



PBA 2016

Project Bank Account Documentation 2016



2016

PROJECT BANK ACCOUNT

Project Bank Account Documentation (PBA)

This document contains the three relevant parts, i.e. Project Bank Account Agreement, Additional Party Deed and the Enabling Provisions, to enable a project bank account to be set up and operated.

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JCT Project Bank Account Agreement

This Agreement is made _____ 20_____

Between (1) _____

_____ (Company No. _____)^[1]

of/whose registered office is at _____

_____ ('the Employer')

And (2) _____

_____ (Company No. _____)^[1]

of/whose registered office is at _____

_____ ('the Contractor')

[1] Where the Employer, Contractor or Sub-Contractor is neither a company incorporated under the Companies Acts nor a company registered under the laws of another country, delete the references to Company number and registered office. In the case of a company incorporated outside England and Wales, particulars of its place of incorporation should be inserted immediately before its Company number.

And (3) _____

_____ (Company No. _____)^[1]
of/whose registered office is at _____

_____ ('the Sub-Contractor')

And (4) _____

_____ (Company No. _____)^[1]
of/whose registered office is at _____

_____ ('the Sub-Contractor')

And (5) _____

_____ (Company No. _____)^[1]
of/whose registered office is at _____

_____ ('the Sub-Contractor')

And

(6)

_____ (Company No. _____)^[1]

of/whose registered office is at _____

_____ (the Sub-Contractor')

Whereas

First the Employer has engaged the Contractor by a contract dated _____ ('the Building Contract') to carry out the following building works _____

at _____

_____ ('the Project');

Second to assist in the development and performance of the Project, the Contractor has engaged Sub-Contractors to carry out parts of the Project as set out in the Sub-Contracts;

Third the Employer, Contractor and Sub-Contractors wish to adopt a payment mechanism which will ensure that the Sub-Contractors receive payment at the same time as the Contractor by having agreed to operate a bank account in accordance with the terms of this Agreement.

Conditions

Definitions and interpretation

1.1 Unless the context otherwise requires or this Agreement specifically provides otherwise, the following words and phrases, where they appear in capitalised form in this Agreement, shall have the meanings stated or referred to below:

Account Holders:	the Employer and the Contractor.
Bank:	the bank where the Project Bank Account will be held as set out in the Schedule to this Agreement.
Bank Mandate:	the instructions as to the operation of the Bank Account as agreed between the Account Holders and the Bank as set out in the Schedule to this Agreement.
Building Contract:	the contract between the Employer and the Contractor in respect of the Project as referred to in the First Recital.
Party:	any of the signatories to this Agreement.
Parties:	all of the signatories to this Agreement.
Project:	the project briefly described in the First Recital.
Project Bank Account:	a bank account opened with the Bank which has no overdraft facility into which all monies due under the Building Contract will be paid by the Employer in accordance with this Agreement.
Sub-Contract:	a sub-contract agreement between a Sub-Contractor and the Contractor in respect of the Project.
Term:	from the date of this Agreement until such time as all monies due to the Contractor and the Sub-Contractors under the Building Contract and/or the Sub-Contracts have been paid in full.

1.2 In this Agreement, unless the context otherwise requires:

- .1 the headings are included for convenience only and shall not affect the interpretation of this Contract;
- .2 the singular includes the plural and vice versa;
- .3 a gender includes any other gender; and
- .4 a reference to a 'person' includes any individual, firm, partnership, company and any other body corporate.

Bank Account

- 2.1 The Account Holders undertake to open a new interest bearing deposit bank account with the Bank, such account to be opened and held in the names of the Account Holders.
- 2.2 The Employer undertakes to pay all monies due to the Contractor under the Building Contract into the Project Bank Account as and when such monies become due for payment in accordance with the terms of the Building Contract.
- 2.3 The Parties agree that any monies paid into the Project Bank Account shall, as from the date on which such monies are paid into the Project Bank Account, be kept separate and distinct and clearly identifiable and shall be held on trust for each of the Contractor and the Sub-Contractors in the amounts owing to them as set out in the Account Holders' instructions to the Bank for the

payment of monies to the Contractor and the Sub-Contractors. Each of the Contractor and the Sub-Contractors acknowledges that it has no rights and/or interest in the monies held in the Project Bank Account other than as a beneficiary of the monies owing to it.

- 2.4 If for any reason the total amount of monies deposited by the Employer in the Project Bank Account is less than the total amount of monies which has been authorised by the Account Holders for payment to the Sub-Contractors and the Contractor, the monies held in the Project Bank Account shall be allocated to and held on trust for each of the Sub-Contractors and the Contractor in the same proportions that the monies owed to them bear to the total amount of monies shown as due to them in the Account Holders' instructions to the Bank.
- 2.5 The Employer acknowledges that, as and when monies are paid by it into the Project Bank Account in accordance with the Building Contract, it will cease to have any further rights and/or interest in such monies.
- 2.6 The Account Holders accept that, irrespective of any disputes which may arise in respect of work performed by the Contractor and/or the Sub-Contractors, the Account Holders may not withdraw any monies from the Project Bank Account (other than in the case of the Contractor where it may withdraw monies owned by it).

Operation of the Bank Account

- 3.1 The Account Holders each agree that:
 - .1 they shall sign the Bank Mandate as soon as reasonably practicable following execution of this Agreement and, in any event, within 14 days of the date of this Agreement. Where payments are received prior to the signing of the Bank Mandate, the Account Holders shall hold the monies on trust, and shall pay the monies into the Project Bank Account as soon as is reasonably practicable following the signing of the Bank Mandate;
 - .2 they shall operate the Project Bank Account at all times in accordance with the Bank Mandate, this Agreement and the Building Contract. If there is any conflict between the Bank Mandate, this Agreement and/or the Building Contract, the documents shall take precedence in the following order:
 - .1 this Agreement;
 - .2 the Bank Mandate; and
 - .3 the Building Contract;
 - .3 the Project Bank Account shall not become overdrawn;
 - .4 they shall keep accurate, complete and up to date books of account and records of all transactions relating to the Project Bank Account, including but not limited to details of all payments out of the Project Bank Account authorised by the Account Holders and any bank charges payable;
 - .5 if the Account Holders have the ability to authorise transactions in respect of the Project Bank Account via an electronic facility operated by the Bank, each Account Holder shall ensure that its access details for such facility are only made available to those of its employees and/or representatives which need to know such information and that such employees and/or representatives are aware of the confidential nature of the access details, the Project Bank Account details and the Project Bank Account transactions;
 - .6 they are each responsible for the acts and/or omissions of their own employees and/or other representatives as if they were their own acts and/or omissions;
 - .7 they are each liable for their own acts and/or omissions under this Agreement and have no liability for the acts and/or omissions of the other Account Holder;
 - .8 they hold all monies in the Project Bank Account on trust for the full and exclusive benefit of the Contractor and the Sub-Contractors in accordance with clauses 2.3 and 2.4 above.
- 3.2 As and when each payment date or milestone (as applicable) set out in the Building Contract is reached, the Account Holders shall identify payments to be made under the Building Contract and the Sub-Contracts; and

- .1 the Employer shall pay the monies due under the Building Contract into the Project Bank Account in such time so as to provide cleared funds not later than the final date for payment; and
 - .2 the Account Holders shall promptly instruct the Bank to make any payments to the Sub-Contractors and/or the Contractor from the Project Bank Account as soon as the Employer's payment is cleared by the Bank, such payment to be in accordance with instructions issued by the Account Holders to the Bank.
- 3.3 The Contractor agrees to inform, on the same day as the Account Holders authorise the payments out of the Project Bank Account, each of the Sub-Contractors of the amounts which are to be paid to them from the Project Bank Account and the date on which the Sub-Contractor can expect to receive such payment.
 - 3.4 All payments to the Sub-Contractors and the Contractor shall be made by bank transfer. The Contractor shall inform the Employer and the Sub-Contractors shall inform the Account Holders of their relevant bank account details and keep them up to date at all times. The Contractor and Sub-Contractors accept that failure to do so may result in monies not being paid to them and that the Account Holders have no liability for such failure.
 - 3.5 Any interest paid by the Bank in respect of the monies held in the Project Bank Account shall belong to the Contractor and may be withdrawn by it on conclusion of the works under the Building Contract.
 - 3.6 Any bank charges, money transmission costs and other disbursements incurred in the establishment and operation of the Project Bank Account shall be borne by the Contractor.

New Sub-Contractors

- 4.1 If the Contractor appoints a new sub-contractor in respect of the Building Contract after the date of this Agreement and agrees with that new sub-contractor that it shall be paid via the Project Bank Account, the Account Holders shall arrange for the new sub-contractor to sign an Additional Party Deed.
- 4.2 The Parties agree that, in signing the Additional Party Deed, the Account Holders are signing on behalf of themselves and as agent for each of the Sub-Contractors. Each Sub-Contractor agrees to be bound by the terms of the Additional Party Deed validly executed by the Account Holders on behalf of all the Parties.

Removal of Sub-Contractor

- 5.1 If prior to the expiry of the Term a Sub-Contractor ceases to be involved in the Project for whatever reason (including but not limited to the termination of its Sub-Contract), the Account Holders shall arrange for the payment out of the Project Bank Account to the Sub-Contractor of any monies held on trust for the benefit of that Sub-Contractor.
- 5.2 On payment of all the monies due to it from the Project Bank Account in accordance with clause 5.1 above the Sub-Contractor shall cease to have any further rights and/or interests in the Project Bank Account.

Confidentiality

- 6.1 No Party shall use and/or disclose any confidential information, which is acquired by it about another Party's business and/or given to it by another Party to this Agreement except in the proper performance of this Agreement.

Assignment

- 7.1 No Party shall without the written consent of the other Parties assign this Agreement or any rights thereunder.

Termination

- 8.1** This Agreement shall continue for the Term, subject to early termination in accordance with clause 8.2 below.
- 8.2** This Agreement shall immediately terminate if:
- .1 the Parties agree in writing that the Agreement should terminate; and/or
 - .2 the Contractor's employment under the Building Contract terminates and all monies have been paid out from the Project Bank Account.
- 8.3** On termination of this Agreement the Account Holders undertake to ensure all monies held on trust for the benefit of the Contractor and/or the Sub-Contractors and held in the Project Bank Account are promptly paid to the relevant Parties (less any outstanding bank charges and expenses as referred to in clause 3.6).

General

Contracts (Rights of Third Parties) Act 1999

- 9.1** Nothing in this Agreement confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

Applicable law

- 9.2** This Agreement shall be governed by and construed in accordance with the law of England and the Parties submit to the exclusive jurisdiction of the English courts.^[2]

Entire Agreement

- 9.3** This Agreement contains the whole agreement between the Parties concerning the operation of the Project Bank Account and it supersedes any prior written or oral agreement between them and is not affected by any other promise, representation, warranty, usage, custom or course of dealing. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this Agreement shall exclude liability for any fraudulent statement or act made prior to the date of this Agreement.
- 9.4** No waiver by any Party of any breach of this Agreement shall be considered as a waiver of any subsequent breach of the same provision or any other provision.
- 9.5** The invalidity, illegality or unenforceability of any of the provisions of this Agreement shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement.
- 9.6** No Party shall be liable for any delay or failure in performing its obligations under this Agreement as a result of reasons beyond its reasonable control, including but not limited to acts of God, war, flood, fire, labour disputes, sub-contractor delays, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, governmental actions and any other similar events. Failure to make payment due to insufficient funds in the Project Bank Account is not a force majeure event.
- 9.7** Each of the Sub-Contractors is only liable for its own acts and/or omissions under this Agreement and not the acts and/or omissions of any of the other Sub-Contractors. The Sub-Contractors are not jointly and severally liable under this Agreement.

[2] Where the Parties do not wish the law applicable to this Agreement to be the law of England appropriate amendments should be made.

Attestation

Notes on Execution as a Deed

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

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

Executed as a Deed by the Employer

namely ¹ _____

(A) acting by a Director and the Company Secretary/two Directors **of the company** ^{2,3}

(Print name of signatory) and _____
(Print name of signatory)

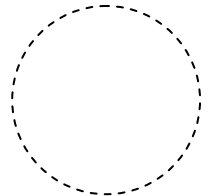
Signature Director Signature Company Secretary/Director

(B) by affixing hereto the common seal **of the company/other body corporate** ^{2,4}

in the presence of

Signature Director

Signature Company Secretary/Director



[Common seal of company]

(C) by attested signature of a single Director **of the company** ^{2,5}

Signature Director

in the presence of

Witness' signature _____ (Print name) _____

Witness' address _____

(D) by attested signature **of the individual** ⁶

Signature

in the presence of

Witness' signature _____ (Print name) _____

Witness' address _____

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

Executed as a Deed by the Contractor

namely ¹ _____

(A) acting by a Director and the Company Secretary/two Directors **of the company** ^{2,3}

(Print name of signatory)

and

(Print name of signatory)

Signature Director

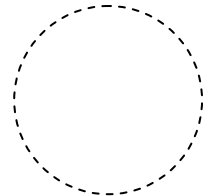
Signature Company Secretary/Director

(B) by affixing hereto the common seal **of the company/other body corporate** ^{2,4}

in the presence of

Signature Director

Signature Company Secretary/Director



[Common seal of company]

(C) by attested signature of a single Director **of the company** ^{2,5}

Signature Director

in the presence of

Witness' signature _____ (Print name) _____

Witness' address _____

(D) by attested signature **of the individual** ⁶

Signature

in the presence of

Witness' signature _____ (Print name) _____

Witness' address _____

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

Executed as a Deed by the Sub-Contractor (1)

namely ¹ _____

(A) acting by a Director and the Company Secretary/two Directors **of the company** ^{2,3}

(Print name of signatory)

and

(Print name of signatory)

Signature Director

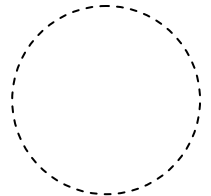
Signature Company Secretary/Director

(B) by affixing hereto the common seal **of the company/other body corporate** ^{2,4}

in the presence of

Signature Director

Signature Company Secretary/Director



[Common seal of company]

(C) by attested signature of a single Director **of the company** ^{2,5}

Signature Director

in the presence of

Witness' signature _____ (Print name) _____

Witness' address _____

(D) by attested signature **of the individual** ⁶

Signature

in the presence of

Witness' signature _____ (Print name) _____

Witness' address _____

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

Executed as a Deed by the Sub-Contractor (2)

namely ¹ _____

(A) acting by a Director and the Company Secretary/two Directors **of the company** ^{2,3}

(Print name of signatory)

and

(Print name of signatory)

Signature Director

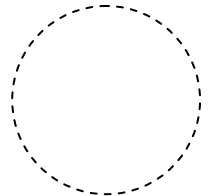
Signature Company Secretary/Director

(B) by affixing hereto the common seal **of the company/other body corporate** ^{2,4}

in the presence of

Signature Director

Signature Company Secretary/Director



[Common seal of company]

(C) by attested signature of a single Director **of the company** ^{2,5}

Signature Director

in the presence of

Witness' signature _____ (Print name) _____

Witness' address _____

(D) by attested signature **of the individual** ⁶

Signature

in the presence of

Witness' signature _____ (Print name) _____

Witness' address _____

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

Executed as a Deed by the Sub-Contractor (3)

namely ¹ _____

(A) acting by a Director and the Company Secretary/two Directors **of the company** ^{2,3}

(Print name of signatory) and _____
(Print name of signatory)

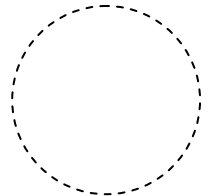
Signature Director Signature Company Secretary/Director

(B) by affixing hereto the common seal **of the company/other body corporate** ^{2,4}

in the presence of

Signature Director

Signature Company Secretary/Director



[Common seal of company]

(C) by attested signature of a single Director **of the company** ^{2,5}

Signature Director

in the presence of

Witness' signature _____ (Print name) _____

Witness' address _____

(D) by attested signature **of the individual** ⁶

Signature

in the presence of

Witness' signature _____ (Print name) _____

Witness' address _____

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

Executed as a Deed by the Sub-Contractor (4)

namely ¹ _____

(A) acting by a Director and the Company Secretary/two Directors **of the company** ^{2,3}

(Print name of signatory) and _____
(Print name of signatory)

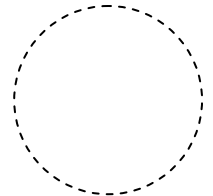
Signature Director Signature Company Secretary/Director

(B) by affixing hereto the common seal **of the company/other body corporate** ^{2,4}

in the presence of

Signature Director

Signature Company Secretary/Director



[Common seal of company]

(C) by attested signature of a single Director **of the company** ^{2,5}

Signature Director

in the presence of

Witness' signature _____ (Print name) _____

Witness' address _____

(D) by attested signature **of the individual** ⁶

Signature

in the presence of

Witness' signature _____ (Print name) _____

Witness' address _____

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

Schedule – Bank Mandate

JCT Additional Party Deed (PBA/AP)

This Agreement is made the _____ 20 _____

Between

The Current Parties

And

_____ (Company No. _____)^[1]

of/whose registered office is at _____

_____ ('the Additional Party')

Whereas

- A** The Current Parties have entered into an Agreement which governs the operation of a Project Bank Account into which all monies due under the Building Contract (as defined below) are paid.
- B** The Additional Party is a sub-contractor of the Contractor. It has been agreed by the Employer and the Contractor that the Additional Party will be paid for its work using the Project Bank Account (as defined below).
- C** This Additional Party Deed constitutes the terms upon which the Additional Party agrees to be paid for the work it performs for the Contractor via the Project Bank Account and sets out the Additional Party's rights and interests in the monies contained within the Project Bank Account.

Definitions

1.1 In this Deed the following words have the following meanings:

Admission Date:	the date stated as such in the Particulars.
Agreement:	the Agreement between the Current Parties which sets out the basis on which the Project Bank Account is to be operated.
Bank:	the bank where the Project Bank Account will be held as stated in the Particulars.
Building Contract:	the contract between the Employer and the Contractor for the project as stated in the Particulars.
Contractor:	the person named as such in the Particulars.
Current Parties:	the persons named as such in the Particulars.
Employer:	the person named as such in the Particulars.

Project Bank Account: the bank account held in the name of the Employer and the Contractor as stated in the Particulars.

Admission

- 2.1 The Additional Party will be added as a party to the Agreement on the Admission Date.
- 2.2 The Additional Party agrees to be bound by the Agreement in relation to the Current Parties as from the Admission Date as if the Additional Party was an original party to the Agreement.
- 2.3 The Current Parties agree to be bound by the Agreement in relation to the Additional Party as from the Admission Date as if the Additional Party was an original party to the Agreement.

Authority

- 3.1 The Employer and the Contractor are authorised by the remaining Current Parties to enter into and execute this Agreement on behalf of all the Current Parties as their agent.

Applicable Law

- 4.1 This Additional Party Deed is governed by English law and the parties agree to submit to the jurisdiction of the English courts.

Particulars

Current Parties:

Employer: _____

_____ (Company No. _____)^[3]
of/whose registered office is at _____

[3] Where the Employer, Contractor or Sub-Contractor is neither a company incorporated under the Companies Acts nor a company registered under the laws of another country, delete the references to Company number and registered office. In the case of a company incorporated outside England and Wales, particulars of its place of incorporation should be inserted immediately before its Company number.

Contractor:

_____ (Company No. _____)^[3]

of/whose registered office is at _____

Sub-Contractor (1):

_____ (Company No. _____)^[3]

of/whose registered office is at _____

Sub-Contractor (2):

_____ (Company No. _____)^[3]

of/whose registered office is at _____

Sub-Contractor (3):

_____ (Company No. _____)^[3]

of/whose registered office is at _____

Sub-Contractor (4):

_____ (Company No. _____)^[3]

of/whose registered office is at _____

Other information:

Admission Date: _____

Agreement between the Current Parties setting out the basis on which the Project Bank Account is to be operated: _____ (dated)

Building Contract between Employer and Contractor for: _____

_____ (project)
_____ (dated)

Project Bank Account held in the name of the Employer and the Contractor at: _____ (Bank)
_____ (Account No.)

Attestation

Notes on Execution as a Deed

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

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

Executed as a Deed by the Employer

namely ¹ _____

(A) acting by a Director and the Company Secretary/two Directors **of the company** ^{2,3}

(Print name of signatory)

and

(Print name of signatory)

Signature Director

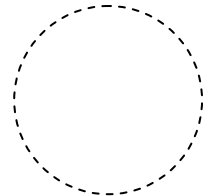
Signature Company Secretary/Director

(B) by affixing hereto the common seal **of the company/other body corporate** ^{2,4}

in the presence of

Signature Director

Signature Company Secretary/Director



[Common seal of company]

(C) by attested signature of a single Director **of the company** ^{2,5}

Signature Director

in the presence of

Witness' signature _____ (Print name) _____

Witness' address _____

(D) by attested signature **of the individual** ⁶

Signature

in the presence of

Witness' signature _____ (Print name) _____

Witness' address _____

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

Executed as a Deed by the Contractor

namely ¹ _____

(A) acting by a Director and the Company Secretary/two Directors **of the company** ^{2,3}

(Print name of signatory)

and

(Print name of signatory)

Signature Director

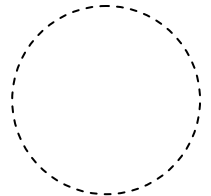
Signature Company Secretary/Director

(B) by affixing hereto the common seal **of the company/other body corporate** ^{2,4}

in the presence of

Signature Director

Signature Company Secretary/Director



[Common seal of company]

(C) by attested signature of a single Director **of the company** ^{2,5}

Signature Director

in the presence of

Witness' signature _____ (Print name) _____

Witness' address _____

(D) by attested signature **of the individual** ⁶

Signature

in the presence of

Witness' signature _____ (Print name) _____

Witness' address _____

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

Executed as a Deed by the Additional Party

namely ¹ _____

(A) acting by a Director and the Company Secretary/two Directors **of the company** ^{2,3}

(Print name of signatory)

and

(Print name of signatory)

Signature Director

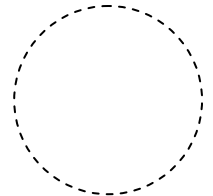
Signature Company Secretary/Director

(B) by affixing hereto the common seal **of the company/other body corporate** ^{2,4}

in the presence of

Signature Director

Signature Company Secretary/Director



[Common seal of company]

(C) by attested signature of a single Director **of the company** ^{2,5}

Signature Director

in the presence of

Witness' signature _____ (Print name) _____

Witness' address _____

(D) by attested signature **of the individual** ⁶

Signature

in the presence of

Witness' signature _____ (Print name) _____

Witness' address _____

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

Enabling Provisions for Project Bank Account

The new clauses should be inserted into the Building Contract as follows:

Arrangements relating to Project Bank Accounts

- X.1** The Parties shall enter into a JCT Project Bank Agreement (PBA) within 7 days of entering into this Contract. The PBA will include those Sub-Contractors referred to in the Contract Particulars who also sign that agreement.^[4]
- X.2** In relation to any payment, the Contractor shall submit to the Employer/Quantity Surveyor^[5] an application as referred to in the Contract, setting out the amount respectively due to himself and to each Sub-Contractor who is a party to the PBA, so that payments can be made through the Project Bank Account.
- X.3** The Employer shall make each payment becoming due under section 4^[6] of the Building Contract into the PBA in such time so as to provide cleared funds not later than the final date for payment. The Contractor acknowledges that payment into the PBA shall discharge the Employer's obligation to make payment under the Building Contract to the extent of that payment.
- X.4** If the Employer notifies a payment to the Contractor of an amount less than that set out in the Contractor's application for payment, he shall state the total payment to be made and the amount due to the Contractor and, with the agreement of the Contractor, to each Sub-Contractor who is party to the PBA, together with a breakdown of any amount that has been reduced, so that payments can be made on time through the PBA.

The new particulars should be inserted into the Contract Particulars of the Building Contract as follows:

X.1 The Sub-Contractors are _____

of _____

of _____

[4] Other sub-contractors may be included in the PBA after it has been executed, by using the JCT Additional Party Deed (PBA/AP).

[5] Delete as appropriate.

[6] Amend as applicable.

of _____

of _____

The following clauses should be inserted into the Sub-Contract:

Arrangements relating to Project Bank Accounts – Sub-Contract

- Y.1** Where a Sub-Contractor is or becomes a party to a JCT Project Bank Agreement (PBA) he shall, in relation to any payment, submit an application as referred to in the Sub-Contract, setting out the amount he considers is due.

- Y.2** The Sub-Contractor acknowledges that payment into the PBA shall discharge the Contractor's obligation to make payment under the Sub-Contract to the extent of that payment.

Guidance Notes

Introduction

The JCT Project Bank Account documentation was originally created in 2009 and formed the basis for JCT's industry-wide consultation on the use of project bank accounts. The documentation was designed to support the Government's fair payment guidelines as part of the Government Construction Strategy. For the 2016 edition there are no textual changes to the documentation of any significance. The Report on the consultation exercise that previously accompanied the documentation has been replaced by the following Guidance Notes.

Preliminary Considerations

The use of project bank accounts (PBAs) was recommended by the Office of Government Commerce (now part of the Cabinet Office) "where practical and cost effective" to promote fair payment practices in the construction industry. More recently, the Government has recognised PBAs as providing "an effective mechanism for facilitating fair payment to the supply chain" and has confirmed central government departments' commitment to using PBAs on their construction projects "unless there are compelling reasons not to do so". (See Public Contracts Regulations statutory guidance issued under r113 of the Public Contracts Regulations 2015 and <https://www.gov.uk/government/publications/project-bank-accounts>.)

PBAs help to protect cash flow to sub-contractors, particularly in the event of the insolvency of the employer or contractor. The extent of the protection is dependent on the operation of the PBA and is generally limited as regards employer's insolvency.

A PBA differs from an ordinary bank account in that the monies in the account are generally held on trust and can only be paid out to the beneficiaries named in the agreement. If properly established so that a secure trust is set up, the monies in a PBA will be protected in the event of the insolvency of the employer and/or the contractor, as the money held in the account is ring fenced by nature of the trust. Other perceived advantages are greater certainty of payment, fewer payment defaults and disputes (with the cost savings this may bring) and predictable cash flow. The disadvantages of PBAs usually cited are the time and cost to set up and run them and the concerns expressed by some employers and contractors regarding relinquishing of control.

The JCT PBA Documentation

The JCT PBA documentation comprises the following:

- Project Bank Account Agreement (PBA)
- Additional Party Deed (PBA/AP)
- Enabling Provisions for insertion into the Building Contract and Sub-Contracts requiring the relevant parties to enter into the PBA
- Guidance Notes

The documentation is designed to be generic enough for use by both public and private sector clients and on any type or size of project. It is specifically designed to be used with JCT forms of building contract.

Outline of the PBA Agreement

Parties and Recitals

The JCT PBA Agreement is to be entered into by the Employer, the Contractor and any sub-contractors appointed in respect of the Project when the PBA is set up. There is the facility under clause 4 for new sub-contractors appointed after the date of the Agreement to be included in the PBA by entering into an Additional Party Deed. It is to be noted the Bank where the PBA is to be held is not a party to the Agreement.

The Parties must complete the Agreement and Recitals by inserting the information required. Details of the Building Contract are to be inserted in the First Recital.

Clause 1

The Conditions are arranged into nine short and succinct clauses and include the Schedule which is to contain the details relating to the Bank Mandate. The documentation has been presented so as to be clear and straightforward and to tackle any unfamiliarity users may have with the PBA arrangement. The definitions set out in clause 1 are commented on below in the context of the provisions to which they relate. A short version of JCT's standard interpretation provisions concludes clause 1.

Clause 2

This provision deals with the establishment of the Bank Account by the Account Holders (defined as the Employer and the Contractor). Under clause 2.1 the Employer and the Contractor are required to set up the PBA. This will include agreeing with the PBA Bank a form of Bank Mandate detailing the operational arrangements for the PBA. Details of the PBA Bank and the Mandate must be set out in the Schedule. The Employer is required under clause 2.2 to pay into the account all monies due to the Contractor under the Building Contract at the time when they become due for payment in accordance with the terms of the Building Contract. The trust provisions are set out in clause 2.3. This clause states that monies paid into the PBA will be kept separate and held on trust for the Contractor and each of the Sub-Contractors in the respective amounts owing to them. Clause 2.4 deals with the allocation of funds in the account where there is a shortfall and clauses 2.5 and 2.6 with the Parties rights in relation to the monies held in the account, a matter commented on in more detail in relation to clause 3 below.

Clause 3

There are clear and detailed provisions regarding the operation of the Bank Account. The Account Holders have 14 days within which to submit the Bank Mandate following execution of the PBA Agreement. Provision is made for what happens to any payments received during this period, which are to be held by the Account Holders 'on trust' and paid into the Bank Account as soon as reasonably practicable following signing of the Bank Mandate. In terms of precedence of documents, the JCT has chosen for the PBA Agreement to take priority over the Building Contract in the event of any conflict.

The provisions relating to the payment out of PBA monies are set out in clauses 3.2 to 3.4 and are based on the general principle that no money is paid out of the PBA until properly payable. Under clause 3.2.1 the Employer is obliged to pay monies due under the Building Contract into the PBA so as to make available cleared funds by the final date for payment. Payment out requires an instruction by the Account Holders requiring any payments to the Sub-Contractors and/or the Contractor to be made as soon as funds provided by the Employer are cleared. It is suggested that Employers and Contractors should not be unduly concerned about the perceived loss of their control when using PBAs, as the timing of payment of monies into the account need not significantly change matters. No money is paid out of the PBA until properly payable. Furthermore, the provisions do not prevent money from being withheld or set off in appropriate circumstances. For example, monies can still be withheld where the payer has issued the appropriate pay less notice as provided for under the 2009 Construction Act.

Under the JCT PBA, the Contractor is entitled to retain the interest earned on monies held in the PBA but he is required to bear the administrative costs associated with setting up the PBA (clauses 3.5 and 3.6).

Clause 4

As referred to above, sub-contractors appointed after the PBA Agreement has been entered into can become parties to the Agreement by entering into an Additional Party Deed.

Clause 5

This deals with removal of a Sub-Contractor prior to expiry of the Term (defined as when all monies due to the Contractor and Sub-Contractors under the Building Contract and/or Sub-Contracts have been paid in full). The clause simply provides that a Sub-Contractor will be removed if he ceases to be involved in the Project by reason of termination or otherwise and on removal will be entitled to payment out of the PBA of any monies held on trust for his benefit.

Clause 6

This clause imposes simple confidentiality obligations on the Parties.

Clause 7

This prohibits any Party from assigning the Agreement or his rights under it without obtaining the prior written consent of the other Parties.

Clause 8

Clause 8 provides for early termination of the Agreement (i.e., prior to expiry of the Term) if the Parties agree in writing the Agreement should terminate or in the event of the Contractor's employment under the Building Contract terminating and all monies having been paid out of the PBA. The consequences of termination are set out in clause 8.3, which provides for any monies held on trust for the Contractor and Sub-Contractors to be paid out to them less any outstanding bank charges and expenses.

Clause 9

This contains a number of general provisions which are in fairly standard JCT format.

The JCT has agreed that this Agreement should contract out of the Contracts (Rights of Third Parties) Act 1999 (clause 9.1). It will be noted that under clause 9.2 the Agreement is to be governed by English law and the English courts are to have jurisdiction over any dispute or difference. If the Building Contract and Sub-Contracts provide that they are to be governed by the law of any other jurisdiction the PBA Agreement should generally be conformed with them.

Attestation

The prescribed mode of execution is expressed to be in the form of a deed, to reinforce the trust provisions set out in the Agreement.

PBA/AP

Other sub-contractors may be included in the PBA after it has been executed, by using the PBA/AP.

Enabling Provisions

The documentation includes suggested enabling clauses for incorporation in the Building Contract and Sub-Contracts. The suitability of these provisions for use in relation to any given project should be considered and appropriate legal advice taken as necessary.

Further considerations

It is to be noted that at present the JCT only knows of two commercial banks who offer PBA arrangements (Barclays and Bank of Scotland).



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