

CIOB

TIME AND COST MANAGEMENT CONTRACT

02

CONTRACT CONDITIONS

2015 EDITION



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INTRODUCTION

The Time and Cost Management Contract (the Contract) is a revised edition of what was previously the Complex Projects Contract, published in 2013. The name has been changed to reflect more clearly the core strengths of the Contract. The Time and Cost Management Contract is written for use with the Time and Cost Management Contract suite's Subcontract and Consultancy Appointment to provide a uniform approach to time cost and risk management from initiation to completion of building and engineering projects.

NAMING

The Contract is formally called the "CIOB Time and Cost Management Contract, 2015 Edition". However, it may also be referred to as "The Time and Cost Management Contract" or simply "TCM15". It is referred to within this document as the "Contract".

THE USE OF THE CONTRACT

The Contract is most suitable for those projects which cannot be effectively managed intuitively and which require for their success a more scientific approach to time and cost risk management than is usual on more simple projects. The Contract can be used by companies, public authorities and private individuals in the UK and in any other country. The Contract can be used for

- build only of a design prepared under the direction of the Employer
- build only of a design prepared under the direction of the Employer, but with the Contractor's design of parts
- design and build or turnkey projects in which the Contractor is responsible for both the design and construction of the Works
- Construction management and management contracting (with some changes in terms required by Special Conditions).

PRICING

The Contract can be used with any method of pricing. Commonly, these include fixed price, target cost, measured term, fixed fee, cost reimbursement, partnering and alliancing. The required method of pricing is to be described in the Special Conditions.

SPECIAL CONDITIONS

The standard documentation is expected to be supplemented by Special Conditions setting out the method of pricing, insurance requirements, bonding and any other matter peculiar to the particular project for which it is used. The Special Conditions take priority over these standard conditions.

SPECIFICATION

The standard documentation is expected to be supplemented by a Contract Specification identifying the standards of performance required for the particular project.

TIME MANAGEMENT

The Contract requires competence in critical path network modelling, resource allocation and productivity analysis. The Working Schedule is required to be in differing densities updated and revised on the rolling wave principle that constantly predicts the currently attainable completion date, sectional completion dates and key dates.

COST MANAGEMENT

Cost management is by reference to the values attributed to the activities in the Working Schedule with progress updated from databased progress records. The updated working schedule constantly predicts the out-turn cost of the Works and the value of work done to date.

RISK MANAGEMENT

The Contract is a collaborative contract requiring the Contractor, its Subcontractors and the design Consultants to work with the Time Manager, Cost Manager, Contract Administrator and the Employer to constantly appraise risk, and to confer in taking practical action to overcome and avoid their unnecessary consequences. The Contract contains power to instruct acceleration both to overcome the effects of a delay to progress and bring forward completion dates where practical.

COLLABORATION

The Contract requires a collaborative approach to design in conformity with British Standards Institution's BS 1192:2007, but goes further in expressly requiring the Contractor and all Subcontractors and Consultants having a continuing role in design, administration or quality control during the Works to participate in decision making, quality control, time management, cost management and risk management.

BUILDING INFORMATION MODELLING

The Contract is suitable for Level 2 Projects¹ and the collaborative production of information throughout the project life cycle. It is compatible with the requirements of the British Standards Institution's PAS 1192: Part 2, 2013 "Specification for information management for the capital/delivery phase of construction projects using building information modelling" and it may be used with any desired Building Information Modelling protocol.

INFORMATION TRANSFER

The Contract requires information to be transferred electronically either by readable file or in native file format and in accordance with a File Transfer Protocol compatible with the British Standards Institution's PAS 1192:4 2014 COBie.

STANDARD DOCUMENTATION

In addition to this Document No. 2 (the Contract Conditions, 2015 Edition), the Contract comprises

- Document No. 1, Contract Agreement, 2015 Edition and
- Document No. 3, Contract Appendices, 2015 Edition.

Also available for use with the Contract are

- Document No. 4, Subcontract Agreement, 2015 Edition
- Document No. 5, Subcontract Conditions, 2015 Edition
- Document No. 6, Subcontract Appendices, 2015 Edition
- Document No. 7, Consultancy Appointment, 2015 Edition
- Document No. 8, Schedules 8 and 9 for the appointment of the Time Manager, 2015 Edition, and
- Document No. 9, Schedules 8 and 9 for the appointment of the Contract Administrator, 2015 Edition.

DISCLAIMER

The Contract has been produced for use in a wide variety of construction and engineering projects. As with any standard document, however, the unique circumstances of each project will demand careful consideration as to its suitability and that of each provision. The parties will need to rely upon their own skill and judgement (and that of their advisers) in making use of this or any other standard form comprised in, or for use in connection with, this Contract. Neither the Chartered Institute of Building nor any author or contributor assumes any liability to anyone for any loss or damage caused by any error or omission whether such error or omission is the result of negligence or any other cause.

¹ Defined by the UK Government's Construction Strategy for reducing construction costs. Cabinet Office, Government Construction Strategy, May 2011, available at www.gov.uk/government.

FEEDBACK

The Chartered Institute of Building would like to receive your comments on the Contract in use, which should be addressed to

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APPENDIX C	Building Information Modelling
APPENDIX D	Working Schedule
APPENDIX E	Progress Records
APPENDIX F	Events
APPENDIX G	Issue Resolution

1. DEFINED TERMS

- 1.1 The capitalised terms used in these Contract Conditions shall have the meanings stated in Appendix A.

2. INTERPRETATION

- 2.1 The language of the Contract shall be English.
- 2.2 The Contract shall be governed and construed in accordance with the Law of the Contract identified in the Contract Agreement.
- 2.3 All monetary amounts shall be in the currency identified in Appendix B.
- 2.4 The Base Date shall be that stated in Appendix B.
- 2.5 Unless the context requires otherwise in the Contract
- 2.5.1 words in the singular include the plural and vice versa
- 2.5.2 references to a person include human persons and corporate and unincorporated bodies
- 2.5.3 any reference to a day shall mean a calendar day and any reference to a date shall mean a calendar date
- 2.5.4 any reference to a meeting includes a virtual meeting by video and/or telephone conference, the substance of which is recorded in writing
- 2.5.5 any reference to a statute, statutory instrument or other subordinate legislation is a reference to such legislation in force in the relevant jurisdiction at the Base Date
- 2.5.6 headings and titles are for information purposes only and shall not be deemed part of the Contract or be used in its interpretation or construction
- 2.5.7 where the Contract requires any document or information to be distributed, unless stated or instructed otherwise it shall be distributed to the other party (or if distributed by another, to both parties) and to the
- 2.5.7.1 Contract Administrator

2.5.7.2. Time Manager, and

2.5.7.3. Cost Manager

in portable document format (PDF) by means of

2.5.7.4. download by the agreed File Transfer Protocol, or

2.5.7.5. email

and the words “distribute”, “re-distribute”, “distributes”, “distributed” and “distribution” shall be construed accordingly, and

2.5.8. where the Contract requires any document or information to be published, unless stated or instructed otherwise it shall be provided to the other party (or if published by another, to both parties) and to the

2.5.8.1. Contract Administrator

2.5.8.2. Time Manager, and

2.5.8.3. Cost Manager

in native file format in the specified software by means of

2.5.8.4. the Common Data Environment

2.5.8.5. download by the agreed File Transfer Protocol, or

2.5.8.6. email

and the words “publish”, “re-publish”, “publishes”, “published” and “publication” shall be construed accordingly.

3. THE CONTRACT

3.1. The Contract supersedes all previous representations, arrangements, understandings and agreements between the parties relating to the Works and sets out the entire agreement between them.

3.2. All the terms of the Contract are severable. In the event that any provision is found to be

unenforceable, illegal or void the remaining terms of the Contract shall continue in full force and effect.

- 3.3. Except as provided otherwise, the Contract Documents taken together define the Works. To the extent that there is any inconsistency between any of the Contract Documents, the documents shall, for the purpose of interpretation, have the following order of priority
- 3.3.1. the Contract Agreement
 - 3.3.2. the Special Conditions
 - 3.3.3. these Conditions of Contract
 - 3.3.4. the Contract Appendices
 - 3.3.5. the Contract Model or Contract Federated Model, and where applicable, any information derived from the Contract Model or Contract Federated Model
 - 3.3.6. the Contract Drawings
 - 3.3.7. the Contract Specification
 - 3.3.8. the Contract Bill of Quantities
 - 3.3.9. the Contractor's Pricing Document
 - 3.3.10. the Contractor's Design
 - 3.3.11. the Development Schedule identified in the Contract Agreement, and
 - 3.3.12. any other documents forming part of the Contract.
- 3.4. In the event of any inconsistency in the Contract Drawings between dimensions, the order of priority shall be dimensions
- 3.4.1. electronically calculated from any Model
 - 3.4.2. electronically calculated from any Drawing
 - 3.4.3. figured, and
 - 3.4.4. scaled, in which case the larger scale Drawing shall prevail.

- 3.5. The Contractor shall identify and notify the Contract Administrator at the earliest opportunity of any actual or potential impossibility, clash, conflict, discrepancy, omission, error, inconsistency and/or ambiguity in and/or between the Contract Documents and/or between the Contract Documents and Applicable Law.
- 3.6. Unless Applicable Law requires or the Special Conditions state otherwise, the Contractor shall not be responsible for verifying the adequacy of any design contained in any Contract Document that has not been produced by or on behalf of the Contractor.
- 3.7. Within 10 Business Days of receiving a notice under Clause 3.5, the Contract Administrator shall issue an instruction for correction. The instruction shall be valued as a Variation unless such instruction requires
- 3.7.1. adoption of a description or data in a higher priority document over that in a lower priority document (as between the documents listed in Clause 3.3), or
 - 3.7.2. correction of any actual or potential impossibility, clash, conflict, discrepancy, omission, error, inconsistency and/or ambiguity in and/or between any Contractor's Design and any Contract Document or Applicable Law.
- 3.8. If at the date of notice under Clause 3.5 an affected Activity is intended to be started within 20 Business Days, any delay to progress in that Activity shall be at the Contractor's risk.

4. OBLIGATIONS OF THE PARTIES

- 4.1. The parties shall work together in the manner required by the Contract and shall co-operate in a spirit of mutual trust and fairness and in good faith.
- 4.2. Where the Contract Administrator, Time Manager, Cost Manager and/or any Listed Person is required to exercise discretion as between the interests of the Employer and Contractor, it shall do so independently and fairly.
- 4.3. The Contractor shall exercise the level of skill, care and diligence to be expected of a properly qualified and competent Contractor. The Contractor shall be experienced in performing the works for projects of a similar size, value and complexity to the Works and shall
- 4.3.1. carry out the Works in such a way that no act, omission or default of the Contractor shall constitute, cause or contribute to any breach by the Employer of its obligations under any Connected Contract, and
 - 4.3.2. comply with all reasonable instructions issued by the Contract Administrator.

- 4.4. In carrying out any work in connection with the Contractor's Design, including any inspection and/or check, the Contractor shall exercise the diligence, skill and care that is reasonably to be expected of a relevant professional practitioner experienced in the design of work of a similar size, value and complexity to the Works.
- 4.5. The Contractor shall comply with Applicable Law and if, and for so long as, the Contractor carries out a part of the Works in a country and/or region where the Site is not located, the Contractor shall in respect of that part of the Works comply with the laws of that country and/or region. If the Contractor fails to do so and
- 4.5.1. expenditure and/or loss is incurred by the Employer, the Contractor shall reimburse the same to the Employer, and/or
- 4.5.2. as a result the Employer becomes subject to claims by third parties, the Contractor shall indemnify the Employer in respect of such claims.
- 4.6. Within 10 Business Days of receiving any reasonable request from the Employer to do so, the Contractor shall provide such documentary evidence as is required by the Special Conditions that financial arrangements have been made and are being maintained by the Contractor to enable the Contractor to fund the progress of the Works in accordance with its current Working Schedule.
- 4.7. If the Contractor fails to provide the information required by Clause 4.6, the Contract Administrator may instruct the Contractor to suspend all or any of its obligations under the Contract (from a date not earlier than 10 Business Days after the notice) until such information is provided. The Contractor shall bear the time and cost effect of any such suspension.
- 4.8. Within 10 Business Days of receiving any reasonable request from the Contractor to do so, the Employer shall provide documentary evidence that financial arrangements have been made and are being maintained by the Employer to enable the Employer to pay the Predicted Cost. If the Employer intends to make any change to its financial arrangements that might have a material impact upon the Contractor, it shall notify the Contractor and provide detailed particulars of the intended change before making it.
- 4.9. If the Employer fails to provide the information required by Clause 4.8, the Contractor may notify the Employer that it intends to suspend all or any of its obligations under the Contract from a date not earlier than 10 Business Days after the notice. The Contractor may continue with any such suspension until such information is provided. The Contractor shall include in such notice a statement setting out which obligations it intends to suspend. The Employer shall bear the time and cost effect of any such suspension.

- 4.10. The party identified in the Contract as host of the File Transfer Protocol and/or Common Data Environment shall be responsible for updating and maintaining the hardware, software and data, and for maintaining the integrity and security of the server and the data to which access is provided. The party identified shall also indemnify and hold harmless any authorised user against loss and/or damage arising from breach of this Clause 4.10.
- 4.11. No acceptance, approval, confirmation, representation or issue of instructions (conditional or otherwise) by the Employer, the Contract Administrator, the Time Manager, the Cost Manager or any of the Listed Persons shall relieve the Contractor of any of its obligations under the Contract.
- 4.12. Where and to the extent that prior to the Contract Date the Contractor has performed any work and/or services in connection with the Project not forming part of the Works, such work and/or services shall
- 4.12.1. be deemed to have been performed under, and to be covered by the terms of, the Contract, regardless of for whom they were performed
 - 4.12.2. be deemed to have been paid for in full, and
 - 4.12.3. not entitle the Contractor to any additional payment, and
- the Contractor shall provide a Collateral Warranty to the Employer in respect of such work and/or services in accordance with Clause 8.

5. COMMENCEMENT AND COMPLETION

- 5.1. Unless access is to be provided in Sections, on the Access Date stated in Appendix B the Employer shall afford access to and grant possession of the Site to the Contractor.
- 5.2. The Contractor shall commence the physical Works on Site on the Access Date, proceed to carry out the Works in a good and workmanlike manner and in accordance with the Contract complete the Works by the Date for Substantial Completion.
- 5.3. Where the Works include a Contractor's Design, or under the Special Conditions the Contractor is given access to the Site before the Access Date, the Contractor's obligations shall commence no later than the Start Date stated in Appendix B.
- 5.4. Where it is stated in the Special Conditions that the Works are to be commenced and/or completed in Sections
- 5.4.1. the Sections shall be those described in the Special Conditions

- 5.4.2. the Sectional Values shall be those stated in Appendix B
- 5.4.3. the Employer shall afford access to and grant possession of each Section to the Contractor by the relevant Sectional Access Date stated in Appendix B, or the Logical Date for Sectional Access identified in the latest accepted Working Schedule, whichever is the later, and
- 5.4.4. the Contractor shall commence the carrying out of the work comprised in each Section on the date Sectional Access is provided and shall complete each Section by the relevant Sectional Completion Date stated in Appendix B.
- 5.5. Where a part of the Works is described in the Special Conditions as to be completed by a Key Date stated in Appendix B, the Contractor shall complete the defined part by the Key Date.
- 5.6. Where it is reasonably foreseeable that the commencement or completion of any part of the Works is, or is likely to be, dependent upon services or work carried out by others, the logical connection between that part and such other services or work shall be indicated on the Working Schedule and clearly described in the Planning Method Statement.
- 5.7. A failure by others to undertake any services or work at a time or in a sequence not identified in accordance with Clause 5.6 shall not constitute an Event.

6. AUTHORISED REPRESENTATIVES AND SITE SUPERVISION

- 6.1. The person identified in the Contract Agreement as the Contractor's Authorised Representative shall be empowered to act with the Contractor's full authority in all matters relating to the Contract. If at any time the appointed person is unable to act, or the Contract Administrator makes reasonable objection to the appointed person, the Contractor shall within 5 Business Days appoint another in its place and shall notify the Contract Administrator of the name, qualifications, experience and contact details of the replacement.
- 6.2. No less than 10 Business Days before the Access Date, the Contractor shall advise the Contract Administrator of the name, qualifications, experience and contact details of the Contractor's Site Agent who shall remain on Site until Substantial Completion or termination (whichever is later). If for any reason the Contractor's Site Agent is, or is likely to be, absent from the Site, the Contractor shall advise the Contract Administrator of a suitably qualified replacement. Any instructions issued by the Contract Administrator to the Contractor's Site Agent shall be deemed to have been issued to the Contractor.
- 6.3. Unless stated otherwise in the Special Conditions, the person identified in the Contract Agreement as the Employer's Authorised Representative shall be empowered to act with

the Employer's full authority in all matters relating to the Contract. If at any time the appointed person is unable to act, the Employer shall within 5 Business Days appoint another in its place and shall notify the Contractor, Contract Administrator and the Listed Persons of the name, qualifications, experience and contact details of the replacement.

7. COMMUNICATIONS

- 7.1. Whenever any instruction, direction, certificate, submission, proposal, register, record, request, determination, acceptance, approval, notice, reply, consent, non-acceptance, rejection, refusal, warning or any other communication is required by the Contract to be issued, it shall, unless the Contract provides otherwise, be in writing in the language of the Contract and transmitted electronically by email or by the agreed File Transfer Protocol or shall be delivered by hand or sent by pre-paid recorded delivery. Recorded delivery means a form of delivery by post whereby the sender may obtain a record of the delivery.
- 7.2. Email shall be deemed to be received as soon as it is sent provided that it bears the subject code data identified in Appendix B, and subject to evidence to the contrary.
- 7.3. Information transmitted in accordance with the File Transfer Protocol shall be deemed to have been received when the recipient is notified that it has been uploaded for file transfer in accordance with the File Transfer Protocol.
- 7.4. Any contribution made in a Common Data Environment shall be deemed to have been received when such contribution is recorded as having been made.
- 7.5. A communication sent by recorded delivery has effect when it is received at the last address notified by the recipient for receiving postal communications or, if none is notified, at the address of the recipient stated in the Contract Agreement.
- 7.6. Delivery of communications made by hand shall be deemed to have taken place when signed for upon delivery.

8. COLLATERAL WARRANTIES

- 8.1. Within 15 Business Days of any written request by the Employer to do so the Contractor shall execute and provide in the form required by the Special Conditions
 - 8.1.1. a Collateral Warranty in respect of the Works in favour of any Connected Party identified by the Employer in its request, and/or
 - 8.1.2. a Collateral Warranty in respect of any Subcontract in favour of the Employer.

9. SECURITY FOR CONTRACTOR'S PERFORMANCE

- 9.1. Where required by Appendix B, the Contractor shall, within 5 Business Days of the Date of Contract, deliver to the Employer
- 9.1.1. a Holding Company Guarantee, and/or
- 9.1.2. a Performance Bond,
- in the form required by the Special Conditions.
- 9.2. Where any advance payment and/or advance mobilisation costs are to be paid to the Contractor and Appendix B requires an Advance Payment Bond, the Contractor shall, on or before the Start Date, deliver it to the Employer in the form required by the Special Conditions.
- 9.3. The guarantor in respect of any Performance Security shall be a financial institution or insurer approved in advance by the Employer, such approval not to be unreasonably withheld or delayed.

10. INSURANCES

- 10.1. The Contractor shall be responsible for the care and protection of the Site and the Works including any unfixed materials, goods or plant on the Site and shall remain responsible for and indemnify the Employer against the cost of and/or delay caused by repair or replacement of any damage thereto, arising prior to the Substantial Completion Date, howsoever caused.
- 10.2. The parties shall take out and maintain insurances for the risks, periods and amounts required by the Special Conditions.
- 10.3. Upon request by either party, the other party shall provide satisfactory evidence that such insurances are in place. If such evidence is not provided within 15 Business Days of the request, the requesting party may notify the other party and take out such insurances as the other party has failed to satisfactorily evidence as a Variation.
- 10.4. The Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings arising in connection with the carrying out of the Works from
- 10.4.1. personal injury to or death of any person, except to the extent that the same is caused by any act or neglect of the Employer or those for whom the Employer is responsible, and/or

- 10.4.2. injury or damage to any property (real or personal) in so far as the same is caused by negligence, breach of Applicable Law, omission or default of the Employer, or those for whom the Employer is responsible.
- 10.5. Any monies received by the Contractor, pursuant to an accepted claim for damage caused to the Works under the insurances, shall be placed in a separate insurance receipts account for the benefit of the Employer and applied to repair or replace the work as the Employer may instruct.

11. INFORMATION

- 11.1. Where the Employer has provided a Reference Design, it shall have the status identified in Appendix B.
- 11.2. Where the Employer provides the Contractor with any investigation report, data, map, Drawing, historical record or any other information of any kind concerning
 - 11.2.1. existing structures
 - 11.2.2. physical ground conditions
 - 11.2.3. subsurface conditions
 - 11.2.4. geology
 - 11.2.5. below ground services on the Site, and/or
 - 11.2.6. other significant physical features,it shall have the status identified in the Contract Specification. If no status is identified, it may be relied upon by the Contractor.
- 11.3. Where the Contractor is required to rely upon information provided by the Employer or any person appointed by the Employer, the Employer warrants that the information so provided is satisfactory for the proper carrying out of the Works.
- 11.4. If not permitted to rely upon any information to which Clause 11.2 refers, or if the information provided is in any way unsatisfactory, before commencing the Contractor's Design, or the relevant part of the Works, the Contractor shall notify the Employer of the investigations required. Unless specifically instructed otherwise, the Contractor shall not commence the Contractor's Design or the relevant part of the Works until satisfactory information has been provided by the Employer, with a copy to the Contract Administrator.

12. CONTRACTOR'S REQUESTS FOR SUPPLY

- 12.1. The Contractor may request from the Contract Administrator
 - 12.1.1. comments on, or acceptance or approval of, a design, sample, work, materials, goods or plant, and/or
 - 12.1.2. the supply of
 - 12.1.2.1. anything the Employer is required to provide
 - 12.1.2.2. instructions and other information, and/or
 - 12.1.2.3. drawings and details other than those comprising the Contractor's Design.
- 12.2. For the avoidance of doubt, except for instructions to which Clauses 3.7 and 19.3 apply, Clause 12.1.2.2 does not apply to a request for an instruction requiring a Variation.
- 12.3. The Contractor shall make any request to which Clause 12.1 applies at least 10 Business Days before the Logical Date by which the Contractor requires the Contract Administrator's response.
- 12.4. The Contract Administrator shall provide a response to the Contractor's request to which Clause 12.1 applies by no later than the latest of the following
 - 12.4.1. 10 Business Days after receiving the request
 - 12.4.2. the Logical Date identified, if any, for the relevant supply in the latest accepted Working Schedule at the time of the request
 - 12.4.3. the date stated in the Contract Specification by which the relevant supply is to be made, and
 - 12.4.4. the Logical Date identified in the latest accepted Working Schedule by which the Contractor reasonably requires the supply in light of the progress actually achieved.

13. CONTRACTOR'S SUBMISSIONS

- 13.1. Where the Contractor is required to provide a submission, unless stated otherwise in the Contract the submission shall be distributed at least 10 Business Days before the Logical Date by which the Contractor reasonably requires acceptance or approval.
- 13.2. Any such submission shall be deemed accepted 10 Business Days after its receipt, unless before then the Contract Administrator notifies the Contractor stating that the submission
- 13.2.1. does not comply with the Contract
 - 13.2.2. would impose an obligation on the Employer that the Contract does not require the Employer to bear
 - 13.2.3. would be contrary to Applicable Law
 - 13.2.4. would have an adverse effect on the Contractor's ability to comply with the Contract, or
 - 13.2.5. is rejected on any other ground stated in the Special Conditions.
- The notice shall also provide particulars supporting the statement.
- 13.3. A submission may be accepted or approved in part in the notice referred to in Clause 13.2, provided that the notice identifies
- 13.3.1. the part which is unacceptable
 - 13.3.2. the reasons why it is unacceptable, and
 - 13.3.3. the date by which the amended submission is to be received.
- 13.4. As soon as is reasonably practicable after a submission has been rejected, deemed rejected, or conditionally accepted, the Contractor shall distribute a submission complying with the Contract. The Contractor shall bear the time and cost effect of any such rejection, conditional acceptance and/or re-submission.
- 13.5. No comment by the Contract Administrator or any other person shall relieve the Contractor of its obligations under the Contract.
- 13.6. If the Contractor considers that any notice under Clause 13.2 is in conflict with any provisions of the Contract or amounts to a Variation, it shall, within 5 Business Days of receiving the decision, refer the issue for Issue Resolution. If the Contractor does not do so, it shall be

deemed to be agreed that the decision is compliant with the Contract and does not amount to a Variation.

- 13.7. The Contractor shall not implement any submission
- 13.7.1. before it has been accepted or approved
 - 13.7.2. in the absence of a response within the permitted period, until after the period for acceptance or approval has ended
 - 13.7.3. that is contrary to any objection raised under Clause 13.2, or
 - 13.7.4. that is contrary to any conditional acceptance or approval under Clause 13.3.
- 13.8. The Contract Administrator shall maintain a database of submissions received from the Contractor, identifying in respect of each submission any relevant Activity ID and
- 13.8.1. the submission identifier
 - 13.8.2. a description of the submission
 - 13.8.3. the date of its receipt
 - 13.8.4. the method of its delivery
 - 13.8.5. whether it is accepted, approved, rejected or conditionally accepted or approved, and
 - 13.8.6. the document comprising the notice.
- 13.9. The Contract Administrator shall publish the current database of submissions no less than 5 Business Days before each Progress Meeting.

14. INTELLECTUAL PROPERTY

- 14.1. The Contractor shall
- 14.1.1. warrant that it has intellectual property rights in the Contractor's Design
 - 14.1.2. indemnify the Employer against any loss or damage sustained by the Employer as a result of the infringement of any intellectual property rights in the Contractor's Design held by the Contractor or any Sub-Contractor, and

- 14.1.3. retain all intellectual property rights in the Contractor's Design, except that the Contractor hereby irrevocably waives any moral rights it may have.
- 14.2. The Contractor grants the Employer and Listed Persons a perpetual, transferable, irrevocable, non-exclusive, sub-licensable, royalty-free licence to copy, use and modify the Contractor's Design and to reproduce any Contractor's Design in connection with
 - 14.2.1. constructing the Works
 - 14.2.2. resolving any issue or dispute arising out of, or in connection with, the Contract
 - 14.2.3. commissioning, maintaining and operating the finished project
 - 14.2.4. promotional activity, advertising, leasing or selling, and/or
 - 14.2.5. repairing, altering, or reconstructing the project, irrespective of who performs such repairs, alterations, or reconstruction.
- 14.3. For any part or parts of the Contractor's Design in which the Contractor does not hold all relevant intellectual property rights, the Contractor warrants and undertakes that it has been granted, or shall obtain for itself, a licence or licences on the terms required by Clause 14.2. The Contractor hereby grants, or (in respect of any licences yet to be obtained) shall grant, a sub-licence or sub-licences to the Employer and Listed Persons on terms no less favourable than those of the Contractor's own licence or licences.

15. DESIGN EXECUTION PLAN

- 15.1. If the Contract Specification requires the Contractor to design the whole of the Works, no less than 20 Business Days after the Start Date the Contractor shall distribute its Design Execution Plan for acceptance by the Contract Administrator. The Design Execution Plan shall identify the timing of submissions and any other matters required by the Contract, and be accompanied by sufficient information to facilitate its interpretation and evaluation.
- 15.2. The Contractor's Design Execution Plan, and any revision made to it, shall not constitute or cause
 - 15.2.1. a breach of the Contract or any Connected Contract
 - 15.2.2. an illegal operation
 - 15.2.3. a hazard to health and/or safety

- 15.2.4. a hazard to the safety and/or stability of the Works or Temporary Work or any other property, or
 - 15.2.5. a fraudulent misrepresentation or any otherwise unethical conduct.
- 15.3. If the Contractor wishes to revise its Design Execution Plan at any time then, no less than 20 Business Days before the relevant work is scheduled to be carried out, the Contractor shall distribute for acceptance by the Contract Administrator its revised intentions for its Design Execution Plan.
- 15.4. Where the current Working Schedule indicates that any Activity affected by a submission under Clause 15.3 is intended to be started within 20 Business Days, any delay to progress in that Activity shall be at the Contractor's risk.
- 15.5. The Contractor shall consult over and consider with the Time Manager, Contract Administrator and Employer the Design Execution Plan and any revision to it. If the Contract Administrator considers that any submission does not comply with the Contract, within 15 Business Days of its receipt the Contract Administrator shall
 - 15.5.1. reject the submission in accordance with Clause 13.2, or
 - 15.5.2. issue a conditional acceptance of the submission in accordance with Clause 13.3.
- 15.6. If not rejected, and subject always to any condition of acceptance, the Design Execution Plan (and any revision of it) shall be deemed to be agreed to be conclusive evidence of the Contractor's intentions for the future performance of the Contractor's Design at the Data Date of its acceptance. The accepted Design Execution Plan (and any revision of it) shall be incorporated in the Working Schedule under Clause 37 or Revised Working Schedule under Clause 41, as the case may be.
- 15.7. The Contractor shall not carry out any work described in the Design Execution Plan before acceptance. If the Contractor carries out, or attempts to carry out, any work before acceptance, the Contract Administrator may instruct the Contractor to suspend performance of the Works or any part of them. The suspension shall remain in force until a satisfactory Design Execution Plan has been accepted, and adequate records have been made of any resources and work carried out before acceptance. The cost and time effect of any such suspension, investigation or record keeping shall be borne by the Contractor.

16. CONTRACTOR'S DESIGN

- 16.1. For the avoidance of doubt, any change to the design of any part of the Works proposed by the Contractor for the purpose of reducing cost shall be deemed to be an offer of a Contractor's Design to which this Clause 16 applies. If acceptable to the Employer, it shall be instructed as a Variation.
- 16.2. Any Contractor's Design shall
- 16.2.1. comply with Applicable Law
 - 16.2.2. comply with Standards
 - 16.2.3. be of good quality
 - 16.2.4. be prepared to the Design Stages stated in the Contract Specification
 - 16.2.5. incorporate the requirements and benefits of its predecessor Design Stage
 - 16.2.6. facilitate the Works being
 - 16.2.6.1. safe to construct and operate, and
 - 16.2.6.2. fit for the purpose required by the Contract, and
 - 16.2.7. include all work
 - 16.2.7.1. reasonably to be inferred from the Contract Specification as necessary for the proper carrying out of the Works
 - 16.2.7.2. not specifically referred to or described in the Contract Specification but which is required to achieve Substantial Completion of the Works, and
 - 16.2.7.3. otherwise necessary for the Works to be fit for the purposes required by the Contract.
- 16.3. The Contractor shall inspect and check the Contractor's Design to establish that there is no potential or actual clash, conflict, discrepancy, omission, error, inconsistency and/or ambiguity in the Contractor's Design and/or between the Contractor's Design and any other part of the design of the Works affected by it.

- 16.4. Where the Contractor's Design is required to be based upon information provided by the Employer, and the Contractor considers that, if made in compliance with that information, the Contractor's Design is likely to be in conflict with its obligations under Clauses 4.3, 4.4 and 4.5, it shall immediately notify the Contract Administrator seeking modified information. Upon receiving such notice, the Contract Administrator shall modify, cancel or confirm the information provided. The Contractor shall not proceed with the Contractor's Design unless such information is modified to minimise or remove the conflict, or it is confirmed.
- 16.5. Unless stated otherwise in the Contract, or the Contract Administrator otherwise instructs, the Contractor shall not commence any Design Stage until the previous Design Stage has been confirmed by the Contract Administrator as complete and in accordance with the Contract.
- 16.6. At the completion of each Design Stage, the approved design shall be signed by the Employer and Contractor solely for the purpose of demonstrating that the Design Stage is complete and without relieving the Contractor of any of its obligations under the Contract. The Employer shall immediately provide a copy of the signed accepted design to the Contract Administrator.
- 16.7. The Contractor shall update the Contractor's Design with the effect of Variations and as-built information to ensure consistency between the Contractor's Design and the built Works.
- 16.8. The Contractor shall publish the Contractor's Design
- 16.8.1. at completion of each required Design Stage, and
- 16.8.2. whenever the Contractor's Design is updated or revised.
- 16.9. Except where the Contractor's Design is one to which Clause 17 applies
- 16.9.1. the Contract Administrator shall maintain a database of the Contractor's submissions in connection with the Contractor's Design, and
- 16.9.2. no less than 5 Business Days before each Progress Meeting, the Contract Administrator shall publish a current copy of the database of submissions.

17. BUILDING INFORMATION MODELLING

- 17.1. Where the Works have been designed by, or under the direction of, the Employer with the aid of Building Information Modelling, unless stated otherwise in the Contract

- 17.1.1. the Contractor may not modify, publish or use any Contract Model and/or Contract Federated Model for any purpose whatsoever, except in connection with, and for the purposes of, the Works. Any such use shall be in accordance with Appendix C and the Building Information Modelling Protocol stated in Appendix B
 - 17.1.2. for the purposes of carrying out the Works and fulfilling its obligations under Clause 55, the Contractor shall receive a licence to use any Contract Model and/or Contract Federated Model and/or any drawings or information extracted from them
 - 17.1.3. neither the Employer nor the Contractor shall grant any other intellectual property rights in respect of the Contract Model, Contract Federated Model, and/or any drawings or information extracted from them
 - 17.1.4. to the extent that information is required for analysis, review, tender, bidding and/or construction purposes, it shall be extracted from the Contract Model and/or Contract Federated Model in accordance with Appendix C and the Building Information Modelling Protocol
 - 17.1.5. the Contract Model and/or Contract Federated Model shall be maintained in accordance with the Building Information Modelling Protocol, and
 - 17.1.6. any use by the Contractor of the Contract Model and/or Contract Federated Model that is inconsistent with Appendix C and/or the Building Information Modelling Protocol shall be at the sole risk of the Contractor.
- 17.2. Where the Contractor is required by the Contract to make a Design Contribution to a Contract Model and/or Contract Federated Model prepared by, or under the direction of, the Employer
- 17.2.1. the intellectual property rights in the Contractor's Design Contribution, and any information derived from it, shall remain the Contractor's, subject to the Employer's right to use the Contractor's Design Contribution in accordance with, and to the extent identified in, Clauses 14 and 18, and
 - 17.2.2. the Contractor shall
 - 17.2.2.1. produce a Design Contribution in compliance with Appendix C and the Building Information Modelling Protocol stated in Appendix B
 - 17.2.2.2. maintain and update the Design Contribution as required by the Contract Administrator throughout the course of the Works
 - 17.2.2.3. indemnify the Employer against any loss, whether direct or

consequential, or damage the Employer may suffer and against any liability, whether direct or indirect, arising out of, or in connection with, the use by other Design Users of the Contractor's Design Contribution, and

- 17.2.2.4. warn the Contract Administrator of any potential or actual clash, conflict, discrepancy, or inconsistency, error, omission and/or ambiguity between the Contractor's Design Contribution and any other Design Contribution.

17.3. Where the Contract Specification requires the Contractor to design the whole of the Works using Building Information Modelling

- 17.3.1. the copyright in the Model and/or Federated Model and any information derived from it shall remain the Contractor's, subject to the Employer's and Contract Administrator's rights to use the Model and/or Federated Model in accordance with, and to the extent identified in, Clauses 14 and 18, and

- 17.3.2. the Contractor shall

- 17.3.2.1. notify the Contract Administrator of the person appointed to act on behalf of the Contractor to manage the coordination of the Design Execution Plan, the Building Information Modelling Protocol and the Model and/or Federated Model
- 17.3.2.2. provide the Common Data Environment and/or File Transfer Protocol
- 17.3.2.3. publish each Model and/or the Federated Model in accordance with Appendix C and the Building Information Modelling Protocol
- 17.3.2.4. select and remain solely responsible for the suitability and integrity of the selected software, and any information, drawings, specifications or other information extracted from any Model
- 17.3.2.5. obtain the Employer's confirmation of acceptance of the completion of each Design Level of Development required by the Design Execution Plan
- 17.3.2.6. maintain and update the Model and/or Federated Model as required by the Contract Administrator throughout the course of the Works, and

- 17.3.2.7. archive each completed Design Level of Development in accordance with the Building Information Modelling Protocol.
- 17.4. To the extent that there is any clash, conflict, discrepancy and/or inconsistency between the terms of this Clause 17 and the Building Information Modelling Protocol, save to the extent stated otherwise in the Contract Specification the terms of this Clause 17 shall prevail.

18. CONFIDENTIALITY

- 18.1. Except where required otherwise by Applicable Law, the Contractor shall keep confidential any Contractor's Design and any rates and prices or other records that have been identified in the Contractor's Pricing Document as confidential, other than those referred to in Clauses 18.4 and 18.6.
- 18.2. The Employer shall promptly notify the Contractor of any lawful request for disclosure of any information relating to the Works required by Applicable Law.
- 18.3. Subject to Clauses 18.4 and 18.6, the Employer shall not use any of the documents provided by, or contributed to by, the Contractor, other than in connection with the carrying out of the Works, or for the determination of the rights and liabilities of any party arising under or in connection with the Contract or any Connected Contract.
- 18.4. The Employer, Contractor, Contract Administrator, Time Manager and Cost Manager may use the data contained in the database referred to in Clause 39 for any purpose whatsoever, whether or not in connection with the Works.
- 18.5. Except in respect of a lawful request for information required by Applicable Law to be disclosed, or for the purposes identified in Clause 18.3, the Employer, Contractor, Contract Administrator, Time Manager, Cost Manager or the Listed Persons shall not divulge or use any of
- 18.5.1. the Contractor's Design
 - 18.5.2. the rates or prices in the Contractor's Pricing Document, or
 - 18.5.3. the Working Schedule, whether or not accepted.
- 18.6. Nothing in this clause shall prevent
- 18.6.1. disclosure of information to the employees of the Contractor and Employer and their professional advisers, who have first given an undertaking in the terms of this clause to their respective employers, to the extent necessary

- 18.6.1.1. for the execution of the Works
- 18.6.1.2. to enforce the Contract, or
- 18.6.1.3. under Applicable Law
- 18.6.2. disclosure of information
 - 18.6.2.1. that has, except as a result of breach of confidentiality, become available or generally known to the public, or
 - 18.6.2.2. in connection with an award or decision under Clause 74.6.
- 18.7. The obligations under this clause shall cease upon the later of
 - 18.7.1. the subject information ceasing to be commercially and/or security sensitive, or
 - 18.7.2. three years after
 - 18.7.2.1. the Contract Termination Date, or
 - 18.7.2.2. the Substantial Completion Date.

19. FINDINGS

- 19.1. All Findings found in any existing structures on the Site, or on any access or right of way to the Site, shall remain in the care and control of the Employer.
- 19.2. On discovering any Finding, the Contractor shall
 - 19.2.1. cease work in the area of the Finding
 - 19.2.2. take appropriate precautions so that the Finding is protected and not damaged or further disturbed, and
 - 19.2.3. issue an Early Warning including details of
 - 19.2.3.1. the time and date of discovery
 - 19.2.3.2. the location of the discovery, and
 - 19.2.3.3. the nature of the Finding.

- 19.3. On receiving the Early Warning, the Contract Administrator shall confer with the Contractor and shall issue instructions for the further excavation, investigation, recovery and/or disposal of such Finding by the Contractor or by others as the Contract Administrator considers appropriate, and/or continuance of the Works or any part of them.

20. UNFORESEEABLE CONDITIONS

- 20.1. If Unforeseeable Conditions are discovered, the Contractor shall issue an Early Warning together with its proposals for overcoming, avoiding, or minimising the likely effects of the discovery on the progress of the Works.
- 20.2. On receiving the Early Warning, the Contract Administrator and any Listed Persons, or others whom the Contract Administrator considers necessary, shall inspect, investigate and make such tests as are appropriate.
- 20.3. As soon as possible the Contract Administrator shall confirm to the Contractor that the notified discovery is
- 20.3.1. an Event, and that the Contractor should proceed to comply with Clause 43, or
- 20.3.2. not an Event, and shall either instruct the Contractor to proceed with its proposals, or such other proposals as are accepted by the Contract Administrator, at the Contractor's risk as to time and/or cost.
- 20.4. If the Contractor considers that the decision under Clause 20.3.2 is in conflict with any provisions of the Contract and/or amounts to a Variation, the Contractor shall within 5 Business Days of its receipt refer the matter for Issue Resolution. If the Contractor does not do so, it shall be deemed to be agreed that the decision is compliant with the Contract and does not amount to a Variation.

21. TEMPORARY AND ANCILLARY WORK

- 21.1. The Contractor shall provide and be responsible for all Temporary Work necessary for the Works. Unless expressly described and priced otherwise, such work shall be deemed to be included in the Contractor's Pricing Document as Preliminaries.

22. HEALTH, SAFETY AND WELFARE

- 22.1. Unless stated otherwise in the Contract, the Contractor shall provide and maintain all necessary Welfare Facilities for the Contractor's personnel.

- 22.2. The Contractor shall not permit anyone to maintain living quarters within any structure forming part of the Works or the Works.
- 22.3. The Contractor shall provide all necessary medical staff, first aid facilities and ambulance services to the Site whenever any work of any nature is carried out on the Site.
- 22.4. The Contractor shall appoint a safety manager to be responsible for maintaining safety and protection against accidents on the Site. The safety manager shall
- 22.4.1. be suitably qualified for this responsibility
 - 22.4.2. have the authority to issue instructions to take protective measures to prevent accidents occurring and promote health and safety on the Site
 - 22.4.3. maintain records of accidents occurring on the Site, and
 - 22.4.4. make any reports concerning health, safety and welfare of persons, and damage to property, which Applicable Law requires.
- 22.5. The Contractor shall, within 1 Business Day, notify the Contract Administrator with details of any accident which may occur on the Site. In default of such notice, the Contract Administrator may instruct the Contractor to suspend the carrying out of the Works or any part of them, until such accident has been properly investigated and recorded. The cost and time effect of such suspension, investigation and/or record keeping shall be borne by the Contractor.

23. CONTRACTOR'S METHODS

- 23.1. The Contractor's working methods for the construction of the Works, and any amendments made to them, shall not constitute or cause
- 23.1.1. an illegal operation
 - 23.1.2. a breach of contract
 - 23.1.3. a hazard to health and/or safety
 - 23.1.4. a hazard to the safety and/or stability of the Works or Temporary Work or any other property
 - 23.1.5. a method or sequence which is not conducive to effective time and/or cost control, or

- 23.1.6. a fraudulent misrepresentation or any otherwise unethical conduct.
- 23.2. No less than 20 Business Days before the Access Date, the Contractor shall prepare and distribute its statement of working methods for the construction of the Works. The submission shall be accompanied by sufficient information to facilitate its interpretation and evaluation.
- 23.3. If the Contractor wishes to amend its statement of working methods at any time, then no later than 25 Business Days before the relevant work is scheduled to be carried out, the Contractor shall distribute for acceptance its revised intentions for its working methods.
- 23.4. Where at the date of submission under Clause 23.3 the current Working Schedule indicates that any Activity affected by the submission is intended to be started within 20 Business Days, any delay to the progress of that Activity caused by the submission shall be at the Contractor's risk.
- 23.5. If the submission under Clause 23.2 or Clause 23.3 does not comply with the Contract, the Contract Administrator shall within 15 Business Days of its receipt either
- 23.5.1. reject the submission in accordance with Clause 13.2, or
- 23.5.2. issue a conditional acceptance of the submission in accordance with Clause 13.3.
- 23.6. If not rejected, and subject always to any condition of acceptance, the submission shall be deemed to be accepted as conclusive evidence of the Contractor's intentions for the method of constructing the Works at the Data Date of the submission.
- 23.7. The Contractor shall not carry out any work described in its statement of working methods before such statement has been accepted. In the event that the Contractor carries out, or attempts to carry out, any work not described in its statement, the Contract Administrator may instruct the Contractor to suspend the carrying out of the Works or any part of them. The suspension shall remain in force until a satisfactory statement of working methods for the construction of the Works has been accepted, and adequate records have been made of any resources and work wrongfully carried out. The cost and time effect of any such suspension, investigation or record keeping shall be borne by the Contractor.

24. LABOUR, PLANT AND MATERIALS

- 24.1. Except for goods and materials to which Clause 61.2.3 or Clause 61.2.4 applies and unless prohibited by Applicable Law, goods, materials and Permanent Plant shall become the property of the Employer free from any encumbrance when
- 24.1.1. properly incorporated into the Works, or
- 24.1.2. their value is included in a Notice of Payment Due and they are clearly marked by the Contractor to that effect,
- whichever occurs first.
- 24.2. Where property in goods and/or materials is intended to be passed to the Employer before being incorporated in the Works, they shall be clearly marked as such by the Contractor at the time of valuation.
- 24.3. The Contractor shall at its own cost provide all labour, goods, materials and Contractor's Plant necessary for the proper carrying out of the Works to the Standard specified in the Contract Specification. Where no Standard is specified, such work, goods, materials and plant shall be of good quality and fit for the intended purpose.
- 24.4. The Contractor warrants that the goods and materials for inclusion in the Works are integrated, co-ordinated and compatible with one another and with the rest of the Works.
- 24.5. The Contractor warrants that, to the extent that it is required to specify or approve goods or materials for use in the Works, or does so specify or approve, it shall not specify, approve or use any goods or materials which are generally known, or ought to be known by contractors having expertise in, and experience of, designing or constructing works of similar scope, complexity, purpose, location and size to the Works, to be deleterious in the particular circumstances in which they are to be used, including without limitation those identified as potentially hazardous under, or not in conformity with, Applicable Law or Standards.
- 24.6. Where in the Contract Specification it is stated that samples of work, goods, materials or plant are required for approval, the Contractor shall submit such samples, together with any relevant technical and/or user information, to the Contract Administrator for its approval before incorporation into the Works.
- 24.7. If and to the extent that any items of work, goods, materials or plant are stated to be required to be to the Contract Administrator's satisfaction, they shall be to the Contract Administrator's reasonable satisfaction.
- 24.8. Where the Contract Specification states that any materials or goods shall be provided by the Employer to the Contractor as Free Issue Materials, the Employer shall provide such

goods and/or materials to the Contractor in accordance with the terms and conditions stated in the Contract Specification

24.8.1. at the time identified by

24.8.1.1. the Contract Specification, or (if none is stated therein)

24.8.1.2. the Contractor's latest accepted Working Schedule, or (if none is stated therein)

24.8.1.3. the Contractor's current Working Schedule, or (if none is stated therein)

24.8.2. in due time for Substantial Completion to be achieved by the Relevant Date for Substantial Completion.

24.9. Unless a deficiency is notified to the Employer and subject always to proof to the contrary, anything to which Clause 24.8 refers shall be deemed to have been supplied in accordance with the Contract Specification.

24.10. The Employer shall immediately rectify any deficiency notified by the Contractor in accordance with Clause 24.5, the time and cost effect of which shall be borne by the Employer.

24.11. The Contractor shall provide all Contractor's Plant for the Works and shall ensure that it is maintained in a good and safe condition.

24.12. All persons engaged in connection with the Works shall be appropriately qualified, skilled and experienced in their respective trade or profession.

24.13. If the Contract Administrator becomes aware that any person employed by the Contractor in connection with the Works

24.13.1. has performed or is performing any element of work incompetently or negligently

24.13.2. has failed or is failing to comply with any provisions of the Contract whether by act or omission, or

24.13.3. has behaved or is behaving in a manner which is prejudicial to the health and safety of others, or is prejudicial to the protection of the environment,

the Contract Administrator shall notify the Contractor of such default and, if such default is continued or repeated at any time, the Contract Administrator may instruct the Contractor

to exclude that person from involvement in the Works. If the Contract Administrator considers it necessary, the Contract Administrator shall then direct the Contractor to appoint a suitable replacement, or may instruct others to be employed to execute the relevant work, the time and cost risk of which shall be borne by the Contractor.

- 24.14. The Contractor warrants that all workers not resident in the country of the Site have the necessary visas and work permits. The Contractor shall be responsible for paying all costs in connection with any necessary repatriation on completion of their trade or profession, or earlier termination.
- 24.15. The Contractor shall provide working conditions and shall pay such rates of wages as are agreed by the trade union representing the relevant trade or industry in the region in which the relevant work is carried out. Where no relevant trade union exists, the Contractor shall
- 24.15.1. provide working conditions not inferior to the general level of working conditions provided locally, and
 - 24.15.2. pay rates of wages not lower than the general level of rates of wages paid locally by employers whose trade or industry is similar to that of the Contractor and who are subject to Applicable Law.
- 24.16. Unless agreed otherwise, neither party shall recruit or attempt to recruit human resources from the other.
- 24.17. No work shall be carried out on the Site other than during Working Hours on the Business Days stated in the Contract Specification and/or the Contractor's Pricing Document, whichever is the more restrictive, unless
- 24.17.1. the Contract Administrator issues an instruction to do so
 - 24.17.2. the particular work is necessary for the immediate protection of life or property, or
 - 24.17.3. for the safety of the Works or any part of them. In such circumstances, the Contractor shall within 5 Business Days notify the Contract Administrator of the nature and quantity of work and the reason for it. In default of such notice
 - 24.17.3.1. the Contract Administrator may instruct the Contractor to suspend the performance of the Works or any part of them until work wrongfully carried out has been properly investigated and recorded, and
 - 24.17.3.2. the Employer may employ and pay others to

- 24.17.3.2.1. make whatever reasonable investigations the Contract Administrator sees fit, and/or
- 24.17.3.2.2. make and keep any records or schedules the Contract Administrator reasonably requires to assist in the management of risks,

and the cost and time effect of such suspension, investigation, record keeping and/or schedule preparation shall be borne by the Contractor.

25. TEMPORARY BUILDINGS AND LAYDOWN

- 25.1. Where it is stated in the Contractor's Pricing Document that the Contractor requires an area for Temporary Buildings, the Employer shall provide the stated areas together with suitable access for the safe and secure erection and maintenance, and the required Site Services in accordance with the terms and conditions stated in the Contract Specification
 - 25.1.1. at the time identified by
 - 25.1.1.1. the Contractor's Pricing Document, or (if none is stated therein)
 - 25.1.1.2. the Contractor's latest accepted Working Schedule, or (if none is stated therein)
 - 25.1.1.3. the Contractor's current Working Schedule, or (if none is stated therein)
 - 25.1.2. in due time for Substantial Completion to be achieved by the Relevant Date for Substantial Completion.
- 25.2. The Contractor shall inspect the areas, access and Site Services provided under Clause 25.1 and notify the Employer, with a copy to the Contract Administrator, within 5 Business Days of any apparent deficiency. Unless a deficiency is notified, and subject always to proof to the contrary, anything to which Clause 25.1 refers shall be deemed to have been supplied in accordance with the Contract.
- 25.3. The Employer shall immediately rectify any deficiency notified by the Contractor in accordance with Clause 25.2, the time and cost effect of which shall be borne by the Employer.
- 25.4. Unless stated otherwise in the Contract or instructed otherwise, in respect of such Temporary Buildings the Contractor shall

- 25.4.1. provide and erect them together with any security provisions to the standards required by the Contract Specification and Applicable Law
 - 25.4.2. connect the Site Services
 - 25.4.3. maintain the Temporary Buildings and services in a condition that is fit for purpose
 - 25.4.4. warrant their safety and security throughout the period indicated in the latest accepted Working Schedule or, if none is indicated, the duration of the Works, and
 - 25.4.5. on Substantial Completion, remove any Temporary Buildings, fencing and/or other security, goods, materials and/or plant and leave the area clean and safe.
- 25.5. Where it is stated in the Contractor's Pricing Document that the Contractor requires an area for Laydown, the Employer shall provide such area, suitable access for the safe and secure erection and maintenance of fencing and Site Services in accordance with the Contract Specification
- 25.5.1. at the time identified by
 - 25.5.1.1. the Contractor's Pricing Document, or (if none stated therein)
 - 25.5.1.2. the Contractor's latest accepted Working Schedule, or (if none is stated therein)
 - 25.5.1.3. the Contractor's current Working Schedule, or (if none is stated therein)
 - 25.5.2. in due time for Substantial Completion to be achieved by the Relevant Date for Substantial Completion.
- 25.6. The Contractor shall inspect the areas, access and Site Services and notify the Employer, with a copy to the Contract Administrator, within 5 Business Days of any apparent deficiency. If no deficiency is notified, and subject always to proof to the contrary, anything to which Clause 25.5 refers shall be deemed to have been supplied in accordance with the Contract.
- 25.7. The Employer shall immediately rectify any deficiency notified by the Contractor in accordance with Clause 25.6, the time and cost effect of which shall be borne by the Employer.
- 25.8. Unless stated otherwise in the Contract, the Contractor shall

- 25.8.1. erect fencing and install all other required security provisions
- 25.8.2. connect the Site Services
- 25.8.3. maintain the Laydown and services in a condition that is fit for purpose
- 25.8.4. warrant the safety and security of the Laydown provided throughout the period indicated in the latest accepted Working Schedule or, if none indicated, the duration of the Works, and
- 25.8.5. on Substantial Completion remove any fencing and/or other security, goods, materials and/or plant and leave the Laydown area clean and safe.

26. QUALITY CONTROL

- 26.1. The Contractor shall carry out and complete Completion Testing and any other testing required by the Contract. Such Completion Testing and other testing shall be carried out in the presence of the Contract Administrator and such other persons as the Contract Administrator requires.
- 26.2. Unless stated otherwise, the Contractor shall provide and bear the cost of providing all necessary information, assistance, documentation and resources for the satisfactory carrying out, recording and completion of all specified testing and Completion Testing.
- 26.3. The Contractor shall notify the Contract Administrator no less than 5 Business Days before it intends to carry out Completion Testing or other testing.
- 26.4. Unless the Contract Administrator instructs otherwise, if any person who is required under Clause 26.1 to witness Completion Testing or other testing does not attend at the time and place agreed, the Contractor may proceed in the person's absence. The Completion Testing or other testing shall then be deemed to have been carried out in the person's presence. If the Contract Administrator does not attend the tests, subject to proof to the contrary, the test data shall be deemed to have been accurately recorded.
- 26.5. The Contractor shall promptly forward to the Contract Administrator duly certified reports of the conduct and results of the Completion Testing or other testing carried out. When the specified tests have achieved the standard required by the Contract, the Contract Administrator shall either sign the Contractor's test certificate or issue a certificate to the Contractor to that effect.
- 26.6. Where the Contract requires Contractor's Plant to be approved, the Contractor shall submit the relevant technical and user information to the Contract Administrator and shall provide

a reasonable opportunity for inspection of the Contractor's Plant. No such Contractor's Plant shall be used in connection with the Works without the Contract Administrator's prior approval.

- 26.7. Where the Contract Specification requires work, materials, goods and/or Permanent Plant to be measured, inspected or tested prior to being covered up or packaged for transportation, the Contractor shall notify the Contract Administrator no less than 5 Business Days before the measurement, inspection or test. The Contract Administrator shall either carry out and complete the measurement, inspection or test within 5 Business Days of receiving the Contractor's notice, or promptly advise the Contractor that the Contract Administrator does not intend to do so.
- 26.8. If the Contractor fails to issue any notice required by this Clause 26, the Contract Administrator may instruct the Contractor to uncover all or any part of the work, goods, materials and/or Permanent Plant for measurement, inspection and testing, the time and cost effect of which shall be borne by the Contractor.
- 26.9. If the Contract Administrator considers that any work, materials, goods and/or Permanent Plant is defective, or otherwise not in accordance with the Contract, the Contract Administrator may instruct the Contractor to
- 26.9.1. uncover, test and, if appropriate, re-test the work, materials, goods and/or Permanent Plant
 - 26.9.2. remove it from the Site and replace it, and/or
 - 26.9.3. do such work as the Contract Administrator considers necessary to enable the Contract Administrator to make any other measurement or test it considers appropriate,
- and to the extent that such work, materials, goods and/or Permanent Plant is found to be defective, or not in accordance with the Contract, the time and cost risk shall be borne by the Contractor.
- 26.10. If the Contractor considers that any decision under this Clause 26 is in conflict with any provisions of the Contract or amounts to a Variation, then within 5 Business Days of its receipt, the Contractor shall refer the issue for Issue Resolution. If the Contractor does not do so, it shall be deemed to be agreed that the Contract Administrator's decision is compliant with the Contract and does not amount to a Variation.

27. ACCESS

- 27.1. The Contractor warrants that it has undertaken all necessary investigation and inquiry to satisfy itself as to the nature and condition of the means of access and transportation to and from the Site and areas for Temporary Buildings and Laydown.
- 27.2. At all reasonable times during the Contract, the Employer, the Contract Administrator, the Time Manager, the Cost Manager, the Listed Persons and other persons authorised by the Employer shall have
- 27.2.1. unrestricted access to all parts of the Site and, to the extent reasonable, to all places from which work, goods, materials and/or Permanent Plant are being obtained and/or manufactured, and
- 27.2.2. the right to examine, inspect, measure and test work, goods, materials and/or Permanent Plant in connection with the Contract or any Connected Contract.
- 27.3. Subject always to Clauses 5.4, 27.2 and 53 and unless the Special Conditions state otherwise, the Contractor shall have the sole right of access to and possession of the Site, and every part of the Works, until Substantial Completion is achieved.

28. PERMITS AND LICENCES

- 28.1. Unless otherwise stated in the Special Conditions
- 28.1.1. the Contractor shall obtain all permits, licences and approvals necessary for the carrying out of the Works
- 28.1.2. where the Contractor is required to design the whole of the Works, the Contractor shall obtain all permits, licences and approvals necessary for the carrying out of the development of land and occupation of the completed Works, and
- 28.1.3. the Contractor shall pay all duties, fees and taxes in connection with any such permits, licences and approvals.
- 28.2. If requested by the Contractor, the Employer shall use reasonable endeavours to assist the Contractor in any applications for permits, licences or approvals made pursuant to this Clause 28.

29. ASSIGNMENT AND SUBCONTRACTING

- 29.1. Neither party may assign the whole or any part of the Contract without the prior approval of the other, except that, as security in favour of a bank or other financial institution, a party may assign without approval its right to any monies due or to become due under the Contract. The assignor shall promptly notify the other party of any such assignment, with a copy to the Contract Administrator.
- 29.2. Except for the supply of materials, labour or plant, or otherwise as provided for in the Contract, the Contractor may not subcontract any part of the Works without the Contract Administrator's prior approval, such approval not to be unreasonably withheld.
- 29.3. Where in the Contract Specification it is stated that any part of the Works is to be carried out by a Subcontractor selected by the Contractor from a list of three or more persons, the Contractor shall at its sole discretion select from the list a Subcontractor to be appointed for the specified work. At any time prior to the appointment of the Subcontractor, the parties may by agreement add or remove persons to or from the list (provided always that the number of persons on the list at any time shall not fall below three).
- 29.4. Any Subcontract entered into by the Contractor in respect of any part of the Works shall incorporate the CIOB Time and Cost Management Subcontract. The Time and Cost Management Subcontract shall not be amended except with the approval of the Employer, which shall not to be unreasonably withheld.
- 29.5. The Contractor shall provide the Contract Administrator with a complete copy of all permitted Subcontracts relating to the Works.
- 29.6. Notwithstanding the appointment of any Subcontractor, the Contractor shall remain wholly responsible for carrying out and completing the Works.

30. PROGRESS MEETINGS

- 30.1. The Contractor, the Time Manager, other Listed Persons and any others invited by the Contract Administrator shall attend Progress Meetings at the intervals stated in Appendix B, to be arranged by the Contract Administrator.
- 30.2. The time and place of Progress Meetings shall be set by the Contract Administrator after consulting with the proposed attendees.
- 30.3. The Contract Administrator shall, no less than 5 Business Days after each Progress Meeting, issue minutes to all attendees and the Employer. The minutes shall be

deemed to be agreed unless notice of any objection is issued to the Contract Administrator within 5 Business Days of their issue.

31. CONTRACT ADMINISTRATOR'S INSTRUCTIONS

- 31.1. The Contract Administrator shall issue those instructions required by the Contract and in addition may at any time issue instructions for
- 31.1.1. the expenditure in whole or in part or omission of Prime Cost Sums, Provisional Sums and/or Employer's Cost Contingencies described in the Contract Specification
 - 31.1.2. the expenditure, reduction, increase, amalgamation with other time contingencies or omission in whole or in part of any Employer's Time Contingency described in the Contract Specification or provided by the Contractor in accordance with Clause 45.2
 - 31.1.3. the omission, or suspension in whole or in part, of any of the Contractor's obligations under the Contract, and/or
 - 31.1.4. anything necessary for the safe, timely and cost-efficient construction of the Works to the quality and standards required.
- 31.2. Subject to Clause 31.4, the Contractor shall comply with all instructions properly issued by the Contract Administrator within the time specified in the instruction or, if none is specified, within a reasonable time. For the avoidance of doubt,
- 31.2.1. the Contract Administrator may not issue instructions with which it is impossible or illegal to comply, and
 - 31.2.2. compliance shall not be considered impossible solely by reason of the likely cost of compliance.
- 31.3. If an instruction requires the performance of anything impossible or illegal, or is likely to put the Contractor's Design in conflict with Clause 16.2 or Clause 16.3, before complying with the instruction the Contractor shall notify the Contract Administrator. Upon receiving notice under this Clause 31.3, the Contract Administrator shall modify, cancel or confirm the instruction. The Contractor shall not implement the instruction unless it is modified to minimise or remove the conflict, or it is confirmed.
- 31.4. If the Contractor considers that the Contract Administrator has failed to issue any instruction required by the Contract, or that the Contract does not empower the Contract Administrator

to issue an instruction, it shall, within 5 Business Days of the instruction or the Logical Date upon which it should have been issued, refer the matter for Issue Resolution. If the Contractor does not do so, the instruction shall be deemed to be agreed to have been issued in accordance with the Contract or not to be required, as the case may be.

- 31.5. If the Contractor is in breach of Clause 31.3, the Employer may at any time notify the Contractor of the default and the Contract Administrator may without further notice employ others to execute the instruction and any other work incidental to it and
- 31.5.1. such work shall be identified in the Working Schedule and valued as an omission under Clause 33
 - 31.5.2. the Contractor shall bear all risk as to time and cost which may arise as a consequence, and
 - 31.5.3. the Employer may recover from the Contractor any additional expenditure and/or loss the Employer incurs as a consequence.

32. VARIATIONS

- 32.1. The Contract Administrator may, at any time before issue of the Certificate of Substantial Completion for the Works, instruct a Variation.
- 32.2. Where the Contract Administrator instructs a Variation, the Contractor shall provide to the Contract Administrator its calculation of valuation in accordance with Clause 33 together with its calculation of the time and cost effect (if any), prepared in accordance with Clauses 43 and 44.
- 32.3. Where the Contractor considers that it is not possible to predict the time and/or cost effect of work arising from a Variation, it shall provide its best estimate for the purposes of Clauses 43 and 44 and shall revise the estimate as further and better information becomes available.

33. VALUATION OF VARIATIONS

- 33.1. Variations shall be valued as follows
- 33.1.1. in regard to additional or substituted work
 - 33.1.1.1. where the work is to be executed under similar conditions and is of similar character and quantity to that in the Contract Documents, the valuation shall be based on measurement according to the rates and prices for similar work in the Contractor's Pricing Document, and

- 33.1.1.2. where there is a material departure from the description and/or quantity of the work in the Contract Documents, the valuation shall include a fair allowance for such difference in description and/or quantity
- 33.1.2. in regard to work which is the subject of approximate quantities
 - 33.1.2.1. where the forecast quantity is within plus or minus 10 per cent of the quantity of work actually carried out, the rate or price in the Contractor's Pricing Document shall determine the valuation, and
 - 33.1.2.2. where the actual quantity of work required differs from the forecast quantity by more than 10 per cent, the rate or price for that work in the Contractor's Pricing Document shall be the basis for determining the valuation, and the valuation shall include a fair allowance for such difference in quantity
- 33.1.3. valuation of omissions shall be by measurement according to the rates and prices for the work in the Contractor's Pricing Document
- 33.1.4. to the extent that a fair valuation of any work or liabilities directly associated with a Variation cannot be made by the application of Clause 33.1.1, 33.1.2 or 33.1.3, the valuation shall be based on fair rates and prices, and
- 33.1.5. no allowance shall be made for any effect upon the regular progress of the Works, or of any part of them, or for any other direct loss and/or expense that is reimbursable under any other provision of the Contract.
- 33.2. Unless the Cost Manager and Contractor agree otherwise, Variations shall be valued at the time of their instruction or, if it is not possible to value the Variation at that time, within 10 Business Days of the date when
 - 33.2.1. the varied work is completed, or
 - 33.2.2. measurement pursuant to Clause 33.3 is carried out,whichever is later.
- 33.3. The Cost Manager shall give the Contractor and the Contract Administrator no less than 5 Business Days before it intends to measure the quantity of work done for the purpose of a valuation. The Cost Manager shall carry out such measurement together with the Contractor, unless the Contractor fails to attend.

- 33.4. Where the Contractor fails to attend such measurement, the Cost Manager shall, within 5 Business Days of measurement, deliver the measurement to the Contractor for agreement. Unless within 5 Business Days of receiving the measurement the Contractor rejects any measurement with reasons, the measurement shall be deemed to be accepted as conclusive evidence of the quantity of work carried out.
- 33.5. The valuation shall be submitted to the Contractor for agreement within 20 Business Days of completion of the varied work. If no agreement is reached, then within a further 5 Business Days the Contractor shall refer the issue for Issue Resolution. Otherwise, the valuation shall be deemed to be accepted as conclusive evidence of the value of the Variation.
- 33.6. If the Contractor rejects a valuation or any re-measurement, the valuation and/or re-measurement shall be corrected within 5 Business Days by agreement with the Cost Manager. If no agreement is reached then, within a further 5 Business Days, the Contractor shall refer the issue for Issue Resolution. Otherwise, it shall be deemed to be agreed that the valuation and/or re-measurement is compliant with the Contract and the Contractor shall not be entitled to any further financial adjustment beyond that concluded by the Cost Manager.
- 33.7. Within 5 Business Days of agreement or deemed agreement, the Cost Manager shall issue the valuation to the Contractor, with a copy to the Contractor Administrator and Employer.

34. EARLY WARNING

- 34.1. If at any time the Employer, the Contract Administrator or any of the Listed Persons becomes aware that an Event is likely to occur or is occurring, it shall notify the Contractor of the Event and the material circumstances giving rise to it.
- 34.2. As soon as the Contractor becomes aware that an Event is likely to occur or is occurring and or on receiving notice under Clause 34.1, the Contractor shall prepare a description of the Event and its likely effect on progress and any Due Date in accordance with Clause 44. The Contractor shall issue the description, together with the Draft Impacted Working Schedule and Draft Impacted Planning Method Statement, to the Contract Administrator and the Listed Persons as an Early Warning.

35. RISK MANAGEMENT

- 35.1. Within 5 Business Days of receiving an Early Warning, the Contractor Administrator shall
- 35.1.1. add the identified risk to the Risk Register
 - 35.1.2. convene a risk management meeting with the Contractor, the Time Manager, the Cost Manager and any other persons likely to be involved in the resolution of the risk to determine what steps, if any, can reasonably be taken to avoid or reduce the likelihood of the occurrence and to minimise the likely effects of the identified risk, and
 - 35.1.3. issue any instructions it considers necessary.
- 35.2. Within 5 Business Days of any risk management meeting, the Contract Administrator shall update the Risk Register identifying
- 35.2.1. the new Data Date
 - 35.2.2. the risks identified
 - 35.2.3. any agreement made, and/or
 - 35.2.4. any instructions issued.
- 35.3. Within 5 Business Days of receiving the revised and updated Risk Register, the Contract Administrator shall provide a copy to the Contractor and the Listed Persons.
- 35.4. If any instruction issued under Clause 35.1.3 or Clause 35.2 involves a revision of the Working Schedule, the Contractor shall revise and re-publish it for acceptance in accordance with Clauses 41 or 49, as the case may be.

36. FAILURE TO PROVIDE RISK MANAGEMENT INFORMATION

- 36.1. If the Contractor fails to publish anything required by the Contract to be published, the Time Manager shall notify the Contract Administrator. The Contract Administrator may at any time notify the Contractor, specifying the Contractor's default and the date of its occurrence and instructing the Contractor to make good the default within 5 Business Days of the notice.
- 36.2. During any period when the Contractor is in default of its obligation to publish a submission, the Employer may

- 36.2.1. employ and pay others to make whatever reasonable investigations the Contract Administrator sees fit, and
- 36.2.2. make and keep any records or schedules the Contract Administrator reasonably requires to assist in the management of risks.

The cost of such investigations, record keeping and/or schedule preparation shall be borne by the Contractor.

- 36.3. Any records or schedules prepared pursuant to Clause 36.2 shall be conclusive evidence of the progress of the Works at the Data Date when they are made.

37. WORKING SCHEDULE

- 37.1. The Working Schedule shall identify the Contractor's intentions for the future conduct of the Works and be prepared in accordance with the requirements of Appendix D and the recommendations of the CIOB Guide.
- 37.2. The Contractor shall with each submission distribute for acceptance by the Time Manager a Draft Planning Method Statement containing sufficient information to identify the assumptions and calculations in the relevant Working Schedule and to facilitate its interpretation.
- 37.3. The Working Schedule, and any revisions or amendments made to it, shall not constitute or cause
 - 37.3.1. an illegal operation
 - 37.3.2. a breach of contract
 - 37.3.3. a hazard to health and/or safety
 - 37.3.4. a hazard to the safety and/or stability of the Works or Temporary Work or any other property
 - 37.3.5. a method or sequence which is not conducive to effective time and/or cost control, or
 - 37.3.6. a fraudulent misrepresentation or any otherwise unethical conduct.

- 37.4. Where the Contractor is required to design any part of the Works, its accepted Design Execution Plan and the interface with any Design Contribution of others relevant to the Works shall be represented in its Working Schedule.
- 37.5. Where the Contractor is required to design the whole of the Works, no less than 20 Business Days after the Start Date the Contractor shall prepare and publish for acceptance its Draft Working Schedule incorporating the Design Execution Plan.
- 37.6. Unless the Contract Specification requires otherwise, no less than 60 Business Days before the Access Date the Contractor shall prepare and publish for acceptance its Draft Working Schedule for the execution of the Works, incorporating the Contractor's Pricing Document as required by Clause 38.
- 37.7. The Working Schedule shall indicate at the relevant Data Date for every Activity planned to be started within the period of 60 Business Days after the Data Date
- 37.7.1. the resources planned to be used
 - 37.7.2. the productivity expected to be achieved
 - 37.7.3. the quantity of work planned to be completed
 - 37.7.4. the calculated duration, and
 - 37.7.5. the planned value.
- 37.8. If the Time Manager considers that the Draft Working Schedule does not comply with the Contract, the Contractor shall within 10 Business Days of publication either
- 37.8.1. reject the submission in accordance with Clause 13.2, or
 - 37.8.2. issue a conditional acceptance of the submission in accordance with Clause 13.3.
- 37.9. If not rejected and subject always to any condition of acceptance, the submission shall be deemed to be accepted as conclusive evidence of the Contractor's intentions for the future conduct of the Works at the Data Date of the submission.
- 37.10. The Contractor may not carry out any work not described in its Draft Working Schedule before it has been accepted. If the Contractor carries out or attempts to carry out any work not so described, the Contract Administrator may instruct the Contractor to suspend the carrying out of the Works until a satisfactory Working Schedule has been accepted and adequate progress records have been made of any resources used and work wrongfully

carried out. The cost and time effect of any such suspension, investigation or record keeping shall be borne by the Contractor.

- 37.11. The Contract Administrator shall maintain a database of submissions in accordance with Paragraph D.13 of Appendix D. No less than 5 Business Days before each Progress Meeting the Contract Administrator shall publish a current copy of the database of submissions.

38. INCORPORATION OF CONTRACTOR'S PRICING DOCUMENT

- 38.1. Whether work is intended to be executed by the Contractor or a Sub-Contractor, the Working Schedule shall identify the quantity of work and the value of each Activity described in the Contractor's Pricing Document, ignoring any advance mobilisation costs or retention monies.
- 38.2. At Low Density and Medium Density, the quantity of work and planned value for each Activity shall be calculated according to the best data available at the Data Date of the Working Schedule.
- 38.3. At High Density, the planned value of each Activity shall be calculated by reference to the quantity of work and staff, labour, materials and plant planned to be required to achieve its completion.
- 38.4. Levels of Effort of appropriate description and value shall be represented on the Working Schedule, logically linked to the Activities to which they apply in respect of
- 38.4.1. each constituent part of Preliminaries, and
 - 38.4.2. Overheads and Profit.
- 38.5. If no rate for Preliminaries and/or Overheads and Profit is identified in the Contractor's Pricing Document, it shall be deemed to be agreed that the Contractor is not entitled to recover such Preliminaries and/or Overheads and Profit as part of any loss and/or expense incurred as a result of any Employer's Cost Risk Event.
- 38.6. Where in the Contract provision is made for
- 38.6.1. advance payment
 - 38.6.2. proportionate repayment of mobilisation costs, and/or
 - 38.6.3. release of retention funds,

such payments shall be represented in the Working Schedule by Activities logically linked to the Activities to which they relate, and reflecting the Logical Date upon which such payments are planned to be made.

38.7. The aggregate value of all the planned Activities, Levels of Effort, mobilisation, repayment of mobilisation and release of retention identified in the accepted Working Schedule shall be equal to the Predicted Cost.

38.8. Where there is a difference between

38.8.1. the Contractor's price for an Activity, and

38.8.2. the cost to the Contractor of the allocated resources calculated in accordance with the Contractor's Pricing Document,

the difference shall be represented as an Activity on the Working Schedule, the time and cost risk of which shall be borne by the Contractor.

38.9. The method of calculation of the valuation of each Activity and Level of Effort at the Data Date of the Draft Working Schedule to which it relates shall be fully described in the relevant Draft Planning Method Statement submitted for acceptance.

38.10. If the Cost Manager considers that

38.10.1. the quantity of work and/or the value of each Activity and/or Level of Effort has not been properly calculated in accordance with the Contractor's Pricing Document

38.10.2. the value has not been reasonably and properly attributed to the Activity and/or Level of Effort indicated on the Working Schedule

38.10.3. any Level of Effort has not been logically linked to appropriate Activities

38.10.4. the method of calculation of value is inappropriate for the effective management of the cost of the Works

38.10.5. the allocation of values has not been properly and reasonably described in the relevant Draft Planning Method Statement, or

38.10.6. the attribution of quantity of work and value does not otherwise comply with the Contract,

the Cost Manager shall within 5 Business Days of receiving the submission notify the Time Manager, who shall within 5 Business Days of such notice either

38.10.7. reject the submission in accordance with Clause 13.2, or

38.10.8. issue a conditional acceptance of the submission in accordance with Clause 13.3.

38.11. If not rejected and subject always to any condition of acceptance, the values attributed shall be deemed to be agreed to be conclusive evidence of the value of the Activities and Levels of Effort illustrated at the Data Date of the relevant submission.

39. PROGRESS RECORDS

39.1. The Contractor shall accurately maintain Progress Records in accordance with the requirements of Appendix E and the recommendations of the CIOB Guide.

39.2. At no less than the status interval stated in Appendix B, the Contractor shall publish for the Time Manager's acceptance the database containing the Progress Records (including those Activities constituting an Event and/or any other delaying factor at the Contractor's risk) for each working day of the interval, together with any other information required by Appendix E.

39.3. If the Time Manager considers that any Progress Record published for acceptance under Clause 39.2 does not reflect the resources actually used, or the progress actually achieved, or does not otherwise comply with the Contract, the Time Manager shall within 5 Business Days of the publication either

39.3.1. reject the submission in accordance with Clause 13.2, or

39.3.2. issue a conditional acceptance of the submission in accordance with Clause 13.3.

39.4. If not rejected and subject always to any condition of acceptance, the Progress Records shall be deemed to be agreed to be conclusive evidence of the Contractor's progress at the Data Date of publication.

39.5. The Time Manager shall maintain a database of submissions of Progress Records in accordance with Paragraph E 10 of Appendix E. No less than 5 Business Days before each Progress Meeting the Time Manager shall publish a current copy of the database of submissions.

40. UPDATED WORKING SCHEDULE

40.1. Within 5 Business Days of acceptance of the Progress Records under Clause 39.4 the Contractor shall publish for acceptance by the Time Manager the Draft Updated

Working Schedule incorporating the Progress Records accepted or deemed accepted, identifying the relevant Data Date and adding in relation to the reporting period

- 40.1.1. in so far as it is relevant to an Activity started but not yet finished before the Data Date
 - 40.1.1.1. the date upon which work started
 - 40.1.1.2. the resources used
 - 40.1.1.3. the quantity of work done, and
 - 40.1.1.4. the value of work done
- 40.1.2. in so far as it is relevant to an Activity previously identified as being in progress, but completed before the Data Date
 - 40.1.2.1. the date upon which work finished
 - 40.1.2.2. the resources used to complete the work
 - 40.1.2.3. the value of the completed work
- 40.1.3. in so far as it is relevant to any Due Date or Milestone, the date upon which the Due Date or Milestone was achieved, and
- 40.1.4. in so far as it is relevant to any Level of Effort, identifying the expenditure up to the Data Date.
- 40.2. The Contractor shall recalculate the Critical Path and any effect upon progress of the work and/or the likely effect on any Due Date or Milestone caused by the addition of the data described in Clause 40.1.
- 40.3. The Contractor shall with each submission distribute for acceptance a Draft Updated Planning Method Statement containing sufficient information to identify
 - 40.3.1. the added data referred to in Clause 40.1, and
 - 40.3.2. any other revisions made.
- 40.4. If, as a result of anything other than an Event, the Draft Updated Working Schedule predicts that any Due Date is unlikely to be achieved, the Contractor shall meet with the Time Manager to identify what revisions to the Draft Updated Working Schedule may be made

to overcome or reduce the likely delay. Any revisions to the Draft Updated Working Schedule shall be made in accordance with Clause 41.

- 40.5. If the Time Manager considers that the Draft Updated Working Schedule conflicts with the accepted Progress Records, the Time Manager shall within 5 Business Days of receipt notify the Contractor. If the Time Manager does not do so, it shall be deemed to be agreed that the Draft Updated Working Schedule complies with the Contract.
- 40.6. Within 5 Business Days of notice under Clause 40.5 the Contractor shall revise and re-publish the Draft Updated Working Schedule to comply with the Time Manager's notice, or reject the notice in whole or in part, giving reasons.
- 40.7. If not rejected and subject always to any condition of acceptance, the Draft Updated Working Schedule shall be deemed to be agreed to be conclusive evidence of the Contractor's intentions for the future performance of the Works at the Data Date of submission and shall become the current Working Schedule.
- 40.8. If the Contractor considers that any decision under Clause 40.5 conflicts with the provisions of the Contract or amounts to a Variation, it shall within 5 Business Days of its receipt refer the issue for Issue Resolution. If the Contractor does not do so, it shall be deemed to be agreed that the decision complies with the Contract, and does not amount to a Variation.

41. REVISED WORKING SCHEDULE

- 41.1. At no less than the status interval for publication of the Draft Revised Working Schedule stated in Appendix B, the Contractor shall revise the Working Schedule and publish it for acceptance by the Time Manager. The submission shall identify for every Activity not completed by the Data Date, or planned to be started within the period of 60 Business Days after the Data Date,
 - 41.1.1. the resources planned to be used
 - 41.1.2. the productivity expected to be achieved
 - 41.1.3. the quantity of work planned to be completed
 - 41.1.4. the calculated duration, and
 - 41.1.5. the calculated value.
- 41.2. Notwithstanding Clause 41.1, the Draft Revised Working Schedule shall be reviewed and revised by the Contractor to reflect any changed intentions for the performance of the

Works. At the Data Date, the Draft Revised Working Schedule shall accurately reflect the best available information about

- 41.2.1. the resources planned to be made available
 - 41.2.2. the productivity achievable in relation to the work to be carried out, and
 - 41.2.3. the Contractor's intentions for the future performance of the Works.
- 41.3. The Contractor shall with each submission distribute for acceptance a Draft Revised Planning Method Statement containing sufficient information to identify
- 41.3.1. the added data referred to in Clauses 41.1 and/or 41.2, and
 - 41.3.2. any other revisions made.
- 41.4. If, as a result of anything other than an Event, the Draft Revised Working Schedule predicts that any Due Date or Milestone is unlikely to be achieved, the Contractor shall meet with the Time Manager to identify what revisions to the Draft Revised Working Schedule may be made to overcome or reduce the likely delay.
- 41.5. If the Time Manager considers that any Draft Revised Working Schedule does not comply with the Contract, the Time Manager shall within 5 Business Days of publication either
- 41.5.1. reject the submission in accordance with Clause 13.2, or
 - 41.5.2. issue a conditional acceptance of the submission in accordance with Clause 13.3.
- 41.6. If not rejected and subject always to any condition of acceptance, the Draft Revised Working Schedule shall be deemed to be agreed to be conclusive evidence of the Contractor's intentions for the future performance of the Works at the Data Date of publication and shall become the current Working Schedule.

42. SCHEDULE QUALITY ASSURANCE

- 42.1. The Time Manager shall provide a copy to the Auditor of the Draft Working Schedule submitted under Clause 37.5 or 37.6, and shall consult with the Auditor concerning its approval or rejection under Clause 37.8.
- 42.2. Notwithstanding the acceptance of any submission under Clauses 37, 38, 39, 40 and/or 41, the Time Manager shall, at the intervals stated in Appendix B, submit to the Auditor for quality assurance audit the latest accepted

- 42.2.1. Design Execution Plan distributed under Clauses 15.1 and 15.3
- 42.2.2. Statement of Contractor's working methods distributed under Clauses 23.2 and 23.3
- 42.2.3. Progress Records database published under Clause 39.2
- 42.2.4. Updated Working Schedule and Planning Method Statement published under Clause 40.1
- 42.2.5. Revised Working Schedule and Planning Method Statement published under Clause 41.1 or 41.2

together with any other information the Auditor reasonably requests.

- 42.3. The Auditor shall, in accordance with the recommendations of the CIOB Guide, carry out a review of the information provided under Clauses 42.1 or 42.2 to ascertain that it is in accordance with the Contract.
- 42.4. If the Auditor finds any departure from the requirements of the Contract, it shall immediately prepare and distribute its report identifying such departure and recommendations for correction.
- 42.5. Within 10 Business Days of receiving any report under Clause 42.4, the Contractor shall review and revise and re-publish its Working Schedule in accordance with the Auditor's recommendations.
- 42.6. For the avoidance of doubt, no correction made under this Clause 42 shall affect any decision made or certificate issued by reference to a previously accepted Working Schedule and/or Progress Records.

43. CALCULATION OF EFFECT OF EVENT ON TIME

- 43.1. Subject to Clause 43.7, upon becoming aware that an Event is likely to occur, is occurring or has occurred, for each and every Event the Contractor shall prepare a description, identifying
 - 43.1.1. the details required by Clause 34.2 and the date and reference of any notice under Clause 34.1
 - 43.1.2. the record identifier of the Event and its Activity Code in accordance with Appendix D, Paragraph D11 and/or D12

- 43.1.3. the identity of the Event
 - 43.1.4. a statement as to whether the Event is likely to occur, is occurring or has occurred
 - 43.1.5. the Initiation Date of the Event
 - 43.1.6. the identification of any document and fact relied upon by the Contractor
 - 43.1.7. a description of the Fragnet required by Clause 43.2 or the non-working period identified under Clause 43.3, and
 - 43.1.8. the result of the calculations carried out under Clause 43.4.
- 43.2. For each and every Event comprising a change in a planned Activity, or an additional Activity associated with an Event, the Contractor shall prepare a logically linked Fragnet in accordance with Appendix D identifying
- 43.2.1. the description and Activity IDs of the Activities affected or additional Activities
 - 43.2.2. the period or periods required for design, approval, manufacturing, procurement, delivery, licensing, permission, approval or other off-site work before work on Site can commence or recommence
 - 43.2.3. any Temporary Work
 - 43.2.4. the labour, plant and material resources used and/or expected to be used
 - 43.2.5. the estimated or actual value of the labour, plant and material resources used or expected to be used
 - 43.2.6. the predicted logical or actual calendar start and finish date
 - 43.2.7. the links to any logical predecessor Activity, successor Activity, Level of Effort and/or Milestone, with a description of any changes to the logic of each such Activity, Level of Effort and/or Milestone, and
 - 43.2.8. the location of the work affected.
- 43.3. For each and every Activity directly affected by any suspension of the working period, the periods of suspension are to be identified as
- 43.3.1. non-working periods in the working calendar which relates only to the Activities affected and no other Activities, or

- 43.3.2. the replacement of the existing working calendar with a calendar which applies only to the Activities suspended.
- 43.4. For each and every Event identified under this Clause 43 the Contractor shall prepare the Draft Impacted Working Schedule by
 - 43.4.1. adding the relevant Fragnet or non-working period to the Working Schedule
 - 43.4.2. re-calculating the Critical Path of the Working Schedule by re-scheduling, and
 - 43.4.3. identifying the effect of the non-working period or Fragnet upon the Draft Impacted Working Schedule.
- 43.5. The Contractor shall with each submission distribute a Draft Impacted Planning Method Statement containing sufficient information to identify
 - 43.5.1. the added or changed data referred to in Clauses 43.2 and 43.3
 - 43.5.2. any other revisions made, and
 - 43.5.3. the details referred to in Clause 43.1.
- 43.6. No less than 5 Business Days before the next Progress Meeting the Contractor shall distribute a copy of the information required by Clause 43.5 and publish the Draft Impacted Working Schedule prepared in accordance with Clause 43.4.
- 43.7. For the avoidance of doubt
 - 43.7.1. if any Event occurs later than 5 Business Days before a Progress Meeting, or if for any reason it is not possible within the time available before a Progress Meeting to properly calculate its time effect, the information required by this Clause 43 shall be supplied to the subsequent Progress Meeting, and
 - 43.7.2. if more than one Event has occurred between Progress Meetings
 - 43.7.2.1. each Event shall be impacted sequentially and in chronological order of the Initiation Date
 - 43.7.2.2. the impact of each Event shall be calculated and identified in a separate description, and
 - 43.7.2.3. the aggregate effect of all Events occurring in the interval shall be recorded in the information distributed under Clause 43.5.

- 43.8. If the Contractor fails to publish the information required by the Contract to enable the Time Manager to calculate the likely time effect of an Event contemporaneously, the effect of the Event shall be calculated after the Relevant Substantial Completion Date by reference to the Relevant Substantial Completion Date that could have been achieved if the Event had not occurred, using
- 43.8.1. the progress records and schedules prepared under Clause 36.2, or (if none)
 - 43.8.2. such records and schedules as, in its absolute discretion, the Time Manager adopts for the purpose of this Clause 43.8.

44. CALCULATION OF EFFECT OF EVENT ON COST

- 44.1. If the impact of an Event identified under Clause 43 indicates that the progress of any part of the Works, or the productivity of any resources, is likely to be, is being, or has been adversely affected, and
- 44.1.1. either the delay to progress or reduced productivity, is likely to cause, is causing, or has caused loss and/or expense to be suffered, or
 - 44.1.2. any part of the Works is unlikely to achieve Substantial Completion by a Due Date,
- the Contractor shall, no less than 5 Business Days before the next Progress Meeting, distribute a notice to that effect.
- 44.2. The Contractor shall include in its notice under Clause 44.1 or as soon afterwards as the information required becomes available
- 44.2.1. any details provided under Clause 34.2 and the date and reference of any notice issued under Clause 34.1
 - 44.2.2. the description of the Employer's Cost Risk Event
 - 44.2.3. the valuation of the Employer's Cost Risk Event
 - 44.2.4. subject to Clause 38.5, the quantification of any expenditure and/or loss caused by the Employer's Cost Risk Event
 - 44.2.5. the identification of any document supporting the facts relied upon, and
 - 44.2.6. any further information, documents or statements that the Employer, the Contract Administrator, the Time Manager, the Cost Manager or the Listed Persons may require in order to verify the occurrence of the Event, or its consequences.

- 44.3. If the Contractor fails to provide the information required by Clause 44.2 to enable the Cost Manager to calculate the amount of the Contractor's entitlement to compensation for disruption and/or prolongation, the amount shall be calculated after the Substantial Completion Date using
- 44.3.1. the progress records and/or schedules as have been prepared under Clause 36.2, or (if none)
 - 44.3.2. such records and schedules as, in its absolute discretion, the Cost Manager considers appropriate for the purposes of this Clause 44.3.
- 44.4. If any Employer's Cost Risk Event occurs later than 5 Business Days before a Progress Meeting, or if for any reason it is not possible within the time available before the Progress Meeting to properly calculate its cost effect, the information required by Clause 44.2 shall be supplied before the next Progress Meeting.

45. FLOAT AND TIME CONTINGENCIES

- 45.1. Each and every Employer's Time Contingency described in the Contract Specification shall be identified as a separate Activity in the Working Schedule.
- 45.2. Where an Employer's Time Contingency is not described in the Contract Specification, unless specified or instructed otherwise, for all Activities for which
- 45.2.1. a Prime Cost Sum
 - 45.2.2. a Provisional Sum, and/or
 - 45.2.3. an Employer's Cost Contingency
- is included in the Contract Specification, the Contractor shall, based upon the information then available,
- 45.2.4. calculate a reasonable Employer's Time Contingency by reference to the labour, goods, materials and plant expected to be required to execute the anticipated work and the productivity reasonably expected to be achievable in executing each Activity, and
 - 45.2.5. include and separately identify each Employer's Time Contingency in the Working Schedule.

- 45.3. An Employer's Time Contingency shall be expended, reduced, increased, or amalgamated with other Employer's Time Contingencies or omitted, as the Contract Administrator may instruct from time to time in order to manage the Employer's time risks under the Contract.
- 45.4. The Contractor shall describe in the Contractor's Pricing Document, and shall include in its Working Schedule, all necessary Contractor's Time Contingencies against the Contractor's risks under the Contract. Subject to Clause 48, Contractor's Time Contingencies shall be expended, reduced, increased or amalgamated with other Contractor's Time Contingencies, or omitted in order to manage the Contractor's time risks under the Contract.
- 45.5. Free Float and Total Float shall not be for the exclusive use of either party and, to the extent that either is available, it shall be available to both parties to use or absorb in order to manage their respective risks, from time to time, prior to the issue of the Certificate of Substantial Completion.

46. CONTRACTOR'S IMPROVEMENT OF PROGRESS

- 46.1. If the Contractor wishes to proceed or has proceeded at a greater pace than that identified in the currently accepted Working Schedule, or has not used the Contractor's Time Contingencies, and the Contractor does not wish to achieve an earlier Due Date, it shall no less than 5 Business Days before the next Progress Meeting allocate in the Working Schedule one or more Contractor's Time Contingencies to replace any float created.
- 46.2. Any intended changes to the Working Schedule required as a result of the implementation of Clause 46.1 shall be published for acceptance in accordance with Clause 41.

47. EMPLOYER'S IMPROVEMENT OF PROGRESS

- 47.1. If the Contractor is able to proceed at a greater pace than that identified in the currently accepted Working Schedule as a result of
- 47.1.1. improved progress by the Employer or any Listed Person, or
 - 47.1.2. an instruction to omit in whole or in part
 - 47.1.2.1. an obligation, or
 - 47.1.2.2. an Employer's Time Contingency,

but the Employer does not wish to achieve an earlier Due Date, it shall no less than 5 Business Days before the next Progress Meeting instruct the Contractor to allocate in the

Working Schedule one or more Employer's Time Contingencies to replace any float created and to re-publish it for acceptance in accordance with Clause 41.

48. INSTRUCTED RECOVERY

- 48.1. If, as a result of delay to progress caused by anything other than an Event, the Contractor publishes a Working Schedule indicating that any part of the Works is likely to be completed later than the relevant Due Date, the Contractor shall consult with the Time Manager about possible ways to overcome or avoid the predicted delay to the Due Date. The Time Manager shall (using its discretion, but having regard to the consultation) advise the Contract Administrator stating whether, in the Time Manager's opinion, the Contractor may be instructed to
- 48.1.1. omit (in whole or in part), amend or re-allocate one or more of the Contractor's Time Contingencies identified under Clause 45.4
 - 48.1.2. change the order or sequence of one or more specific Activities, or sequence of Activities, or part of the Working Schedule
 - 48.1.3. change the resources to be applied to one or more specific Activities, and/or
 - 48.1.4. take any other action necessary to illustrate how the Contractor's obligation to achieve any Due Date is intended to be achieved.
- 48.2. Provided always that the Contract Administrator considers it practicable and reasonable for the Contractor to comply (such compliance not to be considered impracticable or unreasonable solely by reason of the likely cost of compliance), the Contract Administrator shall within 5 Business Days of the consultation instruct the Contractor to publish for acceptance a Revised Working Schedule and the Contractor shall comply with such instruction at no cost to the Employer.
- 48.3. For the avoidance of doubt, the Contract Administrator may instruct the Contractor to recover from a delay to progress of the Works, but not to complete by a date earlier than any Due Date by means of proposals made or implemented under this Clause 48.

49. INSTRUCTED ACCELERATION

- 49.1. If, as a result of any delay to progress caused or likely to be caused by an Event, the Contractor publishes a Working Schedule indicating that any part of the Works is likely to be completed after any Due Date, then at any time after such publication the Contract Administrator may instruct the Contractor to consult with the Time Manager to assist in

drafting proposals to avoid (whether in whole or in part) the predicted delay by implementing any relevant Contract Administrator's instruction to

49.1.1. omit (in whole or in part), amend or re-allocate one or more of the Employer's Time Contingencies identified under Clause 45.1 or Clause 45.2

49.1.2. change the order or sequence of one or more specific Activities, sequence of Activities, or part of the Working Schedule

49.1.3. change the resources to be applied to one or more specific Activities, and/or

49.1.4. take any other action necessary to mitigate the likely effect of the Event,

in order to reduce or eliminate the likely delay to a Due Date.

49.2. Provided always that the Contractor and/or the Time Manager considers it practicable and reasonable for the Contractor to comply with an instruction under Clause 49.1, the Contract Administrator shall within 5 Business Days of the consultation instruct the Contractor to publish for acceptance a Draft Revised Working Schedule.

49.3. For the avoidance of doubt, the Contract Administrator may instruct the Contractor to accelerate the progress of the Works to achieve a date earlier than any Due Date by means of proposals made or implemented under this Clause 49.

49.4. The Contractor shall in accordance with Clause 33 keep and deliver to the Cost Manager the calculation of the costs of preparing any required proposals, and of the costs or savings resulting from compliance with any instruction under Clause 49.2.

50. FAILURE TO COMPLY WITH AN INSTRUCTION TO RECOVER OR ACCELERATE

50.1. If the Contractor considers that the Contract does not empower the issue of instructions issued under Clause 48 or Clause 49, or that such instruction cannot be complied with, it shall within 5 Business Days of receiving the instruction refer the issue for Issue Resolution. If the Contractor does not do so, the instruction shall be deemed to be in accordance with the Contract.

50.2. If the Contractor fails to comply with an instruction under Clause 48 or Clause 49, the Contractor shall reimburse the Employer for any loss and/or expense that the Contractor actually incurs as a result of delay to a Relevant Substantial Completion Date which could have been avoided by compliance with the instruction. For the avoidance of doubt, the Employer's entitlement under this Clause 50.2 shall be separate from and additional to any entitlement to Liquidated Delay Damages recoverable or deductible pursuant to Clause 57,

subject always to the Employer giving credit where appropriate for any damages that have been deducted or paid as Liquidated Delay Damages under Clause 57.

51. EXTENSION OF TIME

51.1. If, on receiving the information referred to in Clause 43, the Time Manager considers that

51.1.1. the Event described

51.1.1.1. has occurred, and

51.1.1.2. is an Employer's Time Risk Event

51.1.2. any Fragnet prepared under 43.2 either contemporaneously properly reflects the accepted Progress Records, or is a reasonable estimate of the quantity of work, Activities and the resources, productivity, durations and sequence likely to flow directly from the Event

51.1.3. any non-working period identified under Clause 43.3 either properly reflects the accepted Progress Records, or is a reasonable estimate of the duration of suspension likely to flow directly from the Event, and

51.1.4. the impact of the Event calculated under Clause 43.4 is likely to prevent the Works or Section from being completed by a Relevant Date for Substantial Completion after a Relevant Substantial Completion Date has passed,

the Time Manager shall within 10 Business Days of receiving this information notify the Contract Administrator of

51.1.5. the impact described in Clause 51.1.4, and/or

51.1.6. the instructions which may be issued in order to reduce the time required for any part of the Works to be carried out, together with any residual consequential impact of the notified Event.

51.2. Within 10 Business Days of receiving notice under Clause 51.1, the Contract Administrator shall either

51.2.1. extend the time for completion by fixing a new Relevant Substantial Completion Date reflecting the impact described in Clause 51.1.4, or

- 51.2.2. issue instructions under Clause 49 for a reduction of the time required for any part of the Works and, commensurate with the predicted impact of the Event in the light of such instructions, confirm either
- 51.2.2.1. the Relevant Substantial Completion Date, or
 - 51.2.2.2. the extended time for completion by fixing a new Relevant Substantial Completion Date,
- and shall forthwith distribute the Contract Administrator's decision.
- 51.3. Where, in accordance with Clauses 51.1.2 and/or 51.1.3, a calculation of entitlement is made on the basis of an estimate of the Activities, resources, productivity, durations, sequences and/or suspension likely to flow directly from the Event, unless the Contract Administrator and Contractor agree otherwise, that estimate shall be revised to reflect the Progress Records, and any extension of time granted shall be adjusted accordingly.
- 51.4. For the avoidance of doubt
- 51.4.1. nothing shall prevent the Contract Administrator from notifying
 - 51.4.1.1. an earlier or later Relevant Substantial Completion Date in accordance with Clause 54.4, or
 - 51.4.1.2. a later Relevant Substantial Completion Date after a Relevant Substantial Completion Date has passed, and
 - 51.4.2. Where in relation to suspension according to Applicable Law or the Law of the Contract there is a right to relief other than in accordance with the Contract, such relief shall be in substitution for, and not in addition to, any contractual relief.
- 51.5. If the Contractor fails to provide the information required under Clause 43 to enable the Time Manager to calculate contemporaneously the Contractor's entitlement to an extension of time, the Contractor's entitlement shall be calculated after Substantial Completion by reference to the Date for Substantial Completion that could have been achieved if the Event had not occurred, using
- 51.5.1. the progress records and/or schedules prepared under Clause 36.2, or (if none)
 - 51.5.2. such records and/or schedules as, in its absolute discretion, the Time Manager considers appropriate for the purposes of this Clause 51.5.

52. CONCURRENCY

- 52.1. For the purposes of the Contract, concurrent causation occurs when
- 52.1.1. a delay to progress of an Activity is caused by two or more occurrences, at least one of which is at the Contractor's risk and at least one of which is an Event, or
 - 52.1.2. a delay to progress of an Activity is caused by one or more occurrences at the risk of the Contractor and, over the same period of delay to progress in whole or in part, a delay to progress is caused to another Activity by one or more Events
- and in the absence of the occurrence which is at the Contractor's risk or the Event, the same delay to progress would have occurred.
- 52.2. When, at the date upon which the delay to progress occurs, the delayed Activity is (or, in the case of concurrent causation as described in Clause 52.1.2, both delayed Activities are) on a Critical Path to a Relevant Date for Substantial Completion, the likely delay to the Relevant Date for Substantial Completion so caused shall, subject to Clauses 46, 47, 48 and/or 49, be deemed to be one for which the Contractor is entitled to an extension of time calculated in accordance with Clause 51, but is not entitled to financial compensation.
- 52.3. Where any delay to progress referred to in Clause 52.1.2 is caused solely by a Employer's Cost Risk Event, the Contractor shall be entitled to compensation calculated in accordance with Clause 44.
- 52.4. To the extent that the Contractor is unable to demonstrate that loss and/or expense for which compensation is claimed was not caused wholly by an Employer's Cost Risk Event, the Contractor shall not be entitled to recover compensation from the Employer.

53. PARTIAL POSSESSION AND USE OF THE WORKS

- 53.1. If, with the Contractor's consent (conditional or otherwise), the Employer adopts or uses any part of the Works to the exclusion of the Contractor before the Certificate of Substantial Completion, that part shall be deemed to have been taken into Partial Possession by the Employer for the purposes of Clause 53.2.
- 53.2. Upon any part being adopted or taken into Partial Possession
- 53.2.1. the Contractor shall not be required to insure the part adopted or taken into Partial Possession, and

- 53.2.2. the Contract Administrator shall distribute a Certificate of Partial Possession, identifying
 - 53.2.2.1. the date upon which the part was adopted or taken into Partial Possession
 - 53.2.2.2. the part of the Works that has been adopted or taken into Partial Possession, clearly illustrated by reference to any Model and/or Drawings and/or Contract Bill of Quantities, and
 - 53.2.2.3. the Current Contract Value of the part of the Works which has been adopted or taken into Partial Possession.
- 53.3. Notwithstanding that the part that is adopted or taken into Partial Possession may not be complete, for the purposes of the Contract the part shall be deemed to have achieved Substantial Completion on the date certified. Any work to be carried out to that part, or any insurances required to be maintained by the Contractor in respect of that part, shall be treated as a Variation and instructed in accordance with Clause 32 unless otherwise agreed by the parties at the date of adoption or Partial Possession.
- 53.4. Any Liquidated Delay Damages relating to the Works, or the relevant Section, shall be reduced by the proportion which the value of the adopted or partially possessed part bears to the Current Contract Value of the Works or Section.
- 53.5. For the avoidance of doubt, if before Substantial Completion the Employer is granted use of any part of the Works (whether as described in the Special Conditions or otherwise), but not to the exclusion of the Contractor
 - 53.5.1. that part shall not be deemed to have been adopted or taken into Partial Possession by the Employer
 - 53.5.2. any relevant insurances required to be maintained by the Contractor shall be amended as necessary to take account of the Employer's use, and
 - 53.5.3. unless described in the Special Conditions, such use shall be granted as a Variation.

54. SUBSTANTIAL COMPLETION

- 54.1. Where it is stated in the Special Conditions that the Employer is willing to accept Substantial Completion of any Subcontract Works before Substantial Completion of the Works as a whole, unless the Special Conditions state otherwise, Clause 54.6 shall apply to the relevant Subcontract Works.

- 54.2. As soon as the Contractor considers that the Works have, or any Section has, achieved Substantial Completion, the Contractor shall notify the Contract Administrator and request a Certificate of Substantial Completion. The notice shall identify the Works or relevant Section and when Substantial Completion was achieved.
- 54.3. If the Contract Administrator does not accept the notice under Clause 54.1, it shall within 5 Business Days of receipt refer the issue for Issue Resolution. If not so referred, the notice shall be deemed to be accepted.
- 54.4. Unless the issue is referred for Issue Resolution under Clause 54.3, within 5 Business Days of a notice under Clause 54.1 the Contract Administrator shall distribute the Certificate of Substantial Completion, identifying the date when the relevant Section or the Works achieved Substantial Completion.
- 54.5. From the Substantial Completion Date
- 54.5.1. the Contractor shall not be required to insure the Works or relevant Section
- 54.5.2. the Post-Substantial Completion Retention Period in respect of the relevant Section or the Works shall commence, and
- 54.5.3. liability under Clause 57 for further delay of the Works or relevant Section shall cease.
- 54.6. Incomplete or defective work discovered before the Substantial Completion Date shall be made good during the Post-Substantial Completion Retention Period, in accordance with instructions issued under Clause 55.1.

55. MAKING GOOD DEFECTS

- 55.1. The Contract Administrator may, at any time after Substantial Completion of the Works or any Section has been achieved, instruct the Contractor to make good at its own expense any defect, shrinkage or other fault in the Works which appears during the Post-Substantial Completion Retention Period indicated in Appendix B. The Contractor shall complete the making good or replacement within the period required by the Contract Administrator, or, if no period is stated, within 40 Business Days of the instruction.
- 55.2. The Contract Administrator shall within 20 Business Days of the end of the Post-Substantial Completion Retention Period or, in the case of Sections, the last Post-Substantial Completion Retention Period

- 55.2.1. inspect the Works with the Contractor and issue to the Contractor a list of all the defects, shrinkages and other faults in the Works of which the Contract Administrator is then aware, together with any instructions for further investigation and/or making good and replacement, and
- 55.2.2. within 5 Business Days of the completion of any further investigations and/or making good and replacement referred to in Clause 55.2.1, inspect the Works with the Contractor and issue to the Contractor a final list of all the defects, shrinkages and other faults of which the Contract Administrator is then aware.
- 55.3. On receiving the Contract Administrator's instructions under Clause 55.1, the Contractor shall commence and carry out the making good, and shall notify the Contract Administrator when it is complete.
- 55.4. If for any reason the specified making good or replacement has not been properly completed within the required period, the Contract Administrator may
 - 55.4.1. notify the Contractor that the Employer intends to employ and pay others to complete the incomplete making good or replacement, or
 - 55.4.2. make a reasonable estimate of the cost of making good or replacement of any defects, shrinkages or other faults not made good.
- 55.5. Any loss and/or expense incurred by the Employer under Clause 55.4 and/or the estimated cost of making good or replacement of any defects, shrinkages or other faults not made good may be withheld or recovered from the Contractor as a debt.
- 55.6. Within 5 Business Days of completion of any making good or replacement, or the date upon which such work is completed by others, whichever is the later, the Contract Administrator shall issue to the Contractor a Certificate of Making Good Defects specifying the date upon which the Contractor's obligations under this Clause 55 are complete.

56. FAILURE TO ACHIEVE SUBSTANTIAL COMPLETION

- 56.1. If the Contractor fails to achieve Substantial Completion of the Works or any Section by the Relevant Substantial Completion Date, the Contract Administrator shall distribute a Certificate of Failure to Achieve Substantial Completion identifying the Relevant Substantial Completion Date for the Works or Section that has not been achieved.
- 56.2. If, after a Certificate of Failure to Achieve Substantial Completion has been distributed, time for completion is further extended, the Certificate previously issued shall be of no effect and to the extent that

- 56.2.1. the Employer would not have been entitled to withhold, deduct or be paid Liquidated Delay Damages had the time for completion already been extended, such Liquidated Delay Damages withheld, deducted or paid pursuant to the Certificate of Failure to Achieve Substantial Completion shall be released or repaid to the Contractor, and
- 56.2.2. where the extended time for completion referred to in Clause 56.2.1 is to a date earlier than the Substantial Completion Date, the Contract Administrator shall distribute a further Certificate of Failure to Achieve Substantial Completion in accordance with Clause 56.1.

57. LIQUIDATED DELAY DAMAGES

- 57.1. If in Appendix B Liquidated Delay Damages are stated to apply, subject to any limit on the period of delay identified there, they shall be calculated by reference to the relevant rate from the date in the Certificate of Failure to Achieve Substantial Completion up to the relevant Substantial Completion Date. If Liquidated Delay Damages do not apply, the Employer may recover from the Contractor as general damages any loss the Employer incurs as a result of delay between the date in the Certificate of Failure to Achieve Substantial Completion and the Substantial Completion Date.
- 57.2. If in Appendix B Liquidated Delay Damages are stated to apply in relation to any Section, subject to any limit on the period of delay identified there, they shall be calculated by reference to the relevant rate from the date in the Certificate of Failure to Achieve Substantial Completion up to the relevant Sectional Substantial Completion Date. If Liquidated Delay Damages do not apply, the Employer may recover from the Contractor as general damages any loss the Employer incurs as a result of delay between the date in the Certificate of Failure to Achieve Substantial Completion and the relevant Sectional Substantial Completion Date.
- 57.3. The parties acknowledge the difficulty in determining the exact loss likely to be suffered by the Employer in the event of a failure to complete by a Relevant Substantial Completion Date. Nevertheless, the parties acknowledge that the rate stated in Appendix B is a genuine pre-estimate of such loss.
- 57.4. If for any reason applicable Liquidated Delay Damages are found to be unenforceable (whether as a penalty or otherwise), the amount payable for the period of delay up to the limit on the period of delay stated in Appendix B or, if no limit on the period of delay is stated, the total sum calculated by reference to the rates stated in Appendix B shall nonetheless act as a cap on any general damages recoverable for delay.

- 57.5. Provided always that the Contract Administrator has distributed a Certificate of Failure to Achieve Substantial Completion and, subject to any limitation stated in Appendix B on the period of delay during which Liquidated Delay Damages may be applied, the Employer may in respect of the sum due
- 57.5.1. deduct it within the calculation contained in the Contract Administrator's Notice of Payment Due under Clause 64
 - 57.5.2. withhold it in a notice of intention to pay less under Clause 66.3.2, and/or
 - 57.5.3. recover it from the Contractor as a debt.
- 57.6. After the issue of a Certificate of Substantial Completion, the Employer shall re-calculate the final amount of Liquidated Delay Damages due from the Contractor in respect of the Works or any Section, giving due credit for any Liquidated Delay Damages previously deducted, withheld or paid.

58. LIMIT OF LIABILITY

The overall Limit of Liability of the Contractor to the Employer under or in connection with the Contract shall be that stated in Appendix B.

59. RETENTION FUND

- 59.1. Where it is identified in Appendix B that a percentage of the value of work completed is to be retained pending the Certificate of Making Good Defects, the relevant sums retained shall be placed by the Employer in a separate bank account and held on trust for the benefit of the Contractor.
- 59.2. Within 5 Business Days of the date of Substantial Completion, the Contract Administrator shall distribute a Notice of Payment Due releasing half of the retention fund.
- 59.3. Within 5 Business Days of the Certificate of Making Good Defects, the Contract Administrator shall distribute a Notice of Payment Due for the balance of the retention fund, together with any interest earned, less any compensation for expenditure and/or loss due from the Contractor to the Employer under Clause 55.4.
- 59.4. Where it is stated in Appendix B that a Retention Bond shall be provided by the Contractor in lieu of the Employer retaining retention monies, the Contractor shall within 5 Business Days of the Date of Contract deliver to the Employer a Retention Bond in the form required

by the Special Conditions. Except as required by Clause 59.5, upon delivery of the Retention Bond the provisions of

59.4.1. Clauses 59.1, 59.2 and 59.3, and

59.4.2. to the extent they relate to retention Clauses 38.6 and 38.7

shall no longer apply.

- 59.5. If any Retention Bond delivered pursuant to Clause 59.4 expires or is otherwise no longer enforceable or compliant with the requirements of the Contract, the Employer may give effect to the provisions of Clauses 38.6, 38.7, 59.1, 59.2 and 59.3 until such time as the Contractor delivers an equivalent replacement Retention Bond.

60. PREDICTED COST

- 60.1. The Predicted Cost shall be the total cost indicated against all the Activities and Levels of Effort in the latest accepted Working Schedule, adjusted to take account of

60.1.1. any Activity included in the Working Schedule which is to be carried out by others and/or for which the Contractor is not otherwise entitled to payment under the Contract

60.1.2. Variations valued under Clause 33

60.1.3. any change in a Level of Effort and any other loss and/or expense ascertained under Clause 44.2.4 arising from an Employer's Cost Risk Event

60.1.4. any expense incurred by the Contractor arising from the calculation of the effect of an Event

60.1.5. any Contract Administrator's instructions issued for the expenditure or omission of any Prime Cost, Provisional Sum and/or Employer's Cost Contingency described in the Contract

60.1.6. taxes and duties legally required to be paid in connection with the Works, other than those which are recoverable by the Contractor, and

60.1.7. any fluctuations since the Base Date in prices or rates in the Contractor's Pricing Document, if applicable.

61. CURRENT CONTRACT VALUE

- 61.1. At the intervals stated in Appendix B, the Cost Manager shall issue to the Contract Administrator a statement of the Current Contract Value.
- 61.2. The Current Contract Value shall be the Predicted Cost less only
 - 61.2.1. the value of any Activities not yet carried out
 - 61.2.2. the value of Activities carried out, but not in accordance with the Contract
 - 61.2.3. the cost of goods or materials delivered to the Site prematurely, and
 - 61.2.4. the cost of unfixed goods in which, according to Applicable Law, property cannot be passed to the Employer.

62. PENULTIMATE CONTRACT VALUE

- 62.1. The Penultimate Contract Value shall be the Current Contract Value calculated in accordance with Clause 61 after the issue of the Certificate of Substantial Completion.
- 62.2. Within 40 Business Days of any Certificate of Substantial Completion or termination under Clauses 68, 69, or 71, the Contractor shall provide to the Cost Manager any further information and documentation it wishes the Cost Manager to take into consideration.
- 62.3. Within 20 Business Days of receiving any information and documentation supplied under Clause 62.2, the Cost Manager shall issue to the Contractor, with a copy to the Contract Administrator and Employer, a statement of the Penultimate Contract Value.

63. FINAL CONTRACT VALUE

- 63.1. The Final Contract Value shall be the Current Contract Value calculated in accordance with Clause 61 after the issue of the Certificate of Making Good Defects.
- 63.2. Within 5 Business Days of issue of the Certificate of Making Good Defects, the Cost Manager shall issue to the Contractor, with a copy to the Contract Administrator and Employer, a statement of the Final Contract Value.

64. CONTRACT ADMINISTRATOR'S NOTICE OF PAYMENT DUE

- 64.1. The Contract Administrator shall, not later than the Notice Date, issue a Notice of Payment Due to the Contractor in respect of each of the statements of
- 64.1.1. Current Contract Value
 - 64.1.2. Penultimate Contract Value, and
 - 64.1.3. Final Contract Value.
- 64.2. A Notice of Payment Due shall identify the
- 64.2.1. final date for payment under Clause 67.1, and
 - 64.2.2. amount due to be paid.
- 64.3. The amount due to be paid shall be the Predicted Cost calculated in accordance with Clause 60, less any deductions and adjustments made in respect of
- 64.3.1. any expenditure incurred under Clause 36.2
 - 64.3.2. any expenditure incurred under Clause 55.4.1
 - 64.3.3. the estimated value of any incomplete work under Clause 55.4.2
 - 64.3.4. Liquidated Delay Damages deducted under Clause 57 and calculated up to the date of the Notice of Payment Due
 - 64.3.5. any sum retained under Clause 59
 - 64.3.6. any sum in respect of those matters listed at Clauses 60.1.1 to 60.1.7 inclusive
 - 64.3.7. any actual expenditure and/or loss incurred by the Employer as a direct consequence of any default on the part of the Contractor, and/or
 - 64.3.8. any amount previously paid.
- 64.4. If the aggregate amount to be deducted exceeds the Predicted Cost, the Contract Administrator shall notify the Contractor of the amount due from the Contractor to the Employer.

- 64.5. Unless referred for Issue Resolution within 20 Business Days of the date of issue, a Notice of Payment Due issued under Clause 64.1 in respect of the statement of Final Contract Value shall be conclusive evidence
- 64.5.1. of the amount due to the Contractor under the Contract, and
- 64.5.2. that where work, goods, materials or plant are stated to be subject to the Contract Administrator's approval, they have been approved.

65. CONTRACTOR'S NOTICE OF PAYMENT DUE

- 65.1. If the Contract Administrator fails to issue a Notice of Payment Due by the Notice Date, the Contractor may issue to the Employer a Notice of Payment Due setting out
- 65.1.1. the sum that it considers to be due, or to have been due, at the date payment became due in accordance with Clause 66.1
- 65.1.2. the basis of the calculation of the value of the work for which payment is then claimed, and
- 65.1.3. the basis on which the sum is claimed to be due.

66. PAYMENT

- 66.1. Except as provided by Clause 66.2, a payment shall become due on the latest date by which issue is required or, if issued earlier, the date of issue of the statement of
- 66.1.1. Current Contract Value
- 66.1.2. Penultimate Contract Value, or
- 66.1.3. Final Contract Value.
- 66.2. If the Notice of Payment Due is issued by the Contractor under Clause 65.1, the final date for payment shall be postponed by the number of days between the Notice Date and the date of such notice.
- 66.3. Where a Notice of Payment Due requires the Employer to pay the Contractor,
- 66.3.1. the Employer shall on or before the final date for payment stated in Appendix B make payment to the Contractor of the amount notified in the Notice of Payment Due subject to Clause 66.3.2, or

- 66.3.2. if the Employer intends to pay the Contractor less than the amount stated in the Notice of Payment Due, unless prohibited by Applicable Law, the Employer may pay less provided the Employer notifies the Contractor, with a copy to the Cost Manager, no less than 5 Business Days prior to the final date for payment, of
- 66.3.2.1. its intention to pay less
 - 66.3.2.2. the sum that it considers to be due at the date of such notice, and
 - 66.3.2.3. the basis on which that sum has been calculated.
- 66.4. If payment is not made in full by the final date for payment, the Contractor may issue to the Employer, with a copy to the Contract Administrator and Time Manager, a notice stating that (from a date not earlier than 10 Business Days after the notice) it intends to suspend all or any of its obligations under the Contract until full payment has been made. The Contractor may continue with the suspension until full payment has been made. The Contractor shall include in such notice a statement setting out which obligations it intends to suspend and its reasons for the suspension. The cost and time effect of any such suspension shall be borne by the Employer.
- 66.5. Where a Notice of Payment Due requires the Contractor to pay the Employer,
- 66.5.1. the Contractor shall, on or before the final date for payment stated in Appendix B, pay the Employer the amount notified in the Notice of Payment Due subject to Clause 66.5.2, or
 - 66.5.2. if the Contractor intends to pay the Employer less than the amount stated in the Notice of Payment Due, unless prohibited by Applicable Law, the Contractor may pay less provided the Contractor notifies the Employer, with a copy to the Cost Manager, no less than 5 Business Days prior to the final date for payment, of
 - 66.5.2.1. its intention to pay less
 - 66.5.2.2. the sum that it considers to be due at the date of such notice, and
 - 66.5.2.3. the basis on which that sum has been calculated.
- 66.6. If as a result of any failure by the Contractor to comply with the Contract the Employer incurs expenditure and/or loss, the Employer may in respect of such expenditure and/or loss
- 66.6.1. deduct it from the amount due within a Contract Administrator's Notice of Payment Due under Clause 64.

- 66.6.2. withhold it in a notice of intention to pay less under Clause 66.3.2, and/or
- 66.6.3. recover it from the Contractor as a debt due on demand.

67. INTEREST ON UNPAID AMOUNTS

- 67.1. Notwithstanding any other rights the parties may have under the Contract, unless it is prohibited by Applicable Law, interest at the rate stated in Appendix B shall be added to any amount due but not paid within the time provided for by the Contract from the date the payment became due until payment in full.
- 67.2. The parties acknowledge that the Interest Rate is intended to constitute a substantial remedy and represents fair compensation for the consequences of late payment.

68. TERMINATION WITHOUT FAULT

- 68.1. If, other than in accordance with Clauses 69, 70 or 71, the Employer wishes to terminate the Contractor's employment under the Contract, it shall be entitled to do so provided that no less than 20 Business Days before the Contract Termination Date, it notifies the Contractor identifying
 - 68.1.1. that the termination is under this Clause 68.1, and
 - 68.1.2. the Contract Termination Date.
- 68.2. Within 60 Business Days of the Contract Termination Date, the Cost Manager shall issue to the Contract Administrator a statement of the Current Contract Value at the Contract Termination Date including
 - 68.2.1. Overheads and Profit on work not completed at the Contract Termination Date
 - 68.2.2. the cost of removal from the site of any unfixed goods, materials, Temporary Work and Contractor's Plant
 - 68.2.3. the value of any Contractor's Plant, Temporary Work and unfixed goods and materials remaining on Site, and
 - 68.2.4. any costs incurred by the Contractor arising directly from the termination.
- 68.3. If the value cannot be determined from the Working Schedule or, if none, the Contractor's Pricing Document, then it shall be calculated on a fair and reasonable basis.

69. TERMINATION FOR CONTRACTOR INSOLVENCY OR DEFAULT

69.1. If at any time before issue of the Certificate of Substantial Completion the Contractor

- 69.1.1. becomes bankrupt or insolvent
- 69.1.2. goes into liquidation
- 69.1.3. has a receiving or administration order made against it
- 69.1.4. compounds with its creditors
- 69.1.5. carries on business under a receiver, trustee or manager for the benefit of its creditors, or
- 69.1.6. anything occurs which under Applicable Law has the effect of depriving the Contractor of the power to manage its financial affairs,

the Employer may notify the Contractor that the Contractor's employment is immediately terminated, stating

- 69.1.7. that the termination is under this Clause 69.1, and
- 69.1.8. the Contract Termination Date.

69.2. If, at the Contract Termination Date stated under Clause 69.1.8, the Contractor has failed to provide in accordance with Clause 8.1.2 any requested sub-contractor Collateral Warranties in favour of the Employer that include step-in rights which would allow the Employer to take over the sub-contracts and complete the Works by the time of termination for insolvency, then to the extent it fails to do so and to the extent the failure is not due to sub-contractor insolvency, the Employer may withhold a reasonable proportion of any sums owing to the Contractor until such Collateral Warranties are provided.

69.3. If at any time before issue of the Certificate of Substantial Completion the Contractor

- 69.3.1. fails to
 - 69.3.1.1. comply with its obligations under Clause 9 and/or Clause 59.4
 - 69.3.1.2. carry out the work in accordance with Applicable Law
 - 69.3.1.3. complete the Works or any Section by any limit on the period of delay stated in Appendix B

- 69.3.1.4. comply with Applicable Law or any other law relevant to the Contract and/or the parties in respect of
 - 69.3.1.4.1. health and safety, or
 - 69.3.1.4.2. corruption
- 69.3.2. refuses or neglects to comply with
 - 69.3.2.1. a Contract Administrator's instruction
 - 69.3.2.2. any Employer's request under Clause 8.1
- 69.3.3. without reasonable cause suspends the carrying out of the Works, or
- 69.3.4. contrary to Clause 29 subcontracts or assigns the Contract or a substantial part of it,

the Employer shall, within 10 Business Days of the Contractor's default, notify the Contractor specifying
 - 69.3.5. the nature of the default
 - 69.3.6. the date of its occurrence, and
 - 69.3.7. the action required to remedy the default or, if appropriate, that it considers that the default cannot be remedied.
- 69.4. Subject to Clause 69.5, if the Contractor fails to remedy the default within 10 Business Days of the notice of default, the Employer may notify the Contractor that from a date not earlier than 5 Business Days after the notice the Contractor's employment shall be terminated, stating
 - 69.4.1. that the termination is under this Clause 69.4, and
 - 69.4.2. the Contract Termination Date.
- 69.5. Notwithstanding that the Employer considers that the Contractor's default cannot be remedied, the Contractor may, within 5 Business Days of notice under Clause 69.3, propose a solution to the Employer, which the Contractor reasonably considers would adequately remedy its default. The Employer shall, at its discretion, within 5 Business Days of receiving the proposal, notify the Contractor that

- 69.5.1. its proposal is accepted as an adequate remedy (in which case Clause 69.4 shall apply, with the 10 Business Day period required by Clause 69.4 being deemed to commence on the date on which the Contractor issues its notice under Clause 69.5)
- 69.5.2. its proposal is rejected, or
- 69.5.3. the Contractor is required within 10 Business Days to provide details of its proposal, so that the Employer may consider further whether it would adequately remedy the default.
- 69.6. If the Contractor fails to provide any required details within the period stated in Clause 69.5.3, or the Employer notifies the Contractor that its proposal is rejected, the Employer may notify the Contractor that from a date not earlier than 5 Business Days after the notice the Contractor's employment shall be terminated, stating
- 69.6.1. that the termination is under this Clause 69.6, and
- 69.6.2. the Contract Termination Date.
- 69.7. Notwithstanding any remedy of the specified default, if at any time the Contractor repeats the default, the Employer may notify the Contractor that from a date not earlier than 5 Business Days after the notice the Contractor's employment shall be terminated, stating
- 69.7.1. that the termination is under this Clause 69.7, and
- 69.7.2. the Contract Termination Date.
- 69.8. The Contractor shall not remove from the Site and/or any Laydown any Temporary Buildings, unfixed goods, materials, Temporary Work or Contractor's Plant and shall vacate the Site and any Temporary Buildings and/or Laydown on or before the Contract Termination Date. The Employer may take whatever steps are reasonably necessary to secure the Site and to prevent the removal of Temporary Buildings, unfixed goods, materials, Temporary Work and Contractor's Plant from the Site, Temporary Buildings or Laydown.
- 69.9. Within 100 Business Days of the Contract Termination Date, or within 60 Business Days of Substantial Completion of the Works by another Contractor, whichever is the later, the Cost Manager shall issue to the Contractor, with a copy to the Contract Administrator and Employer, a statement of the Penultimate Contract Value of the work properly completed at the Contract Termination Date. The Penultimate Contract Value shall include the value of any unfixed goods, materials, Temporary Work and/or Contractor's Plant not returned to the Contractor, less any expenditure and/or loss incurred by the Employer and arising directly from the termination and any additional cost to the Employer of completing the Works.

- 69.10. Within 10 Business Days of issue of a statement of the Penultimate Contract Value under Clause 69.9, the Contract Administrator shall issue a Notice of Payment Due.

70. TERMINATION FOR EMPLOYER INSOLVENCY OR DEFAULT

- 70.1. If at any time before issue of the Certificate of Substantial Completion the Employer

- 70.1.1. becomes bankrupt or insolvent
- 70.1.2. goes into liquidation
- 70.1.3. has a receiving or administration order made against it
- 70.1.4. compounds with its creditors
- 70.1.5. carries on business under a receiver, trustee or manager for the benefit of its creditors, or
- 70.1.6. anything occurs which under Applicable Law has the effect of depriving the Employer of the power to manage its financial affairs,

the Contractor may notify the Employer that the Contractor's employment is immediately terminated, stating

- 70.1.7. that the termination is under this Clause 70.1, and
- 70.1.8. the Contract Termination Date.

- 70.2. If at any time before issue of the Certificate of Substantial Completion the Employer

- 70.2.1. fails to
 - 70.2.1.1. pay by the final date for payment the amount due to the Contractor in accordance with Clause 66.3, or
 - 70.2.1.2. comply with Applicable Law in respect of
 - 70.2.1.2.1. health and safety, or
 - 70.2.1.2.2. corruption

70.2.2. contrary to the provisions of Clause 29 assigns the Contract or a substantial part of it, or

70.2.3. interferes with or obstructs the issue of any Certificate

the Contractor may within 10 Business Days of the Employer's default notify the Employer, specifying

70.2.4. the nature of the Employer's default

70.2.5. the date of its occurrence, and

70.2.6. the action required to remedy the default, or if appropriate that it considers that the default cannot be remedied.

70.3. If the Employer fails to remedy the default within 10 Business Days of the notice under Clause 70.2, the Contractor may notify the Employer that from a date not earlier than 5 Business Days after the notice the Contractor's employment shall be terminated, stating

70.3.1. that the termination is under this Clause 70.3, and

70.3.2. the Contract Termination Date.

70.4. Notwithstanding that the Contractor considers that the Employer's default is incapable of being remedied, the Employer may, within 5 Business Days of the notice under Clause 70.1, propose a solution to the Contractor which the Employer reasonably considers would adequately remedy the default. The Contractor shall then, at its sole discretion, within 5 Business Days of receiving the proposal, notify the Employer that

70.4.1. its proposal is accepted as an adequate remedy (in which case Clause 70.3 shall apply, with the 10 Business Day period required by Clause 70.3 being deemed to commence on the date on which the Contractor issues its notice under this Clause 70.4)

70.4.2. its proposal is rejected, or

70.4.3. the Employer is required within 10 Business Days to provide details of its proposal, so that the Contractor may consider further whether it would be an adequate remedy.

70.5. If the Employer fails to provide any required details within the period stated in Clause 70.4.3, or the Contractor notifies the Employer that its proposal is rejected, the Contractor may notify

the Employer that from a date not earlier than 5 Business Days after the notice the Contractor's employment shall be terminated, stating

70.5.1. that the termination is under this Clause 70.5, and

70.5.2. the Contract Termination Date.

70.6. Notwithstanding any remedy of the specified default, if at any time the Employer repeats the default, the Contractor may notify the Employer that from a date not earlier than 5 Business Days after the notice the Contractor's employment shall be terminated, stating

70.6.1. that the termination is under this Clause 70.6, and

70.6.2. the Contract Termination Date.

70.7. Within 60 Business Days of termination under this Clause 70, or within 20 Business Days of receiving the next Notice of Payment Due after the Termination Date, whichever is the later, the Employer shall pay to the Contractor the value of the work properly completed at the Contract Termination Date including

70.7.1. Overheads and Profit on work not completed at the Contract Termination Date

70.7.2. the cost of removal from the site of any unfixed goods, materials, Temporary Work and Contractor's Plant

70.7.3. the value of any Contractor's Plant, Temporary Work and unfixed goods and materials remaining on Site, and

70.7.4. any costs and/or loss incurred by the Contractor arising directly from termination under this Clause 70.

71. TERMINATION FOR IMPOSSIBILITY, ILLEGALITY, OR PROLONGED SUSPENSION

71.1. If at any time before issue of the Certificate of Substantial Completion

71.1.1. without fault on the part of the Contractor, it becomes impossible or illegal to continue the Works, or

71.1.2. part or the whole of the Works is suspended by reason of any of the occurrences described in Appendix F for a continuous period of 120 Business Days or more,

either party may notify the other that if the impossibility, illegality or suspension continues for a further 5 Business Days, it intends to terminate the Contractor's employment under the Contract.

71.2. Unless during the period of notice the impossibility, illegality or suspension ceases, either party may notify the other of the termination of the Contractor's employment identifying

71.2.1. that the termination is under this Clause 71.2, and

71.2.2. the Contract Termination Date.

71.3. Within 60 Business Days of termination under this Clause 71, the Cost Manager shall issue to the Contractor, with a copy to the Contract Administrator and Employer, a statement of the Penultimate Contract Value of the work properly completed at the Contract Termination Date. The Penultimate Contract Value shall include the value of any Temporary Work, Contractor's Plant and unfixed goods and materials remaining on Site, less any amount previously included in a Notice of Payment Due.

71.4. Within 10 Business Days of issue of the statement of Penultimate Contract Value under Clause 71.3, the Contract Administrator shall issue a Notice of Payment Due in accordance with Clause 64.

72. CONSEQUENCES OF TERMINATION

72.1. Upon termination of its employment the Contractor shall publish its Design Contribution and distribute any access codes and/or passwords relating to it, provided that

72.1.1. subject to any effective pay less notice, or, where termination is under Clause 69, the Employer has paid in full all sums of which Notice of Payment Due has been issued prior to the Contract Termination Date, and

72.1.2. instructions have not been issued by the Contract Administrator to the contrary.

72.2. On confirmation of receipt by the Contract Administrator of an accessible copy of the Contractor's Design, the Contractor shall delete from its own computer the files delivered.

72.3. Except where the Contract states otherwise or the Contractor is otherwise instructed the Contractor shall vacate the Site on the Contract Termination Date. To the extent that it is possible without adversely affecting the safety of the Works, the Works or other persons or property, the Contractor shall remove all Contractor's Plant, Temporary Work and unfixed

goods and materials remaining on Site, property in which has not passed to the Employer under Clause 24.1 and vacate and leave clean and tidy.

72.4 For the avoidance of doubt, after termination the Contractor shall not be entitled to

72.4.1 any payment except payment becoming due in accordance with Clauses 68.2, 69.9, 70.7 or 71.3, or

72.4.2 any other compensation, including without limitation consequential loss or damages for termination under Clauses 68, 69 or 71.

73. ISSUE RESOLUTION

73.1. Unless the Contract requires any issue arising under or in connection with the Contract to be referred to Issue Resolution within a particular time, either party may within 20 Business Days of the issue arising notify the other that they wish it to be referred to Issue Resolution.

73.2. All notices requiring Issue Resolution shall be issued to the other party, with a copy to the Contract Administrator.

73.3. Within 5 Business Days of receiving notice under Clause 73.1, the Employer's Authorised Representative and the Contractor's Authorised Representative shall meet to try to resolve the issue. If the Employer's Authorised Representative or the Contractor's Authorised Representative is unavailable for the meeting, the relevant party shall promptly notify the other and shall use all reasonable endeavours to send a director or senior employee who shall have authority to agree the issue.

73.4. If within 10 Business Days of the Employer's or the Contractor's Authorised Representative receiving notice under Clause 73.1 the issue is not resolved by agreement, the Principal Expert identified in Appendix B shall be appointed to resolve the issue by Determination.

73.5. The Principal Expert may consult any other experts identified in Appendix B. Where the Principal Expert wishes to consult an expert not identified in Appendix B, because none is identified in the appropriate discipline or an identified expert is not available, the Principal Expert may consult such other expert as it considers reasonably necessary.

73.6. The Principal Expert shall follow the procedure in Appendix G in conducting the Issue Resolution.

73.7. As soon as it is able to do so, and in any event within 20 Business Days of being appointed, the Principal Expert shall issue its Determination to both parties, with a copy to the Contract

Administrator, setting out those reasons for the Determination which the Principal Expert considers may be helpful to the parties for the avoidance of further issues.

- 73.8. If within 10 Business Days of its issue the Principal Expert discovers, or has it brought to its attention, that the Determination contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, issue, matter or thing, or any defect of form, the Principal Expert shall issue to both parties, with a copy to the Contract Administrator, a corrected Determination.
- 73.9. Neither the Principal Expert nor any other expert appointed for the purposes of this Clause 73 shall be liable in any way for any error, omission or misconduct in the Issue Resolution.
- 73.10. Unless the parties agree otherwise, the parties shall
- 73.10.1. each bear their own costs of the Issue Resolution, and
 - 73.10.2. bear equally the fees and out-of-pocket expenses of the Principal Expert and any other expert consulted by the Principal Expert.
- 73.11. A Determination may be relied upon by either party in any dispute resolution proceedings and the Principal Expert and/or any other expert consulted by the Principal Expert may be called as a witness by either party or the tribunal.

74. DISPUTE RESOLUTION

- 74.1. The parties may settle any dispute by mediation or negotiation.
- 74.2. Unless Applicable Law requires that a party may refer a dispute to adjudication at any time, the parties hereby agree that no dispute shall arise and no adjudicator shall be appointed under Clause 74.10 unless and until the Principal Expert has distributed its Determination under Clause 73.7.
- 74.3. If the Principal Expert fails to issue a Determination within the time required by the Contract, either party shall be entitled to treat any issue referred to the Principal Expert as having given rise to a dispute.
- 74.4. A Determination by the Principal Expert shall be final and binding on the parties unless
- 74.4.1. it is issued late, and/or
 - 74.4.2. either party issues a notice of adjudication or arbitration within 20 Business Days of distribution of the Determination.

- 74.5. Except where any matter is deemed to be agreed or is stated to be conclusive as to the rights of the parties or has been decided by Issue Resolution, the adjudicator or arbitrator may open up, review and revise any measurement, valuation, record, decision, extension of time or certificate issued under the Contract.
- 74.6. Any adjudicator's decision or arbitral award in respect of the Contract shall be a public document unless
- 74.6.1. the parties agree otherwise
 - 74.6.2. in consolidated proceedings to which Clause 74.14 applies, the consent of all other Consenting Parties has not been obtained, or
 - 74.6.3. in proceedings to which Clause 74.15 applies, a connected contract expressly prohibits any arbitration award from being a public document.
- 74.7. Where the parties have agreed in Appendix B that adjudication is applicable and have agreed the adjudication rules, either party may refer any dispute to adjudication in accordance with the agreed adjudication rules. If the parties have not agreed that disputes may be determined by adjudication, but Applicable Law requires that a party may refer a dispute to adjudication, then either party may refer any dispute to adjudication in accordance with Applicable Law. In such circumstances, the adjudication rules shall be the default adjudication rules of the Applicable Law. If no adjudication rules are agreed in Appendix B and the Applicable Law does not provide any default adjudication rules, the adjudication rules shall be the Scheme for Construction Contracts, modified as necessary to meet any requirements of adjudication under Applicable Law not provided for.
- 74.8. The adjudicator shall be that person identified in Appendix B.
- 74.9. The adjudicator's decision shall be binding on the parties unless and until the dispute is finally determined by arbitration or by agreement.
- 74.10. No party may issue more than one notice of adjudication in respect of any dispute. If having served a notice of adjudication the referring party fails to serve its referral documents on time, or within such extended time as may be agreed by the parties, the referral shall lapse and the subject dispute shall not be referred to adjudication
- 74.11. Unless indicated otherwise in Appendix B, the final dispute resolution mechanism for any dispute shall be arbitration. Arbitration shall be in accordance with the rules stated in Appendix B and the procedural law of the arbitration shall be the same as the Law of the Contract.

- 74.12. The arbitrator shall be that person identified in Appendix B.
- 74.13. Each Consenting Party shall be bound to all other Consenting Parties in respect of Clause 74.14.
- 74.14. Any Consenting Party may be joined as an additional party to an arbitration involving any other Consenting Party under any contract between the Contractor and the other Consenting Party. If more than one arbitration has begun under any such contract, and the Contractor notifies the other relevant Consenting Parties and arbitrators that two or more arbitrations are substantially related in issues of law and/or fact, and that the issues should be heard in one arbitration, the arbitrator selected in the first-filed arbitration shall determine as soon as reasonably practicable whether, in the interests of justice and efficiency, the proceedings should be consolidated before that arbitrator.
- 74.15. If an arbitration has begun under any contract (including the Contract) to which the Employer or the Contractor is a party, and either party notifies the other and the relevant arbitrator that the arbitration is substantially related in issues of law and/or fact to one or more arbitrations under another Contract or other contracts between them, and that the issues should be heard in one arbitration, the arbitrator selected in the first-filed arbitration shall determine as soon as reasonably practicable whether, in the interests of justice and efficiency, the proceedings should be consolidated before that arbitrator.



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