nominating body shall be one of the bodies listed opposite selected by the Party requiring the reference to adjudication.)*

- \* ~~Royal Institute of British Architects~~
- \* ~~The Royal Institution of Chartered Surveyors~~
- \* ~~Construction Confederation~~
- \* ~~National Specialist Contractors Council~~
- \* ~~Chartered Institute of Arbitrators~~

Paragraph of Schedule 1, Part 1 Third Party Rights from the Contractor for the Purchasers and/or Tenants

1-1-2 Applicability of paragraph 1-1-2  
*(Where no selection is made, paragraph 1-1-2 does not apply.)*

- \* Paragraph 1-1-2 does not apply

Paragraph of Schedule 2 Pricing Document

2 Applicable rule within the Pricing Document for payment of the Contract Sum<sup>(10)</sup>  
*(Where no selection is made, Rule A shall apply.)*

- Schedule 2:
- \* Rule A/
- \* ~~Rule B/~~
- \* ~~Rule C/~~
- \* ~~Rule D~~

Schedule 3 Supplemental Provisions  
*(Where neither entry against an item below is deleted, the relevant paragraph applies.)*

Collaborative working

- \* Paragraph 1 applies

Health and safety

- \* Paragraph 2 applies

Sustainable development and environmental considerations

- \* Paragraph 3 applies

Performance Indicators and monitoring

- \* Paragraph 4 does not apply

Notification and negotiation of disputes

- \* Paragraph 5 does not apply

<sup>(9)</sup> The Parties should either name the Adjudicator and select the nominating body or, alternatively, select only the nominating body. The Adjudication Agreement (Adj) and the Adjudication Agreement (Named Adjudicator) (Adj/N) have been prepared by JCT for use when appointing an Adjudicator.

<sup>(10)</sup> Delete all but one of the nominating bodies asterisked.

<sup>(11)</sup> Delete all but one.



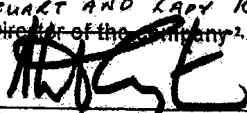

## Attestation

### Notes on Execution as a Deed

- 1 For the purposes of execution as a deed, two forms are provided for execution, one for the Employer and the other for the Contractor. Each form provides three methods of execution, (A) to (C), for use as appropriate. The full name of the Employer or Contractor (whether a company or other body) should be inserted where indicated at the commencement of the relevant form. This applies irrespective of the method used.
- 2 For public and private companies incorporated and registered under the Companies Acts, the three principal methods of execution as a deed are:
  - (A) through signature by a Director and the Company Secretary or by two Directors;
  - (B) by affixing the company's common seal in the presence of a Director and the *Company* Secretary or of two Directors or other duly authorised officers; or
  - (C) signature by a single Director in the presence of a witness who attests the signature.

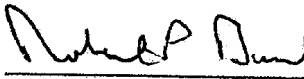
Methods (A) and (C) are available to public and private companies whether or not they have a common seal. (Method (C) was introduced by section 44(2)(b) of the Companies Act 2006.) Methods (A) and (C) are not available under companies legislation to local authorities or to certain other bodies corporate, e.g. bodies incorporated by letters patent or private Act of Parliament that are not registered under companies legislation and such bodies may only use method (B).
- 3 Where method (A) is being used, delete the inappropriate words and insert in the spaces indicated the names of the two Directors, or of the Director and the Company Secretary, who are to sign.
- 4 If method (B) (affixing the common seal) is adopted in cases where either or both the authorised officers attesting its affixation are not themselves a Director or the *Company* Secretary, their respective office(s) should be substituted for the reference(s) to Director and/or to *Company* Secretary/Director. (In the case of execution by bodies that are not companies, the reference to "*Company*" under the second signature should be deleted where appropriate.)
- 5 Method (C) (execution by a single Director) has been introduced primarily, but not exclusively, for 'single officer' companies. The Director should sign where indicated in the presence of a witness who should then sign and set out his name and address.

**Executed as a Deed by the Employer****Execution as a Deed**namely Sir Stuart and Lady Ruth Lipton(C) by attested signature of a single Director of the company<sup>2,5</sup>

*SIR STUART AND LADY RUTH LIPTON*  
   
 Signature Director

in the presence of

Witness' signature



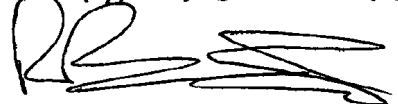
(Print name)

R P BURROW

Witness' address

67 Brook St London W1K 4NS  
 SOLICITOR

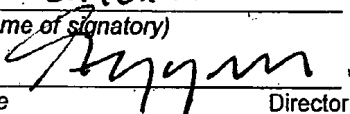
Note: The numbers on this page refer to the numbered paragraphs in the Notes on Execution as a Deed.

Witness signature of  
 RUTH K. LIPTON  



7, Park Avenue,  
 Hutton, Brentwood,  
 Essex CM13 2QL



*Execution as a Deed***Executed as a Deed by the Contractor**namely 'Mace Limited(A) acting by a Director and the Company Secretary/two Directors of the company <sup>2.1</sup>

IAN EGGERS.  
(Print name of signatory)  
  
Signature Director

and

DAVID VANGLIN  
(Print name of signatory)  
  
Signature Company Secretary/Director

*Note: The numbers on this page refer to the numbered paragraphs in the Notes on Execution as a Deed.*



# Schedules

## Schedule 1 Third Party Rights

(Clause 36)

### Part 1: Third Party Rights for Purchasers and Tenants

- 1
  - 1 The Contractor warrants as at and with effect from Practical Completion that he has carried out the Project in accordance with this Contract. In the event of any breach of this warranty and subject to paragraphs 1.2 and 1.3 of this Part 1 of this Schedule:
    - 1 the Contractor shall be liable for the reasonable costs of repair, renewal and/or reinstatement of any part or parts of the Project to the extent that the Purchaser or Tenant incurs such costs and/or the Purchaser or Tenant is or becomes liable either directly or by way of financial contribution for such costs; and
    - 2 (if paragraph 1.1.2 is stated in the Contract Particulars to apply) the Contractor shall in addition to the costs referred to in paragraph 1.1.1 be liable for any other losses incurred by the Purchaser or Tenant up to the maximum liability stated in the Contract Particulars.
  - 2 If in or by the Contract Particulars paragraph 1.1.2 is stated or deemed not to apply, the Contractor shall not be liable for any losses incurred by the Purchaser or Tenant other than the costs referred to in paragraph 1.1.1.
  - 3 The Contractor shall be entitled in any action or proceedings by the Purchaser or Tenant to rely on any term in this Contract and to raise the equivalent rights in defence of liability as he would have against the Employer under this Contract.
  - 4 The obligations of the Contractor under or pursuant to clause 36.1 shall not be released or diminished by the appointment of any person by the Purchaser or Tenant to carry out any independent enquiry into any relevant matter.
- 2 The Purchaser or Tenant has no authority to issue any direction or instruction to the Contractor in relation to this Contract.
- 3 Subject to the Employer (or the Funder in accordance with paragraph 6 of Part 2 of this Schedule) having paid all monies due and payable under this Contract, the Purchaser or Tenant is granted the same rights in respect of the Design Documents as are granted to the Employer by clause 13 (*Copyright*) and any use made of the Design Documents is subject to the same conditions as are set out in clause 13.
- 4 Where clause 34 (*Professional Indemnity*) applies the Contractor shall, upon request, provide to a Purchaser or Tenant evidence that the insurance required by clause 34 is being maintained. At the time of its issue the Contractor shall provide to any Purchaser or Tenant notified in accordance with clause 36.1 a copy of any notification provided under clause 34.3.
- 5 The rights contained in this Schedule may be assigned without the Contractor's consent by a Purchaser or Tenant, by way of absolute legal assignment, to another person (P1) taking an assignment of the Purchaser's or Tenant's interest in the Project and by P1, by way of absolute legal assignment, to another person (P2) taking an assignment of P1's interest in the Project. In such cases the assignment shall only be effective upon written notice thereof being given to the Contractor. No further or other assignment of a Purchaser's or Tenant's rights under this Schedule will be permitted and in particular P2 shall not be entitled to assign these rights.
- 6 Any notices required to be given by this Schedule shall be given in accordance with clause 5.2.
- 7 No action or proceedings for any breach of the rights contained in this Schedule shall be commenced against the Contractor after the expiry of 12 years from the date of Practical Completion of the Project or the relevant Section (if applicable), whichever is the earlier.
- 8 For the avoidance of doubt, the Contractor shall have no liability to the Purchaser or Tenant under this Schedule for delay in completion of the Project.
- 9 This Schedule 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 between the Contractor and any Purchaser or Tenant which arises out of or in connection with this Schedule.

## Part 2: Third Party Rights for a Funder

- 1
  - 1 The Contractor warrants that he has complied and will continue to comply with this Contract.
  - 2 The Contractor shall be entitled in any action or proceedings by the Funder to rely on any term in this Contract and to raise the equivalent rights in defence of liability as he would have against the Employer under this Contract.
  - 3 The obligations of the Contractor under or pursuant to clause 36.4 shall not be released or diminished by the appointment of any person by the Funder to carry out any independent enquiry into any relevant matter.
- 2 The Funder has no authority to issue any direction or instruction to the Contractor in relation to this Contract unless and until the Funder has given notice under paragraph 4 or 5.4 of this Part 2 of this Schedule.
- 3 The Funder has no liability to the Contractor in respect of amounts due under this Contract unless and until the Funder has given notice under paragraph 4 or 5.4.
- 4 The Contractor agrees that, in the event of the termination of the Finance Agreement by the Funder, the Contractor shall, if so required by written notice given by the Funder and subject to paragraph 6, accept the instructions of the Funder or its appointee to the exclusion of the Employer in respect of the Project upon the terms and conditions of this Contract. The Employer acknowledges that the Contractor shall be entitled to rely on a notice given to the Contractor by the Funder under this paragraph 4 as conclusive evidence for the purposes of this Contract of the termination of the Finance Agreement by the Funder; and further acknowledges that such acceptance of the instructions of the Funder to the exclusion of the Employer shall not constitute any breach of the Contractor's obligations to the Employer under this Contract.
- 5
  - 1 The Contractor shall not exercise any right of termination of his employment under this Contract without having first:
    - 1 copied to the Funder any notices required by this Contract to be sent to the Employer prior to the Contractor being entitled to give notice under this Contract that his employment under this Contract is terminated; and
    - 2 given to the Funder written notice that he has the right under this Contract forthwith to notify the Employer that his employment under this Contract is terminated.
  - 2 The Contractor shall not treat this Contract as having been repudiated by the Employer without having first given to the Funder written notice that he intends so to inform the Employer.
  - 3 The Contractor shall not:
    - 1 issue a notice to the Employer to which paragraph 5.1.2 refers; or
    - 2 notify the Employer that he is treating this Contract as having been repudiated by the Employer as referred to in paragraph 5.2

before the lapse of 7 days from receipt by the Funder of the written notice by the Contractor which the Contractor is required to give under paragraph 5.1.2 or 5.2.
  - 4 The Funder may, not later than the expiry of the 7 days referred to in paragraph 5.3, require the Contractor by notice in writing and subject to paragraph 6 to accept the instructions of the Funder or its appointee to the exclusion of the Employer in respect of the Project upon the terms and conditions of this Contract. The Employer acknowledges that the Contractor shall be entitled to rely on a notice given to the Contractor by the Funder under this paragraph 5.4 and that acceptance by the Contractor of the instructions of the Funder to the exclusion of the Employer shall not constitute any breach of the Contractor's obligations to the Employer under this Contract. Provided that, subject to paragraph 6, nothing in this paragraph 5.4 shall relieve the Contractor of any liability he may have to the Employer for any breach by the Contractor of this Contract.
- 6 It shall be a condition of any notice given by the Funder under paragraph 4 or 5.4 that the Funder or its appointee accepts liability for payment of the sums due and payable to the Contractor under this Contract and for performance of the Employer's obligations including payment of any sums outstanding at the date of such notice. Upon the issue of any notice by the Funder under paragraph 4 or 5.4, this Contract shall continue in full force and effect as if no right of termination

of the Contractor's employment under this Contract, nor any right of the Contractor to treat this Contract as having been repudiated by the Employer, had arisen and the Contractor shall be liable to the Funder and its appointee under this Contract in lieu of his liability to the Employer. If any notice given by the Funder under paragraph 4 or 5.4 requires the Contractor to accept the instructions of the Funder's appointee, the Funder shall be liable to the Contractor as guarantor for the payment of all sums from time to time due to the Contractor from the Funder's appointee.

- 7 Subject to the Employer having paid all monies due and payable under this Contract, or the Funder having made payment of such sums in accordance with paragraph 6, the Funder is granted the same rights in respect of the Design Documents as are granted to the Employer by clause 13 (*Copyright*) and any use made of the Design Documents is subject to the same conditions as are set out in clause 13.
- 8 Where clause 34 (*Professional Indemnity*) applies the Contractor shall, upon request, provide to the Funder evidence that the insurance required by clause 34 is being maintained. At the time of its issue, the Contractor shall provide to the Funder a copy of any notification provided under clause 34.3.
- 9 The rights contained in this Schedule may be assigned without the Contractor's consent by the Funder, by way of absolute legal assignment, to another person (P1) providing finance or re-finance in connection with the carrying out of the Project and by P1, by way of absolute legal assignment, to another person (P2) providing finance or re-finance in connection with the carrying out of the Project. In such cases the assignment shall only be effective upon written notice thereof being given to the Contractor. No further or other assignment of the Funder's rights under this Contract will be permitted and in particular P2 shall not be entitled to assign these rights.
- 10 Any notices required to be given by this Schedule shall be given in accordance with clause 5.2.
- 11 No action or proceedings for any breach of the rights contained in this Schedule shall be commenced against the Contractor after the expiry of 12 years from the date of Practical Completion of the Project or the relevant Section (if applicable), whichever is the earlier.
- 12 Notwithstanding the rights contained in this Schedule, the Contractor shall have no liability to the Funder for delay under this Contract unless and until the Funder serves notice pursuant to paragraph 4 or 5.4. For the avoidance of doubt the Contractor shall not be required to pay liquidated damages in respect of the period of delay where the same has been paid to or deducted by the Employer.
- 13 This Schedule 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 between the Contractor and the Funder which arises out of or in connection with this Schedule.



## Schedule 2 Pricing Document

(Clause 1)

- 1 This Pricing Document contains:
  - 1 the rules for determining the manner in which the Contractor is to receive payments in respect of the Contract Sum; and
  - 2 the contract sum analysis and the pricing information.

**The rules for determining the manner in which the Contractor is to receive payments in respect of the Contract Sum**

- 2 The applicable rule is that identified by the Contract Particulars.

### Rule A – Interim valuation

- 3 The proportion of the Contract Sum to be included in an interim payment advice shall be the value of work properly executed by the Contractor up to a date 7 days prior to the issue of the payment advice, determined by reference to the rates and prices in the contract sum analysis.

### Rule B – Stage payment

- 4
  - 1 The proportion of the Contract Sum to be included in an interim payment advice shall be the total of the amounts identified in the contract sum analysis in respect of all of the stages completed by a date 7 days prior to the issue of the payment advice.
  - 2 Where the contract sum analysis indicates that any stage payment is to be treated as an advance payment, the issue of a payment advice in respect of that payment is conditional upon the receipt by the Employer of a bond in the form of the annexed draft.

### Rule C – Progress payment

- 5
  - 1 The proportion of the Contract Sum to be included in an interim payment advice shall be as set out in the annexed schedule.
  - 2 Where the schedule indicates that any progress payment is to be treated as an advance payment, the issue of that payment advice of that payment is conditional upon the receipt by the Employer of a bond in the form of the annexed draft.
  - 3 Where the Employer considers that Practical Completion will not be achieved by the date stated in the Contract Particulars, whether due to some matter entitling the Contractor to an adjustment to the Completion Date or otherwise, the Employer shall notify the Contractor of the date when he considers Practical Completion is likely to be achieved and, in consultation with the Contractor, determine the reasonable amendments necessary to the schedule.
  - 4 Any amendments made shall have regard to the prolonged duration over which future payments are to be made and reflect the proportions and intervals indicated by the schedule in respect of those payments that have not yet been the subject of a payment advice. No amendment shall be made in respect of payments that should have been the subject of a payment advice by the date of the Employer's notification to the Contractor under paragraph 5.3.
  - 5 The amendments to the schedule shall take effect in relation to any payment advice issued by the Employer more than 14 days after the notification under paragraph 5.3.

### Rule D – Some other procedure

- 6 The Contractor shall receive payment of the Contract Sum in the manner set out in the annexed procedure.

### The contract sum analysis and the pricing information

- 7
  - 1 The contract sum analysis and the pricing information are annexed.
  - 2 The contract sum analysis sets out the manner in which the Contractor has calculated the Contract Sum in the detail and containing such additional information as is specified by the

## Requirements.

- 3 Where there is more than one Section, the contract sum analysis identifies the value of each Section.
- 4 Where Rule B applies, the contract sum analysis also identifies the stages into which the Project is divided for payment purposes and the amounts applicable to each stage.
- 5 The pricing information comprises such information as is specified by the Requirements or provided by the Contractor for use in the valuation of Changes.

**Annexes:**

The contract sum analysis, comprising:

The pricing information, comprising:

## Schedule 3 Supplemental Provisions

Each provision applies unless otherwise stated in the Contract Particulars.

### Collaborative working

- 1 The Parties shall work with each other and with other project team members in a co-operative and collaborative manner, in good faith and in a spirit of trust and respect. To that end, each shall support collaborative behaviour and address behaviour which is not collaborative.

### Health and safety

- 2
  - 1 Without limiting either Party's statutory and/or regulatory duties and responsibilities and/or the specific health and safety requirements of this Contract, the Parties will endeavour to establish and maintain a culture and working environment in which health and safety is of paramount concern to everybody involved with the project.
  - 2 In addition to the specific health and safety requirements of this Contract, the Contractor undertakes to:
    - 1 comply with any and all approved codes of practice produced or promulgated by the Health and Safety Executive and/or the Health and Safety Commission;
    - 2 ensure that all personnel engaged by the Contractor and members of the Contractor's supply chain on site receive appropriate site-specific health and safety induction training and regular refresher training;
    - 3 ensure that all such personnel have access at all times to competent health and safety advice in accordance with regulation 7 of the Management of Health and Safety at Work Regulations 1999; and
    - 4 ensure that there is full and proper health and safety consultation with all such personnel in accordance with the Health and Safety (Consultation with Employees) Regulations 1996.

### Sustainable development and environmental considerations

- 3
  - 1 The Contractor is encouraged to suggest economically viable amendments to the Project which, if instructed as a Change, may result in an improvement in environmental performance in the carrying out of the Project or of the completed Project.
  - 2 The Contractor shall provide to the Employer all information that he reasonably requests regarding the environmental impact of the supply and use of materials and goods which the Contractor selects.

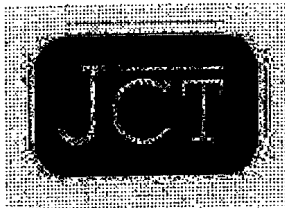
### Performance Indicators and monitoring

- 4
  - 1 The Employer shall monitor and assess the Contractor's performance by reference to any performance indicators stated or identified in the Contract Documents.
  - 2 The Contractor shall provide to the Employer all information that he may reasonably require to monitor and assess the Contractor's performance against the targets for those performance indicators.
  - 3 Where the Employer considers that a target for any of those performance indicators may not be met, he may inform the Contractor who shall submit his proposals for improving his performance against that target to the Employer.

**Notification and negotiation of disputes**

- 5 With a view to avoidance or early resolution of disputes or differences (subject to clause 43), each Party shall promptly notify the other of any matter that appears likely to give rise to a dispute or difference. The senior executives nominated in the Contract Particulars (or if either is not available, a colleague of similar standing) shall meet as soon as practicable for direct, good faith negotiations to resolve the matter.





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