

## **Legal Services**

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Reference: ME 1/0/86



**Clackmannanshire Council**

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**Clackmannanshire Council  
Measured Term Contract - MTC/Scot 2011 Edition  
Schedule of Amendments**

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The proposed contract set out in the Invitation to Tender is let under the terms of the Measured Term Contract (MTC/Scot 2011) subject to the following amendments below. Where a Recital, Article or Condition is not referred to below, the un-amended term in the MTC/Scot 2011 shall apply.

On the issue of the Award Letter (as after defined), the terms set out in this document shall have full force and effect:

**Recitals**

**First -** The Employer (as after-defined) requires the maintenance, upgrades and minor works to be carried out within various properties within the local government area of Clackmannanshire (the "Contract Area") in accordance with the details set out or referred to in the Contract Particulars.

**Second -** The Employer by Contract Notice has advertised the required works and the Contractor has submitted the Tender. The Employer has accepted the Tender by issuing the Award Letter. The works specified in the First Recital include the design and construction of the works specified as such within the Employers Requirements ("**the Contractor's Designed Portion**")

**Fifth -** As part of the Tender, the Contractor has supplied to the Employer the Contractor's safety policy complying with the Statutory Requirements, a copy of which is annexed.

**Sixth -** The Supplemental Provisions identified in Schedule 1 (referred to as the Schedule in the SBCC/MTC/Scot 2011 un-amended form) shall apply, subject to the insertion detailed below at the end of the Schedule:

**7. Contractor Design Responsibility**

In the event that the Employers Requirements state that the Contractor is required to provide any design input or design on any part or all of the works in respect of any Order, the provisions of Schedule 2 - Contractors Design Submission Procedure shall apply.

## **Articles**

For the purposes of this Contract, the following terms have the following meanings, unless otherwise stated:

### **Article 1 - Definitions**

**"Award Letter"** means the formal acceptance letter signed by the proper officer of the Employer accepting the Tender by the Contractor;

**"Employer"** means Clackmannanshire Council, a local authority constituted by virtue of section 2 of the Local Government etc (Scotland) Act 1994 and having its principal offices at Kilncraigs, Greenside Street, Alloa, FK10 1EB;

**"Claim Limit"** means the sum of One Hundred Thousand Pounds (£100,000) Sterling;

**"Contractor"** means the contractor selected by the Employer following a response to the Invitation to Tender advertised by a Contract Notice in the Public Contracts Scotland Portal and being the entity set out in the Invitation to Tender and as identified in the Award Letter;

**"Contractor's Design Documents"** means the drawings, details and specifications of materials, goods and workmanship and other related documents prepared by or for the Contractor in relation to the CDP Works.

**"Contract Notice"** means the contract notice in respect of the proposed works published by the Employer on the Public Contracts Scotland Portal;

**"Invitation to Tender"** means the invitation to tender sent out by the Employer to the Contractor (and such other candidates), such invitation which includes the Employers Requirements, Contract Particulars and the Contract Documents;

**"Public Contracts Scotland Portal"** means the national advertising portal maintained by the Scottish Government on behalf of (amongst others) the Employer;

**"Tender"** means the formal offer to carry out the works by the Contractor to the Employer in accordance with the requirements set out in the Invitation to Tender;

**Article 2 -** The Employer shall pay the Contractor at the times and in the manner specified in the Conditions amounts calculated by reference to the Schedule of Rates identified in the Contract Particulars (Item 10), adjusted and, if appropriate, revised as therein mentioned, or (where applicable and appropriate) calculated by reference to a Schedule of Hourly Charges (subject to items 11 and 12). All applications for payment by the Contractor must be supported by the purchase order number

specified on the Award Letter. Failure to specify the purchase order shall entitle the Employer to withhold payment until such time as the Contractor submits an application for payment in accordance with this Article and section 4.5.1.

**Article 3** - For the purposes of this Contract, the Contract Administrator is the person specified in the Award Letter, or if he ceases to be the Contract Administrator, such other person as the Employer shall nominate in accordance with section 3.10.1 of the Conditions.

**Article 4** - The CDM Co-ordinator for the purposes of the CDM Regulations is the Contract Administrator, or such person nominated in writing by the Contract Administrator to the Contractor. In the event that this person ceases to be the CDM Co-ordinator, the CDM Co-ordinator shall be such person as the Employer shall nominate in writing to the Contractor pursuant to regulation 14(3) of those regulations.

**Article 7** - The provisions of Article 7 and sections 9.3 to 9.5 of the Conditions do not apply where the dispute or difference exceeds the Claim Limit.

Where any dispute or difference between the parties of any kind whatsoever arising out of or in connection with this Contract falls below the Claim Limit, then the matter shall be referred to arbitration in accordance with sections 9.3 to 9.5 of the Conditions. The exceptions to this Article 7 are:

- .1 any disputes or differences arising under or in respect of the Construction Industry Scheme or VAT, to the extent that legislation provides another method of resolving such disputes or differences;
- .2 any disputes or differences in connection with the enforcement of any decision of an Adjudicator; or
- .3 where any dispute or difference exceeds the Claim Limit

**Article 8** - Subject to Article 6 (and where it applies) to Article 7, the Commercial Court of the Court of Session shall have exclusive jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.

## **Contract Particulars**

### **1. Properties and Description of the Types of Work**

- 1.1 Any properties within the Contract Area specified by the Contract Administrator.
- 1.2 As set out in the Employers Requirements.

### **3. Contract Period**

The Contract Period shall commence on the Date for Commencement and shall terminate on the Date for Completion. For the purposes of the Agreement, the following terms have the following meanings:

" **Date for Commencement**" means the date falling 2 weeks after the date of the award letter issued by the Employer to the Contractor, or such other date as the Employer and the Contractor may agree in writing;

" **Date for Completion**" means the date falling 4 years after the Date for Commencement, or such earlier date as is specified in terms of the Contract;

### **4. Arbitration**

Article 7 and section 9.3 to section 9.5 do not apply where the dispute or difference exceeds the Claim Limit.

### **5. Orders - Minimum and Maximum Value**

Minimum Value of any one Order to be issued: Fifty Pounds (£50)

Maximum value of any one Order to be issued: The sum specified in the Contract Notice

### **6. Orders - Value of work to be carried out**

The amount specified in the Contract, the Contract Notice or any other document forming part of this Contract (save for any Orders) are indicative only and do not constitute a binding commitment on the Employer to make such work available to the Contractor. The Employer shall be under no obligation to award the Contractor any Order(s) under this Contract.

### **7. Orders - Priority Coding**

All Orders are to be carried out in accordance with the priority coding set out in the Employers Requirements.

## **9. Progress Payments**

Estimated Value of an Order above which progress payments can be applied for - Twenty Thousand Pounds (£20,000)

## **10. Responsibility for Measurement and Valuation**

The Contractor shall measure and value all Orders within the stipulated timescales.

The Contractor is to allow for liaising and meeting with the Contract Administrator where they have been directed to check the Contractor's measurement and valuations and should errors of rating or measurement be discovered, to inform the Contractor and adjust the measurement and valuation as required.

The Contractor's side noted back up measurements should be provided with the measurement and valuation of the order and be detailed, accurately and clearly, side noted to allow checking of the measurements and rates by the Contract Administrator where applicable.

Star rates, i.e. rates not included in the schedules, require to be built up in detail and agreed with the Contract Administrator before payment is made.

Similarly, the Contractor shall allow for liaison with the Contract Administrator and submitting the detailed and side noted measurement and valuation within 5 working days (if applicable) of any variations to the Works Order issued by (i) the Contract Administrator for checking and agreement by the Contract Administrator or (ii) following the CVI Sheet process set out in the Conditions.

The Contractor must provide a measurement and valuation to the Contract Administrator of the Work Order, within the following timescales or as otherwise agreed in writing by the Contract Administrator:-

<b><u>Banding</u></b>	<b><u>Maximum Response Time</u></b>
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£0-£250K	- 5 working days
£250K-£2M	- 10 working days

## **11. Schedule of Rates**

11.1 - The Schedule of Rates is that set out in the Invitation to Tender priced by the Contractor (the "Pricing Document") and accepted by the Employer by the issue of the Award Letter.

11.2 - Not Applicable

11.3 - Section 5.6.1 does not apply.

11.4 - The Schedule of Rates are fixed for the Contract Period and shall not be subject to further revision. The Contractor assumes inflation risk within the Contract over the Contract Period and by submission of the Invitation to Tender, expressly accepts this condition of contract.

## **12. Day-work**

### 12.1 Valuation - Percentage Additions (Percentage 'B')

The percentage additions to be added in respect of Orders or the appropriate part of orders carried out under this Contract as Day-work in ***all*** types and areas as percentage additions to the invoice price of non-labour items are as follows:

Refer to Schedule of Rates.

### 11.2 Revision of Schedule of Hourly Charges

Section 5.6.3 applies.

The annual revision date is: 12 months from the Date for Commencement

The revision to the hourly rates will be calculated with reference to the published standard hourly rates published by the BCIS or other appropriate bodies, all as stated in the Schedule of Rates - Day-work Section - between period starting on the Date for Commencement and the revision date.

## **13. Overtime Work**

these percentage additions will apply to prior approved ***non-productive overtime in all works specified within the Employers Requirements.***

The percentage addition in respect of overheads and profit on non-productive overtime rates applicable to all works is **Percentage 'C'** all as set out in the Schedule of Rates.

## **14. Insurance**

14.1 - Insurance cover for any one occurrence or series of occurrences arising out of one event - Five Million Pounds Sterling (£5,000,000) (minimum)

14.2 - Percentage to cover professional fees - 20%

14.3 - The annual renewal date of insurance as supplied by the Contractor is as specified in the Invitation to Tender.

The following additional clause is to be inserted after the end of item 14.4:

14.5 - Insurance cover for professional indemnity insurance - Two Million Pounds Sterling (£2,000,000) on an each and every claim basis except

for pollution and contamination claims which shall be on an aggregate basis.

### **15. Break Provisions - Employer Only**

The period of notice to be given by the Employer is 13 weeks.

### **16. Settlement of Disputes**

#### **Adjudication**

Nominator of Adjudicator shall be made by The Royal Institution of Chartered Surveyors in Scotland.

### **17. Arbitration**

#### **Arbitration**

Subject always to the Claim Limit, the Appointer of the Arbitrator (and of any replacement) shall be the Chairman or Vice Chairman of the Board of Scottish Building Contract Committee.

All arbitrations hereunder shall be conducted under the terms of the Chartered Institute of Arbitrators Scottish Short Form Arbitration Rules 2012, with the following amendments:

Article 1.6 - Article 1.6 is deleted and replaced by the following term:

The Act also includes "default rules" which can be modified or dis-applied by the agreement of the parties. Default rules 1,2,5,6,40,41,53 and 69 shall not apply in their entirety to both parties. Default rules 22, 41 and 69 shall not apply in their entirety except where any respect of any dispute or difference has been raised by the Employer only, and references within the Default Rules shall be read accordingly. Except as set out herein, no other default rule is modified or dis-applied by these rules.

Article 1.8 - The figure £25,000 where it appears in the first and second sentence shall be substituted with the Claim Limit.

Article 3.4 - The word "parties" where it appears shall be deleted and replaced with "Contractor". At the end of article 3.4 the following wording shall be inserted:

"The Arbitrator shall have no power to request a reasonable deposit from the Employer in respect of his fees."

Article 6.1 - Article 6.1(ii) shall be deleted and replaced as follows:

"the parties' legal and other expenses, subject to an overall limit of 10% of the sum claimed and not exceeding 10% of the Claim Limit."

Article 7.1 - At the end of Article 7.1, the following term shall be inserted:

"The Parties agree that the manner that interest is to be calculated in should be simple interest and should not exceed the Interest Rate".

## **Conditions**

### **Section 1 - Definitions and Interpretations**

The terms of Section 1.1 shall be amended as follows (and where applicable the terms below substituted in place of the terms contained therein):

**"Contract Documents"** means the Agreement, these Conditions, the Schedule of Rates and the Employers Requirements;

**"Employers Requirements"** means the written description of the work to be carried out by the Contractor under the Agreement as set out in the Invitation to Tender;

**"Interest Rate"** means a rate of 2% above the official dealing rate of the Bank of England current at the date that a payment due under this Contract becomes overdue;

**"Public Holiday"** means Christmas Day, Good Friday, a day which under the Banking and Financial Dealings Act 1971 is a Bank Holiday in Scotland and any week day being a local holiday which the principal offices of the Employer are closed for business to the public;

**"Retention Amount"** means [5]% of the total sum specified in the certificate issued by the Contract Administrator pursuant to clause 4.3.3 and on which no interest is payable (save in the case of late payment by the Employer).

### **Section 2 - Carrying Out the Work**

#### **2.1 Contractors Obligations**

2.1 On receipt of an Order, the Contractor shall carry it out in a proper and workmanlike manner and in accordance with the Contract Administrators instructions, the Contract Documents, the Construction Phase Plan (where applicable) and other Statutory Requirements, and shall give all notices required by the Statutory Requirements. On receipt of an Order, the Contractor shall advise the Employer whether he estimates that the duration of the works will last more than 30 working days and, if so, notification will require to be given to HSE and the client will appoint a CDM Co-ordinator for any orders that fall into this classification. The Contractor shall be the Principal Contractor for the purposes of the CDM Regulations.

In relation to the Contractor's Designed Portion, the Contractor shall:

2.1.1 using reasonable skill, care and diligence, complete the design for the Contractor's Designed Portion, including, so far as not described or stated in the Employers Requirements, the selection of any specifications for the kinds and standards of the materials, goods and workmanship to be used in the CDP Works;

- 2.1.2 not be responsible for the contents of the Employer's Requirements or for verifying the adequacy of any design contained within them in respect of an Order and, if an inadequacy is found in any design in the Employers Requirements in respect of an Order then, subject to section 2.1A to 2.1B, the Employers Requirements shall be altered or modified by instructions under section 5.1.1;
- 2.1.3 comply with the Contract Administrator's directions for the integration of the design of the Contractors Designed Portion with the design of the works as a whole, subject to the provisions of section 5.1.4;
- 2.1.4 in complying with this section 2.1, comply with regulations 11,12 and 18 of the CDM Regulations;
- 2.1.5 without charge provide the Contract Administrator, as and when necessary, with two copies of such drawings or details, specifications of materials, goods and workmanship, and (if requested) related calculations and information, as are reasonably necessary to explain the Contractors Designed Portion; and
- 2.1.6 not commence any work to which the documents referred to in section 2.1.5 relate, before the expiration of 7 days from the date of their delivery.
- 2.1A If the Contractor becomes aware of any divergence between the Statutory Requirements and the Contract Documents or between the Statutory Requirements and any instruction of the Contract Administrator in respect of any Order, he shall immediately give to the Contract Administrator a notice specifying the divergence.
- 2.1B Provided the Contractor is not in breach of section 2.1A, the Contractor shall not be liable under this Contract if the works completed under any Order do not comply with the Statutory Requirements to the extent that such non-compliance results from the Contractor having carried out work in accordance with the Contract Documents or any instruction of the Contract Administrator.
- 2.1C Any inconsistency in or between documents prepared by the Contractor for the CDP Works shall be corrected by the Contractor at his own expense after the Contract Administrator has expressed his reasonable satisfaction as to the manner in which the Contractor proposes to deal with the inconsistency.

## 2.2 Materials, goods and workmanship

- 2.2.1 The Contractor in carrying out each Order shall use materials, goods and workmanship of the quality and standards specified in the Order, or if not so specified, as specified in the Employers Requirements.

2.2.2 Where and to the extent that approval of the quality of materials or goods or of the standards of workmanship is a matter for the Contract Administrator's opinion, such quality and standards shall be to his reasonable satisfaction.

2.2.3 To the extent that the quality of materials and goods or standards of workmanship are not described in the Order, or Employers Requirements nor stated to be a matter for such opinion or satisfaction, they shall be of a standard appropriate to the relevant work.

2.2.4 For the purposes of carrying out each Order the Contractor, subject to section 2.3.1.2, shall:

.1 provide all the labour, materials and goods necessary. In providing such labour, the Contractor shall not contravene any of the provisions of the Equality Act 2010 in relation to the selection and recruitment of such labour;

.2 provide, unless otherwise stated in the Contract Documents, the requisite plant and equipment for the proper execution of all Orders, including scaffolding, tackle, machinery, tools or other appliances and everything necessary for the use of his workmen and shall be responsible for carrying them to the place where they are required, for any necessary erection and subsequent removal;

.3 provide all items necessary to comply with the Statutory Requirements in respect of safety, health and welfare,

and for the purposes of the Contract shall take all reasonable steps to encourage Contractor's Persons to be registered cardholders under the Construction Skills Certification Scheme (CSCS) or qualified under an equivalent recognised qualification scheme.

2.2.5 Where named product(s), goods, materials or equipment are specified in the Employers Requirements, the Contractor may propose an alternative specification where such specification is of an equivalent standard. The Contractor shall propose any such change in writing to the Contract Administrator stating the nature of the proposed change and how such a change will affect the Employer (including, without prejudice to the generality, the effect on whole life costing of the proposed change and/or the reduction in the appropriate entry within the Schedule of Rates).

2.2.6 Having considered a request under section 2.2.5, the Contract Administrator may approve the Contractors proposed change, or in his absolute discretion, reject the proposed change.

2.2.7 Without prejudice to the other terms of the Contract, the Contractor shall only be entitled to exercise the rights under section 2.2.5 where the Contract Administrator determines that the Procurement

Regulations apply to the Contract and it is necessary for the compliance by the Employer with their community obligations under European law.

## 2.12 Defects

Clause 2.12 shall be deleted and replaced with the following terms:

2.12.1 At, or on before the Order Completion Date, the Contract Administrator shall advise the Contractor whether he is of the opinion that any Defects, shrinkages or other faults that exist and which are due to materials or workmanship not in accordance with the Contract at any of the properties within the Order. Where such Defects, shrinkages or other faults exist, the Contractor shall forthwith proceed to make good at no cost to the Employer.

2.12.2 Where no such Defects exist as set out in clause 2.12.1 or the Contractor shall have remedied all Defects as set out in clause 2.12.1 to the satisfaction of the Contract Administrator, the Contract Administrator shall certify that the Order has been completed in accordance with this Contract, and shall within 14 days release one half of the Retention Amount to the Contractor.

2.12.3 Any Defects, shrinkages or other faults which appear within 12 months of the Order Completion Date and which are due to materials or workmanship not in accordance with this Contract, shall be made good by the Contractor at no cost to the Employer. Where the terms of this clause 2.12 are complied with to the satisfaction of the Contract Administrator, on application by the Contractor, the Contract Administrator shall instruct the Employer to release the remaining Retention Amount.

## **Section 3 - Control of Work**

### 3.5 Variations

The following additional section shall be added at the end of section 3.5.1:

3.5.1A Further to the provisions of clause 3.5.1, after the issue of an Order, the Contract Administrator at any time prior to the Order Completion Date may issue an instruction to include additional properties within that Order, to be completed in accordance with the Employers Requirements. Any additional properties to be included within the Order shall be payable in accordance with the Schedule of Rates, and no additional uplift shall be permitted.

3.5.1B Where the Contract Administrator issues an instruction for additional properties, and the Contractor is of the view that the inclusion of such additional properties will affect the Order Completion Date, the Contractor shall notify the Contract Administrator of this and propose such later date as the Contractor believes to be appropriate, taking into account the nature of the works required as a result of the instruction.

3.5.1C The Contract Administrator shall consider the request from the Contractor, and having done so shall adjust the Order Completion Date accordingly to such later date as is fair and reasonable taking account of the nature of the works required.

The following additional section shall be inserted after the end of section

3.5.4:

3.5.5 The Contractor shall provide and maintain a record of variations identified in each house, and those will be recorded in writing and referred to as a Confirmation of Verbal Instruction Sheet ("CVI Sheet"). The CVI Sheet must be provided to the Contract Administrator (or such other person as nominated by him) timeously for signature.

3.5.6 In the event that a CVI Sheet is not signed in accordance with section 3.5.5, the Contractor shall not be entitled to any additional payment for the variation until such time as the CVI Sheet is provided, and any such sums sought for payment will be deducted by the Contract Administrator from the applicable certificate in accordance with section 4.5.2.

### 3.6 Cancellation of an Order

Section 3.6.1 shall be deleted and replaced with the following terms:

3.6.1 The Contract Administrator may cancel any Order in its entirety, or delete or remove any property or properties from the scope of any Order

Section 3.6.2.2 shall be deleted and replaced with the following terms:

3.6.2.2 the Employer shall reimburse the Contractor such additional direct costs as may be reasonably incurred and adequately vouched by the Contractor as a result of the cancellation of an Order, or the deletion of a property after the Contractor has opened up the property in accordance with the instructions of the Contract Administrator and the Employers Requirements, subject to such sum not exceeding the maximum of 3% of the value specified in the Order, or where a property as described above has been deleted, the maximum of [3%] of the value of the works as would have been calculated had that work been completed in line with the Schedule of Rates.

3.6.2.3 Except as set out in clause 3.6.2.2 above, no compensation shall be payable (whether by direct loss and expense or any other form of damages at common law) where the Contract Administrator deletes or removes a property or properties (including (without prejudice to the generality) as a result of failed access attempts as detailed within the Employers Requirements) from an Order on or before the Order Completion Date.

### 3.8 Compliance with Instructions

Section 3.8 shall be deleted and replaced with the following:

- 3.8.1 If within 7 days after receipt of a notice from the Contract Administrator requiring compliance with a Contract Administrators instruction the Contractor does not comply, the Employer at their sole option may take any of the steps set out in sections 3.8.2 to 3.8.3 below.
- 3.8.2 The Employer may employ and pay other persons to execute any work whatsoever which may be necessary to give effect to that instruction. The Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and such costs may be withheld or deducted by the Employer from any monies due or to become due to the Contractor under this Contract or shall be recoverable from the Contractor a debt.
- 3.8.3 Where the Employer requires by virtue of any Procurement Regulations to advertise for other persons to execute any work whatsoever which may be necessary to give effect to that instruction, the Employer may serve notice on the Contractor specifying the sum of money which the Employer reasonably estimates to be the cost of remedying the Contractors failure to comply with this section 3.8.1. On service of this notice, the Employer may then proceed to withhold or deduct the monies specified in such a notice due or to become due to the Contractor under this Contract or shall be recoverable from the Contractor as a debt.
- 3.8.4 On completion of the works specified in section 3.8.3, should the amount specified in any notice served under the aforesaid section exceed the actual cost of the works and all administration expenses incurred by the Employer in complying with the Procurement Regulations, within 28 days of compiling a reconciliation account, the Employer shall make payment of any remaining balance to the Contractor. The Contractor shall not be entitled to any interest or any other sums on such a payment. In the event that any other sums remain due to the Employer by the Contractor under the Contract, the Employer shall be entitled to withhold payment of the sum described in this section 3.8.4

In this section 3.8:

**"Procurement Regulations"** means the Public Contracts (Scotland) Regulations 2012, the Local Government (Scotland) Act 1973 and any other legislation governing or regulating the purchase of goods, supplies and services by local authorities constituted under the Local Government etc (Scotland) Act 1994;

### Section 4 - Payment

### 4.3 Progress Payments

4.3.1 At the end of section 4.3.1, the following section shall be inserted:

4.3.1A Any application for payment under this section 4.3.1 shall only be accepted by the Employer where it contains the purchase order number specified in the Award Letter. Any application that does not comply with the provisions of this section shall be invalid and there shall be no obligation on the Employer to make payment until such time as the application complies with this section 4.3.1A.

4.3.1B Notwithstanding the terms of section 4.3.1A above, payment per house in respect of any application by the Contractor made under an Order shall be suspensively conditional on the works on each house detailed in the Order being completed to the satisfaction of the Contract Administrator and all properly completed test certificates and "as fitted" drawings all as set out in the Employers Requirements having been received by the Employer. The Contractor must also include the re-measurement details specified within the Employers Requirements. Any application that does not comply with the provisions of this section shall be invalid and there shall be no obligation on the Employer to make payment until such time as the application complies with this section 4.3.1B. For the avoidance of doubt, the Contractor shall be solely responsible for ensuring that all documents required in accordance with this section are delivered timeously to the Employer.

4.3.1C Where the Contractor is seeking payment in respect of any variations set out on a CVI Sheet, the Contractor must submit the CVI Sheet with the relevant application. The Employer shall be under no obligation to make payment of any variations under this Contract until such time as the provisions of this section 4.3.1C and section 3.5.5 and section 3.5.6 have been complied with.

4.3.3 The Contract Administrator shall not later than 10 days after the due date issue a certificate, stating the sum that he considers to be or to have been, due to the Contractor in respect of the progress payment, after taking into account any amounts previously certified, deducting the Retention Amount, and (where relevant) any sums paid in respect of any application under section 4.6.3 made after the issue of the latest certificate. The certificate shall state the basis on which that sum has been calculated.

4.4 This section shall not apply.

Sections 4.5.1 and 4.5.2 shall be deleted and replaced with the following

4.5.1 the Contractor shall following the Order Completion Date, and in compliance with his obligations under section 4.3.1A to 4.3.1B, make

an application to the Contract Administrator in respect of the completed Order, stating the sum that the Contractor considers will become due to him on the due date in respect of the Order, the basis on which that sum has been calculated and the applicable purchase order set out in the Award Letter;

4.5.2 Subject to clauses 4.5.3 and 4.5.4, the due date for payment in respect of the completed Order shall be 30 days after receipt by the Contract Administrator of the Contractor's application. Not later than 5 days after the due date the Contract Administrator shall issue a certificate stating the sum that he considers to be due to the Contractor in respect of the completed Order, after taking into account any amounts previously certified in respect of the Order and deducting or releasing any part of the Retention Amount in accordance with this Contract, and the basis on which that sum had been calculated.

4.6.1 Subject to section 4.6.4, the final date for payment of each payment under sections 4.3 to 4.5 shall be 30 days from its due date.

The following provisions shall be inserted after section 4.7 of the Conditions:

#### 4.8 Community Benefit Provision

4.8.1 Where the Contractor has offered within the Tender to provide Community Benefit Provision to the Employer (pursuant to the Employer's statutory powers under the Local Government in Scotland Act 2003), the Contractor shall be obliged to deliver the Community Benefit Provision in accordance with the Tender and any further requirements of the Employer and at no cost to the Employer as more particularly specified in the Employer's Requirements and Invitation to Tender.

4.8.2 In the event that the Contractor fails to provide the Community Benefit Provision in accordance with section 4.8.1, the Employer reserves the right, on giving the Contractor not less than 7 days written notice, to either (i) provide the Community Benefit Provision directly; or (ii) employ others to carry out the Community Benefit Provision.

4.8.3 The Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and such costs may be withheld or deducted by the Employer from any monies due or to become due to the Contractor under this Contract or shall be recoverable from the Contractor as a debt.

In this section 4.8.3:

**"Community Benefit Provision"** means, without prejudice to the generality, the provision of paid or unpaid work placements, modern or vocational apprenticeships or training and educational training to persons within the Contract Area;

## **Section 5 - Measurement and Valuation**

At the end of section 5.1.3, the following section shall be inserted:

- 5.1.4 The Contract Administrator shall not issue any instruction in respect of any Order affecting the design of the CDP Works without the Contractor's consent, such consent not to be withheld or unreasonably delayed.

Section 5.6.3 shall be deleted and replaced with the following term:

- 5.6.3 The all-in labour rates set out in the Schedule of Hourly Charges shall be revised at the first anniversary of the Date for Commencement, and annually thereafter in accordance with the basis (if any) set out in the Schedule or identified in the Contract Particulars or, if none, in accordance with section 5.6.5.

Section 5.6.4 shall be deleted and replaced with the following term:

- 5.6.4 Whether or not section 5.6.3 applies, any all-in hourly rate deducted or fixed under section 5.5 shall be revised in accordance with the revision provisions set out in section 5.6.3 above.

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

At the end of section 6.4.3, the following additional section shall be inserted:

### **6.4A CPD Professional Indemnity Insurance**

6.4A Where there is a Contractors Designed Portion, the Contractor shall:

6.4A.1 forthwith after this Contract has been entered into, take out (unless he has already done so) a Professional Indemnity insurance policy with limits of indemnity of the types and in amounts not less than those stated in the Contract Particulars;

6.4A.2 thereafter provided it is available at commercially reasonable rates, maintain such insurance from the Date for Commencement until [12] years after the Date for Completion;

## **Section 7 - Break Provision - Employer Only**

Section 7.1 and Section 7.2 shall be held delete and replaced with the following conditions:

- 7.1 The Employer shall have the right to reduce the duration of the Contract Period by giving the Contractor not less than 13 weeks notice to that effect. The notice may expire at any time not less than 6 months after the date of commencement of the Contract Period.
- 7.2 As from receipt by the Contractor of notice under section 7.1, the Contractor shall not, unless otherwise agreed between him and the Contract Administrator, be under any obligation to accept any subsequent Orders which cannot reasonably be completed before the expiration of the notice, but the Contractor shall not be relieved of his obligation to complete all Orders properly given prior to the receipt of the notice, even if such Orders cannot be, or are not, completed before the expiry of such notice, and to complete any subsequent Orders that can reasonably be completed before that expiration or that he otherwise accepts.

## **Section 8 - Termination for Default etc**

Section 8.4.1 shall be deleted and replaced by the following term:

8.4.1 If the Contractor:

- .1 fails to comply with the CDM Regulations; or
- .2 without reasonable cause fails in such a manner to comply with his obligations under this Contract that the carrying out of any Order or Orders (in the opinion of the Contract Administrator) is materially disrupted, suspended or delayed; or
- .3 fails to comply with any other obligation incumbent on the Contractor under this Contract,

the Contract Administrator may give to the Contractor a notice specifying the default or defaults (a "specified default")

Section 8.6 shall be held delete and replaced by the following conditions:

- 8.6 The Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment, under this or any other contract with the Employer if, in relation to this or any other such contract, the Contractor or any person employed by him, or acting on his behalf shall have:
- (i) Committed an offence under the Bribery Act 2010; or

(ii) Where the Employer is a Local Authority, shall have given any fee or reward the receipt of which is an offence under section 66 of the Local Government (Scotland) Act 1973 or any re-enactment thereof; or

(iii) Committed any breach of the Employment Relations 1999 Act (Blacklists Regulations) 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992; or

(iv) Committed any breach of the Data Protection Act 1998 by unlawful processing of personal data in connection with any blacklisting activities described at (iii) above.

At the end of Section 8.10.2, the following additional section shall be inserted:

#### **8.11 Termination by the Employer - Procurement Challenge**

8.11.1 In the event that the Employer receives notification by an economic operator (within the meaning of the Procurement Regulations) that they intend to challenge the award of this Contract by the Employer to the Contractor, the Employer may on giving immediate written notice to the Contractor, terminate (i) the employment of the Contractor; or (ii) the Contract in its entirety.

8.11.2 In the event of termination pursuant to this section 8.11, no compensation, damages or other monetary payment shall be due by the Employer to the Contractor.

8.11.3 The provisions of section 8.2.1 shall not apply to any notice served under section 8.11.

8.11.4 The right of the Employer to terminate in accordance with this section shall expire on the date occurring 4 months from the date of the Award Letter.

#### **Section 9 - Settlement of Disputes**

Section 9.1 shall not apply.

Section 9.7 shall be amended with the insertion of the following after the word "difference" and before the word "is" in the first sentence:

"that exceeds the Claim Limit"

## Schedules

### Schedule 2 Contractor's Design Submission Procedure

This is Schedule 2 referred to in and forming part of the foregoing Building Contract for use in Scotland

Dated

Between the Employer

And the Contractor

1. The Contractor shall prepare and submit two copies of each of the Contractor's Design Documents to the Contract Administrator in such format as is stated in the Employer's Requirement or the Contractor's Proposals and in sufficient time to allow any comments of the Contract Administrator to be incorporated prior to the relevant Contractor's Design Document being used for procurement and/or in the carrying out of the CDP Works.
2. Within 14 days from the date of receipt of any Contractor's Design Document, or (if later) 14 days from either the date or expiry of the period for submission of the same stated in the Contract Documents, the Contract Administrator shall return one copy of that Contractor's Design Document to the Contractor marked 'A', 'B' or 'C' provided that a document shall be marked 'B' or 'C' only where the Contract Administrator considers that it is not in accordance with this Contract.
3. If the Contract Administrator does not respond to a Contractor's Design Document in the time stated in paragraph 2, it shall be regarded as marked 'A'.
4. Where the Contract Administrator marks a Contractor's Design Document 'B' or 'C', he shall identify by means of a written comment why he considers that it is not in accordance with this Contract.
5. When a Contractor's Design Document is returned by the Contract Administrator:
  1. if it is marked 'A', the Contractor shall carry out the CDP Works in strict accordance with that document;

2. if it is marked 'B', the Contractor may carry out the CDP Works in accordance with that document, provided that the Contract Administrator's comments are incorporated into it and an amended copy of it is promptly submitted to the Contract Administrator; or
  3. if it is marked 'C', the Contractor shall take due account of the Architect/Contract Administrator's comments on it and shall either forthwith resubmit it to the Architect/ Contract Administrator in amended form for comment in accordance with paragraph 1 or notify the Architect / Contract Administrator under paragraph 7.
6. The Contractor shall not carry out any work in accordance with a Contractor's Design Document marked 'C' and the Employer shall not be liable to pay for any work within the CDP Works executed otherwise than in accordance with Contractor's Design Documents marked 'A' or 'B'.
  7. If the Contractor disagrees with a comment of the Contract Administrator and considers that the Contractor's Design Document in question is in accordance with this Contract, he shall, within 7 days of receipt of the comment, notify the Contract Administrator, in writing, that he considers that compliance with the comment would give rise to a Variation. Such notification shall be accompanied by a statement setting out the Contractor's reasons. Upon receipt of such a notification the Contract Administrator shall, within 7 days, either confirm or withdraw the comment and, where the comment is confirmed, the Contractor shall amend and resubmit the document accordingly.
  8. Provided always that:
    1. confirmation or withdrawal of a comment in accordance with paragraph 7 shall not signify acceptance by either the Employer or the Contract Administrator that the relevant Contractor's Design Document or amended document is in accordance with this Contract or that compliance with the Contract Administrator's comment would give rise to a Variation;
    2. where in relation to a comment by the Contract Administrator the Contractor does not notify him in accordance with paragraph 7, the comment in question shall not be treated as giving rise to a Variation; and
    3. neither compliance with the design submission procedure in this Schedule nor with the Contract Administrator's comments shall diminish the Contractor's obligations to ensure that the Contractor's Design Documents and CDP Works are in accordance with this Contract.

