



BIM and JCT Contracts 2024

A graphic of isometric cubes in white and light gray, arranged in a stepped pattern that rises from the bottom left towards the center of the page.

2024

PRACTICE NOTE

Practice Note – BIM and JCT Contracts

This Practice Note is intended as a general guide only. Professional advice should be obtained on any issues that may arise.

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Introduction

General and scope

- 1 This Practice Note is intended to supplement the JCT Building Information Modelling (BIM), Collaborative and Integrated Team Working Practice Note published in January 2016 which provided a general overview of BIM in the UK construction industry and was designed to assist in providing an understanding of BIM to those who may be new to or unfamiliar with the concept^[1]. This Practice Note assumes some knowledge of BIM and is intended to provide additional guidance in this area as well as practical assistance to those using JCT 2024 contracts for projects using BIM.
- 2 Industry studies, in particular the Winfield Rock Report^[2], have highlighted a gap in construction industry and legal industry understanding regarding the legal and contractual application of BIM. Such studies have also noted a lack of easy-to-digest resources for use by those preparing contract documentation to accommodate BIM and those applying contract provisions to BIM processes during construction and post-completion. This Practice Note aims to further project participants' and their professional advisers' understanding of BIM related legal and contractual issues and suggests practical ways of approaching such issues in a collaborative and constructive way.
- 3 The UK Government Construction Strategy of May 2011 mandated a minimum level of BIM on all centrally procured public sector projects by 2016 known as the UK BIM Mandate.^[3] The UK Government Construction Playbook^[4] and the UK Government's Information Management Mandate^[5] contained further requirements regarding implementing BIM. The UK Government's Information Management Mandate redefined the UK BIM Mandate and is delivered through the application of the UK BIM Framework.^[6]
- 4 Optional provisions for JCT contracts allowing for the integration of a BIM Protocol were first introduced by JCT in 2011 as part of its Public Sector Supplement^[7], and those provisions, with minor changes, were then incorporated into the 2016 edition of JCT contracts and are included in the current 2024 edition of JCT contracts.
- 5 This Practice Note was first published in 2019 and has now been updated to take into account developments during that period. It is intended to provide guidance on using a JCT contract on a project where BIM is to be used. Part A of this Practice Note consists of a commentary on BIM and the JCT Design and Build Contract ('DB'), the DB form having been chosen for review in this Note as it is understood to be the most popular form from the JCT suite for use on a project employing BIM. The commentary points out provisions in DB that may be most impacted by or relevant where projects are using BIM. Many of the principles relating to BIM discussed in the commentary in Part A may be relevant when utilising other contract forms in the JCT range for projects using BIM, but care should be taken as the provisions vary from JCT contract form to form. It is always important to refer to the specific provisions in the JCT contract form under consideration and obtain appropriate specialist advice on any issues.

[1] JCT's 2016 BIM Practice Note is available to download from JCT's website at https://www.jcttld.co.uk/docs/BIM_Practice_Note_0116.pdf

[2] See Bibliography.

[3] See Bibliography.

[4] See Bibliography.

[5] See Bibliography.

[6] The UK BIM Framework, as its website explains "sets out the overarching approach to implementing BIM in the UK" using the BS EN ISO 19650 series of standards. The ISO 19650 series is an international series of standards that has been adopted by the British Standards Institute as BS EN ISO 19650. For further information on the BS EN ISO 19650 series, see the commentary in Part A of this Practice Note on the JCT Design and Build Contract 2024 clause 2.7.2. Further guidance on the series can be found on the UK BIM Framework website: <https://ukbimframework.org>. Whilst this 2024 edition of this Practice Note reflects the BS EN ISO 19650 series it is not exhaustive on compliance with the series.

[7] The JCT 2011 Public Sector Supplement – Fair Payment, Transparency and Building Information Modelling included suggested steps to be taken or minor modifications to be made for JCT contracts, for both public sector and private sector projects, where design work and information supply was to be governed by a BIM Protocol.

- 6 One of the most widely used methods of clarifying the contractual position in relation to BIM is to incorporate a BIM Protocol into the Contract, a BIM Protocol being the document commonly used to set out the key provisions relating to BIM. JCT 2024 standard form contracts include provisions to allow for the incorporation of an agreed BIM Protocol^[8] and (in most cases) provisions which make reference to certain aspects of the BIM process. The JCT 2024 provisions do not prescribe the form of the BIM Protocol, this being a matter for the parties to decide. This Practice Note includes guidance on matters to bear in mind in preparing and incorporating a BIM Protocol.
- 7 It must also be remembered that in most cases a project is not procured through the construction contract in isolation. The Employer's approach to BIM on a project will often be influenced by the consultants appointed at the outset and the advice they provide on procuring the project and the appropriate processes and technologies to be implemented. Also, properly reflecting BIM in the construction contract and appointments, and accompanying scope and technical documents, should be a collaborative exercise, being a collaboration between those in both the legal and technical functions so as to avoid a mismatch between contractual and technical documentation and approaches.

Content of this Practice Note

- 8 This Practice Note is arranged as follows:
- Part A consists of a commentary on BIM and the JCT Design and Build Contract 2024 and points out provisions that may be most impacted by or relevant to a project using BIM. It provides suggestions on matters to bear in mind, including in preparing and incorporating a BIM Protocol.
 - Part B sets out suggestions on the main topics that may sensibly be covered in a BIM Protocol.^[9]
 - Some typical items to be considered by the Employer and the Employer's professional advisers in formulating the Exchange Information Requirements (EIR) at pre-tender stage are set out in the form of a checklist at Appendix 1.
 - A Glossary of terms is included at Appendix 2.
 - The Design and Build Contract provisions referred to in Part A are for ease of reference set out in Appendix 3.
 - Lastly, a short bibliography is included to enable readers to further their knowledge and understanding.

Use of this Practice Note

- 9 As outlined above, this Practice Note is intended to provide assistance to readers in furthering their understanding of the use of the JCT contract with BIM. It considers how the use of BIM is facilitated in JCT contracts, focusing on the JCT Design and Build Contract and the interaction of BIM with provisions in DB. This Practice Note is not intended to be prescriptive or definitive and is not a substitute for professional advice.
- 10 In Part A, words and phrases that are defined in the Design and Build Contract are referred to in capitalised form. References generally in this Note to BIM related technical terms, including terms from the standards *BS EN ISO 19650-1:2018* and *BS EN ISO 19650-2:2018*^[10], are italicised and explained in the Glossary.

[8] The mechanism for integration of an agreed BIM Protocol varies from JCT contract form to form and it will be important to refer to the provisions set out in the particular contract form being utilised.

[9] Where parties are seeking to be compliant with the BS EN ISO 19650 series in relation to their project it is instructive to refer to the UK BIM Framework protocol template document for the delivery phase BS EN ISO 19650-2 (called an 'Information Protocol' by the UK BIM Framework) on the UK BIM Framework website: <https://ukbimframework.org>.

[10] For further information on the standards, see the commentary in Part A on DB clause 2.7.2.

Part A – Commentary on BIM and the JCT Design and Build Contract (DB) 2024^[11]

| Clause | Content ^[12] | Guidance |
|----------------------------|---|---|
| Article 3 | Collaborative working | Collaboration is key to any BIM project. Note in DB 2024 the previous supplemental provision for collaborative working has been moved to form Article 3 and it is no longer optional. |
| Contract Particulars (1.1) | BIM Protocol | <p>Note that for a BIM Protocol to apply, this must be identified in the relevant entry in the Contract Particulars (see definition of BIM Protocol in DB clause 1.1), i.e. a BIM Protocol is not automatically included in the Contract Documents.</p> <p>Identify any applicable BIM Protocol in the Contract Particulars and when preparing the contract documentation for execution include the BIM Protocol in an appropriate place within the Contract Documents.</p> |
| 1.1 | Definition of BIM Protocol | <p>Establish at pre-contract stage the BIM Protocol that is to be identified in the Contract Particulars and review this carefully from a legal and technical perspective, taking into account this Note (including the comments in relation to clause 1.3 below regarding precedence), and in particular ensure that:</p> <ul style="list-style-type: none"> (a) the definitions/terminology and other provisions in the BIM Protocol do not contradict the other Contract Documents; (b) the provisions/requirements of the BIM Protocol reflect the BIM processes and risk allocation for the project (including any security risks associated with the use of or access to such information); (c) the documents and information that are likely to be an essential part of the BIM process are identified and discussed with technical and operational teams, so that these can be specified in the BIM Protocol; (d) the relevant BIM processes are included within the BIM Protocol or its appendices; examples of documents which may be included in the appendices are the <i>Exchange Information Requirements (EIR)</i>, <i>BIM Execution Plan (BEP)</i>, <i>Responsibility Matrix</i> and <i>Master Information Delivery Plan (MIDP)</i>; (e) the BIM Protocol clarifies responsibility for hosting, managing and supporting the CDE where information will be held and shared; and (f) all appendices to the BIM Protocol are properly completed. |
| 1.1 | Definition of Contract Documents | Note that an agreed BIM Protocol is a Contract Document. |
| 1.1 | Definition of Contractor's Design Documents | Ensure the BIM Protocol clearly sets out any requirements regarding BIM documents and information to be provided by the Contractor. If information to be produced by the Contractor for BIM purposes is intended to be shared and/or is a final deliverable, suitable provisions would need to be included in the BIM Protocol dealing with this scenario. |

[11] This commentary is not a substitute for professional advice and is not intended to be prescriptive or definitive.

[12] Reference is made to the topic under consideration in a given clause.

| Clause | Content ^[12] | Guidance |
|--------|---|---|
| 1.1 | Definition of Design Submission Procedure | <p>The Design Submission Procedure is as specified by the BIM Protocol or, where that is not applicable, the procedure set out in Schedule 1 subject to any modifications of that procedure specified in the Contract Documents.</p> <p>Ensure the BIM Protocol sets out an applicable procedure, if relevant, clearly specifying what information must be submitted by the Contractor and when. The Design Submission Procedure set out in Schedule 1 provides for information to be submitted by the Contractor to the Employer and returned by the Employer (marked A, B or C) in accordance with that schedule.</p> |
| 1.3 | Precedence | <p>Note clause 1.3 states as follows: “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.” Any applicable BIM Protocol is a Contract Document.</p> <p>Some model protocols claim in the case of conflict to override the Agreement and other Contract Documents.^[13] JCT considers that its contracts give sufficient latitude to BIM Protocols to reduce the risk of a conflict arising. It is suggested that any overriding provisions in a BIM Protocol (where present) should be amended and/or qualified to reflect the intended order of precedence of the Contract Documents as stated in the JCT Agreement/Contract Conditions.</p> <p>As noted elsewhere in this Practice Note, review any BIM Protocol alongside the Agreement and the other Contract Documents carefully with a view to the BIM Protocol being consistent with the Agreement and other Contract Documents.</p> |
| 1.4.6 | Documents | <p>References to documents (where a BIM Protocol applies) are to be interpreted as including information in a form conforming to that protocol. This underlines why if any <i>information model</i> is intended to be provided by the Contractor a BIM Protocol should be included in the Contract and identified in the Contract Particulars.</p> |
| 2.7.2 | Supply of Contract Documents | <p>The PAS 1192 suite of documents has played a key role in underpinning the adoption of BIM in the UK and is discussed in JCT’s 2016 BIM Practice Note. As referred to in the Introduction to this Practice Note, currently the UK BIM Framework outlines the general approach for implementing BIM in the UK and is based on the BS EN ISO 19650 series of standards. The standard that deals specifically with the delivery phase is <i>BS EN ISO 19650-2:2018</i>.</p> <p>This Practice Note takes into account the two ISO documents published in January 2019, namely <i>BS EN ISO 19650-1:2018</i> and <i>BS EN ISO 19650-2:2018</i>^[14] which replaced the PAS 1192 suite’s standards/specifications <i>BS 1192:2007+A2:2016</i> and <i>PAS 1192-2:2013</i> respectively. Whilst the ISOs largely maintain the processes and procedures of <i>PAS 1192</i>, they introduce some new procedures, terminology and language. Parties and their professional advisers should consider these standards and the further guidance on the standards available on the UK BIM Framework website.</p> <p>Note that the <i>BS EN ISO 19650</i> suite is not intended to introduce wholesale changes to BIM practices under the 1192 suite. Guidance on the UK’s transition from the 1192 suite to <i>BS EN ISO 19650</i> can be found in <i>PD 19650-0:2019</i>^[15].</p> <p>Consider whether the BIM Protocol makes it sufficiently clear how the Contract Documents and any pre-construction information are to be hosted and managed,</p> |

[13] For example, see the UK BIM Framework protocol template document for the delivery phase BS EN ISO 19650-2 clause 1.5.

[14] See Bibliography.

[15] See Bibliography.

| Clause | Content ^[12] | Guidance |
|-----------|---|---|
| | | taking into account the parties' intended approach on such matters and <i>BS EN ISO 19650-1:2018</i> and <i>BS EN ISO 19650-2:2018</i> (and any further parts of <i>BS EN ISO 19650</i> as may be relevant). For example, consider whether both parties or one of the contracting parties is to have control of and access to the <i>Common Data Environment (CDE)</i> solution implemented given the identified risks in case law ^[16] on this issue. |
| 2.8 | Supply of Contractor's Design Documents | Ensure the BIM Protocol clearly sets out the <i>exchange information requirements</i> , timescales for such information being shared and the parties' respective rights of access to that information, including whether this should extend through the lifecycle of the project. |
| 2.12-2.14 | Discrepancies | Agree a process which reflects clauses 2.12 to 2.14 for notifying and resolving BIM related discrepancies in or between the documents referred to in clauses 2.12 to 2.14 and include this in the BIM Protocol. |
| 2.26 | Relevant Events | <p>Review the list of Relevant Events and consider where any BIM related events may fall within the list e.g. events such as delay in receiving information from other members of the project team, issues surrounding the hosting, management and support of the <i>CDE</i> and changes to the BIM Protocol.</p> <p>Consider whether coordinated and cross-referenced BIM information/data will be used to assist monitoring the progress of the Works against the Completion Date.</p> |
| 2.35 | Defects | <p>Examine whether input from the Contractor is required during and after the Rectification Period as part of a "<i>soft landings</i>" process, for example to assist with building performance and post-occupancy evaluation, and consider providing for this in the BIM Protocol. Parties could consider, and might find it useful, to utilise procedures in the BIM Protocol to update as-built information to record remedial work; such updating could be done in the <i>information model</i> and managed through the <i>CDE</i>.</p> <p>Look at whether assistance will be required from the Contractor after practical completion in respect of the <i>Asset Information Model ("AIM")</i>, including to comply with <i>BS EN ISO 19650</i> requirements, and if such assistance is anticipated, consider providing for this in the BIM Protocol.</p> |
| 2.37 | As-built Drawings | Consider whether any BIM related information should be required before practical completion is achieved (alongside as-built drawings), e.g. <i>Construction Operations Building Information Exchange ("COBie")</i> information and <i>information models</i> and provide for this in the BIM Protocol. |
| 2.38 | Copyright and use | <p>Ensure the licence is consistent with the parties' intended approach to BIM and encompasses all the intended uses for the <i>information models</i>. It will also be important to consider the extent to which information provided by the Contractor will be shared by the Employer, what information is required and in what format and structure that information should be provided.</p> <p>Ensure sufficient licences have been obtained by the Employer from its appointed consultants to enable the Contractor to use the <i>information model</i> provided.</p> |

[16] *Trant Engineering v Mott MacDonald Ltd* [2017] EWHC 2061 (TCC) was concerned with a payment dispute which led to the revocation and denial of access to the CDE. The parties took opposing views on the existence of a contract and its terms. An interim injunction was granted to restore access to the CDE, subject to a payment into court pending resolution of the dispute. Note the UK BIM Framework protocol template (delivery phase) document has addressed this issue and deals with when parties should have access to the information in the CDE solution.

| Clause | Content ^[12] | Guidance |
|---------------------|--|---|
| 3.4.3 | Conditions of sub-contracting | When considering whether any supply or grant of information and licences to and by the sub-contractor are sufficient, consider the documents and information that may, by their nature, have different copyright or ownership, e.g. geometrical models and/or objects may only be under licence from manufacturers compared to <i>information models</i> where the sub-contractor may own the intellectual property. |
| 3.5 | Compliance with Employer's instructions | Look at how instructions from the Employer in relation to BIM are to be carried out, for example how the various information requirements in <i>BS EN ISO 19650-1:2018</i> are to be fulfilled and whether there will be a separate BIM related role, and consider providing for these matters in the BIM Protocol. It must be remembered that under DB only the Employer (or the Employer's Agent) has the power to issue instructions. |
| 3.9 | Instructions requiring Changes | Give thought to how Changes in relation to BIM might arise, be instructed and monitored. |
| 3.16 | CDM Regulations and Part 2A of the Building Regulations | Consider whether any BIM processes or <i>information models</i> could be utilised to improve compliance with applicable CDM Regulations and as applicable Part 2A of the Building Regulations. |
| 4.12/4.13 | Gross Valuation | Consider how receipt of <i>information models</i> may be used as part of the valuation process and/or how this may impact that process. |
| 4.21 | Relevant Matters | Review the Relevant Matters listed in clause 4.21 and consider where any events relating to/connected with the BIM process may fall within the list. |
| 5.1 | Definition of Changes | Consider how any Change impacts on the BIM process. |
| 5.2 | Valuation of Changes and provisional sum work | Give thought to how any Changes required by Employer's instructions that relate to BIM will (if not agreed) be valued in accordance with the Valuation Rules. |
| 6.15 (Section 6) | Professional Indemnity Insurance, insurance etc. | <p>The Employer should consider whether it needs to request confirmation from the Contractor that the Contractor's professional indemnity insurance policy covers production and delivery of the <i>information models</i> (this may also apply to the Employer's consultants).</p> <p>Consider who bears the risk of cyber security related risks and whether the Employer should consider obtaining or requiring cyber insurance, taking into account the provisions in <i>BS EN ISO 19650-5:2020</i>.</p> <p>Parties should obtain specialist insurance advice as necessary prior to entering into the Contract regarding the BIM roles and responsibilities being undertaken.</p> |
| 7.4 | Third Party Rights/Collateral Warranties from Contractor | Consider whether any requirements for the grant of third party rights or the giving of collateral warranties by the Contractor to any Purchaser, Tenant and/or Funder which relate to BIM should be reflected in the BIM Protocol. |
| 8.7 and 8.12 | Termination, consequences of termination | Note the requirement in clause 8.7.2.2 for the Contractor to provide the Employer with copies of all Contractor's Design Documents then prepared following an Employer termination under clauses 8.4 to 8.6 (i.e. for Contractor default, insolvency or corruption). The term "Contractor's Design Documents" includes "any other design |

| Clause | Content ^[12] | Guidance |
|-------------------------|--|---|
| | | <p>documents or information to be provided by the Contractor under the BIM Protocol.” When preparing the BIM Protocol, ensure the requirements for the Contractor to provide BIM documents and information sufficiently capture what might be needed in the event of a termination.</p> <p>Consider rights of access to the <i>CDE</i> during a period of suspension and/or following termination. For example, will the Employer have access even on termination due to Contractor insolvency or Employer default? Will the Contractor require ongoing access for audit or insurance purposes?</p> |
| 9.1 | Notification and negotiation of disputes | Note in DB 2024 the previous supplemental provision for notification and negotiation of disputes has been moved to form new clause 9.1 and it is no longer optional. This provision requires each Party to give the other prompt notice of potential disputes and encourages nomination by each Party of an employee of sufficient seniority and authority to act as its representative with a view to early settlement. This process for early notification and negotiation of disputes is consistent with the collaborative approach involved on any project using BIM and is particularly helpful for resolving potential disputes relating to <i>information models</i> . |
| Schedule 1 (paragraphs) | | |
| 1 | Submission of the Contractor's Design Documents to the Employer by the means and in the format stated in the Employer's Requirements or Contractor's Proposals | The Design Submission Procedure (as defined in clause 1.1) will be as specified by the BIM Protocol or, where that is not applicable, the procedure set out in Schedule 1 subject to any modifications of that procedure specified in the Contract Documents. Where Schedule 1 applies, ensure the BIM Protocol includes any modifications required to the process set out in that schedule. |
| 2 | Return of Contractor's Design Documents by the Employer marked 'A', 'B' or 'C'. | <p>Where Schedule 1 applies, provisions regarding marking may need to be modified (and the modifications set out in the BIM Protocol) to reflect the procedures that may be required for review and approval of <i>information models</i>. Consider whether 14 days is sufficient time for review.</p> <p>The method of return will also need to be clarified by way of a modification set out in the BIM Protocol to take account of the BIM processes contained in the protocol. For example, how will the returned comments be hosted and managed through the <i>CDE</i> solution and information management processes put into place for the project?</p> |
| Schedule 2 (paragraphs) | | |
| 7 | Performance Indicators | Where a BIM Protocol applies and Supplemental Provision 7 also applies, consider including performance indicators in respect of the use of BIM in the BIM Protocol to encourage best practice. |

Part B – BIM Protocol Checklist

A BIM Protocol will typically:

- set out the obligations of project team members in relation to information management and other BIM processes; and
- contain appendices setting out or referring to the technical documents detailing the technical aspects of those obligations and processes.

It should be noted *BS EN ISO 19650-2:2018*^[17] provides for the appointing party to establish a project information protocol, to be incorporated into all appointments. Guidance on the legal and contractual implications of *BS EN ISO 19650*, including a protocol template document, is available on the UK BIM Framework website.

Some main topics that may often be covered by a BIM Protocol, and its appendices, include the following:

- 1) **Precedence** – Review the BIM Protocol alongside the other Contract Documents with a view to the BIM Protocol being consistent with them. See the comments on precedence and clause 1.3 of the JCT Design and Build Contract in Part A.
- 2) **Co-ordination** – What is the approach to design co-ordination, e.g. how will inconsistencies be highlighted and addressed? Who will be responsible for resolving such inconsistencies?
- 3) **Technical documentation** – Check that the relevant technical information and documents are set out or identified in the BIM Protocol; for example, *Exchange Information Requirements (EIR)*, *Responsibility Matrix*, *Master Information Delivery Plan (MIDP)*, *BIM Execution Plan (BEP)* and any BIM technical specification documents.
- 4) **Employer's responsibilities** – What is required from the Employer for the BIM process to work successfully?
- 5) **Contractor's obligations** – What general obligations does the Contractor have in respect of BIM, e.g. scope of the Contractor's duties to develop existing BIM data or produce new BIM data/deliverables, and with regard to the rest of the project delivery team, if relevant? Consider setting out or referring to a programme, *responsibility matrix* and/or a BIM risk register in the BIM Protocol, where this has not been done already.
- 6) **Common Data Environment** – Who will be responsible for putting the *Common Data Environment (CDE)* process in place and monitoring how it is being used? Who will host the physical extranet used to exchange information? Who controls access to this and are there any circumstances in which it may be validly withdrawn?^[18] Who takes the risk of the *CDE* being inaccessible due to cyber issues?
- 7) **Design process** – Has a Design Submission Procedure been included in the BIM Protocol (see comments on the JCT Design and Build Contract Schedule 1 in Part A). Are there standards, methods and procedures specified in the BIM Protocol?
- 8) **Software and interoperability** – Who takes the risk of software issues e.g. data corruption, hacking, interoperability, inconsistency in *information model* formats?
- 9) **Copyright and use** – Is it clear what rights have been obtained from other members of the project team to enable the Contractor to use those team members' *information models*? What rights are being provided by the Contractor to the Employer and other third parties?
- 10) **Security** – Are the Contractor's obligations in relation to information security, including any project-specific security obligations and remedies, insofar as relevant to the BIM process, set out in the BIM Protocol?

[17] For further information on the BS EN ISO19650 series, see the commentary in Part A on DB clause 2.7.2 and the UK BIM Framework website.

[18] *Trant Engineering v Mott MacDonald Ltd* [2017] EWHC 2061 (TCC) was concerned with a payment dispute which led to the revocation and denial of access to the CDE. The parties took opposing views on the existence of a contract and its terms. An interim injunction was granted to restore access to the CDE, subject to a payment into court pending resolution of the dispute.

- 11) **Practical completion** – What BIM deliverables are required from the Contractor prior to practical completion? Is there mention of the Employer's intended use at the operation stage and/or the Employer's *Asset Information Model*, if relevant?
- 12) **Purchasers, Tenants, Funders** – Consider whether any requirements of Purchasers, Tenants or Funders should be reflected in the BIM Protocol.

Note – The above is a general outline of what could be covered in a BIM Protocol and some questions to consider. It is not intended to be a definitive or exhaustive list. The necessary content of a BIM Protocol will vary from contract to contract and depend on a number of factors, including the nature of the project, the approach to procurement of the design and/or construction processes and the underlying contractual arrangements. This is not legal advice. Appropriate legal and technical advice should always be taken in relation to any BIM Protocol prior to the tender stage.

Appendix 1 – Checklist of common contents of Exchange Information Requirements (EIR)

Below are the main issues or topics that may often be relevant for inclusion in an EIR.

Information

- ☐ What purposes does the Employer require the information for?
- ☐ Are work stages aligned with data and *information exchanges*?
- ☐ How are information deliverables to be communicated?
- ☐ What is the *level of information need* for given elements at different work stages?
- ☐ How might health and safety and CDM be enhanced through BIM and will this impact information requirements/deliverables?

Management

- ☐ What BIM standards are to be adopted?
- ☐ What are the roles and responsibilities associated with the management of information?
- ☐ What are the collaboration processes for information sharing?
- ☐ How will the modelling process be managed?
- ☐ What security measures are required to secure the data?
- ☐ What is the coordination process to meet quality control requirements?
- ☐ How will the integrity of the information and data be maintained?
- ☐ What are the *information exchange* standards for asset information?
- ☐ What templates should be used for information coordination and consistency?
- ☐ What training is to be provided by the Employer or required to be delivered by the Contractor/consultant?

Technical

- ☐ Are there software platforms that need to be adopted?
- ☐ Does the Employer have any system constraints?
- ☐ What formats need to be adopted to deliver data and information?
- ☐ Will common coordinates be adopted?

Commercial

- ☐ How should the Contractor/consultant prepare, deliver and maintain its response to the *Exchange Information Requirements*?
- ☐ What information does a bidder need to provide as part of a bid submission?

Note – The above is a general outline of what could often be covered in an EIR and some questions to consider. It is not intended to be a definitive or exhaustive list. The necessary content of an EIR will vary depending on a number of factors. This is not legal advice and appropriate legal and technical advice should always be taken in relation to the creation of any EIR.

Appendix 2 – Glossary

| | |
|---|---|
| Asset Information Model (AIM) | <i>Information model</i> relating to the operational phase of the project, i.e. post-construction, containing the data needed to assist in the operation and management of the completed asset/project. |
| BIM Execution Plan (BEP) | <p>A plan prepared by the supplier/Contractor to explain how BIM will be carried out and how they will comply with the Exchange Information Requirements (EIR). The BEP describes the organisational methods to be used and may have graphical representations as well as processes and models. It also clarifies roles and responsibilities.</p> <p>Also see <i>BS EN ISO 19650-2:2018</i> definition: Plan that explains how the information management aspects of the appointment will be carried out by the delivery team.</p> <p>There is usually a “Pre-Contract BEP” which sets out the response to the EIR. This focuses on the proposed approach to information management, and the project team’s capability and capacity to manage information. See also s.5.3.2 of <i>BS EN ISO 19650-2:2018</i>.</p> <p>There is then a “Post-Contract BEP” which sets out the agreed details for delivery of the BIM aspects of the project and which should be appended to the BIM Protocol and incorporated into the Contract. See also s.5.4 of <i>BS EN ISO 19650-2:2018</i>.</p> |
| Building Information Modelling (BIM) | Use of a shared digital representation of a built asset/facility to facilitate design, construction and operation processes to form a reliable basis for decisions. |
| COBie | An internationally agreed <i>Information Exchange</i> schema for exchanging facility information between the Employer and the supply chain. See also <i>BS 1192-4:2014</i> . |
| Common Data Environment (CDE) | A single source of information for any given project or asset, for collecting, managing and disseminating information through a managed process. See also s.5.1.7 of <i>BS EN ISO 19650-4:2022</i> . |
| Exchange Information Requirements (EIR) | Specifications for what, when, how and for whom information is to be produced in relation to an appointment. Referred to as “Employer Information Requirements” in the 1192 suite. |
| Information Exchange | The act of satisfying an information requirement or part thereof. |
| Information Model | <p>Set of structured and unstructured information suitably named and retrievable from within a file, system or application storage hierarchy.</p> <p>Structured information includes geometrical models, schedules and databases. Unstructured information includes documentation, video clips and sound recordings.</p> |
| Levels (e.g. Level 2; Level 3) | There is no established standard definition. However, for general understanding, the degree of maturity or adoption of BIM in the UK was split up into milestones called ‘Levels’. This has been replaced in <i>BS EN ISO 19650</i> , by “BIM according to ISO 19650”; see s.6 of <i>PD 19650-0:2019</i> for further explanation. |

| | |
|---|--|
| Level of information need | <p>Framework that defines the extent and granularity of each information deliverable. See also s.11.2 of <i>BS EN ISO 19650-1:2018</i>.</p> <p>Previously referred to (in the 1192 suite) as “Level of Definition”, being the aggregate of Level of Detail (“LOD”) and Level of Information (“LOI”).</p> |
| Master Information Delivery Plan (MIDP) | Plan incorporating all relevant Task Information Delivery Plans (“TIDP”). TIDP is defined as a schedule of information containers and delivery dates, for a specific task team. |
| Protocol | Supplementary legal agreement, usually included as a schedule to a contract or appointment for a project using BIM, setting out the parties’ rights, duties and risk allocation for the BIM process, for example see the UK BIM Framework protocol template document on the UK BIM Framework website. |
| Responsibility Matrix | Chart that describes the participation to be made by various roles or functions in completing tasks or deliverables. |
| Soft Landings | The phrase ‘soft landing’ has been used to describe the need for a smooth transfer from the design/construction stage to the operational stage of a newly built asset. Government Soft Landings (GSL) has been developed to help drive better outcomes for assets undergoing design and construction. Whilst GSL is not a prerequisite of BIM it is a key feature of the Government’s aim to derive maximum benefit from the use of BIM. Soft landings as defined by BSRIA may be more applicable outside the public sector. |

Appendix 3 – Extracts from the JCT Design and Build Contract 2024

Articles

Article 3

Collaborative working

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

Contract Particulars

1.1

BIM Protocol (where applicable)

(State title, edition, date or other identifiers of the relevant documents.)

Conditions

1.1 Definitions

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:

BIM Protocol: (where applicable) the document identified as such in the **Contract Particulars** (against the reference to **clause 1.1**).

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.

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 the Contractor under the BIM Protocol.

Design Submission Procedure: such procedure as is specified by the BIM Protocol or, where that is not applicable, the procedure set out in **Schedule 1**, subject to any modifications of that procedure specified in the Contract Documents.

1.3 Agreement etc. to be read as a whole

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.

1.4 Headings, references to persons, legislation etc.

In the Agreement and these Conditions, unless the context otherwise requires:

- 1.4.6 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.

2.7 Contract Documents

- 2.7.2 Immediately after the execution of this Contract the Employer, without charge to the Contractor, shall (unless previously provided or unless the BIM Protocol or other communications protocol requires otherwise) provide the Contractor with one copy, certified on behalf of the Employer, of the Contract Documents, together with any pre-construction information required to be provided to the Contractor under regulation 4(4) of the CDM Regulations and any building information required to be provided to the Contractor under regulation 11A(4) of the Building Regulations.

2.8 Construction information

Save for any Contractor's Design Documents contained in the Contractor's Proposals, the Contractor shall without charge provide to the Employer copies of the Contractor's Design Documents as and when necessary from time to time in accordance with the Design Submission Procedure and the Contractor shall not commence any work to which such a document relates before that procedure has been complied with.

2.12 Employer's Requirements – inadequacy

- 2.12.1 If an inadequacy is found in any design in the Employer's Requirements and the Contractor under clause 2.11 is not responsible for verifying its adequacy, then, if or to the extent that the inadequacy is not dealt with in the Contractor's Proposals, the Employer's Requirements shall be corrected, altered or modified accordingly.
- 2.12.2 Subject to clause 2.15, any correction, alteration or modification under clause 2.12.1 shall be treated as a Change.

2.13 Notice of discrepancies etc.

If the Contractor becomes aware of any inadequacy as is referred to in clause 2.12 or any other discrepancy or divergence in or between any of the following, namely:

- 2.13.1 the Employer's Requirements;
- 2.13.2 the Contractor's Proposals and other Contractor's Design Documents; and
- 2.13.3 any instruction issued by the Employer under these Conditions;

it shall immediately give notice with appropriate details to the Employer, and the Employer shall issue instructions in that regard.

2.14 Discrepancies in documents

- 2.14.1 Where the discrepancy or divergence to be notified under clause 2.13 is within or between the Contractor's Proposals and/or other Contractor's Design Documents, the Contractor shall notify the Employer of its proposed amendment to remove the discrepancy or divergence and (subject to compliance with Statutory Requirements) the Employer shall decide between the discrepant items or otherwise may accept the Contractor's proposed amendment; the Contractor shall be obliged to comply with the decision or acceptance by the Employer without cost to the Employer.

- 2.14.2 Where the discrepancy is within the Employer's Requirements (including any Change to them) the Contractor's Proposals shall prevail (subject to compliance with Statutory Requirements), without any adjustment of the Contract Sum. Where the Contractor's Proposals do not deal with the discrepancy, the Contractor shall notify the Employer of its proposed amendment to deal with the discrepancy and the Employer shall either agree the proposed amendment or decide how the discrepancy is to be dealt with; that agreement or decision shall be notified to the Contractor and treated as a Change.

2.26 Relevant Events

The following are the Relevant Events referred to in clauses 2.24 and 2.25:

- 2.26.1 Changes and any other matters or instructions which under these Conditions are to be treated as, or as requiring, a Change;
- 2.26.2 Employer's instructions:
- 2.26.2.1 under clause 2.13, except for any instructions relating to a discrepancy or divergence in or between the Contractor's Proposals and/or other Contractor's Design Documents;
 - 2.26.2.2 under clause 3.10 or 3.11; or
 - 2.26.2.3 for the opening up for inspection or testing of any work, materials or goods under clause 3.12 or 3.13.3 (including making good), unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract;
- 2.26.3 deferment of the giving of possession of the site or any Section under clause 2.4;
- 2.26.4 compliance with clause 3.15.1 or with the Employer's instructions under clause 3.15.2 or (except to the extent that the presence of asbestos or contaminated material has been identified in the Contract Documents and/or any such material has been brought on to the site by the Contractor or any Contractor's Person) compliance with clause 3.15.3 or with Employer's instructions under clause 3.15.4;
- 2.26.5 suspension by the Contractor under clause 4.11 of the performance of any or all of its obligations under this Contract;
- 2.26.6 any impediment, prevention or default, whether by act or omission, by the Employer or any Employer's Person, except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or any Contractor's Person;
- 2.26.7 an epidemic:
- 2.26.7.1 first occurring after the Base Date which affects the execution of the Works; or
 - 2.26.7.2 first occurring before the Base Date whose effects change after the Base Date and any such change affects the execution of the Works
- by limiting the availability or use of labour or the availability of persons engaged in providing services for the Works where such labour and/or persons are necessary for the proper carrying out of the Works, or preventing the Contractor from, or delaying the Contractor in, securing such goods or materials or such services as are necessary for the proper carrying out of the Works;
- 2.26.8 the occurrence after the Base Date of any of the following which affects the execution of the Works:
- 2.26.8.1 the passing into law of any statute, statutory instrument or other subordinate legislation, regulation or bye-law, whether to make a new law or change or repeal an existing law;
 - 2.26.8.2 the exercise of any statutory power, except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or any Contractor's Person; or

2.26.8.3 the publication of any guidance,

by the United Kingdom Government or any of the devolved administrations, or any Local or Public Authority or any equivalent authority governed by public law in any of the devolved administrations, or in the case of guidance by the Construction Leadership Council or its successor;

- 2.26.9 the carrying out by a Statutory Provider of work in pursuance of its statutory obligations in relation to the Works, or the failure to carry out such work;
- 2.26.10 exceptionally adverse weather conditions;
- 2.26.11 loss or damage occasioned by any Specified Peril;
- 2.26.12 civil commotion or the use or threat of terrorism and/or the activities of the relevant authorities in dealing with such event or threat;
- 2.26.13 strike, lock-out or local combination of any trades employed upon the Works or engaged in the preparation, manufacture or transportation of any of the goods or materials required for them or any persons engaged in design work for the Works;
- 2.26.14 delay in receipt of any necessary permission or approval of any statutory body which the Contractor has taken all practicable steps to avoid or reduce;
- 2.26.15 force majeure.

2.35 Schedules of defects and instructions

If any defects, shrinkages or other faults in the Works or a Section appear within the relevant Rectification Period due to any failure of the Contractor to comply with its obligations under this Contract:

- 2.35.1 such defects, shrinkages and other faults shall be specified by the Employer in a schedule of defects which it shall deliver to the Contractor as an instruction not later than 14 days after the expiry of that Rectification Period; and
- 2.35.2 prior to issue of that schedule, the Employer may whenever it considers it necessary issue instructions requiring any such defect, shrinkage or other fault to be made good, provided no instructions under this clause 2.35.2 shall be issued after delivery of that schedule or more than 14 days after the expiry of the relevant Rectification Period.

Within a reasonable time after receipt of such schedule or instructions, the defects, shrinkages and other faults shall at no cost to the Employer be made good by the Contractor unless the Employer shall otherwise instruct. If the Employer so instructs otherwise, an appropriate deduction may be made from the Contract Sum in respect of the defects, shrinkages or other faults not made good.

2.37 As-built Drawings

The Contractor, in addition to its obligations under the CDM Regulations in relation to information for the health and safety file, shall, before practical completion of the Works or relevant Section and without further charge to the Employer, supply for retention and use by the Employer such Contractor's Design Documents and related information as is specified in the Contract Documents or as the Employer may reasonably require that show or describe the Works as built or relate to the maintenance and operation of them or their installations.

2.38 Copyright and use

- 2.38.1 Subject to any rights in any designs, drawings and other documents supplied to the Contractor for the purposes of this Contract by or on behalf of the Employer, all rights including (without limitation) copyright in all Contractor's Design Documents shall remain vested in the Contractor.

- 2.38.2 Subject to all sums due and payable under this Contract to the Contractor having been paid, the Employer shall have an irrevocable, royalty-free, non-exclusive licence to copy and use the Contractor's Design Documents and to reproduce the designs and content of them for any purpose relating to the Works including, without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Works. That licence shall enable the Employer to copy and use the Contractor's Design Documents for an extension of the Works but shall not include any right or licence to reproduce the designs contained in them for any such extension.
- 2.38.3 The licence shall be assignable to any owner from time to time of the Works or any part of them and may be sub-licensed to any owner or tenant of the Works or part of them and to any person engaged for the purposes permitted by clause 2.38.2.
- 2.38.4 The Contractor shall not be liable for any use by the Employer of any of the Contractor's Design Documents for any purpose other than that for which they were prepared.

3.4 Conditions of sub-contracting

Where considered appropriate, the Contractor shall engage the sub-contractor using the JCT Design and Build Sub-Contract. It shall be a condition of any sub-contract that:

- 3.4.3 where documents or information and/or the grant of licences are or may be required from the sub-contractor for the BIM Protocol, where applicable, and/or for the purposes of clauses 2.37 and 3.16 of these Conditions, the sub-contract shall also provide for the supply and grant to and by the sub-contractor of all information and licences reasonably necessary for that purpose.

3.5 Compliance with instructions

The Contractor shall forthwith comply with all instructions issued to it by the Employer on any matter on which these Conditions expressly empower the Employer to issue instructions, save that:

- 3.5.1 where an instruction requires a Change of the type referred to in clause 5.1.2, the Contractor need not comply to the extent that it notifies a reasonable objection to the instruction to the Employer;
- 3.5.2 in the case of a notification by the Contractor under clause 2.20.2, the Contractor need not comply pending confirmation of the instruction.

3.9 Instructions requiring Changes

- 3.9.1 The Employer may issue instructions requiring a Change, subject to clause 3.9.4 and provided that the Employer may not effect a Change which is, or which makes necessary, an alteration or modification in the design of the Works without the Contractor's consent.
- 3.9.2 Any instruction of the type referred to in clause 5.1.2 shall be subject to the Contractor's right of reasonable objection set out in clause 3.5.1.
- 3.9.3 No Change required or sanctioned by the Employer shall vitiate this Contract.
- 3.9.4 The Contractor shall, within a reasonable time after receipt of an instruction effecting a Change or of an instruction in regard to the expenditure of a Provisional Sum included in the Employer's Requirements, notify the Employer whether in its capacity as Principal Designer and/or Principal Contractor it has any objection to such instruction. If the Contractor has any reasonable objection the Employer shall, to the reasonable satisfaction of the Contractor, vary the terms of the instruction so as to remove that objection; and, until the Employer has so varied the terms of the instruction, the Contractor shall not be required pursuant to clauses 2.1.1 to 2.1.4 to comply with such instruction.

3.16 CDM Regulations and Part 2A of the Building Regulations

Without limiting either Party's statutory and regulatory duties and responsibilities, each Party undertakes to the other that in relation to the Works and site it will duly comply with applicable CDM Regulations and as applicable Part 2A of the Building Regulations^[40], and in particular but without limitation:

- 3.16.1 where the Contractor is not the Principal Designer, the Employer shall ensure that the Principal Designer carries out its duties and, where the Contractor is not the Principal Contractor, shall ensure that the Principal Contractor carries out its duties under those regulations;
- 3.16.2 where the Contractor is and while it remains the Principal Designer, it shall comply with the duties of a Principal Designer and (where it is the Principal Designer for the purposes of the CDM Regulations) it shall without charge prepare, and deliver to the Employer, the health and safety file;
- 3.16.3 the Contractor shall comply with:^[41]
 - 3.16.3.1 regulations 8 to 10 and 15 of the CDM Regulations and, where it is the Principal Contractor for the purposes of the CDM Regulations, with regulations 12 to 14 of those regulations; and
 - 3.16.3.2 regulations 11F, 11J, 11K and 11L of the Building Regulations and, where it is the Principal Contractor for the purposes of the Building Regulations, with regulation 11N of those regulations;
- 3.16.4 if the Employer appoints a replacement for any Principal Designer or Principal Contractor, the Employer shall immediately upon that appointment notify the Contractor with details of the new appointee.

[40] Part 2A of the Building Regulations, introduced by the Building Regulations etc. (Amendment) (England) Regulations 2023 pursuant to the Building Safety Act 2022, sets out a framework of safety duties and competence requirements for those persons involved in the procurement, design and undertaking of building work to which building regulations apply (including higher-risk building work for which additional duties apply). If any project involves higher-risk building work, see the Design and Build Contract Guide.

[41] Under the CDM Regulations and the Building Regulations, where the Employer is a domestic client (as defined in regulation 2(1) in both sets of regulations), the Principal Contractor may also be responsible for carrying out certain of the client's duties.

4.12 Gross Valuation – Alternative A

The Gross Valuation for each Interim Payment shall be the total of the amounts referred to in clauses 4.12.1 and 4.12.2, less the deductions referred to in clause 4.12.3, each calculated as at the Interim Valuation Date:

4.12.1 the total of the following, which are subject to Retention:

- 4.12.1.1 the cumulative value of stages completed;
- 4.12.1.2 the value of any Changes or other work referred to in clause 5.2 that are relevant to the Interim Payment (whether agreed pursuant to clause 5.2 or valued under the Valuation Rules) but excluding any amounts referred to in clause 4.12.2.4;
- 4.12.1.3 the value of any Listed Items for which the conditions set out in clause 4.15 are satisfied; and
- 4.12.1.4 where JCT Fluctuations Option C is applicable and where in accordance with the JCT Formula Rules amounts in the Value of Work are to be allocated to lift installations, structural steelwork installations or catering equipment installations, the total value of Site Materials of those descriptions, provided that their value shall only be included if they are adequately protected against weather and other casualties and they are not on the Works prematurely;

those values shall be adjusted, where appropriate, in accordance with any applicable Fluctuations Provision or any Acceleration Quotation for which there has been Confirmed Acceptance;

4.12.2 the total of the following, which are not subject to Retention:

- 4.12.2.1 any amounts to be included in accordance with clause 4.3 by the Employer as a result of payments made or costs incurred by the Contractor under clause 2.5.2, 2.20, 3.12, 6.10.2 or 6.10.3, 6.11.3, 6.12.2 or 6.20;
- 4.12.2.2 any amounts payable under clause 4.11.2;
- 4.12.2.3 the amount of any loss and/or expense to which the Contractor is entitled under clause 4.19.1 or by a Confirmed Acceptance;
- 4.12.2.4 where Insurance Option B or C applies or to the extent that the work is under clause 6.13.5.3 to be treated as a Change, any amounts in respect of reinstatement work under clause 6.13.4; and
- 4.12.2.5 any amount payable to the Contractor under any applicable Fluctuations Provision, other than by means of an adjustment made under clause 4.12.1;

4.12.3 the following deductions:

- 4.12.3.1 any amounts deductible under clause 2.35, 3.6, 6.12.2 or 6.19.2; and
- 4.12.3.2 any amount allowable by the Contractor under clause 6.10.2 or under any applicable Fluctuations Provision, other than by means of an adjustment made under clause 4.12.1.

4.13 Gross Valuation – Alternative B

The Gross Valuation for each Interim Payment shall be the total of the amounts referred to in clauses 4.13.1 and 4.13.2, less the deductions referred to in clause 4.13.3, each calculated as at the Interim Valuation Date:

4.13.1 the total values of the following, which are subject to Retention:

- 4.13.1.1 work properly executed including any design work carried out by the Contractor and work so executed for which a value has been agreed pursuant to clause 5.2 or which has been valued under the Valuation Rules, but excluding any amounts referred to in clause 4.13.2.4;
- 4.13.1.2 Site Materials provided they are adequately protected against weather and other casualties and they are not on the Works prematurely; and
- 4.13.1.3 Listed Items (if any) for which the conditions set out in clause 4.15 are satisfied;

those values shall be adjusted, where appropriate, in accordance with any applicable Fluctuations Provision or any Acceleration Quotation for which there has been Confirmed Acceptance;

4.13.2 the total of the following, which are not subject to Retention:

- 4.13.2.1 any amounts to be included in accordance with clause 4.3 by the Employer as a result of payments made or costs incurred by the Contractor under clause 2.5.2, 2.20, 3.12, 6.10.2 or 6.10.3, 6.11.3, 6.12.2 or 6.20;
- 4.13.2.2 any amounts payable under clause 4.11.2;
- 4.13.2.3 the amount of any loss and/or expense to which the Contractor is entitled under clause 4.19.1 or by a Confirmed Acceptance;
- 4.13.2.4 where Insurance Option B or C applies or to the extent that the work is under clause 6.13.5.3 to be treated as a Change, any amounts in respect of reinstatement work under clause 6.13.4; and
- 4.13.2.5 any amount payable to the Contractor under any applicable Fluctuations Provision, other than by means of an adjustment made under clause 4.13.1;

4.13.3 the following deductions:

- 4.13.3.1 any amounts deductible under clause 2.35, 3.6, 6.12.2 or 6.19.2; and
- 4.13.3.2 any amount allowable by the Contractor under clause 6.10.2 or under any applicable Fluctuations Provision, other than by means of an adjustment made under clause 4.13.1.

4.21 Relevant Matters

The following are the Relevant Matters:

- 4.21.1 Changes and any other matters or instructions which under these Conditions are to be treated as a Change;
- 4.21.2 Employer's instructions:
 - 4.21.2.1 under clause 3.10 or 3.11; or
 - 4.21.2.2 for the opening up for inspection or testing of any work, materials or goods under clause 3.12 (including making good), unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract;
- 4.21.3 compliance with clause 3.15.1 or with Employer's instructions under clause 3.15.2 or (except to the extent that the presence of asbestos or contaminated material has been identified in the Contract Documents and/or any such material has been brought on to the site by the Contractor or any Contractor's Person) compliance with clause 3.15.3 or with Employer's instructions under clause 3.15.4;
- 4.21.4 delay in receipt of any permission or approval for the purposes of Development Control Requirements necessary for the Works to be carried out or proceed, which delay the Contractor has taken all practicable steps to avoid or reduce;
- 4.21.5 any impediment, prevention or default, whether by act or omission, by the Employer or any Employer's Person, except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or any Contractor's Person;
- 4.21.6 (where the Contract Particulars state that clause 4.21.6 applies) an epidemic:
 - 4.21.6.1 first occurring after the Base Date which affects the execution of the Works; or
 - 4.21.6.2 first occurring before the Base Date whose effects change after the Base Date and any such change affects the execution of the Works

by limiting the availability or use of labour or the availability of persons engaged in providing services for the Works where such labour and/or persons are necessary for the proper carrying out of the Works, or preventing the Contractor from, or delaying the Contractor in, securing such goods or materials or such services as are necessary for the proper carrying out of the Works;
- 4.21.7 (where the Contract Particulars state that clause 4.21.7 applies) the occurrence after the Base Date of any of the following which affects the execution of the Works:
 - 4.21.7.1 the passing into law of any statute, statutory instrument or other subordinate legislation, regulation or bye-law, whether to make a new law or change or repeal an existing law;
 - 4.21.7.2 the exercise of any statutory power, except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or any Contractor's Person; or
 - 4.21.7.3 the publication of any guidance,

by the United Kingdom Government or any of the devolved administrations, or any Local or Public Authority or any equivalent authority governed by public law in any of the devolved administrations, or in the case of guidance by the Construction Leadership Council or its successor.

5.1 Definition of Changes

The term 'Change' means:

- 5.1.1 a change in the Employer's Requirements which makes necessary the alteration or modification of the design, quality or quantity of the Works, otherwise than such as may be reasonably necessary for the purposes of rectification pursuant to clause 3.13, including:
 - 5.1.1.1 the addition, omission or substitution of any work;
 - 5.1.1.2 the alteration of the kind or standard of any of the materials or goods to be used in the Works;
 - 5.1.1.3 the removal from the site of any work executed or Site Materials other than work, materials or goods which are not in accordance with this Contract;
- 5.1.2 the imposition by the Employer of any obligations or restrictions in regard to the following matters or any addition to or alteration or omission of any such obligations or restrictions that are so imposed or are imposed in the Employer's Requirements in regard to:
 - 5.1.2.1 access to the site or use of any specific parts of the site;
 - 5.1.2.2 limitations of working space;
 - 5.1.2.3 limitations of working hours; or
 - 5.1.2.4 the execution or completion of the work in any specific order.^[47]

5.2 Valuation of Changes and provisional sum work

The value of:

- 5.2.1 all Changes required by Employer's instructions;
- 5.2.2 all work which under these Conditions is to be treated as a Change; and
- 5.2.3 all work executed by the Contractor in accordance with Employer's instructions as to the expenditure of Provisional Sums included in the Employer's Requirements

shall be such amount as is agreed by the Employer and the Contractor or, where not agreed, the amount valued (a 'Valuation') in accordance with clauses 5.4 to 5.7 ('the Valuation Rules').

[47] See clause 3.5.1 for the Contractor's right of reasonable objection to Changes.

6.15 Obligation to insure

The Contractor shall:

- 6.15.1 forthwith after this Contract has been entered into, take out (unless it 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^[55];
- 6.15.2 thereafter, provided it is available at commercially reasonable rates and terms, maintain such insurance until the expiry of the period stated in the Contract Particulars from the date of practical completion of the Works; and
- 6.15.3 as and when reasonably requested to do so by the Employer, produce for inspection documentary evidence that such insurance has been effected and/or is being maintained.

[55] See the Design and Build Contract Guide.

7.4 Rights Particulars

The requirements for the grant of P&T Rights and Funder Rights by the Contractor and sub-contractors and any requirement for the grant of Employer Rights by any sub-contractors ('Rights Particulars') are set out in the document(s) identified in the Contract Particulars against the reference to clause 7.4.^[56] As respects those requirements:

- 7.4.1 such rights are conferred only on persons sufficiently identified (by name, class or description) in the Rights Particulars;
- 7.4.2 if in relation to an identified beneficiary the Rights Particulars fail to specify the method by which such rights are to be conferred, the Contractor in relation to rights to be granted by it may elect to do so either as third party rights or by collateral warranty;
- 7.4.3 unless otherwise stated in the Rights Particulars, the term 'the Consultants' shall in all third party rights and/or collateral warranties to be granted mean the Employer's Agent (including any replacements) and any other consultants providing design services to the Employer in connection with the Works.

[56] The relevant Rights Particulars should identify the beneficiaries (by name, class or description) and the sub-contractors which 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.jctltd.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 5 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.

8.7 Consequences of termination under clauses 8.4 to 8.6

If the Contractor's employment is terminated under clause 8.4, 8.5 or 8.6:

- 8.7.1 the Employer may employ and pay other persons to carry out and complete the Works and to make good any defects of the kind referred to in clause 2.35, or may do so itself, and the Employer and such other persons may enter upon and take possession of the site and the Works and (subject to obtaining any necessary third party consents) may use all temporary buildings, plant, tools, equipment and Site Materials for those purposes;
- 8.7.2 the Contractor shall:
 - 8.7.2.1 when required in writing by the Employer to do so (but not before), remove or procure the removal from the Works of any temporary buildings, plant, tools, equipment, goods and materials belonging to the Contractor or Contractor's Persons;
 - 8.7.2.2 provide the Employer with copies of all Contractor's Design Documents then prepared, whether or not previously provided;
 - 8.7.2.3 if so required by the Employer within 14 days of the date of termination, assign (so far as assignable and so far as it may lawfully be required to do so) to the Employer, without charge, the benefit of any agreement for the supply of materials or goods and/or for the execution of any work for the purposes of this Contract^[58];
- 8.7.3 no further sum shall become due to the Contractor under this Contract other than any amount that may become due to it under clause 8.7.6 or 8.8.3 and the Employer need not pay any sum that has already become due either:
 - 8.7.3.1 insofar as the Employer has given or gives a Pay Less Notice under clause 4.9.5; or
 - 8.7.3.2 if the Contractor, after the last date upon which such notice could have been given by the Employer in respect of that sum, has become insolvent within the meaning of clauses 8.1.1 to 8.1.3;
- 8.7.4 upon completion of the Works and the making good of defects in them (or of instructions otherwise, as referred to in clause 2.35) ('completion'), the Employer shall forthwith notify the Contractor of the date of completion and such completion shall be deemed for the purposes of this clause 8.7 to have taken place on the date so notified;
- 8.7.5 the due date for the Termination Payment under clause 8.7.6 shall be 2 months after the date of completion as referred to in clause 8.7.4;
- 8.7.6 the amount due on termination shall be calculated in accordance with the following amounts:
 - 8.7.6.1 the amount of expenses properly incurred by the Employer, including those incurred pursuant to clause 8.7.1 and, where applicable, clause 8.5.3.3, and of any direct loss and/or damage caused to the Employer and for which the Contractor is liable, whether arising as a result of the termination or otherwise;
 - 8.7.6.2 the amount of payments made to the Contractor; and
 - 8.7.6.3 the total amount which would have been payable for the Works in accordance with this Contract,and if the sum of the amounts referred to in clauses 8.7.6.1 and 8.7.6.2 exceeds the amount referred to in clause 8.7.6.3, the difference shall be an amount payable by the Contractor to the Employer or, if that sum is less, by the Employer to the Contractor (the 'Termination Payment').

[58] Clause 8.7.2.3 may not be effectual in cases of Contractor's insolvency.

8.12 Consequences of Termination under clauses 8.9 to 8.11, etc.

If the Contractor's employment is terminated under any of clauses 8.9 to 8.11 or under clause 6.11.2.2 or 6.14:

- 8.12.1 no further sums shall become due to the Contractor otherwise than in accordance with this clause 8.12;
- 8.12.2 the Contractor shall:
 - 8.12.2.1 with all reasonable dispatch remove or procure the removal from the site of any temporary buildings, plant, tools and equipment belonging to the Contractor and Contractor's Persons and, subject to the provisions of clause 8.12.5, all goods and materials (including Site Materials); and
 - 8.12.2.2 provide to the Employer copies of the documents referred to in clause 2.37 then prepared;
- 8.12.3 the Contractor shall not later than 2 months after the date of termination provide the Employer with all documents necessary for calculating the amounts referred to in clause 8.12.5. Not later than 3 months after receipt of those documents, the Employer shall prepare and send to the Contractor an account which shall set out the amounts referred to in clause 8.12.5;
- 8.12.4 the due date for the Termination Payment under clause 8.12.5 shall be the last date for issue of the Employer's account under clause 8.12.3;
- 8.12.5 the amount due on termination from the Employer to the Contractor or (if a negative amount) from the Contractor to the Employer shall be the aggregate of:
 - 8.12.5.1 the total value of work properly executed at, and of any design work properly carried out before, the date of termination of the Contractor's employment, ascertained in accordance with these Conditions as if the employment had not been terminated, together with any other amounts due to the Contractor under these Conditions;
 - 8.12.5.2 any sums ascertained in respect of direct loss and/or expense under clause 4.20 (whether ascertained before or after the date of termination);
 - 8.12.5.3 the reasonable cost of removal under clause 8.12.2;
 - 8.12.5.4 the cost of materials or goods (including Site Materials) properly ordered for the Works for which the Contractor then has paid or is legally bound to pay;
 - 8.12.5.5 (only where the Contractor's employment is terminated either under clause 8.9 or 8.10, or under clause 8.11.1.3 if the loss or damage to the Works was caused by the negligence or default of the Employer or any Employer's Person) any direct loss and/or damage caused to the Contractor by the termination,

less amounts previously paid to the Contractor under this Contract, but without deduction of any Retention (the 'Termination Payment'). Payment by the Employer for any such materials and goods as are referred to in clause 8.12.5.4 shall be subject to those materials and goods thereupon becoming the Employer's property.

9.1 Notification and negotiation of disputes

With a view to avoidance or early resolution of disputes or differences (subject to Article 8), each Party shall promptly notify the other of any matter that appears likely to give rise to a dispute or difference. The senior executives nominated in the Contract Particulars (or if either is not available, a colleague of similar standing) shall meet as soon as practicable for direct, good faith negotiations to resolve the matter.

Schedules

Schedule 1 Design Submission Procedure

(Clause 2.8)

- 1 The Contractor shall prepare and submit each of the Contractor's Design Documents to the Employer by the means and in the format stated in the Employer's Requirements or the Contractor's Proposals and in sufficient time to allow any comments of the Employer to be incorporated prior to the relevant Contractor's Design Document being used for procurement and/or in the carrying out of the Works. Where the means and format are not so stated, then, unless and until otherwise agreed with the Employer, the Contractor shall submit to the Employer 2 copies of each of the Contractor's Design Documents.
- 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 Employer 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 Employer considers that it is not in accordance with this Contract.

Schedule 2 Supplemental Provisions

(Seventh Recital)

Performance Indicators and monitoring

- 7
 - 7.1 The Employer shall monitor and assess the Contractor's performance by reference to any performance indicators stated or identified in the Contract Documents.
 - 7.2 The Contractor shall provide to the Employer all information that the Employer may reasonably require to monitor and assess the Contractor's performance against the targets for those performance indicators.
 - 7.3 Where the Employer considers that a target for any of those performance indicators may not be met, it may inform the Contractor and the Contractor shall submit its proposals for improving its performance against that target to the Employer.

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Standards^[19]

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8. <https://www.bimplus.co.uk>
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[19] See <https://www.ukbimframework.org>



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