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DB 2011 Design and Build Contract 2011

incorporating Amendment 1: CDM Regulations

2011

DESIGN AND BUILD CONTRACT

Articles of Agreement

This Agreement is made the 22ND DECEMBER 2014

Between

The Employer Laffly LLP

Place of incorporation: England

Company No. 00350595^[1]

whose registered office is at

15 Regent Street
London
SW1Y 4LR

And

The Contractor Develop UK (Space) Limited

Place of incorporation: England and Wales

Company No. 09236659^[1]

whose registered office is at

29/30 Fitzroy Square
London
W1T 6LQ

[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. As to execution by foreign companies and matters of jurisdiction, see the Design and Build Contract Guide.

Recitals

Whereas

- First** the Employer wishes to have the design and construction of the following work carried out^[2]:
- Refurbishment of Offices at 150 Holborn including extension to 5th & 6th Floor and external cladded system to existing brickwork
- at
- 150 Holborn, London EC1N 2NS
- (‘the Works’) and the Employer has supplied to the Contractor documents showing and describing or otherwise stating his requirements (‘the Employer’s Requirements’);
- Second** in response to the Employer’s Requirements the Contractor has supplied to the Employer:
- documents showing and describing the Contractor’s proposals for the design and construction of the Works (‘the Contractor’s Proposals’); and
 - an analysis of the Contract Sum (‘the Contract Sum Analysis’);
- Third** the Employer has examined the Contractor’s Proposals and, subject to the Conditions, is satisfied that they appear to meet the Employer’s Requirements^[3];
- Fourth** for the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004, the status of the Employer is, as at the Base Date, that stated in the Contract Particulars;
- Fifth** the division of the Works into Sections is shown in the Employer’s Requirements or in such other documents as are identified in the Contract Particulars^[4];
- Sixth** the Contract is not supplemented by a Framework Agreement;
- Seventh** the Supplemental Provisions identified in the Contract Particulars apply;

[2] State nature and location of intended works.

[3] Where the Employer has accepted a divergence from his requirements in the proposals submitted by the Contractor, the divergence should be removed by amending the Employer’s Requirements before the Contract is executed.

[4] Delete the Fifth Recital if the Works are not divided into Sections.

Articles

Now it is hereby agreed as follows

Article 1: Contractor's obligations

The Contractor shall complete the design for the Works and carry out and complete the construction of the Works in accordance with the Contract Documents.

Article 2: Contract Sum

The Employer shall pay the Contractor at the times and in the manner specified in the Conditions the VAT-exclusive sum of

1875000 (£1875000) ('the Contract Sum')

or such other sum as shall become payable under this Contract.

Article 3: Employer's Agent

For the purposes of this Contract the Employer's Agent is

Ove Arup & Partners

of

8 Fitzroy Street
London
W1

or such other person as the Employer shall nominate in his place. Save to the extent that the Employer may otherwise specify by notice to the Contractor, the Employer's Agent shall have full authority to receive and issue applications, consents, instructions, notices, requests or statements and otherwise to act for the Employer under any of the Conditions.

Article 4: Employer's Requirements and Contractor's Proposals

The Employer's Requirements, the Contractor's Proposals and the Contract Sum Analysis are those referred to in the Contract Particulars.

Article 5: Principal Designer

The Principal Designer for the purposes of the CDM Regulations is the Contractor

or such replacement as the Employer at any time appoints to fulfil that role.

Article 6: Principal Contractor

The Principal Contractor for the purposes of the CDM Regulations is the Contractor

or such replacement as the Employer at any time appoints to fulfil that role.

Article 7: Adjudication

If any dispute or difference arises under this Contract, either Party may refer it to adjudication in accordance with clause 9.2^(a).

Article 8: Arbitration

Where Article 8 applies^[7], then, subject to Article 7 and the exceptions set out below, any dispute or difference between the Parties of any kind whatsoever arising out of or in connection with this Contract shall be referred to arbitration in accordance with clauses 9.3 to 9.8 and the JCT 2011 edition of the Construction Industry Model Arbitration Rules (CIMAR). The exceptions to this Article 8 are:

- any disputes or differences arising under or in respect of the Construction Industry Scheme or VAT, to the extent that legislation provides another method of resolving such disputes or differences; and
- any disputes or differences in connection with the enforcement of any decision of an Adjudicator.

Article 9: Legal proceedings^[7]

Subject to Article 7 and (where it applies) to Article 8, the English courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.

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- [5] Insert the name of the Principal Designer in Article 5 if the Contractor is not to fulfil that role and that of the Principal Contractor in Article 6 if that is to be a person other than the Contractor.
Under the CDM Regulations 2015, regardless of whether or not a project is notifiable, there is a requirement to appoint a principal designer and a principal contractor in all cases where there is more than one contractor, or if it is reasonably foreseeable that more than one contractor will be working on a project at any time. For these purposes, the term 'contractor' is broadly defined by the regulations and treats the Contractor's sub-contractors as separate contractors.
- [6] As to adjudication in cases where the Employer is a residential occupier within the meaning of section 106 of the Housing Grants, Construction and Regeneration Act 1996, see the Design and Build Contract Guide.
- [7] If it is intended, subject to the right of adjudication and exceptions stated in Article 8, that disputes or differences should be determined by arbitration and not by legal proceedings, the Contract Particulars must state that Article 8 and clauses 9.3 to 9.8 apply and the words "do not apply" must be deleted. If the Parties wish any dispute or difference to be determined by the courts of another jurisdiction the appropriate amendment should be made to Article 9 (see also clause 1.10 and Schedule 5 Parts 1 and 2).

Contract Particulars

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

Part 1: General

Clause etc.	Subject	
Fourth Recital and clause 4.5	Construction Industry Scheme (CIS)	* Employer at the Base Date is a 'contractor' for the purposes of the CIS
Fifth Recital	Description of Sections (if any) <i>(If not shown or described in the Employer's Requirements, state the reference numbers and dates or other identifiers of documents in which they are shown.)</i> ^[6]	Employer's Requirements
Seventh Recital and Part 1 of Schedule 2	Supplemental Provisions – Part 1 <i>(Where neither entry against an item below is deleted, the relevant paragraph <u>does not</u> apply.)</i>	
	Site Manager	* Paragraph 1 applies
	Named Sub-Contractors	* Paragraph 2 applies
	Bills of Quantities	* Paragraph 3 does not apply
	Valuation of Changes – Contractor's estimates	* Paragraph 4 applies
	Loss and expense – Contractor's estimates	* Paragraph 5 applies
Seventh Recital and Part 2 of Schedule 2	Supplemental Provisions – Part 2 <i>(Where neither entry against an item below is deleted, the relevant paragraph applies.)</i>	
	Acceleration Quotation	* Paragraph 6 does not apply
	Collaborative working	* Paragraph 7 applies
	Health and safety	* Paragraph 8 applies
	Cost savings and value improvements	* Paragraph 9 does not apply

	Sustainable development and environmental considerations	* Paragraph 10 applies
	Performance Indicators and monitoring	* Paragraph 11 does not apply
	Notification and negotiation of disputes	* Paragraph 12 does not apply
Article 4	Employer's Requirements (State reference numbers and dates or other identifiers of documents in which these are contained.) ^[6]	Construction Management Plan issued by Arup
Article 4	Contractor's Proposals (State reference numbers and dates or other identifiers of documents in which these are contained.) ^[8]	Full set of drawings and further specifications by Arup
Article 4	Contract Sum Analysis (State reference numbers and dates or other identifiers of documents in which this is contained.) ^[6]	[]
Article 8	Arbitration (If neither entry is deleted, Article 8 and clauses 9.3 to 9.8 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it <u>must</u> be stated that Article 8 and clauses 9.3 to 9.8 apply.) ^[9]	* Article 8 and clauses 9.3 to 9.8 (Arbitration) apply
1.1	Base Date	28 November 2014
1.1	Sections: Dates for Completion of Sections ^[11]	Section [] : 1 July 2016
1.7	Addresses for service of notices by the Parties (If none is stated, the address in each case, subject to clause 1.7.3, shall be that shown at the commencement of the Agreement.) ^[12]	Employer 15 Regent Street London SW1Y 4LR Contractor 29/30 Fitzroy Square London W1T 6LQ
2.3	Sections: Dates of Possession of Sections ^[11]	Section [] : 22 December 2014
2.4	Sections: deferment of possession of Sections	* Clause 2.4 does not apply
2.17.3	Limit of Contractor's liability for loss of use etc. (if any)	£1875000
2.29.2	Sections: rate of liquidated damages for each Section ^[11]	Section [] : ££7000 per per week

2.34	Sections: Section Sums ⁽¹¹⁾	Section [] : £[]
2.35	Sections: Rectification Periods ⁽¹¹⁾ (If no other period is stated, the period is 6 months.)	Section [] : 1 month months from the date of practical completion of each Section
4.6	Advance payment (Not applicable where the Employer is a Local Authority)	* Clause 4.6 applies If applicable: the advance payment will be ⁽¹²⁾ 25 per cent of the Contract Sum and will be paid to the Contractor on 1 January 2015; it will be reimbursed to the Employer in the following amount(s) and at the following time(s) £[] on []
4.6	Advance Payment Bond (Not applicable where the Employer is a Local Authority) (Where an advance payment is to be made, an advance payment bond is required unless stated that it is not required.)	* An advance payment bond is not required
4.7	Method of payment – alternatives ⁽¹⁴⁾ (If no Alternative is selected, Alternative B applies.) Alternative A: Stage Payments Stages (insert brief description) []	* by stages in accordance with Alternative A (clause 4.13) The stages referred to in clause 4.8.2 are set out in the following document ⁽⁵⁾ [] / * as follows: ⁽¹²⁾ Cumulative value £[]
4.15.4	Listed Items – uniquely identified (Delete the entry if no bond is required.)	* No bond is required for Listed Items uniquely identified.
4.15.5	Listed Items – not uniquely identified (Delete the entry if clause 4.15.5 does not apply.)	* No bond is required for Listed Items not uniquely identified.
4.17	Contractor's Retention Bond (Not applicable where the Employer is a Local Authority) (Not applicable unless stated to apply and relevant particulars are given below)	* Clause 4.17 applies If clause 4.17 applies, the maximum aggregate sum for the purposes of clause 2 of the bond is £250000

For the purposes of clause 6.3 of the bond, the
expiry date shall be

1st September 2016

4.18.1	Retention Percentage <i>(The percentage is 3 per cent unless a different rate is stated; if no retention is required, insert 'Nil' or '0'.)</i>	15 per cent
4.19 and Schedule 7	Fluctuations Options ⁽¹⁷⁾ <i>(If no Fluctuations Option is selected, Option A applies.)</i>	Schedule 7: * Fluctuations Option A applies / * Fluctuations Option B applies / * Fluctuations Option C applies
	Percentage addition for Fluctuations Option A, paragraph A.12 or Fluctuations Option B, paragraph B.13	[] per cent
	Formula Rules for Fluctuations Option C, paragraph C.1.2	Rule 3: Base Month [] 20 []
	<i>(Unless Part II is stated to apply, Part I applies.)</i>	* Rules 10 and 30(i): Part I / Part II of section 2 of the Formula Rules applies ⁽¹⁸⁾
5.5	Daywork	The Percentage Additions to each section of the prime cost or, if they apply in respect of labour, the All-Inclusive Rates, are set out in the following document ⁽⁹⁾ []
6.4.1.2	Contractor's insurance: injury to persons or property – insurance cover <i>(for any one occurrence or series of occurrences arising out of one event)</i>	£10000000
6.5.1	Insurance – liability of Employer	Minimum amount of indemnity for any one occurrence or series of occurrences arising out of one event £10000000 ⁽¹⁹⁾
6.7 and Schedule 3	Insurance of the Works – Insurance Options ⁽¹⁷⁾⁽²⁰⁾	* Schedule 3: Insurance Option A applies
6.7 and Schedule 3 Insurance Option A (paragraphs A.1 and A. 3), B (paragraph B.1) or C (paragraph C.2)	Percentage to cover professional fees <i>(If no other percentage is stated, it shall be 15 per cent.)</i>	15 per cent
6.7 and Schedule 3 Insurance Option A (paragraph A.3)	Annual renewal date of insurance <i>(as supplied by the Contractor)</i>	27th September
6.10 and Schedule 3	Terrorism Cover – details of the required cover <i>(State reference numbers and dates or other identifiers of documents setting out the requirements. Unless otherwise stated, Pool Re Cover is required.)</i>	[]

6.12	Professional Indemnity insurance	
	<p>Level of cover <i>(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.)</i></p> <p><i>(If no amount is stated, insurance under clause 6.12 shall not be required.)</i></p>	<p>* Amount of indemnity required relates to claims or series of claims arising out of one event /</p> <p>* is the aggregate amount for any one period of insurance</p> <p>and is</p> <p>£[]</p>
	<p>Cover for pollution and contamination claims <i>(If no amount is stated, such cover shall not be required; unless otherwise stated, the required limit of indemnity is an annual aggregate amount.)</i></p>	<p>* is required, with a sub-limit of indemnity of</p> <p>£[] /</p> <p>* is not required</p>
	<p>Expiry of required period of Professional Indemnity insurance is <i>(If no period is selected, the expiry date shall be 6 years from the date of practical completion of the Works.)</i></p>	<p>* 6 years /</p> <p>* 12 years /</p> <p>* [] years (not exceeding 12 years)</p>
6.14	Joint Fire Code	
	<p>If the Joint Fire Code applies, state whether the insurer under Schedule 3, Insurance Option A, B or C (paragraph C.2) has specified that the Works are a 'Large Project':</p>	<p>* The Joint Fire Code applies / does not apply⁽²¹⁾</p> <p>* Yes / No⁽²¹⁾</p>
6.17	Joint Fire Code – amendments/revisions <i>(The cost shall be borne by the Contractor unless otherwise stated.)</i>	<p>The cost, if any, of compliance with amendment(s) or revision(s) to the Joint Fire Code shall be borne by the Employer / the Contractor</p> <p>* </p>
7.2	Assignment/grant by Employer of rights under clause 7.2 <i>(If neither entry is deleted, clause 7.2 applies.)</i>	<p>* Clause 7.2 does not apply</p>
8.9.2	Period of suspension <i>(If none is stated, the period is 2 months.)</i>	2 months
8.11.1.1 to 8.11.1.6	Period of suspension <i>(If none is stated, the period is 2 months.)</i>	2 months
9.2.1	Adjudication ⁽²²⁾	The Adjudicator is []
	<p>Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)⁽²³⁾</p> <p><i>(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.)</i></p>	<p>* The Royal Institution of Chartered Surveyors</p>
9.4.1	Arbitration ⁽²⁶⁾ – appointor of Arbitrator (and of any replacement) ⁽²⁷⁾	<p>President or a Vice-President:</p> <p>* The Royal Institution of Chartered Surveyors</p>

*(If no appointor is selected, the appointor shall
be the President or a Vice-President of the Royal
Institute of British Architects.)*

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- [8] If the relevant document or set of documents takes the form of an Annex to this Contract, it is sufficient to refer to that Annex.
- [9] On factors to be taken into account by the Parties in considering whether disputes are to be determined by arbitration or by legal proceedings, see the Design and Build Contract Guide. See also footnote [7].
- [10] Not used
- [11] Continue on further sheets if necessary, which should be signed or initialled by or on behalf of each Party and then be annexed to this Contract.
- [12] As to service of notices etc. outside the United Kingdom, see the Design and Build Contract Guide.
- [13] Insert either a monetary amount or a percentage figure, delete the alternative and complete the other required details.
- [14] Delete whichever Alternative is not applicable. Where Interim Payments are to be made by stages (including by quantity of units and sub-units completed) make the appropriate entries or prepare and insert a separate schedule of cumulative stage values.
- [15] Cumulative value of final stage must be equal to the Contract Sum.
- [16] The first date should not be more than one month after the Date of Possession. Where it is intended that Interim Applications be made on the last day of each month, the entry may be completed/amended to read "the last day of *(insert month)* and thereafter the last day in each month or the nearest Business Day in that month." After practical completion, clause 4.8.3 provides for intervals of 2 months (or such other period as the Parties agree) between Interim Applications.
- [17] Delete all but one.
- [18] The Part to be deleted depends upon which method of formula adjustment (Part I – Work Category Method or Part II – Work Group Method) is applicable.
- [19] Insert an amount where it is stated in the Employer's Requirements that insurance under clause 6.5.1 is required. If the indemnity is to be for an aggregate amount and not for any one occurrence or series of occurrences the entry should be amended to make this clear.
- [20] Obtaining Terrorism Cover, which is necessary in order to comply with the requirements of Insurance Option A, B or C, will involve an additional premium and may in certain situations be difficult to effect. Where a difficulty arises discussion should take place between the Parties and their insurance advisers. See the Design and Build Contract Guide.
- [21] Where Insurance Option A applies these entries are made on information supplied by the Contractor.
- [22] 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.
- [23] Delete all but one of the nominating bodies asterisked.
- [24] constructionadjudicators.com is a trading name of Contractors Legal Grp Ltd.
- [25] Association of Independent Construction Adjudicators acts as an agent of and is controlled by the National Specialist Contractors' Council for the purpose of the nomination of adjudicators.
- [26] This only applies where the Contract Particulars state (against the reference to Article 8) that Article 8 and clauses 9.3 to 9.8 (*Arbitration*) apply.
- [27] Delete all but one of the bodies asterisked.

Part 2: Third Party Rights and Collateral Warranties

Not applicable

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- [28] The Contractor may be required to grant rights either as Third Party Rights or Collateral Warranties. In the case of sub-contractors, provision is made only for the grant of Collateral Warranties – see Part 2(E) of these particulars and the Design and Build Contract Guide.
- [29] As to the Contracts (Rights of Third Parties) Act 1999 and identification of beneficiaries, see the Design and Build Contract Guide.
- [30] The paragraph numbers in Schedule 5 are the same as the clause numbers in the JCT Collateral Warranty.
- [31] Employers should be selective in listing the sub-contractors (or categories of sub-contractor) including any consultants from whom collateral warranties may be required (see the Design and Build Contract Guide).
- [32] Where a sub-contractor is required to grant Collateral Warranties of the types referred to in clause 7E (i.e. the Sub-Contractor Collateral Warranty for a Purchaser or Tenant (SCWa/P&T), for a Funder (SCWa/F) and for the Employer (SCWa/E)), state the particular type(s). All three Collateral Warranties are documents prepared by JCT.
- [33] Professional indemnity insurance applies only where the sub-contractor has design responsibilities. As to cover levels, see the Design and Build Contract Guide.

Attestation

Note on Execution

This Agreement should be executed by both the Employer and the Contractor either under hand or as a deed. As to factors relevant to that choice, see the Design and Build Contract Guide.

Execution under hand

If this Agreement is to be executed under hand, use the form set out on the following page. Each Party or his authorised representative should sign where indicated in the presence of a witness who should then sign and set out his name and address.

Execution as a Deed

If this Agreement is to be executed as a deed, each Party should use the relevant form marked 'Execution as a Deed' in accordance with the notes provided.

Other forms of Attestation

In cases where the forms of attestation set out are not appropriate, e.g. in the case of certain housing associations and partnerships or if a Party wishes an attorney to execute this Agreement on his behalf, the appropriate form(s) may be inserted in the vacant space opposite and/or below.

Execution under hand

As witness

the hands of the Parties
or their duly authorised representatives

Signed by or on behalf of
the Employer

in the presence of:

witness signature

DAVID BROWN

witness' name

15 REGENT STREET

witness' address

LONDON SW1Y 4LR

Signed by or on behalf of
the Contractor

in the presence of:

witness signature

SIMON BARNES

witness' name

29-30 FITZROY SQ

witness' address

LONDON W1T 6LQ