

## HGCRA LDED and Construction Act 2009 Amendments

### PPC2000 (amended 2008)

#### Updated on 25 October 2011

The Housing Grants Construction and Regeneration Act 1996 (**HGCRA**) is being changed by the Local Democracy Economic Development and Construction Act 2009 with effect from 1 October 2011 in England and Wales. Contracts for 'construction operations', including PPC2000, should be amended to comply with the updated HGCRA and take into account the revised payment and adjudication provisions and the expanded right of suspension.

This loose leaf updater contains a set of amendments to the published form which Trowers & Hamlins LLP and the Association of Consultant Architects recommend are incorporated into PPC2000 for contracts entered into on or after 1 October 2011 relating to projects to be carried out in England and Wales. These amendments will be incorporated into the published form when it is next updated and republished.

A marked up version of the payment clause is included at the end of this loose leaf so that users can easily see the changes made to the payment clause. This is for information only and should not be incorporated into the published form.

#### Amendments to the published form of PPC2000 (amended 2008)

1 **Clause 18.3(xii)**

In line 1 insert "any or all of" before "its obligations"

2 **Clause 20**

Delete clause 20 in its entirety and insert the following:

	20	<b>Payment</b>
Payment obligations	20.1	The Client shall be responsible for payment to the Consultants of all agreed amounts stated in the Consultant Payment Terms and for payment to the Constructor of all agreed amounts in respect of Constructor's Services, in respect of Pre-Construction Activities and comprising the Agreed Maximum Price, plus in each case VAT (if applicable), and in each case subject to and adjusted in accordance with these Partnering Terms.
Payment applications and due dates for payment	20.2	Subject to any agreed payment milestones, activity schedules or cashflows and any other payment arrangements set out in the Price Framework and the Consultant Payment Terms and any Pre-Construction Agreement, applications for payment of amounts due to the Consultants and the Constructor shall be submitted respectively by each Consultant and the Constructor to the Client and the Client Representative at the intervals stated in the Price Framework, the Consultant Payment Terms and any Pre-Construction Agreement or (if no intervals are stated) at the end of each calendar month. Each application for payment shall state the sum the relevant Consultant or the Constructor considers to be due to it on the due date for payment and the basis on which that sum is calculated and

shall be accompanied by such details as are stated in the Project Brief and such further information as the Client Representative may reasonably require. The due date for payment in respect of each application for payment shall be the date of receipt by the Client of the relevant application, submitted in accordance with this clause 20.2.

Interim payments to Constructor – payment notices and final date for payment	20.3	Within five (5) days from receipt of each application for payment made by the Constructor in accordance with clause 20.2, clause 20.15 or when otherwise required by these Partnering Terms, the Client Representative shall issue to the Constructor and the Client a payment notice, calculated in accordance with clause 20.5, specifying the sum the Client Representative considers to have been due on the due date for payment and the basis on which that sum is calculated. Subject to any notice issued in accordance with clause 20.7, the Client shall pay to the Constructor the sum stated as due in the payment notice by the final date for payment. Subject to any revised periods stated in the Price Framework, the final date for payment shall be the later of twenty (20) Working Days from the due date for payment and fifteen (15) Working Days from the date of receipt by the Client of any required VAT invoice from the Constructor in the same sum as the payment notice.
Payment to Consultants – payment notices and final date for payment	20.4	Within five (5) days from receipt by the Client of each application for payment made by a Consultant in accordance with clause 20.2 the Client shall issue a payment notice to each Consultant, calculated according to the relevant Consultant Payment Terms on the basis of the Consultant Services provided and taking into account sums due pursuant to clauses 20.10 and 20.17, specifying the sum the Client considers to have been due on the due date for payment and the basis on which that sum is calculated. Subject to any notice issued in accordance with clause 20.7, the Client shall pay to the relevant Consultant the amount stated as due in the relevant payment notice by the final date for payment. Subject to any revised periods stated in the Consultant Payment Terms, the final date for payment shall be the later of thirty (30) Working Days from the due date for payment and twenty five (25) Working Days from the date of receipt by the Client from the relevant Consultant of any required VAT invoice in the same sum as the relevant payment notice.
Content of Constructor valuations	20.5	The amount payable under each application for payment by the Constructor shall be calculated in accordance with the Price Framework to establish the value of the Constructor's Services properly performed, or the value of any Pre-Construction Activities properly performed or the value of that part of the Project properly progressed, including the value of any unfixed materials, goods and equipment on and off Site intended for the Project (subject to clause 15.4 and if and to the extent provided in the Price Framework), less the total of all amounts previously paid, and adjusted to reflect shared savings, shared added value and pain/gain Incentives pursuant to clause 13.2, any Incentives that link payment to achievement of the Date for Completion or any KPI Targets pursuant to clause 13.3 and any sums due pursuant to clauses 17.3, 17.4, 18.5 or 18.6 and taking into account sums due pursuant to clauses 20.10 and 20.17.

Default notice	20.6	<p>If the Client Representative or the Client does not issue a payment notice in accordance with clause 20.3 or clause 20.4 respectively:</p> <ul style="list-style-type: none"> <li>(i) the relevant Consultant's application for payment under clause 20.2 or the Constructor's application under clause 20.2 or clause 20.15 shall be treated as the payment notice;</li> <li>(ii) subject to any notice issued in accordance with clause 20.7, the Client shall pay the amount stated as due in the application for payment by the final date for payment.</li> </ul>
Pay less notice	20.7	<p>Not later than two (2) Working Days before the final date for payment of any sum due, the payer or (in respect of payments due to the Constructor) the Client Representative may give notice to the payee pursuant to Section 111(3) of the HGCRA, specifying the sum that the payer considers to be due on the date the notice is served and the basis on which that sum is calculated. If a notice is issued under this clause 20.7:</p> <ul style="list-style-type: none"> <li>(i) the payer shall pay the amount stated in such notice by the final date for payment;</li> <li>(ii) the payee shall reissue any required VAT invoice to reflect the sum stated in such notice.</li> </ul>
Adjustment of notices	20.8	<p>The issue of any notice or VAT invoice or the payment of any amount by the payer shall not in any way affect the right of the payer or any payee to contend that:</p> <ul style="list-style-type: none"> <li>(i) any Consultant Services or Constructor's Services or Pre-Construction Activities or the Project have or have not been properly valued; and/or</li> <li>(ii) that any amount has been improperly paid or withheld.</li> </ul> <p>In calculating any notice, the payer or (in the case of payments to the Constructor) the Client Representative shall be entitled to reconsider and, if necessary, adjust any assessment made in arriving at any previous notice.</p>
Notices not approved	20.9	<p>The issue of any notice or VAT invoice or the payment of any amount shall not:</p> <ul style="list-style-type: none"> <li>(i) constitute or imply or be evidence of the Client's approval or acceptance of any part of any Consultant Services or Constructor's Services or Pre-Construction Activities or the Project; or</li> <li>(ii) in any way affect the responsibilities of any Partnering Team member under the Partnering Contract.</li> </ul>
Interest on late payment	20.10	<p>Any delay in a due payment beyond the final date stated in clause 20.3, clause 20.4, clause 20.16(iii) or clause 20.18 shall entitle the payee to be</p>

paid interest at the percentage specified in the Project Partnering Agreement, and the Partnering Team members confirm that such interest is a substantial remedy for late payment in compliance with Section 9 of the Late Payment Act.

Fluctuation	20.11	Amounts in the Price Framework and Consultant Payment Terms shall be subject only to such fluctuation provisions, if any, as are set out in the Price Framework and Consultant Payment Terms.
Payment of Specialists	20.12	The Constructor shall pay all Specialists (other than Specialists appointed pursuant to clause 10.11) the amounts to which they are entitled in accordance with the Specialist Payment Terms (with provision for interest on late payment equivalent to clause 20.10), shall maintain full records of all amounts payable and paid to each Specialist and shall make these records available to the Client Representative on request.
Inspection of financial records	20.13	Each Partnering Team member shall allow the Client Representative to visit its offices and to inspect its financial records in relation to the Project at any time subject to reasonable prior notice.
Statutory deduction	20.14	Where the Client is a "contractor" for the purposes of the Finance Act, then not later than fifteen (15) Working Days prior to the Constructor's first application for payment in relation to the Project, and at any other time upon request, the Constructor shall either provide the Client with evidence that the Constructor is entitled to be paid without the statutory deduction referred to in the Finance Act or inform the Client in writing that it is not entitled to be paid without such statutory deduction (and in the latter case the Constructor shall immediately inform the Client if it subsequently becomes entitled to be paid without such statutory deduction) and the Client shall be entitled to receive from the Constructor evidence supporting the Constructor's stated entitlement to be paid without such statutory deduction.
Payment on Project Completion	20.15	Within twenty (20) Working Days following Project Completion (or any other period stated in the Price Framework), the Client Representative shall prepare and issue to the Client and the Constructor an account confirming the balance of the Agreed Maximum Price due as between the Client and the Constructor, calculated in accordance with clause 20.5. The Client and the Constructor shall seek to agree the amount of that balance, taking into account any adjustment provided for in these Partnering Terms and subject to deduction of any amount stated as a Retention in the Price Framework. On or after forty (40) Working Days following Project Completion (or any revised period stated in the Price Framework) the Constructor shall issue a payment application in accordance with clause 20.2 and the due date for payment shall be the date of receipt by the Client of such application.
Final Account	20.16	The following procedures shall apply in relation to the Final Account:  (i) Within twenty (20) Working Days following notice to the Client and the Constructor by the Client Representative confirming satisfaction

of the Constructor's obligations under clause 21.4 as to rectification of defects (or on such earlier date as the Client and the Constructor may agree), the Client Representative shall prepare and issue to the Client and the Constructor a Final Account (calculated in accordance with clause 20.5 and taking into account any adjustment provided for in these Partnering Terms) for agreement between the Client and the Constructor.

- (ii) On or after forty (40) Working Days of the notice confirming satisfaction of the Constructor's obligations under clause 21.4 (or any revised period stated in the Price Framework) the Constructor or the Client (as the case may be) shall make an application for payment which shall state the sum the Constructor or the Client considers to be due to it and the basis on which that sum is calculated and which shall be accompanied by such details as are stated in the Project Brief and such further information as the Constructor or the Client Representative may reasonably require. Such application shall either be in the agreed amount or if agreement is not reached then in such amount as the payee considers to be due on the due date for payment, calculated in accordance with clause 20.5 and taking into account any adjustment provided for in these Partnering Terms. The due date for payment in respect of the application shall be the date of receipt by the payer of such application.
- (iii) Within five (5) days of the due date for payment the payer or (in respect of payments due to the Constructor) the Client Representative shall issue to the payee a payment notice setting out the sum the payer or the Client Representative considers to have been due on the due date for payment (either in the agreed sum or as calculated in accordance with clause 20.5 and taking into account any adjustment provided for in these Partnering Terms) and the basis on which that sum is calculated. Subject to any revised periods in the Price Framework, the final date for payment shall be the later of twenty (20) Working Days from the due date for payment and fifteen (15) Working Days from the date of receipt by the payer of any required VAT invoice in the same sum as the payment notice.
- (iv) If a payment notice is not issued in accordance with clause 20.16(iii) the application for payment pursuant to clause 20.16(ii) shall be treated as the payment notice. Subject to any notice issued in accordance with clause 20.7, the payer shall pay the sum stated as due in the payment notice or the application for payment by the final date for payment.
- (v) The Final Account, when agreed, shall be conclusive evidence as to the balance of the Agreed Maximum Price due between the Client and the Constructor.

Suspension of 20.17 If the Client fails to make any payment due in accordance with this clause

performance

20 by the stated final date for payment, and if such failure shall continue for seven (7) days after the Constructor or a Consultant has given the Client written notice of its intention to suspend performance of any or all of its obligations and the grounds for such intended suspension, then the Constructor or such Consultant may suspend performance of any or all of its obligations under the Partnering Contract until payment is received in full. Where the Constructor or a Consultant exercises such right of suspension it shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by it as a result of the exercise of the right.

Sums due to the Client

20.18

Any sum due to the Client from a Partnering Team member (other than pursuant to clause 20.16) which the Client does not deduct and/or withhold from sums due or to become due to the relevant Partnering Team member shall be due for payment on receipt of an application from the Client by the relevant Partnering Team member. In such application the Client shall specify the sum it considers to be due on the payment due date and the basis on which that sum is calculated. Within 5 days of the payment due date the relevant Partnering Team member shall issue a notice confirming the sum that it considers to have been due on the payment due date and the basis on which that sum is calculated. If the relevant Partnering Team member fails to serve such notice the Client's application shall be treated as the payment notice. The final date for payment for any such sum applied for shall be the later of twenty (20) Working Days from the payment due date and fifteen (15) Working Days from the date of receipt by the relevant Partnering Team member of any required VAT invoice from the Client in the same amount as the payment notice.

### 3 **Clause 26.4**

In lines 9 – 10 of final paragraph delete "the Client shall not be bound to make any further payment to the Constructor" and insert "no further sum shall become due to the Constructor"

In line 12 of final paragraph delete "prior to the date of termination"

### 4 **Clause 26.17**

Insert new clause 26.17:

"In the event of a Partnering Team member suffering an event of insolvency as described in Section 113(2) to Section 113(5) of the HGCR:

- (i) the payer need not pay any sum that has already become due to the payee insofar as the payer has given or gives a notice in accordance with clause 20.7;
- (ii) the payer need not pay any sum that has already become due to the payee if the event occurs after the date on which the notice in relation to that sum is due in accordance with clause 20.7."

5 **Appendix 1**

In line 1 of the definition of Final Account delete "20.15" and insert "20.16(i)"

6 **Appendix 5 Part 2**

Renumber existing paragraphs 4 and 5 as paragraphs 9 and 10 respectively.

Insert new paragraph 4:

"The Adjudicator shall be appointed and the dispute or difference referred to him/her within seven (7) days following the giving of a notice by any Partnering Team member requiring a dispute or difference to be so referred."

Insert new paragraph 5:

"The Adjudicator shall reach his/her decision within twenty eight (28) days of the date of referral, or such longer period as is agreed by the Partnering Team members in dispute after the dispute has been referred. The Adjudicator may extend the period of twenty eight (28) days by up to fourteen (14) days with the consent of the Partnering Team member who referred the dispute or difference."

Insert new paragraph 6:

"The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law."

Insert new paragraph 7:

"The Adjudicator may correct his/her decision so as to remove a clerical or typographical error arising by accident or omission within five (5) days of communicating his/her decision to the Partnering Team members in dispute."

Insert new paragraph 8:

"The Adjudicator's decision shall be binding until the dispute is finally determined by legal proceedings, by arbitration (if the Partnering Contract provides for arbitration or the Partnering Team members otherwise agree to arbitration) or by agreement."

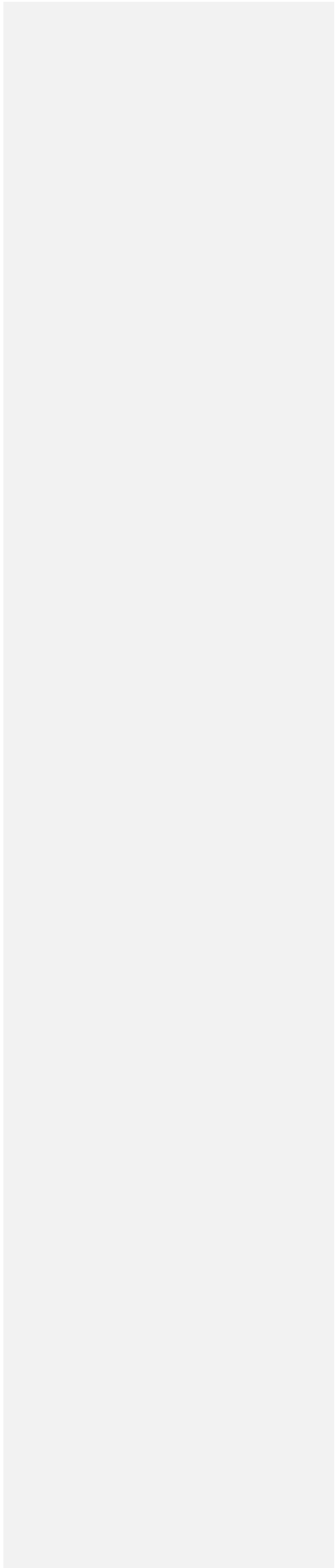
[Insert new paragraph 11:

"If the Model Adjudication Procedure fourth edition is the edition current at the date of the relevant notice:

- (i) delete paragraph 29 and insert "Not used."
- (ii) delete paragraph 30 and insert "Not used."
- (iii) insert "as amended" at the end of the definition of 'Act'"

---

<sup>1</sup> The CIC have advised that they are reviewing the Model Adjudication Procedure in light of the revised Construction Act and that a fifth edition should be available during early October 2011. If this is the case these amendments will not be required although users should check that the new edition satisfies the requirements of the revised Construction Act and amend if required.





**Mark up of clause 20 in PPC2000 (amended 2008) showing changes made**

	20	<b>Payment</b>	
Payment obligations	20.1		The Client shall be responsible for payment to the Consultants of all agreed amounts stated in the Consultant Payment Terms and for payment to the Constructor of all agreed amounts in respect of <del>the</del> Constructor's Services, <u>in respect of under any</u> Pre-Construction <u>Activities Agreement</u> and comprising the Agreed Maximum Price, plus in each case VAT (if applicable), and in each case subject to and adjusted in accordance with these Partnering Terms.
Payment applications	20.2		Subject to any agreed payment milestones, activity schedules or cashflows and any other payment arrangements set out in the Price Framework and the Consultant Payment Terms and any Pre-Construction Agreement, applications for payment of amounts due to the Consultants and the Constructor shall be submitted respectively by each Consultant and the Constructor to the Client <u>and the Client Representative</u> at the intervals stated in the Price Framework, the Consultant Payment Terms and any Pre-Construction Agreement or (if no intervals are stated) at the end of each calendar month. Each application for payment shall <u>state the sum the relevant Consultant or the Constructor considers to be due to it on the due date for payment and the basis on which that sum is calculated and shall</u> be accompanied by such details as are stated in the Project Brief and such further information as the Client Representative may reasonably require. <u>The due date for payment in respect of each application for payment shall be the date of receipt by the Client of the relevant application, submitted in accordance with this clause 20.2.</u>
<u>Interim Valuations and payments to Constructor – payment notices and final date for payment</u>	20.3		<del>Subject to any revised periods stated in the Price Framework, w</del> Within five (5) <del>Working Days</del> days from receipt of each application for payment made by the Constructor in accordance with clause 20.2, <u>clause 20.15 or</u> <del>and</del> when otherwise required by these Partnering Terms, the Client Representative shall issue to the Constructor and the Client a <u>payment notice valuation</u> calculated in accordance with clause 20.5, specifying the <u>sum amount of the Client Representative considers to have been due on the due date for payment</u> <del>proposed to be made, to what that amount relates</del> and the basis on which that <u>sum amount</u> is calculated. <del>The date of such valuation shall be the due date for payment to the Constructor and such valuation shall also be notice pursuant to Section 110(2) of the HGCRA. Subject to any notice issued in accordance with clause 20.7, the Client shall pay to the Constructor the sum stated as due in the payment notice by the final date for</del> <u>payment.</u> Subject to any revised periods stated in the Price Framework, the <u>final date for payment shall be the later of Client shall pay to the Constructor the amount stated as due in each such valuation within fifteen</u> <del>twenty</del> (20) <u>15</u> Working Days from the <u>due date for payment of issue of each such valuation and</u> <del>fifteen</del> (15) Working Days from the date of receipt by the Client of any required VAT invoice <u>from the Constructor</u> in the same amount <u>as the payment notice from the Constructor, whichever shall be the later, and the later of such dates shall be the final date for payment.</u>

Payment to  
Consultants –  
payment notices  
and final date for  
payment

20.4 ~~Subject to any revised periods stated in the Consultant Payment Terms, within five (15) Working Days from receipt by the Client of each application for payment made by a Consultant in accordance with clause 20.2 and when otherwise required by these Partnering Terms, the Client shall issue a payment notice to each Consultant, calculated according to the relevant Consultant Payment Terms on the basis of the Consultant Services provided, and taking into account sums due pursuant to clauses 20.10 and 20.17 specifying the sum amount of the payment proposed to be made, to what that amount relates, the Client considers to have been due on the due date for payment and the basis on which that sum amount is calculated. The date of such notice shall be the due date for payment to that Consultant and such notice shall also be notice pursuant to Section 110(2) of the HGCRA. Subject to any notice issued in accordance with clause 20.7, the Client shall pay to the relevant Consultant the amount stated as due in the relevant payment notice by the final date for payment. Subject to any revised periods stated in the Consultant Payment Terms, the Client shall pay to each Consultant the amount stated as due in each notice within final date for payment shall be the later of thirty (30) fifteen (15) Working Days from the due date for payment of issue of such notice and or ten (10) twenty five (25) Working Days from the date of receipt by the Client from the relevant Consultant of any required VAT invoice in the same sum as the relevant payment notice amount from that Consultant, whichever shall be the later, and the later of such dates shall be the final date for payment.~~

Content of  
Constructor  
valuations

20.5 The amount payable under each application for payment by the Constructor shall be calculated in accordance with the Price Framework to establish the value of the Constructor's Services properly performed, or the value of any Pre-Construction Activities properly performed or the value of that part of the Project properly progressed, including the value of any unfixed materials, goods and equipment on and off Site intended for the Project (subject to clause 15.4 and if and to the extent provided in the Price Framework), less the total of all amounts previously paid, and adjusted to reflect shared savings, shared added value and pain/gain Incentives pursuant to clause 13.2, and any Incentives that link payment to achievement of the Date for Completion or any KPI Targets pursuant to clause 13.3 and any sums due pursuant to clauses 17.3, 17.4, 18.5 or 18.6 and taking into account sums due pursuant to clauses 20.10 and 20.17.

Default notice

~~20.5~~ 20.6 If the Client Representative or the Client does not issue a payment notice in accordance with clause 20.3 or clause 20.4 respectively:

Formatted: Bullets and Numbering

(i) the relevant Consultant's application for payment under clause 20.2 or the Constructor's application under clause 20.2 or clause 20.15 shall be treated as the payment notice;

Formatted: Body 2, Indent: Left: 1.69 cm, Hanging: 1.59 cm, Tab stops: Not at 1.75 cm

(ii) subject to any notice issued in accordance with clause 20.7, the Client shall pay the amount stated as due in the application for payment by the final date for payment.

Formatted: Default Paragraph Font

Withholding or  
deduction Pay less

20.7 Not later than two (2) Working Days before the final date for payment of any ~~sum~~ amount due, the payer or (in respect of payments due to the

Formatted: Bullets and Numbering

notice

Constructor) the Client Representative may give notice to the payee pursuant to Section 111(34) of the HGCRA, specifying ~~any amount proposed to be withheld or deducted from the amount otherwise due together with the ground or grounds for such withholding or deduction and the amount attributable to each such ground,~~ the sum that the payer considers to be due on the date the notice is served and the basis on which that sum is calculated. If a notice is issued is issued under this clause 20.7:

(i) the payer shall pay the amount stated in such notice by the final date for payment;

Formatted: Indent: Left: 1.69 cm, Hanging: 1.59 cm, Tab stops: Not at 2.7 cm

(ii) the payee shall reissue any required VAT invoice to reflect the sum stated in such notice.

Formatted: Default Paragraph Font

Adjustment of valuations and notices

~~20.7~~20.8 ~~None of the issue by the Client Representative of any valuation or by the Client of any notice or by any party of a VAT invoice or the payment of any amount by the payer Client shall not in any way affect the right of the payer Client or any payee to contend that:~~

Formatted: Bullets and Numbering

(i) any Consultant Services or Constructor's Services or Pre-Construction Activities or the Project have~~s~~ or have not been properly valued; and/or

Formatted: Indent: Left: 1.69 cm, Hanging: 1.59 cm, Tab stops: Not at 2.7 cm

(ii) that any amount has been improperly paid or withheld.

~~and, in calculating any valuation or notice, the payer or (in the case of payments to the Constructor) Client and the Client Representative shall be entitled to reconsider and, if necessary, adjust any assessment made in arriving at any previous valuation or notice.~~

Notices Valuations not approved

~~20.8~~20.9 ~~None of the issue by the Client Representative or any valuation or by the Client of any notice or by any party of a VAT invoice or the payment of any amount by the Client shall not:~~

Formatted: Bullets and Numbering

(i) constitute or imply or be evidence of the Client's approval or acceptance of any part of any Consultant Services or Constructor's Services or Pre-Construction Activities or the Project; or

(ii) shall in any way affect the responsibilities of any Partnering Team member Consultant or the Constructor under the Partnering Contract.

Interest on late payment

~~20.9~~20.10 ~~Any delay in a due payment beyond the final date stated in clause 20.3, or clause 20.4, clause 20.16(iii) or clause 20.18 shall entitle the payee to be paid interest at the percentage specified in the Project Partnering Agreement, and the Partnering Team members Consultants and the Constructor confirm that such interest is a substantial remedy for late payment in compliance with Section 9 of the Late Payment Act.~~

Formatted: Bullets and Numbering

Fluctuation

~~20.10~~20.11 ~~Amounts in the Price Framework and Consultant Payment Terms shall be subject only to such fluctuation provisions, if any, as are set out in the~~

Formatted: Bullets and Numbering

Price Framework and Consultant Payment Terms.

Payment of Specialists

~~20.14~~20.12 The Constructor shall pay all Specialists (other than Specialists appointed pursuant to clause 10.11) the amounts to which they are entitled in accordance with the Specialist Payment Terms (with provision for interest on late payment equivalent to clause 20.109), shall maintain full records of all amounts payable and paid to each Specialist and shall make these records available to the Client Representative on request.

Formatted: Bullets and Numbering

Inspection of financial records

~~20.12~~20.13 Each Partnering Team member shall allow the Client Representative to visit its offices and to inspect its financial records in relation to the Project at any time subject to reasonable prior notice.

Formatted: Bullets and Numbering

Statutory deduction

~~20.13~~20.14 Where the Client is a "contractor" for the purposes of the Finance Act, then not later than fifteen (15) Working Days prior to the Constructor's first application for payment in relation to the Project, and at any other time upon request, the Constructor shall either provide the Client with evidence that the Constructor is entitled to be paid without the statutory deduction referred to in the Finance Act or inform the Client in writing that it is not entitled to be paid without such statutory deduction (and in the latter case the Constructor shall immediately inform the Client if it subsequently becomes entitled to be paid without such statutory deduction) and the Client shall be entitled to receive from the Constructor evidence supporting the Constructor's stated entitlement to be paid without such statutory deduction.

Formatted: Bullets and Numbering

Payment on Project Completion

~~20.14~~20.15 Within twenty (20) Working Days following Project Completion (or any other period stated in the Price Framework), the Client Representative shall prepare and issue to the Client and the Constructor an account confirming the balance of the Agreed Maximum Price due as between the Client and the Constructor, calculated in accordance with clause 20.5. subject only to any outstanding entitlements and claims by the Client or the Constructor notified to the Client Representative prior to that date, and the Client and the Constructor shall seek to agree the amount of that balance, taking into account any adjustment provided for in these Partnering Terms and subject to deduction of any amount stated as a Retention in the Price Framework. Within twenty (20) Working Days from the date of issue of that account, the Client Representative shall issue a valuation in accordance with clause 20.3 in the agreed amount, or if agreement is not reached then, subject to clause 20.7, in such amount as is fair and reasonable. The Client shall pay in accordance with clause 20.3 the amount stated as due in such valuation. On or after forty (40) Working Days following Project Completion (or any revised period stated in the Price Framework) the Constructor shall issue a payment application in accordance with clause 20.2 and the due date for payment shall be the date of receipt by the Client of such application.

Formatted: Bullets and Numbering

Final Account

~~20.15~~20.16 The following procedures shall apply in relation to the Final Account:

Formatted: Bullets and Numbering

- (i) Within twenty (20) Working Days following notice to the Client and the Constructor by the Client Representative confirming satisfaction of the Constructor's obligations under clause 21.4 as to rectification of defects (or on such earlier date as the Client and the Constructor

Formatted: Tab stops: Not at 2.7 cm

may agree), the Client Representative shall prepare and issue to the Client and the Constructor a Final Account (calculated in accordance with clause 20.5 and taking into account any adjustment provided for in these Partnering Terms) for agreement between the Client and the Constructor. ~~The Final Account, when agreed, shall be conclusive evidence as to the balance of the Agreed Maximum Price due between the Client and the Constructor and, upon agreement, the Client Representative shall issue a Final Account valuation. The Client shall pay in accordance with clause 20.3 the amount stated as due in such valuation, and clause 20.7 shall not apply to such valuation.~~

- (ii) ~~On or after forty (40) Working Days of the notice confirming satisfaction of the Constructor's obligations under clause 21.4 (or any revised period stated in the Price Framework) the Constructor or the Client (as the case may be) shall make an application for payment which shall state the sum the Constructor or the Client considers to be due to it and the basis on which that sum is calculated and which shall be accompanied by such details as are stated in the Project Brief and such further information as the Constructor or the Client Representative may reasonably require. Such application shall either be in the agreed amount or if agreement is not reached then in such amount as the payee considers to be due on the due date for payment, calculated in accordance with clause 20.5 and taking into account any adjustment provided for in these Partnering Terms. The due date for payment in respect of the application shall be the date of receipt by the payer of such application.~~
- (iii) ~~Within five (5) days of the due date for payment the payer or (in respect of payments due to the Constructor) the Client Representative shall issue to the payee a payment notice setting out the sum the payer or the Client Representative considers to have been due on the due date for payment (either in the agreed sum or as calculated in accordance with clause 20.5 and taking into account any adjustment provided for in these Partnering Terms) and the basis on which that sum is calculated. Subject to any revised periods stated in the Price Framework, the final date for payment shall be the later of twenty (20) Working Days from the due date for payment and fifteen (15) Working Days from receipt by the payer of any required VAT invoice in the same sum as the payment notice.~~
- (iv) ~~If a payment notice is not issued in accordance with clause 20.16(iii) the application for payment pursuant to clause 20.16(ii) shall be treated as the payment notice. Subject to any notice issued in accordance with clause 20.7, the payer shall pay the sum stated as due in the payment notice or the application for payment by the final date for payment.~~
- (v) ~~The Final Account, when agreed, shall be conclusive evidence as~~

Formatted: Body 2, Indent: Hanging: 1.52 cm, Tab stops: Not at 2.7 cm

to the balance of the Agreed Maximum Price due between the Client and the Constructor.

Formatted: Default Paragraph Font

Non-agreement of Final Account

~~20.16~~ If agreement of the Final Account is not reached within forty (40) Working Days from the date of its issue in accordance with clause 20.15, either the Client or the Constructor may implement the procedure described in clause 27 if appropriate.

Formatted: Bullets and Numbering

Suspension of performance

~~20.16~~ 20.17 If the Client fails to make any payment due in accordance with this clause 20 by the stated final date for payment, and if such failure shall continue for seven (7) days after the Constructor or a Consultant has given the Client written notice of its intention to suspend performance of any or all of its obligations and the grounds for such intended suspension, then the Constructor or such Consultant may suspend performance of its any or all of its obligations under the Partnering Contract until payment is received in full. Where the Constructor or a Consultant exercises such right of suspension it shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by it as a result of the exercise of the right.

Sums due to the Client

20.18 Any sum due to the Client from a Partnering Team member (other than pursuant to clause 20.16) which the Client does not deduct and/or withhold from sums due or to become due to the relevant Partnering Team member shall be due for payment on receipt of an application from the Client by the relevant Partnering Team member. In such application the Client shall specify the sum it considers to be due on the payment due date and the basis on which that sum is calculated. Within 5 days of the payment due date the relevant Partnering Team member shall issue a notice confirming the sum that it considers to have been due on the payment due date and the basis on which that sum is calculated. If the relevant Partnering Team member fails to serve such notice the Client's application shall be treated as the payment notice. The final date for payment for any such sum applied for shall be the later of twenty (20) Working Days from the payment due date and fifteen (15) Working Days from the date of receipt by the relevant Partnering Team member of any required VAT invoice from the Client in the same amount as the payment notice.

Formatted: Bullets and Numbering