

**Design and Construction of a 3 story office  
and associated External Works at:**

**Southern Gate, Block B, Chichester**

for

**SAABON Ltd**

**Contract Documents**

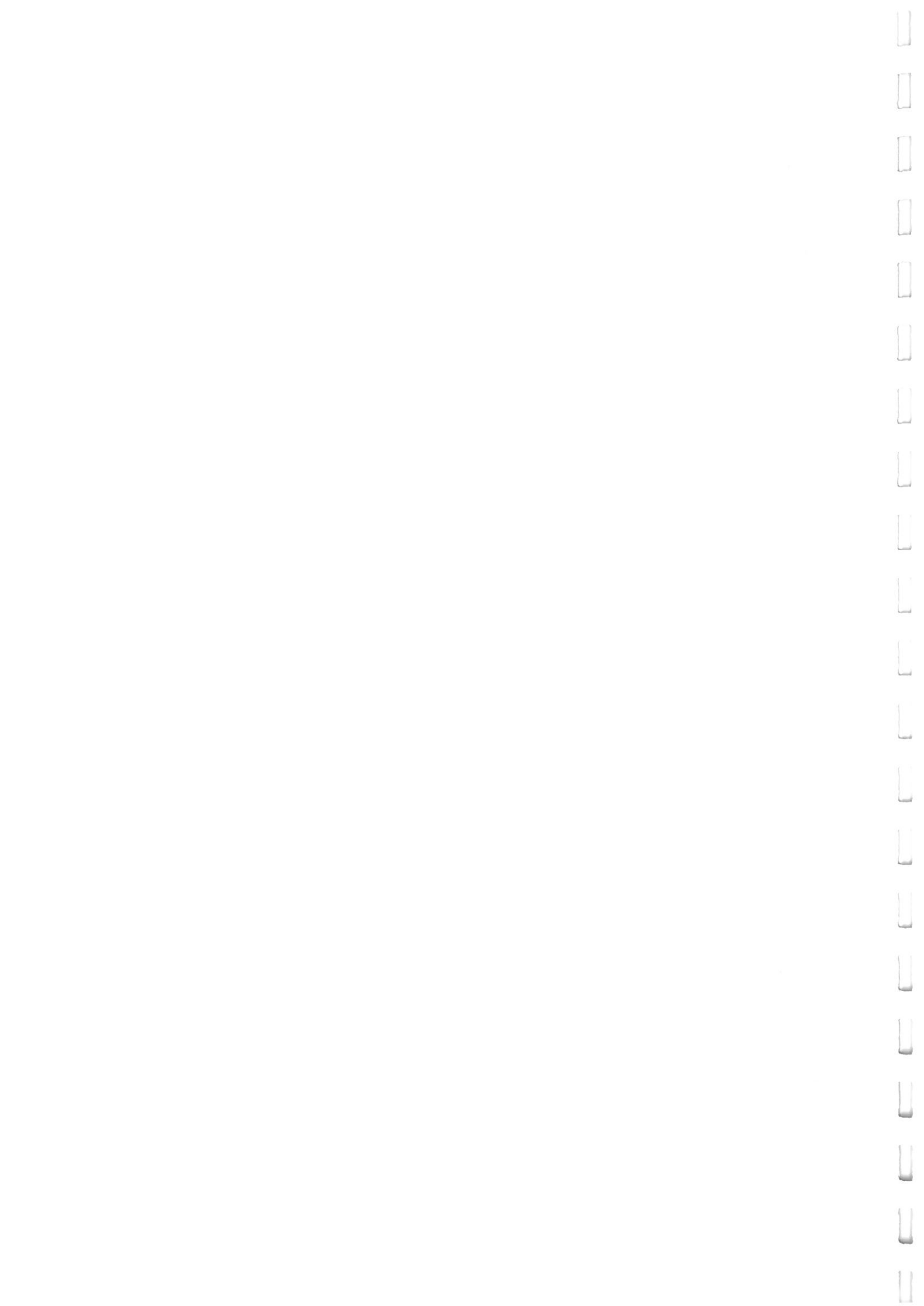
1. Form of Contract
2. Preliminaries
3. Employers  
Requirements
4. Contractors Contract  
Sum Analysis
5. Contractors Proposals
6. Appendices

July 2017

Birmingham  
Bournemouth  
Canterbury  
Cheltenham  
Chichester  
Liverpool  
London  
Manchester  
Oxford  
Winchester



Midland House 1 Market Avenue, Chichester PO19 1JU



FORM OF CONTRACT





This contract has been amended from the original template.

DB 2016  
Design and Build Contract 2016

# 2016

DESIGN AND BUILD CONTRACT



### Design and Build Contract (DB)

#### Appropriate:

- where detailed contract provisions are necessary and Employer's Requirements have been prepared and provided to the Contractor;
- where the Contractor is not only to carry out and complete the works, but also to complete the design; and
- where the Employer employs an agent (who may be an external consultant or employee) to administer the conditions.

#### Can be used:

- where the works are to be carried out in sections;
- by both private and local authority employers.

Where the Contractor's design responsibility is restricted to discrete parts of the works and he is not responsible for completing the design for the whole works, consideration should be given to using one of the JCT contracts that provide for the employment of an Architect/Contract Administrator and limited design input by the Contractor.

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For details of 2016 Edition changes, see the Design and Build Contract Guide (DB/G) and the Tracked Change Document.

[www.jctltd.co.uk](http://www.jctltd.co.uk)

# Contents

## Agreement

### Recitals

### Articles

- Article 1: Contractor's obligations
- Article 2: Contract Sum
- Article 3: Employer's Agent
- Article 4: Employer's Requirements and Contractor's Proposals
- Article 5: Principal Designer
- Article 6: Principal Contractor
- Article 7: Adjudication
- Article 8: Arbitration
- Article 9: Legal proceedings

### Contract Particulars

### Attestation

### Conditions

#### Section 1 Definitions and Interpretation

##### 1.1 Definitions

##### Interpretation

- 1.2 Reference to clauses etc.
- 1.3 Agreement etc. to be read as a whole
- 1.4 Headings, references to persons, legislation etc.
- 1.5 Reckoning periods of days
- 1.6 Contracts (Rights of Third Parties) Act 1999
- 1.7 Notices and other communications
- 1.8 Effect of Final Statement
- 1.9 Effect of payments other than payment of Final Statement
- 1.10 Consents and approvals
- 1.11 Applicable law

#### Section 2 Carrying out the Works

##### Contractor's Obligations

- 2.1 General obligations
- 2.2 Materials, goods and workmanship

##### Possession

- 2.3 Date of Possession – progress
- 2.4 Deferment of possession
- 2.5 Early use by Employer
- 2.6 Work not forming part of the Contract

##### Supply of Documents, Setting Out etc.

- 2.7 Contract Documents
- 2.8 Construction information
- 2.9 Site boundaries

##### Discrepancies and Divergences

- 2.10 Divergence in Employer's Requirements and definition of site boundary

- 2.11 Preparation of Employer's Requirements
- 2.12 Employer's Requirements – inadequacy
- 2.13 Notice of discrepancies etc.
- 2.14 Discrepancies in documents
- 2.15 Divergences from Statutory Requirements
- 2.16 Emergency compliance with Statutory Requirements

### **2.17 Design Work – liabilities and limitation**

#### **Fees, Royalties and Patent Rights**

- 2.18 Fees or charges legally demandable
- 2.19 Patent rights and royalties – Contractor's indemnity
- 2.20 Patent rights – Instructions

#### **Unfixed Materials and Goods – property, risk etc.**

- 2.21 Materials and goods – on site
- 2.22 Materials and goods – off site

#### **Adjustment of Completion Date**

- 2.23 Related definitions and interpretation
- 2.24 Notice by Contractor of delay to progress
- 2.25 Fixing Completion Date
- 2.26 Relevant Events

#### **Practical Completion, Lateness and Liquidated Damages**

- 2.27 Practical completion
- 2.28 Non-Completion Notice
- 2.29 Payment or allowance of liquidated damages

#### **Partial Possession by Employer**

- 2.30 Contractor's consent
- 2.31 Practical completion date
- 2.32 Defects etc. – Relevant Part
- 2.33 Insurance – Relevant Part
- 2.34 Liquidated damages – Relevant Part

#### **Defects**

- 2.35 Schedules of defects and instructions
- 2.36 Notice of Completion of Making Good

#### **Contractor's Design Documents**

- 2.37 As-built Drawings
- 2.38 Copyright and use

### **Section 3 Control of the Works**

#### **Access and Representatives**

- 3.1 Access for Employer's Agent
- 3.2 Site Manager

#### **Sub-Contracting**

- 3.3 Consent to sub-contracting
- 3.4 Conditions of sub-contracting

#### **Employer's Instructions**

- 3.5 Compliance with instructions
- 3.6 Non-compliance with instructions
- 3.7 Instructions other than in writing
- 3.8 Provisions empowering instructions
- 3.9 Instructions requiring Changes
- 3.10 Postponement of work
- 3.11 Instructions on Provisional Sums
- 3.12 Inspection – tests
- 3.13 Work not in accordance with the Contract
- 3.14 Workmanship not in accordance with the Contract
- 3.15 Antiquities



### **3·16 CDM Regulations**

#### **Section 4 Payment**

##### **Contract Sum and Adjustments**

- 4·1 Adjustment only under the Conditions
- 4·2 Items included in adjustments
- 4·3 Taking adjustments into account

##### **Taxes**

- 4·4 VAT
- 4·5 Construction Industry Scheme (CIS)

##### **Payments and Notices – general provisions**

- 4·6 Advance payment
- 4·7 Interim Payments – Contractor's Interim Payment Applications, due dates and Payment Notices
- 4·8 Relevant statement and Final Payment Notice
- 4·9 Interim and final payments – final date and amount
- 4·10 Pay Less Notices and other general provisions
- 4·11 Contractor's right of suspension

##### **Interim Payments – calculation of sums due**

- 4·12 Gross Valuation – Alternative A
- 4·13 Gross Valuation – Alternative B
- 4·14 Sums due as Interim Payments

#### **4·15 Listed Items**

##### **Retention**

- 4·16 Rules on treatment of Retention
- 4·17 Retention Bond
- 4·18 Retention – amounts and periods

##### **Loss and Expense**

- 4·19 Matters materially affecting regular progress
- 4·20 Notification and ascertainment
- 4·21 Relevant Matters
- 4·22 Amounts ascertained – addition to Contract Sum
- 4·23 Reservation of Contractor's rights and remedies

#### **4·24 Final Statement and Final Payment**

#### **Section 5 Changes**

##### **General**

- 5·1 Definition of Changes
- 5·2 Valuation of Changes and provisional sum work
- 5·3 Giving effect to Valuations, agreements etc.

##### **The Valuation Rules**

- 5·4 Measurable Work
- 5·5 Daywork
- 5·6 Change of conditions for other work
- 5·7 Additional provisions

#### **Section 6 Injury, Damage and Insurance**

##### **Personal Injury and Property Damage**

- 6·1 Contractor's liability – personal injury or death
- 6·2 Contractor's liability – loss, injury or damage to property
- 6·3 Loss or damage to Existing Structures or their contents

##### **Insurance against Personal Injury and Property Damage**

- 6·4 Contractor's insurance of his liability
- 6·5 Contractor's insurance of liability of Employer

## 6-6 Excepted Risks

### **Insurance of the Works and Existing Structures**

- 6-7 Insurance Options and period
- 6-8 Related definitions
- 6-9 Sub-contractors – Specified Perils cover under Works Insurance Policies
- 6-10 Terrorism Cover – policy extensions and premiums
- 6-11 Terrorism Cover – non-availability – Employer's options
- 6-12 Evidence of insurance
- 6-13 Loss or damage – insurance claims and reinstatement
- 6-14 Loss or damage to Existing Structures – right of termination

### **Professional Indemnity Insurance**

- 6-15 Obligation to insure
- 6-16 Increased cost and non-availability

### **Joint Fire Code – compliance**

- 6-17 Application of clauses
- 6-18 Compliance with Joint Fire Code
- 6-19 Breach of Joint Fire Code – Remedial Measures
- 6-20 Joint Fire Code – amendments/revisions

## **Section 7 Assignment, Performance Bonds and Guarantees, Third Party Rights and Collateral Warranties**

### **Assignment**

- 7-1 General
- 7-2 Rights of enforcement

### **7-3 Performance Bonds and Guarantees**

#### **Clauses 7A to 7E – Preliminary**

- 7-4 Rights Particulars
- 7-5 Notices
- 7-6 Execution of Collateral Warranties

#### **Third Party Rights from Contractor**

- 7A Rights for Purchasers and Tenants
- 7B Rights for a Funder

#### **Collateral Warranties from Contractor**

- 7C Contractor's Warranties – Purchasers and Tenants
- 7D Contractor's Warranty – Funder

### **7E Third Party Rights and Collateral Warranties from Sub-Contractors**

## **Section 8 Termination**

### **General**

- 8-1 Meaning of insolvency
- 8-2 Notices under section 8
- 8-3 Other rights, reinstatement

### **Termination by Employer**

- 8-4 Default by Contractor
- 8-5 Insolvency of Contractor
- 8-6 Corruption and regulation 73(1)(b) of the PC Regulations
- 8-7 Consequences of termination under clauses 8-4 to 8-6
- 8-8 Employer's decision not to complete the Works

### **Termination by Contractor**

- 8-9 Default by Employer
- 8-10 Insolvency of Employer

### **8-11 Termination by either Party and regulations 73(1)(a) and 73(1)(c) of the PC Regulations**

**8·12 Consequences of Termination under clauses 8·9 to 8·11, etc.**

**Section 9 Settlement of Disputes**

**9·1 Mediation**

**9·2 Adjudication**

**Arbitration**

- 9·3 Conduct of arbitration
- 9·4 Notice of reference to arbitration
- 9·5 Powers of Arbitrator
- 9·6 Effect of award
- 9·7 Appeal – questions of law
- 9·8 Arbitration Act 1996

**Schedules**

**Schedule 1 Design Submission Procedure**

**Schedule 2 Supplemental Provisions**

- Part 1
- Part 2

**Schedule 3 Insurance Options**

- Insurance Option A
- Insurance Option B
- Insurance Option C

**Schedule 4 Code of Practice**

**Schedule 5 Third Party Rights**

- Part 1: Third Party Rights for Purchasers and Tenants
- Part 2: Third Party Rights for a Funder

**Schedule 6 Forms of Bonds**

- Part 1: Advance Payment Bond
- Part 2: Bond in respect of payment for off-site materials and/or goods
- Part 3: Retention Bond

**Schedule 7 JCT Fluctuations Option A**

# Agreement

This Agreement is made the 26<sup>th</sup> August 2017

**Between**

**The Employer** SAABON Ltd

(Company No. 8182897)<sup>(1)</sup>

Whose registered office is at The Music Rooms, Tanbridge Park, Horsham RH12 1SU

**And**

**The Contractor** W. Stirland Ltd

(Company No. 00486441)<sup>(1)</sup>

whose registered office is at Redmoor Estate, Main Road, Chichester, West Sussex, PO20 7HT

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<sup>(1)</sup> Where the Employer or Contractor is neither a company incorporated under the Companies Acts nor a company registered under the laws of another country, delete the references to Company number and registered office. In the case of a company incorporated outside England and Wales, particulars of its place of incorporation should be inserted immediately before its Company number.  
As to execution by foreign companies and matters of jurisdiction, see the Design and Build Contract Guide.

## Recitals

### Whereas

**First** the Employer wishes to have the design and construction of the following work carried out<sup>[2]</sup>:

The works comprise the construction of a three storey block of offices together with associated external works, drainage and services.

at

Block B, Southern Gate, Chichester, West Sussex PO19 8SG ('the Works')

and the Employer has supplied to the Contractor documents showing and describing or otherwise stating his requirements ('the Employer's Requirements');

**Second** in response to the Employer's Requirements the Contractor has supplied to the Employer:

- documents showing and describing the Contractor's proposals for the design and construction of the Works ('the Contractor's Proposals'); and
- an analysis of the Contract Sum ('the Contract Sum Analysis');

**Third** the Employer has examined the Contractor's Proposals and, subject to the Conditions, is satisfied that they appear to meet the Employer's Requirements<sup>[3]</sup>;

**Fourth** for the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004, the status of the Employer is, as at the Base Date, that stated in the Contract Particulars;

**Fifth** The Works are not divided into Sections;

**Sixth** the Contract is not supplemented by a Framework Agreement;

**Seventh** whether any of Supplemental Provisions 1 to 10 apply is stated in the Contract Particulars;

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<sup>[2]</sup> State nature and location of intended works.

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

## Articles

### Now it is hereby agreed as follows

#### Article 1: Contractor's obligations

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

#### Article 2: Contract Sum

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

Two million, five hundred and twenty thousand, nine hundred and sixteen pounds and seventy three pence ONLY. (£2,520,916.73) ('the Contract Sum')

or such other sum as becomes payable under this Contract.

#### Article 3: Employer's Agent

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

BAQUS Group Ltd

of

Midland House, 1 Market Avenue, Chichester, West Sussex PO19 1JU

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

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

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

#### Article 5: Principal Designer

The Principal Designer for the purposes of the CDM Regulations is the Contractor or such replacement as the Employer at any time appoints to fulfil that role.

#### Article 6: Principal Contractor

The Principal Contractor for the purposes of the CDM Regulations is the Contractor or such replacement as the Employer at any time appoints to fulfil that role.

#### Article 7: Adjudication

If any dispute or difference arises under this Contract, either Party may refer it to adjudication in accordance with clause 9.2<sup>[6]</sup>.

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<sup>[6]</sup> As to adjudication in cases where the Employer is a residential occupier within the meaning of section 106 of the Housing Grants, Construction and Regeneration Act 1996, see the Design and Build Contract Guide.

**Article 8: Arbitration**

Not applicable.

**Article 9: Legal proceedings<sup>71</sup>**

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

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<sup>71</sup> If it is intended, subject to the right of adjudication and exceptions stated in Article 8, that disputes or differences should be determined by arbitration and not by legal proceedings, the Contract Particulars **must** state that Article 8 and clauses 9.3 to 9.8 apply and the words "do not apply" **must** be deleted. If the Parties wish any dispute or difference to be determined by the courts of another jurisdiction the appropriate amendment should be made to Article 9 (see also clause 1.11 and Schedule 5 Parts 1 and 2).

## Contract Particulars

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

Clause etc.	Subject	
Fourth Recital and clause 4-5	Construction Industry Scheme (CIS)	* Employer at the Base Date is not a 'contractor' for the purposes of the CIS
Seventh Recital and Part 1 of Schedule 2	Supplemental Provisions – Part 1 <i>(Where neither entry against one of Supplemental Provisions 1 to 3 below is deleted, that Supplemental Provision <u>does not</u> apply.)</i>	
	Named Sub-Contractors	* Supplemental Provision 1 applies
	Valuation of Changes – Contractor's estimates	* applies
	Loss and expense – Contractor's estimates	* Supplemental Provision 3 applies
Seventh Recital and Part 2 of Schedule 2	Supplemental Provisions <sup>[9]</sup> – Part 2 <i>(Where neither entry against one of Supplemental Provisions 4 to 10 below is deleted, that Supplemental Provision applies.)</i>	
	Acceleration Quotation	* Supplemental Provision 4 applies
	Collaborative working	* Supplemental Provision 5 applies
	Health and safety	* Supplemental Provision 6 applies
	Cost savings and value improvements	* Supplemental Provision 7 applies
	Sustainable development and environmental considerations	* Supplemental Provision 8 applies
	Performance Indicators and monitoring	* Supplemental Provision 9 does not apply

<sup>[9]</sup> Supplemental Provision 11 (Transparency) applies only where the Employer is a Local or Public Authority or other body to whom the Freedom of Information Act 2000 applies; Supplemental Provision 12 (The Public Contracts Regulations 2015) applies only where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations.



Notification and negotiation of disputes

\* Supplemental Provision 10  
appliesWhere Supplemental Provision 10 applies, the  
respective nominees of the Parties are

Employer's nominee

Peter Bradley

Contractor's nominee

Shaun Stirlandor such replacement as each Party may notify  
to the other from time to time

Article 4	Employer's Requirements <i>(State reference numbers and dates or other identifiers of the relevant documents.)</i> <sup>[8]</sup>	<u>all as Section 3</u>
Article 4	Contractor's Proposals <i>(State reference numbers and dates or other identifiers of the relevant documents.)</i> <sup>[9]</sup>	<u>all as Section 5</u>
Article 4	Contract Sum Analysis <i>(State reference numbers and dates or other identifiers of the relevant documents.)</i> <sup>[9]</sup>	<u>all as Section 4</u>
Article 8	Arbitration <i>(If neither entry is deleted, Article 8 and clauses 9-3 to 9-8 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it <u>must</u> be stated that Article 8 and clauses 9-3 to 9-8 apply.)</i> <sup>[10]</sup>	* Article 8 and clauses 9-3 to 9-8 ( <i>Arbitration</i> ) do not apply
1-1	Base Date	<u>01 December 2016</u>
1-1	BIM Protocol (where applicable) <i>(State title, edition, date or other identifiers of the relevant documents.)</i>	Not applicable
1-1	Date for Completion of the Works <i>(where completion by Sections does not apply)</i>	<u>11 December 2017</u>
1-7	Addresses for service of notices by the Parties <i>(If none is stated, the address in each case, subject to clause 1-7-3, shall be that shown at the commencement of the Agreement.)</i> <sup>[12]</sup>	Employer <u>SAABON Ltd, The Music Room, Tanbridge Park, Horsham, West Sussex RH12 1SU</u> Contractor <u>W. Stirland Ltd, Redmoor Estate, Main Road, Chichester, West Sussex PO20 7HT</u>
2-3	Date of Possession of the site <i>(where possession by Sections does not apply)</i>	<u>12 December 2016</u>

<sup>[8]</sup> If the relevant document or set of documents takes the form of an Annex to this Contract, it is sufficient to refer to that Annex.

<sup>[10]</sup> On factors to be taken into account by the Parties in considering whether disputes are to be determined by arbitration or by legal proceedings, see the Design and Build Contract Guide. See also footnote [7].

<sup>[12]</sup> As to service of notices etc. outside the United Kingdom, see the Design and Build Contract Guide.

2-4	Deferment of possession of the site (where possession by Sections does not apply)	* Clause 2-4 applies
		Maximum period of deferment (if less than 6 weeks) is <u>6 weeks</u>
2-17-3	Limit of Contractor's liability for loss of use etc. (if any)	<u>£7,000,000.00 (Seven Million)</u>
2-29-2	Liquidated damages (where completion by Sections does not apply)	at the rate of <u>£700.00 per calendar day</u>
2-35	Rectification Period (where completion by Sections does not apply) (If no other period is stated, the period is 6 months.)	<u>12 months</u> from the date of practical completion of the Works
4-2, 4-12 and 4-13	Fluctuations Provision <sup>[13]</sup> (Unless another option or entry is selected, JCT Fluctuations Option A applies.)	* <del>JCT Fluctuations Option A applies/</del> * <del>JCT Fluctuations Option B applies/</del> * <del>JCT Fluctuations Option C applies<sup>[14]</sup>/</del> * <del>no Fluctuations Provision applies/</del> * <del>the following Fluctuations Provision applies</del> <hr/> <hr/> <hr/> <hr/>
4-6	Advance payment (Not applicable where the Employer is a Local or Public Authority.)	* Clause 4-6 does not apply
4-7-1	Method of payment – alternatives <sup>[17]</sup> (If no Alternative is selected, Alternative B applies.)	* <del>by stages in accordance with Alternative A- (clause 4-12)/</del> * periodically in accordance with Alternative B (clause 4-13)
4-7-2	Interim Payments – Interim Valuation Dates (The dates apply for each Alternative; if no date is stated, the first Interim Valuation Date is one month after the Date of Possession.)	The first Interim Valuation Date is <u>4 weeks after the commencement of the works</u> and thereafter the <u>last Friday of each Calendar Month same date in each month or the nearest Business Day in that month<sup>[19]</sup></u>
4-15-4	Listed Items – uniquely identified (Delete the entry if no bond is required.)	* No bond is required for Listed Items uniquely identified.

<sup>[13]</sup> Unless the Fluctuations Provision is to be JCT Fluctuations Option A (set out in Schedule 7), delete all but one of the asterisked choices. JCT Fluctuations Options B and C are no longer included in JCT contract documents but continue to be available on the JCT website [www.jctltd.co.uk](http://www.jctltd.co.uk). If an alternative fluctuation or cost adjustment formula is to be used, the document(s) in which it is contained should be identified here.

<sup>[14]</sup> JCT Fluctuations Option C can only operate if a schedule to which rule 11b of the Formula Rules refers is included in the Contract Documents.

<sup>[17]</sup> Delete whichever Alternative is not applicable. Where Interim Payments are to be made by stages (including by quantity of units and sub-units completed) make the appropriate entries or prepare and insert a separate schedule of cumulative stage values.

<sup>[19]</sup> The first Interim Valuation Date should not be more than one month after the Date of Possession.

4-15-5	Listed Items – not uniquely identified (Delete the entry if clause 4-15-5 does not apply.)	*	No bond is required for Listed Items not uniquely identified.
4-17	Contractor's Retention Bond (Not applicable where the Employer is a Local or Public Authority and, in other cases, not applicable unless stated to apply, with relevant particulars given below)	*	Clause 4-17 does not apply
4-18-1	Retention Percentage (The percentage is 3 per cent unless a different rate is stated; if no retention is required, insert 'Nil' or '0'.)		<u>Three per cent</u>
5-5	Daywork		The Percentage Additions to each section of the prime cost or, if they apply in respect of labour, the All-Inclusive Rates, are set out in the following document <sup>[8]</sup>  <u>TBA</u>
6-4-1	Contractor's Public Liability insurance: injury to persons or property – the required level of cover is not less than		<u>£10,000,000.00</u> for any one occurrence or series of occurrences arising out of one event
6-5-1	Insurance – liability of Employer		Minimum amount of indemnity for any one occurrence or series of occurrences arising out of one event <sup>[20]</sup>  <u>£10,000,00.00</u>
6-7 and Schedule 3	Works insurance – Insurance Option applicable		Schedule 3: * Insurance Option A applies/ * <del>Insurance Option B applies/</del> * <del>Insurance Option C applies</del>
	Percentage to cover professional fees (If no other percentage is stated, it shall be 15 per cent.)		<u>13 per cent</u>
	Where Insurance Option A applies and cover is to be provided under the Contractor's annual policy (paragraph A-2), the annual renewal date is (as supplied by the Contractor)		<u>31 January</u>
6-10 and Schedule 3	Terrorism Cover – details of the required cover (Unless otherwise stated, Pool Re Cover is required.) <sup>[22]</sup>		are set out in the following document(s)  <u>Is not required</u>

<sup>[8]</sup> If the relevant document or set of documents takes the form of an Annex to this Contract, it is sufficient to refer to that Annex.

<sup>[20]</sup> Insert an amount where it is stated in the Employer's Requirements that insurance under clause 6-5-1 is required. If the indemnity is to be for an aggregate amount and not for any one occurrence or series of occurrences, the entry should be amended to make this clear.

<sup>[22]</sup> Obtaining Terrorism Cover for the Works, which unless otherwise agreed is necessary in order to comply with the requirements of Insurance Option A, B or C, will involve an additional premium and in certain situations has been difficult to effect. If any difficulty might arise, there should be immediate pre-contract discussion between the Parties and their insurance advisers. See the Design and Build Contract Guide.

Professional Indemnity insurance

Level of cover  
*(If an alternative is not selected the amount shall be the aggregate amount for any one period of insurance. A period of insurance for these purposes shall be one year unless otherwise stated.)*

\* Amount of indemnity required relates to claims or series of claims arising out of one event

*(If no amount is stated, insurance under clause 6-15 shall not be required.)*

and is  
£10,000,000.00

Cover for pollution and contamination claims  
*(If no amount is stated, such cover shall not be required; unless otherwise stated, the required limit of indemnity is an annual aggregate amount.)*

\* is required, with a sub-limit of indemnity of £2,000,000.00

Expiry of required period of Professional Indemnity insurance is  
*(If no period is selected, the expiry date shall be 6 years from the date of practical completion of the Works.)*

\* 12 years

6-17 Joint Fire Code

\* The Joint Fire Code applies<sup>[23]</sup>

If the Joint Fire Code applies, state whether the insurer under Insurance Option A, B or C (paragraph C-2) has specified that the Works are a 'Large Project':

\* Yes<sup>[23]</sup>

6-20 Joint Fire Code – amendments/revisions  
*(The cost shall be borne by the Contractor unless otherwise stated.)*

\* The cost, if any, of compliance with amendment(s) or revision(s) to the Joint Fire Code shall be borne by the Contractor

7-2 Assignment/grant by Employer of rights under clause 7-2  
*(If neither entry is deleted, clause 7-2 applies.)*

\* Clause 7-2 applies

7-3-1 Performance bond or guarantee from bank or other approved surety<sup>[24]</sup>  
*(If this entry is not completed or the required form is not specified, a performance bond or guarantee is not required.)*

\* is not required

7-3-2 Guarantee from the Contractor's parent company

\* is not required

<sup>[23]</sup> Where Insurance Option A applies these entries are made on information supplied by the Contractor.

<sup>[24]</sup> If a performance bond is required, the identity of the issuer as well as the operative terms of the bond should be agreed prior to execution of the contract.

7.4	Third Party Rights and Collateral Warranties – details of the requirements for the grant by the Contractor and sub-contractors of P&T Rights, Funder Rights and/or (in the case of sub-contractors) Employer Rights in respect of the Works, either as third party rights or by collateral warranties ('Rights Particulars') are set out in the following document <sup>[25]</sup> <i>(State reference number and date or other identifier of the relevant document.)</i>	<u>all as Appendix 7</u>
8.9.2	Period of suspension <i>(If none is stated, the period is 2 months.)</i>	<u>One month</u>
8.11.1.1 to 8.11.1.6	Period of suspension <i>(If none is stated, the period is 2 months.)</i>	<u>Three months</u>
9.2.1	Adjudication <sup>[26]</sup>  Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established) <sup>[27]</sup> <i>(Where an Adjudicator is not named and a nominating body has not been selected, the nominating body shall be one of the bodies listed opposite selected by the Party requiring the reference to adjudication.)</i>	The Adjudicator is <u>The President or a Vice-President or Chairman or a Vice-Chairman of</u>  * <u>Royal Institute of British Architects</u> * <u>The Royal Institution of Chartered Surveyors</u> * <u>constructionadjudicators.com<sup>[28]</sup></u> * <u>Association of Independent Construction Adjudicators<sup>[29]</sup></u> * <u>Chartered Institute of Arbitrators</u>

<sup>[25]</sup> The relevant Rights Particulars should identify the beneficiaries (by name, class or description) and the sub-contractors who are also required to grant rights, specify whether rights are to be granted at each level as Third Party Rights or by way of Collateral Warranties, state in those cases where the default provision is not to apply which alternative provision is to apply in its place and give any other details required to complete the terms of the rights or warranties that are to be given. A Model Form for the Rights Particulars is included in the Design and Build Contract Guide and is also available on the JCT website [www.jcttd.co.uk](http://www.jcttd.co.uk).

In the case of third party rights the relevant limits and details required for the purposes of the respective parts of Schedule 5 of this Contract and Schedule 6 of the Design and Build Sub-Contract are the same as those required for the purposes of the Warranty Particulars for the corresponding Collateral Warranty (CWa/P&T, CWa/F, SCWa/P&T, SCWa/F or SCWa/E). Directions may be needed as to mode of execution of sub-contracts and/or collateral warranties by relevant sub-contractors. See also the Design and Build Contract Guide.

<sup>[26]</sup> The Parties should either name the Adjudicator and select the nominating body or, alternatively, select only the nominating body. The Adjudication Agreement (Adj) and the Adjudication Agreement (Named Adjudicator) (Adj/N) have been prepared by JCT for use when appointing an Adjudicator.

<sup>[28]</sup> constructionadjudicators.com is a trading name of Contractors Legal Grp Ltd.

<sup>[27]</sup> Delete all but one of the nominating bodies asterisked.

<sup>[29]</sup> Association of Independent Construction Adjudicators is controlled by and acts as an agent of the National Specialist Contractors' Council for the purpose of the nomination of adjudicators.

## Attestation

### Note on Execution

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

#### Execution under hand

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

#### Execution as a Deed

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

#### Other forms of Attestation

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

## Notes on Execution as a Deed

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

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

Execution as a Deed

**Executed as a Deed by the Employer**

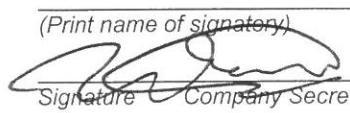
namely <sup>1</sup> SAABON Ltd

(A) acting by a Director and the Company Secretary/two Directors of the company <sup>2,3</sup>

GREGORY SPENCER CASWILL and  
(Print name of signatory)

Signature  Director

VANESSA CASWILL  
(Print name of signatory)

Signature  Company Secretary/Director

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



*Execution as a Deed*

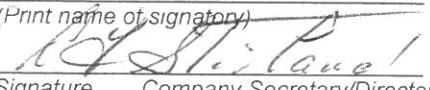
**Executed as a Deed by the Contractor**

namely <sup>1</sup> W. Stirland Ltd

(A) acting by a Director and the Company Secretary/two Directors **of the company** <sup>2,3</sup>

S. Stirland  
 (Print name of signatory)  
  
 Signature Director

and

R. Stirland  
 (Print name of signatory)  
  
 Signature Company Secretary/Director

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

# Conditions

## Section 1 Definitions and Interpretation

### Definitions

- 1-1 Unless the context otherwise requires or the Agreement or these Conditions specifically provide otherwise, the following words and phrases, where they appear in capitalised form in the Agreement or these Conditions, shall have the meanings stated or referred to below:

<i>Word or phrase</i>	<i>Meaning</i>
Acceleration Quotation:	a quotation by the Contractor for an acceleration in the carrying out of the Works or a Section made under <b>Supplemental Provision 4</b> .
Adjudicator:	an individual appointed under <b>clause 9-2</b> as the Adjudicator.
Agreement:	the Agreement to which these Conditions are annexed, including its Recitals, Articles and Contract Particulars.
All Risks Insurance:	see <b>clause 6-8</b> .
Arbitrator:	an individual appointed under <b>clause 9-4</b> as the Arbitrator.
Article:	an article in the <b>Agreement</b> .
Base Date:	the date stated as such date in the <b>Contract Particulars</b> (against the reference to <b>clause 1-1</b> ) <sup>[32]</sup> .
BIM Protocol:	(where applicable) the document identified as such in the <b>Contract Particulars</b> (against the reference to <b>clause 1-1</b> ).
Business Day:	any day which is not a Saturday, a Sunday or a Public Holiday.
C-1 Replacement Schedule:	(where applicable) the insurance schedule and/or other documents identified as such in the <b>Contract Particulars</b> (against the reference to <b>clause 6-7</b> and <b>Schedule 3</b> ).
CDM Regulations:	the Construction (Design and Management) Regulations 2015.
Change:	see <b>clause 5-1</b> .
Completion Date:	the Date for Completion of the Works or of a Section as stated in the <b>Contract Particulars</b> or such other date as is fixed either under <b>clause 2-25</b> or by a Pre-agreed Adjustment.
Conditions:	the clauses set out in sections 1 to 9 of these Conditions, together with and including the Schedules hereto.
Confirmed Acceptance:	the Employer's instruction under <b>Supplemental Provision 4</b> confirming acceptance of an Acceleration Quotation.

<sup>[32]</sup> The Base Date is relevant (inter alia) to clause 2-15-2-1 (changes in Statutory Requirements) and the JCT Fluctuations Options and it helps to determine the edition/issue and/or version of documents relevant to this Contract, e.g. definitions of the prime cost of daywork (clause 5-5).

Construction Industry Scheme (or 'CIS'):	see the <b>Fourth Recital</b> .
Construction Phase Plan:	the plan referred to in regulation 2 of the CDM Regulations, including any updates and revisions.
Consultants:	see <b>clause 7.4</b> .
Contract Documents:	the Agreement and these Conditions, together with the Employer's Requirements, the Contractor's Proposals, the Contract Sum Analysis and (where applicable) the BIM Protocol.
Contract Particulars:	the particulars in the <b>Agreement</b> and there described as such, including the entries made by the Parties.
Contract Sum:	the sum stated in <b>Article 2</b> .
Contract Sum Analysis:	see the <b>Second Recital</b> and the <b>Contract Particulars</b> .
Contractor:	the person named as Contractor in the <b>Agreement</b> .
Contractor's Design Documents:	the drawings, details and specifications of materials, goods and workmanship and other related documents and information prepared by or for the Contractor in relation to the design of the Works (including such as are contained in the Contractor's Proposals), together, where applicable, with any other design documents or information to be provided by him under the BIM Protocol.
Contractor's Persons:	the Contractor's employees and agents, all other persons employed or engaged on or in connection with the Works or any part of them and any other person properly on the site in connection therewith, excluding the Employer, Employer's Persons and any Statutory Undertaker.
Contractor's Proposals:	see the <b>Second Recital</b> and the <b>Contract Particulars</b> .
Date for Completion:	the date stated as such date in the <b>Contract Particulars</b> (against the reference to <b>clause 1.1</b> ) in relation to the Works or a Section.
Date of Possession:	the date stated as such date in the <b>Contract Particulars</b> (against the reference to <b>clause 2.3</b> ) in relation to the Works or a Section.
Design Submission Procedure:	such procedure as is specified by the BIM Protocol or, where that is not applicable, the procedure set out in <b>Schedule 1</b> , subject to any modifications of that procedure specified in the Contract Documents.
Development Control Requirements:	any statutory provisions and any decision of a relevant authority thereunder which control the right to develop the site.
Employer:	the person named as Employer in the <b>Agreement</b> .
Employer Rights:	any rights in favour of the Employer to be granted by sub-contractors in accordance with the Rights Particulars, either by way of third party rights or JCT collateral warranty SCWa/E.
Employer's Agent:	see <b>Article 3</b> .
Employer's Final Statement:	the final statement prepared by or on behalf of the Employer pursuant to <b>clause 4.24.4</b> .
Employer's Persons:	all persons employed, engaged or authorised by the Employer, excluding the Contractor, Contractor's Persons, and any Statutory Undertaker but including any such third party as is referred to in clause 3.15.2.

Employer's Requirements:	see the <b>First Recital</b> and the <b>Contract Particulars</b> .
Excepted Risks:	see <b>clause 6.8</b> .
Existing Structures:	any and all existing structures within which the Works or part of them are to be executed or to which they are to form an extension, together with any Section for which a Section Completion Statement has been issued and, as from the Relevant Date, any Relevant Part taken into possession under clause 2.30.
Final Payment Notice:	see <b>clause 4.8</b> .
Final Statement:	see <b>clauses 1.8</b> and <b>4.24</b> .
Finance Agreement:	the agreement between the Funder and the Employer for the provision of finance for the Works.
Fluctuations Provision:	the provision (if any) specified by the <b>Contract Particulars</b> (against the reference to <b>clauses 4.2, 4.12</b> and <b>4.13</b> ).
Funder:	the person named or otherwise sufficiently identified as such (whether by class or description) in or by the Rights Particulars and in respect of whom the Employer gives notice under <b>clause 7B.1</b> .
Funder Rights:	the rights in favour of the Funder to be granted by the Contractor as third party rights under <b>Part 2 of Schedule 5</b> or by JCT collateral warranty CWa/F or those to be granted by sub-contractors in accordance with the Rights Particulars.
Gross Valuation:	see <b>clauses 4.12</b> and <b>4.13</b> .
Insolvent:	see <b>clause 8.1</b> .
Insurance Options A, B and C:	the provisions relating to insurance of the Works and (where applicable) Existing Structures set out in <b>Schedule 3</b> .
Interest Rate:	a rate 5% per annum above the official bank rate of the Bank of England current at the date that a payment due under this Contract becomes overdue.
Interim Payment:	any of the payments to which <b>clause 4.7</b> and the <b>Contract Particulars</b> refer.
Interim Payment Application:	see <b>clause 4.7</b> .
Interim Valuation Date:	each date as specified by the <b>Contract Particulars</b> (against the reference to <b>clause 4.7.2</b> ).
Joint Fire Code:	the Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Renovation, published by Construction Industry Publications Ltd and the Fire Protection Association, current at the Base Date.
Joint Names Policy:	see <b>clause 6.8</b> .
Listed Items:	materials, goods and/or items prefabricated for inclusion in the Works which are listed as such items by the Employer in a list supplied to the Contractor and annexed to the Employer's Requirements.
Local or Public Authority:	a body that is a 'contracting authority' as defined by the PC Regulations.
Named Sub-Contractor:	see <b>Supplemental Provision 1</b> .
Non-Completion Notice:	see <b>clause 2.28</b> .

Notice of Completion of Making see **clause 2.36**.

Good:

P&T Rights:	the rights in favour of a Purchaser or Tenant to be granted by the Contractor as third party rights under <b>Part 1 of Schedule 5</b> or by JCT collateral warranty CWa/P&T or those to be granted by sub-contractors in accordance with the Rights Particulars.
Parties:	the Employer and the Contractor together.
Party:	either the Employer or the Contractor.
Pay Less Notice:	see <b>clauses 4.9.5</b> and <b>4.10.1</b> .
Payment Notice:	see <b>clause 4.7.5</b> .
PC Regulations:	the Public Contracts Regulations 2015.
Practical Completion Statement:	see <b>clause 2.27</b> .
Pre-agreed Adjustment:	see <b>clause 2.23.2</b> .
Principal Contractor:	the Contractor or other contractor named in <b>Article 6</b> or any successor appointed by the Employer.
Principal Designer:	the Contractor or other person named in <b>Article 5</b> or any successor appointed by the Employer.
Provisional Sum:	a provisional sum for work included in the Employer's Requirements.
Public Holiday:	Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday. <sup>[33]</sup>
Purchaser:	any person named or otherwise sufficiently identified as such (whether by class or description) in or by the Rights Particulars to whom the Employer transfers or agrees to transfer his interest in all or part of the Works.
Recitals:	the recitals in the <b>Agreement</b> .
Rectification Period:	the period stated as such period in the <b>Contract Particulars</b> (against the reference to <b>clause 2.35</b> ) in relation to the Works or (where applicable) a Section.
Relevant Date:	see <b>clause 2.30</b> .
Relevant Event:	see <b>clause 2.26</b> .
Relevant Matter:	see <b>clause 4.21</b> .
Relevant Omission:	see <b>clause 2.23.3</b> .
Relevant Part:	see <b>clause 2.30</b> .
Retention:	see <b>clauses 4.14</b> and <b>4.16</b> to <b>4.18</b> .
Retention Percentage:	the percentage stated in the <b>Contract Particulars</b> (against the reference to <b>clause 4.18.1</b> ).
Rights Particulars:	see <b>clause 7.4</b> and the <b>Contract Particulars</b> for that clause.

<sup>[33]</sup> Amend as necessary if different Public Holidays are applicable.

Scheme:	Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998.
Sections:	(where applicable) the Sections into which the Works have been divided, as referred to in the <b>Fifth Recital</b> and the <b>Contract Particulars</b> .
Section Completion Statement:	see <b>clause 2-27-2</b> .
Section Sum:	see <b>clause 2-34</b> and the <b>Contract Particulars</b> .
Site Materials:	all unfixated materials and goods delivered to and placed on or adjacent to the Works which are intended for incorporation therein.
Specified Perils:	see <b>clause 6-8</b> .
Statutory Requirements:	any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Works or performance of any obligations under this Contract and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to the Works or with whose systems the Works are, or are to be, connected, including Development Control Requirements.
Statutory Undertaker:	any local authority or statutory undertaker where executing work solely in pursuance of its statutory obligations, including any persons employed, engaged or authorised by it upon or in connection with that work.
Tenant:	any person named or otherwise sufficiently identified as such (whether by class or description) in or by the Rights Particulars to whom the Employer grants or agrees to grant a leasehold interest in all or part of the Works.
Terrorism Cover:	see <b>clause 6-8</b> .
Valuation:	a valuation in accordance with the Valuation Rules, pursuant to <b>clause 5-2</b> .
Valuation Rules:	see <b>clauses 5-4</b> to <b>5-7</b> .
VAT:	Value Added Tax.
Works:	the works briefly described in the <b>First Recital</b> , as more particularly shown, described or referred to in the Contract Documents, including any changes made to those works in accordance with this Contract.
Works Insurance Policy:	the Joint Names Policy or policies covering the Works and Site Materials to be effected and maintained under whichever of Insurance Options A, B or C applies under this Contract.

## Interpretation

### Reference to clauses etc.

- 1-2 Unless otherwise stated, a reference in the Agreement or in these Conditions to a clause or Schedule is to that clause in or Schedule to these Conditions and, unless the context otherwise requires, a reference in a Schedule to a paragraph is to that paragraph of that Schedule.

### Agreement etc. to be read as a whole

- 1-3 The Agreement and these Conditions are to be read as a whole. Nothing contained in any other Contract Document or any Framework Agreement, irrespective of their terms, shall override or modify the Agreement or these Conditions.

**Headings, references to persons, legislation etc.**

- 1.4** In the Agreement and these Conditions, unless the context otherwise requires:
- 1 the headings, notes and footnotes are included for convenience only and shall not affect the interpretation of this Contract;
  - 2 the singular includes the plural and vice versa;
  - 3 a gender includes any other gender;
  - 4 a reference to a 'person' includes any individual, firm, partnership, company and any other body corporate;
  - 5 a reference to a statute, statutory instrument or other subordinate legislation ('legislation') is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification, and including corresponding legislation in any other relevant part of the United Kingdom; and
  - 6 references to documents shall, where there is a BIM Protocol or other protocol relating to the supply of documents or information, be deemed to include information in a form or medium conforming to that protocol.

**Reckoning periods of days**

- 1.5** Where under this Contract an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include a day which is a Public Holiday that day shall be excluded.

**Contracts (Rights of Third Parties) Act 1999**

- 1.6** Other than such rights of any Purchasers, Tenants and/or Funder as take effect pursuant to clauses 7A and/or 7B, nothing in this Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

**Notices and other communications**

- 1.7**
- 1 Any notice or other communication between the Employer (or Employer's Agent) and the Contractor that is expressly referred to in the Agreement or these Conditions (including, without limitation, each application, approval, consent, confirmation, counter-notice, decision, instruction or other notification) shall be in writing.
  - 2 Subject to clause 1.7.4, each such notice or other communication and any documents to be supplied may or (where so required) shall be sent or transmitted by the means (electronic or otherwise) and in such format as the Parties have agreed or may from time to time agree in writing for the purposes of this Contract.<sup>[34]</sup>
  - 3 Subject to clauses 1.7.2 and 1.7.4, any notice, communication or document may be given or served by any effective means and shall be duly given or served if delivered by hand or sent by pre-paid post to:
    - 1 the recipient's address stated in the Contract Particulars, or to such other address as the recipient may from time to time notify to the sender; or
    - 2 if no such address is then current, the recipient's last known principal business address or (where a body corporate) its registered or principal office.
  - 4 Any notice expressly required by this Contract to be given in accordance with this clause 1.7.4 shall be delivered by hand or sent by Recorded Signed for or Special Delivery post. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.
  - 5 If in an emergency any communication is made orally with respect to health and safety, risk of damage to property or insurance matters, written confirmation of it shall be sent as soon thereafter as is reasonably practicable.

<sup>[34]</sup> In cases where there is no BIM Protocol, the Parties should agree a communications protocol on or before entering into the Contract, or as soon thereafter as is practicable, covering e.g. the medium or format to be used for the Design Submission Procedure (Schedule 1) if not stated in the Employer's Requirements or Contractor's Proposals. See the Design and Build Contract Guide.

**Effect of Final Statement**

- 1-8
- 1 As from the due date for the final payment specified in clause 4-24-5 and in addition to the effects referred to in clause 4-24-6, the Final Statement or, as the case may be, the Employer's Final Statement ('the relevant statement') shall, except as provided in clauses 1-8-2 and 4-24-6 (and save in respect of fraud), have effect in any proceedings under or arising out of or in connection with this Contract (whether by adjudication, arbitration or legal proceedings) as conclusive evidence that:
    - 1 where and to the extent that any particular quality of any materials or goods or any particular standard of an item of workmanship was expressly described in the Employer's Requirements, or in any instruction issued by the Employer under these Conditions, to be for his approval, the particular quality or standard was to his reasonable satisfaction, but the relevant statement shall not be conclusive evidence that they or any other materials, goods or workmanship comply with any other requirement or term of this Contract;
    - 2 all and only such extensions of time, if any, as are due under clause 2-25 have been given; and
    - 3 the reimbursement of direct loss and/or expense, if any, due to the Contractor as agreed, ascertained or valued in accordance with these Conditions is in final settlement of all and any claims which the Contractor has or may have arising out of the occurrence of any Relevant Matters, whether such claim be for breach of contract, duty of care, statutory duty or otherwise.
  - 2 The effects of the relevant statement specified in clauses 1-8-1 and 4-24-6 shall in relation to the subject matter of any adjudication, arbitration or other proceedings be suspended pending the conclusion of such proceedings, and shall thereafter be subject to the terms of any decision, award or judgment in and any settlement of those proceedings:
    - 1 where those proceedings are commenced before or within 28 days after the date of issue of the relevant statement; or
    - 2 in the case of an adjudication commenced within the period referred to in clause 1-8-2-1 in which the Adjudicator gives his decision after the date of issue of the relevant statement, where arbitration or legal proceedings to determine the dispute or difference in question are commenced within 28 days of the date of that decisionbut not otherwise.
  - 3 For the purposes of clause 1-8-2 any proceedings shall be treated as concluded if during any period of 12 months commencing on or after the issue of the relevant statement neither Party takes a further step in them.

**Effect of payments other than payment of Final Statement**

- 1-9 Save as stated in clause 1-8, no payment by the Employer shall of itself be conclusive evidence that any works, any materials or goods or any design to which it relates are in accordance with this Contract.

**Consents and approvals**

- 1-10 Where consent or approval of either Party is expressly required under these Conditions and is requested, such consent or approval shall not be unreasonably delayed or withheld, except in the case of either Party's consent under clause 7-1 the giving of which shall be at the sole discretion of the Party from whom it is sought.

**Applicable law**

- 1-11 This Contract shall be governed by and construed in accordance with the law of England.<sup>[35]</sup>

<sup>[35]</sup> Where the Parties do not wish the law applicable to this Contract to be the law of England appropriate amendments should be made.