



Public Sector Supplement
**Fair Payment, Transparency and
Building Information Modelling**



2011

PUBLIC SECTOR SUPPLEMENT

Public Sector Supplement: Fair Payment, Transparency and Building Information Modelling

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Part 1 – Introduction

Scope

1. This Supplement suggests steps to be taken by Public Sector clients (or their contract administrators) to ensure compliance with the Fair Payment Charter when using JCT Contracts, together with relevant amendments. Contractors and sub-contractors should familiarise themselves with the requirements. The Fair Payment amendments may also be used by Private Sector clients who wish to ensure that those principles are applied at other levels in the supply chain.
2. At the same time, to deal with other aspects of Government contracting policy relevant to JCT contracts, the Supplement also includes:
 - a model clause authorising disclosures by Public Sector clients in accordance with the Freedom of Information Act 2000 (FOIA) and the Government's Transparency Policy; and
 - suggested steps to be taken, or minor modifications to be made, for both Public Sector and Private Sector projects, where design work and information supply is to be governed by a Building Information Modelling ('BIM') protocol.
3. Part 2 of this Supplement sets out the preliminary steps that should be taken in relation to Fair Payment. That is followed in Part 3 by a note on incorporation of amendments into JCT contracts.
4. Part 4 consists of individual schedules of modifications for each of the following JCT Main Contracts, covering not only Fair Payment but also Transparency and BIM protocol:
 - Standard Building Contract (SBC) (all versions)
 - Design and Build Contract (DB)
 - Major Project Construction Contract (MP)
 - JCT - Constructing Excellence Contract (CE)
 - Prime Cost Building Contract (PCC)
 - Management Building Contract (MC)
 - Intermediate Building Contract (IC) (both versions), and
 - Minor Works Building Contract (MW)
 - Measured Term Contract (MTC)
 - Construction Management Trade Contract (CM/TC).
5. Part 5 sets out schedules of modifications for each of the JCT Sub-Contracts designed for use with the Main Contracts listed above and for the generic Short Form of Sub-Contract and Sub-subcontract. Transparency is relevant only to Main Contracts; BIM protocols can generally be incorporated in JCT Sub-Contracts and (if relevant) the JCT Sub-subcontract without amendments to the printed text of either the Articles or Conditions.
6. Given the wide terms of the Fair Payment Charter and of the related guidance referred to below, it is possible that the underlying principles should be applied in the case of consultant appointments also, whether under the JCT Consultancy Agreement (Public Sector) (CA 2011) or otherwise. However, as indicated in the note on the JCT Construction Management Appointment in the schedule for the Construction Management Trade Contract, conformity should generally be achievable, at least in the case of CA 2011, without modification to the printed form.

Fair Payment principles

7. The Fair Payment Charter provides that all contracts are to have payment periods not exceeding 30 days. In JCT's view, its existing payment provisions – agreed by all sides of the industry – substantially conform to fair payment principles. However, the Office of Government Commerce (OGC) (now the Cabinet Office Efficiency and Reform Group) in its "Guide to Best Fair Payment Practices" has interpreted and applied that provision in the following way:
 - the final date for payment under a contract should not exceed 30 days from the date as at which the value of work done and/or materials supplied in a particular period is assessed,
 - 'contracts' for these purposes, in addition to the Main Contract (Tier 1), include all Sub-Contracts and Sub-subcontracts (respectively Tier 2 and Tier 3 contracts),
 - for the purpose of interim payments, the value of work and materials supplied by all 3 tiers should be assessed as at the same date (a 'common valuation date'), and

- on the assumption that the main contract valuation date (and hence the common valuation date) is (or may be) 7 days prior to the date on which a payment becomes due (the 'due' date), the final dates for payment to Main Contractor, his Sub-Contractors and their Sub-subcontractors respectively should be no more than 14, 19 and 23 days after the due date, i.e. within 21, 26 and 30 days from valuation date.

Transparency and FOIA

8. The model clause, which has been included in the schedule of suggested modifications for each Main Contract, is based on the original OGC draft, with minor adaptation and clarifications.
9. JCT accepts that the appropriate stage for identifying commercially sensitive material in Public Sector contracts is at the tender stage and that, in view of the tight schedule for responses to any information requests under FOIA, further procedural provisions would not be appropriate. However, to give contractors an opportunity to review or add to any previous submissions, the clause has the added requirement that contractors should promptly be informed of any such request received by the client, which appears generally accepted practice.

BIM Protocols

10. Wider adoption and further development of building information modelling techniques should yield substantial benefits both for clients and for the industry generally.
11. In terms of improved collaborative working, most of the benefits will accrue in the design phase. This, in terms of JCT Contracts, is covered principally by the Pre-Construction Services Agreements, Framework Agreement, Consultancy Agreement (Public Sector), JCT - Constructing Excellence Contract and the preliminary phase of the Management Contract. However, collaborative working is and has for some time also been covered by Supplemental Provision 1 in all relevant JCT Main Contracts.
12. BIM is also directed to facilitating post-occupancy management and will therefore overlay both the construction phase supply of design information to contractors and supply by them of their designs and 'as built' information.
13. In that regard JCT's existing conditions appear adequate; the primary requirement is simply integration of BIM protocols (through inclusion in the Preliminaries/Employer's Requirements or other contract documents) and their harmonisation with design submission procedures, information release schedules and communication protocols.
14. Consequential amendments to the Contractor's Design Submission procedure may be necessary but, in contracts other than the Major Project Construction Contract, this can be effected simply through modifications included in the Contract Documents.
15. Nevertheless, to underline the importance of these protocols and their status within the Contract (and to cover the position if a protocol is agreed too late for ready incorporation in another document), optional minor additions to the Contract Conditions are included for certain Main Contracts.

Part 2 – Employer’s preliminary notice of Fair Payment requirements

For all contracts, with a view to ensuring that payment is received by the Contractor, his Sub-Contractors and their Sub-subcontractors (i.e. by all Tiers 1 to 3 contractors) within 30 days of the date as at which periodic payments are assessed or otherwise become due for payment, a Public Sector client or its contract administrator should include in the tender documents – whether in the Preliminaries/Employer’s Requirements or other suitable document – a clear statement to the effect that:

- all valuations by Contractors and Sub-Contractors of work done and materials supplied to them are to be made as at the same valuation date as applies under the Main Contract (the common valuation date), with the Employer’s statement indicating what that date will be
- the due dates for payments under all Sub-Contracts and Sub-subcontracts should be the same as the due dates under the Main Contract, with a final date for payment 19 days after the due date in Sub-Contracts and 23 days after due date in Sub-subcontracts^[1]
- Contractors are required to inform their Sub-Contractors and Sub-Contractors should inform their Sub-subcontractors of these Fair Payment requirements prior to entry into the relevant Sub-Contract or Sub-subcontract and should also inform them promptly of any relevant ascertainment of additional sums due to them under their Sub-Contract or Sub-subcontract.

(It can also be pointed out that use of the BACS system may assist in ensuring timely payment.)

[1] All JCT Main Contracts set a final date for interim payments 14 days after due date, subject as otherwise provided by law.

Part 3 – Incorporation of modifications

In the case of JCT Main Contracts, the suggested modifications may be incorporated in one of two ways:

either by amending the contract document itself in accordance with the relevant modifications and then executing it in its amended form, with each amendment initialled by or on behalf of each party

or by downloading the relevant amendment sheet from Part 4 of this Supplement, attaching it to the Contract in the form of a numbered Annex or Schedule and, prior to execution, inserting in the Articles with the next available number a provision along the following lines:

'Article [___]: Fair Payment, Transparency and Building Information Modelling

This Agreement and the Conditions shall have effect as modified by the amendments set out in [Annex/Schedule] [_____] attached.'

(The additional provision and the Annex or Schedule should each in similar fashion be initialled on execution.)

The latter alternative will generally be the easier approach. (In the case of the Major Project Construction Contract, which has no Articles, an additional clause can be added in lieu.)

In the case of the JCT Sub-Contracts and Sub-subcontract, for which modification schedules are included in Part 5:

- in the Standard Building Sub-Contracts, Design and Build Sub-Contract and Intermediate Sub-Contracts ICSUB and ICSUB/D^[2], Item 1 of the Sub-Contract Particulars provides for a Schedule of Modifications to be included as a Numbered Document; the relevant modifications may conveniently be included in or as that Schedule. Any BIM protocol should where relevant be included in the Contractor's Requirements or as a Numbered Document.
- in the Minor Works Sub-Contract (MWSUB/D) and the Short Form of Sub-Contract, the Second Recital and, in the case of the Sub-subcontract, the Third Recital similarly allow for inclusion of such a Schedule and any BIM protocol as further documents forming part of the contract.

[2] In ICSUB/NAM the corresponding entry is at Item IT6 in the Sub-Contract Information.

Part 4 – Suggested modifications to JCT Main Contracts

Standard Building Contract (all versions – Q, AQ, XQ)

Design and Build Contract

Major Project Construction Contract

JCT - Constructing Excellence Contract

Prime Cost Building Contract

Management Building Contract

Intermediate Building Contract (both versions – IC and ICD)

Minor Works Building Contract (both versions – MW and MWD)

Measured Term Contract

Construction Management Trade Contract (with a note on the Construction Management Appointment)

Standard Building Contract 2011
Standard Building Contract 2011
 (all versions – Q, AQ, XQ)

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Fair Payment [FP], Transparency [T] and Building Information Modelling [BIM]

Issued September 2011

	Clause number	Modification
[FP]	Contract Particulars, clause 4-9-1	In the right-hand column (and in the related footnote), delete 'or the nearest Business Day in that month'
	Clause 1-1	Insert the following (before the definition of Completion Date):
[FP]		'Common Valuation Date: the date 7 days before each due date, as specified in the Contract Particulars (against the reference to clause 4-9-1).'
[BIM]		In the definition of 'Contract Documents' insert after 'Contractor's Proposals' ', any agreed Building Information Modelling protocol' ^[a]
[T]	Clause 2-8-5	Insert as clause 2-8-5 the following ^[b] : '5 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 ('FOIA'), the content of this Contract is not confidential. The Employer shall be responsible for determining in his absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding clause 2-8-4 or any other term of this Contract: ·1 the Contractor hereby consents to the Employer publishing any amendments to the standard form JCT contract in their entirety, including changes to the standard form agreed from time to time, but in each case with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted; ·2 the Employer shall promptly inform the Contractor of any request for disclosure that he receives in relation to this Contract.'
[FP]	Clause 3-9-2-7	Insert as clause 3-9-2-7 the following: '7 that under the sub-contract and any sub-subcontract under it, the due dates for interim payments shall each be the same date as under this Contract and each valuation for an interim payment shall be made as at the Common Valuation Date; the final date for each payment under the sub-contract shall be not later than 19 days after due date and, under any sub-subcontract, not later than 23 days after due date.'
[FP]	Clause 4-9-1	Delete the existing text and insert the following: 'During the period up to the due date for the final payment under clause 4-15-3, the due dates for interim payments shall be the monthly dates specified in the Contract Particulars.'
[FP]	Clause 4-11-1	Delete 'less than 7 days before the due date' and insert 'later than the Common Valuation Date'
[FP]	Clause 4-15-3	Delete '28 days' and insert '14 days'

	Clause number	Modification
[FP]	Clause 4-16 (introductory paragraph)	Delete 'a date not more than 7 days before the due date of an interim payment' and insert 'the Common Valuation Date'

[a] It is suggested that any agreed BIM protocol should be included in the Employer's Requirements (see the Contract Particulars entry for the Tenth Recital) or other suitable Contract Document: if so included, this modification may be deleted.

(Where included in or as a Contract Document, the BIM protocol may make appropriate amendments to the Contractor's Design Submission Procedure (Schedule 1) without further modifications to the Contract form (see clause 2-9-5.)

[b] Applicable only for Employers in the Public Sector: in other cases the modification should be deleted.

Note:

As regards incorporation of this schedule of modifications in the Contract, see Part 3 of this Supplement.

Design and Build Contract 2011

Design and Build Contract 2011

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Fair Payment [FP], Transparency [T] and Building Information Modelling [BIM]

Issued September 2011

	Clause number	Modification
[FP]	Contract Particulars, clause 4.7.1	Above the clause 4.7 entry insert the following new entry by reference to clause 4.7.1: 'Interim Payments – due dates <i>(The dates apply for each Alternative; if no date is stated, the first due date is one month after the Date of Possession.)</i>
		The first due date is: _____ and thereafter the same date in each month'
[FP]	Contract Particulars, clause 4.7 (Alternative A: Stage Payment)	Delete 'referred to in clause 4.8.2'
[FP]	Contract Particulars, clause 4.7 (Alternative B: Period Payments – Dates of Interim Applications)	Delete the entire text of the existing entry
	Clause 1.1	Insert the following (before the definition of Completion Date):
[FP]		'Common Valuation Date: the date 7 days before each due date, as specified in the Contract Particulars (against the reference to clause 4.7).'
[BIM]		In the definition of 'Contract Documents' insert after 'Contractor's Proposals' ', any agreed Building Information Modelling protocol' ^[a]
[T]	Clause 2.7.5	Insert as clause 2.7.5 the following ^[b] : '5 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 ('FOIA'), the content of this Contract is not confidential. The Employer shall be responsible for determining in his absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding clause 2.7.4 or any other term of this Contract: ·1 the Contractor hereby consents to the Employer publishing any amendments to the standard form JCT contract in their entirety, including changes to the standard form agreed from time to time, but in each case with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted; ·2 the Employer shall promptly inform the Contractor of any request for disclosure that he receives in relation to this Contract.'

Clause number	Modification
[FP] Clause 3-4-2-7	Insert as clause 3-4-2-7 the following: ‘7 that under the sub-contract and any sub-subcontract under it, the due dates for interim payments shall each be the same date as under this Contract and each valuation for an interim payment shall be made as at the Common Valuation Date; the final date for each payment under the sub-contract shall be not later than 19 days after due date and, under any sub-subcontract, not later than 23 days after due date.’
[FP] Clause 4-7-1	Delete the existing text and insert the following: ‘During the period up to the due date for the final payment under clause 4-12-5, the due dates for Interim Payments shall be the monthly dates specified in the Contract Particulars.’
[FP] Clause 4-7-2	After ‘under clause 4-13 where’ insert ‘the Contract Particulars state that’
[FP] Clause 4-8 heading	Delete ‘and due dates’
[FP] Clause 4-8	Delete the existing text of the entire clause and insert as clauses 4-8-1 and 4-8-2 the following: ‘1 In relation to each Interim Payment, the Contractor shall make an application to the Employer (an ‘Interim Application’), stating the sum that the Contractor considers to be due to him and the basis on which that sum has been calculated. 2 Each Interim Application shall be accompanied by such further information as may be specified in the Employer’s Requirements and should be submitted on or before the Common Valuation Date. In the event of an Interim Application being received by the Employer more than 3 days after the Common Valuation Date, the final date for payment shall be postponed by the same number of days as the number of days after the Common Valuation Date that the Interim Application is received.’
[FP] Clause 4-9-1	After ‘from its due date’ insert ‘, subject to clause 4-8-2’
[FP] Clause 4-12-7	Delete ‘28 days’ and insert ‘14 days’
[FP] Clause 4-13 (introductory paragraph)	Delete ‘completion of the relevant stage’ and insert ‘the Common Valuation Date’
[FP] Clause 4-13-1-1	Delete ‘at the relevant stage’ and insert ‘of stages completed’
[FP] Clause 4-14 (introductory paragraph)	Delete ‘date for making an Interim Application under clause 4-8-3’ and insert ‘Common Valuation Date’

[a] It is suggested that any agreed BIM protocol should be included in the Employer’s Requirements (see the Contract Particulars entry for Article 4): if so included, this modification may be deleted.

(Where included in or as a Contract Document, the BIM protocol may make appropriate amendments to the Contractor’s Design Submission Procedure (Schedule 1) without further modifications to the Contract form (see clause 2-8.)

[b] Applicable only for Employers in the Public Sector: in other cases the modification should be deleted.

Note:

As regards incorporation of this schedule of modifications in the Contract, see Part 3 of this Supplement.

Major Project Construction Contract 2011

Major Project Construction Contract 2011

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Issued December 2011

	Clause number	Modification
[FP]	Clause 1	<p>Insert the following (before the definition of Completion Date):</p> <p>‘Common Valuation Date: the date 7 days before each due date, as specified in the Contract Particulars (against the reference to clause 28.1).’</p>
[BIM]	Clause 12.1 ^[a]	<p>Insert the following after ‘Design Documents’:</p> <p>‘, in relation to which the following provisions of this clause 12 shall apply subject to any modifications set out in the Requirements or the Proposals or in any Building Information Modelling or similar protocol agreed by the Parties’</p>
[FP]	Clause 28.1	Delete ‘7 days before that date’ and insert ‘the Common Valuation Date’
[T]	Clause 44 ^[b]	<p>Insert the following as clause 44:</p> <p>‘Transparency</p> <p>The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 (‘FOIA’), the content of this Contract is not confidential. The Employer shall be responsible for determining in his absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding any other term of this Contract:</p> <ul style="list-style-type: none"> ·1 the Contractor hereby consents to the Employer publishing any amendments to the standard form JCT contract in their entirety, including changes to the standard form agreed from time to time, but in each case with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted; ·2 the Employer shall promptly inform the Contractor of any request for disclosure that he receives in relation to this Contract.’
[FP]	Schedule 2, paragraphs 3 and 4.1	In each paragraph, delete ‘a date not more than 7 days before that date’ and insert ‘the Common Valuation Date’

[a] Applicable only where a BIM or similar protocol or provision of the Requirements or the Proposals is intended to vary or alter the procedure. Where there is no such protocol or provision, the modification may be deleted.

[b] Applicable only for Employers in the Public Sector: in other cases the modification should be deleted.

Notes:

Clause 28.2

See the comment below on clause 31.2 of the MP Sub-Contract in relation to the ‘de minimis’ exception post-practical completion, which reflects this clause: if the Parties consider the exception unnecessary, that is simply achieved by inserting the nominal figure of £1 in the Contract Particulars for clause 28.2. Alternatively the exception may be deleted.

Incorporation of modifications

As regards incorporation of this schedule of modifications in the Contract, see Part 3 of this Supplement.

JCT - Constructing Excellence Contract 2011
JCT - Constructing Excellence Contract 2011

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Fair Payment [FP], Transparency [T] and Building Information Modelling [BIM]

Issued December 2011

	Clause number	Modification
[FP]	Contract Particulars, Part 1 – clause 1-1	<p>Insert in the first entry, after the lines for the name and address of the Client, the following further entry:</p> <p>‘Where the Purchaser is not the Client, he is:</p> <p>* a Tier 1 Supplier/ * a Tier 2 Supplier</p> <p>(A Tier 1 Supplier for these purposes means a Supplier directly contracted to the Client and a Tier 2 Supplier means one sub-contracted to a Tier 1 Supplier.)^[a]</p>
[FP]	Contract Particulars, Part 1 – clauses 7-6 and 7-19	<p>Insert the following:</p> <p>‘Common Valuation Date The Common Valuation Date is the _____ day of each month, commencing with the date next following the commencement of the Services under this Contract.^[b]</p>
[T]	Contract Particulars, Part 9^[c]	<p>Insert the following as a supplementary condition, with the first available number:</p> <p>‘Where the Purchaser is the Client and is a public sector body, the Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 (‘FOIA’), the content of this Contract is not confidential. The Purchaser shall be responsible for determining in his absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding clause 2-8-4 or any other term of this Contract:</p> <ul style="list-style-type: none"> ·1 the Supplier hereby consents to the Purchaser publishing any amendments to the standard form JCT contract in their entirety, including changes to the standard form agreed from time to time, but in each case with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted; ·2 the Purchaser shall promptly inform the Supplier of any request for disclosure that he receives in relation to this Contract.’
[FP]	Clause 1-1	<p>Insert the following (before the definition of Completion Date):</p> <p>‘Common Valuation Date: the monthly date specified in Part 1 of the Contract Particulars (against the reference to clauses 7-6 and 7-19).’</p>
[FP]	Clause 4-17	<p>After ‘The Supplier acknowledges that terms imposing more onerous obligations on members of the Supply Chain are to be avoided’ insert ‘except as provided by clauses 7-6 and 7-7 or 7-19 and 7-20, whichever apply’</p>

Clause number	Modification
[FP] Clause 7.6 ^[d]	<p>Delete the existing text and insert the following:</p> <p>‘If the Supplier’s statement under clause 7.4.1 is received by the Purchaser:</p> <ul style="list-style-type: none"> ·1 on or before the Common Valuation Date, where the Purchaser is the Client; ·2 not later than 7 days prior to the Common Valuation Date, where the Purchaser is a Tier 1 Supplier; or ·3 not later than 11 days prior to the Common Valuation Date where the Purchaser is a Tier 2 Supplier <p>the due date for the relevant payment shall be 7 days after the Common Valuation Date. If the Supplier’s statement is not received at the required time, the due date shall be regarded as postponed by the same number of days as the number of days after the last such date for receipt that the statement is received.’</p>
[FP] Clause 7.7 ^[d]	<p>Delete the existing text and insert the following:</p> <p>‘The final date for payment shall be:</p> <ul style="list-style-type: none"> ·1 where the Purchaser is the Client, 14 days after the due date; ·2 where the Purchaser is a Tier 1 Supplier, 19 days after the due date; ·3 where the Purchaser is a Tier 2 Supplier, 23 days after the due date.’
[FP] Clause 7.16 ^[e]	<p>Delete the introductory paragraph and insert the following:</p> <p>‘At monthly intervals or, where the Payment Schedule provides for payment on completion of activities or milestones shown in the Payment Schedule, upon completion of an activity or milestone, the Supplier shall provide the Purchaser with:’</p>
[FP] Clause 7.19 ^[e]	<p>Delete the existing text and insert the following:</p> <p>‘If the Supplier’s application and statement under clause 7.16 is received by the Purchaser:</p> <ul style="list-style-type: none"> ·1 on or before the Common Valuation Date, where the Purchaser is the Client; ·2 not later than 7 days prior to the Common Valuation Date, where the Purchaser is a Tier 1 Supplier; or ·3 not later than 11 days prior to the Common Valuation Date where the Purchaser is a Tier 2 Supplier <p>the due date for the relevant payment shall be 7 days after the Common Valuation Date. If the Supplier’s application and statement are not received at the required time, the due date shall be regarded as postponed by the same number of days as the number of days after the last such date for receipt that the application and statement are received.’</p>
[FP] Clause 7.20 ^[e]	<p>Delete the existing text and insert the following:</p> <p>‘The final date for payment shall be:</p> <ul style="list-style-type: none"> ·1 where the Purchaser is the Client, 14 days after the due date; ·2 where the Purchaser is a Tier 1 Supplier, 19 days after the due date; ·3 where the Purchaser is a Tier 2 Supplier, 23 days after the due date.’

[a] See the modifications below to clauses 7.6 and 7.7 or to clauses 7.19 and 7.20, as applicable.

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- [b] Where the Purchaser is not the Client but is a Tier 1 or Tier 2 Supplier, the monthly date to be inserted is the date that applies under the contract between the Client and his Tier 1 Supplier (see the additional entry for clause 1.1 in Part 1 of the Contract Particulars set out above).
 - [c] Delete this modification if the Purchaser is not the Client or, if he is the Client, where he is not a public sector body.
 - [d] Applicable only to the Target Cost Option; delete the modifications if the Contract Sum Option applies, or if payments to Tiers 1 to 3 are covered by Project Bank Account arrangements.
 - [e] Applicable only to the Contract Sum Option; delete the modifications if the Target Cost Option applies, or if payments to Tiers 1 to 3 are covered by Project Bank Account arrangements.

Notes:

BIM protocols

Where there is an agreed BIM protocol that is relevant to this Contract, it may be incorporated in the Contract either through inclusion in the Preliminaries to a document listed in Part 2 or Part 3 of the Contract Particulars or directly through its inclusion in one of those lists.

Incorporation of modifications

As regards incorporation of this schedule of modifications in the Contract, see Part 3 of this Supplement.

Prime Cost Building Contract 2011

Prime Cost Building Contract 2011

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Fair Payment [FP], Transparency [T] and Building Information Modelling [BIM]

Issued December 2011

	Clause number	Modification
[FP]	Contract Particulars, clause 4-6-1	In the right-hand column (and in the related footnote), delete 'or the nearest Business Day in that month'
	Clause 1-1	Insert the following (before the definition of Completion Date):
[FP]		'Common Valuation Date: the date 7 days before each due date, as specified in the Contract Particulars (against the reference to clause 4-6-1).'
[BIM]		In the definition of 'Contract Documents' insert after 'the Contract Drawings (if any),' 'any agreed Building Information Modelling protocol.' ^[a]
[T]	Clause 2-7-5	Insert as clause 2-7-5 the following ^[b] : <ul style="list-style-type: none"> ·5 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 ('FOIA'), the content of this Contract is not confidential. The Employer shall be responsible for determining in his absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding clause 2-7-4 or any other term of this Contract: <ul style="list-style-type: none"> ·1 the Contractor hereby consents to the Employer publishing any amendments to the standard form JCT contract in their entirety, including changes to the standard form agreed from time to time, but in each case with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted; ·2 the Employer shall promptly inform the Contractor of any request for disclosure that he receives in relation to this Contract.'
[FP]	Clause 3-9-2-7	Insert as clause 3-9-2-7 the following: <ul style="list-style-type: none"> ·7 that under the sub-contract and any sub-subcontract under it, the due dates for interim payments shall each be the same date as under this Contract and each valuation for an interim payment shall be made as at the Common Valuation Date; the final date for each payment under the sub-contract shall be not later than 19 days after due date and, under any sub-subcontract, not later than 23 days after due date.'
[FP]	Clause 4-6-1	Delete the existing text and insert the following: <p>'During the period up to the due date for the final payment under clause 4-14-3, the due dates for interim payments shall be the monthly dates specified in the Contract Particulars.'</p>
[FP]	Clause 4-6-2 (introductory paragraph)	Delete 'a date not more than 7 days before the date of the interim payment' and insert 'the Common Valuation Date'
[FP]	Clause 4-8-1	Delete 'less than 7 days before the due date' and insert 'later than the Common Valuation Date'

Clause number	Modification
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[FP]	Clause 4-14-3	Delete '28 days' and insert '14 days'
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[a] It is suggested that any agreed BIM protocol should be included in the Specification: if so included, this modification may be deleted.

[b] Applicable only for Employers in the Public Sector: in other cases the modification should be deleted.

Note:

As regards incorporation of this schedule of modifications in the Contract, see Part 3 of this Supplement.

Management Building Contract 2011

Management Building Contract 2011

Public Sector Supplement

Fair Payment [FP], Transparency [T] and Building Information Modelling [BIM]

Issued December 2011

	Clause number	Modification
[FP]	Contract Particulars, clause 4-7-2	In the right-hand column, delete 'or the nearest Business Day in that month'
	Clause 1-1	Insert the following (before the definition of Completion Date):
[FP]		'Common Valuation Date: the date 7 days before each due date, as specified in the Contract Particulars (against the reference to clause 4-7-2).'
[BIM]		In the definition of 'Contract Documents' insert after 'Project Specification' 'any agreed Building Information Modelling protocol,' ^[a]
[T]	Clause 2-8-6	Insert as clause 2-8-6 the following ^[b] : <ul style="list-style-type: none"> ·6 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 ('FOIA'), the content of this Contract is not confidential. The Employer shall be responsible for determining in his absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding clause 2-8-5 or any other term of this Contract: <ul style="list-style-type: none"> ·1 the Management Contractor hereby consents to the Employer publishing any amendments to the standard form JCT contract in their entirety, including changes to the standard form agreed from time to time, but in each case with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted; ·2 the Employer shall promptly inform the Management Contractor of any request for disclosure that he receives in relation to this Contract.'
[FP]	Clause 4-7	Delete the existing text of clauses 4-7-2, 4-7-3 and 4-7-4 and insert the following as clause 4-7-2: 'during the Construction Period and up to the due date for the final payment under clause 4-14-3, the due dates for interim payments shall be the monthly dates specified in the Contract Particulars.'
[FP]	Clause 4-9-1 (introductory paragraph)	Delete 'a date not more than 7 days before the due date' and insert 'the Common Valuation Date'
[FP]	Clause 4-14-3	Delete '28 days' and insert '14 days'

[a] It is suggested that any agreed BIM protocol should be included in the Preliminaries section of the Project Specification: if so included, this modification may be deleted.

[b] Applicable only for Employers in the Public Sector: in other cases the modification should be deleted.

Notes:

Fair Payment terms at Tiers 2 and 3

The terms are incorporated in the Management Works Contract Conditions through the relevant schedule of modifications. To cover the sub-contracting of services under clause 3.8, the requirement may be included in the Preliminaries section of the Project Specification and/or as a term of Employer's consent under that clause.

Incorporation of modifications

As regards incorporation of this schedule of modifications in the Contract, see Part 3 of this Supplement.

Intermediate Building Contract 2011
Intermediate Building Contract 2011
 (both versions – IC and ICD)

Public Sector Supplement

Fair Payment [FP], Transparency [T] and Building Information Modelling [BIM]

Issued September 2011

	Clause number	Modification
[FP]	Contract Particulars, clause 4-7-1	In the right-hand column (and in the related footnote), delete 'or the nearest Business Day in that month'
	Clause 1-1	Insert the following (before the definition of Completion Date):
[FP]		'Common Valuation Date: the date 7 days before each due date, as specified in the Contract Particulars (against the reference to clause 4-7-1).'
[BIM]		In the definition of 'Contract Documents', after 'Contractor's Drawings' (IC) or after 'Contractor's Proposals' (ICD), insert ', any agreed Building Information Modelling protocol' ^[a]
[T]	Clause 2-8-4	Insert as clause 2-8-4 the following ^[b] : '4 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 ('FOIA'), the content of this Contract is not confidential. The Employer shall be responsible for determining in his absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding clause 2-8-3 or any other term of this Contract: ·1 the Contractor hereby consents to the Employer publishing any amendments to the standard form JCT contract in their entirety, including changes to the standard form agreed from time to time, but in each case with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted; ·2 the Employer shall promptly inform the Contractor of any request for disclosure that he receives in relation to this Contract.'
[FP]	Clause 3-6-2-7	Insert as clause 3-6-2-7 the following: '7 that under the sub-contract and any sub-subcontract under it, the due dates for interim payments shall each be the same date as under this Contract and each valuation for an interim payment shall be made as at the Common Valuation Date; the final date for each payment under the sub-contract shall be not later than 19 days after due date and, under any sub-subcontract, not later than 23 days after due date.'
[FP]	Clause 4-7-1	Delete the existing text of the entire clause and insert as clause 4-7-1 the following: 'During the period up to the due date for the final payment under clause 4-14-3, the due dates for interim payments shall be the monthly dates specified in the Contract Particulars.'
[FP]	Clause 4-8 (introductory paragraph)	Delete 'at a date not more than 7 days before the due date of an interim payment' and insert 'as at the Common Valuation Date'

	Clause number	Modification
[FP]	Clause 4-10-1	Delete 'less than 7 days before the due date' and insert 'later than the Common Valuation Date'
[FP]	Clause 4-14-3	Delete '28 days from its due date' and insert '14 days from its due date'

[a] If where IC is used there is an agreed BIM protocol, this modification may be of use. If in a case involving ICD, any agreed BIM protocol is included in the Employer's Requirements (see the Contract Particulars entry for the Fourth Recital) or if in the case of either IC or ICD there is no agreed protocol, the modification may be deleted. (In ICD, any Contractor's design submission procedure is contained within the Contract Documents rather than the Contract form.)

[b] Applicable only for Employers in the Public Sector: in other cases the modification should be deleted.

Note:

As regards incorporation of this schedule of modifications in the Contract, see Part 3 of this Supplement.

Minor Works Building Contract 2011
Minor Works Building Contract 2011
(both versions – MW and MWD)

Public Sector Supplement

Fair Payment [FP], Transparency [T] and Building Information Modelling [BIM]

Issued September 2011

	Clause number	Modification
[FP]	Clause 3.3.2.3	Insert as clause 3.3.2.3 the following: ‘3 under the sub-contract and any sub-subcontract under it, the due dates for interim payments shall each be the same date as under this Contract and each valuation for an interim payment shall be made as at the same date as the valuation under this Contract; the final date for each payment under the sub-contract shall be not later than 19 days after due date and, under any sub-subcontract, not later than 23 days after due date;’ Renumber existing paragraph 3 as 4
[FP]	Clause 4.4	Delete ‘at intervals of 2 months (unless otherwise agreed) up to the expiry of the Rectification Period’ and insert ‘, in the period up to the due date for the final payment under clause 4.8.1, at intervals of not more than one month’
[T]	Schedule 3, paragraph 7	Insert as paragraph 7 the following ^[a] : ‘The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 (‘FOIA’), the content of this Contract is not confidential. The Employer shall be responsible for determining in his absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding any other term of this Contract: ·1 the Contractor hereby consents to the Employer publishing any amendments to the standard form JCT contract in their entirety, including changes to the standard form agreed from time to time, but in each case with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted; ·2 the Employer shall promptly inform the Contractor of any request for disclosure that he receives in relation to this Contract.’

[a] Applicable only for Employers in the Public Sector: in other cases the modification should be deleted.

Notes:

BIM protocols

In those cases where there is a relevant BIM protocol, it is assumed that, in the case of MWD, it will be included in the Employer’s Requirements and, in other cases, within one of the Contract Documents identified in the Recitals.

Incorporation of modifications

As regards incorporation of this schedule of modifications in the Contract, see Part 3 of this Supplement.

Measured Term Contract 2011

Measured Term Contract 2011

Public Sector Supplement

Fair Payment [FP], Transparency [T] and Building Information Modelling [BIM]

Issued December 2011

Clause number	Modification
[FP] Contract Particulars, item 9	<p>Delete the existing heading and insert in its place:</p> <p>'Payments (Clauses 4·3, 4·4 and 4·5)'</p> <p>Under the existing entry (progress payment threshold) insert the following further entry:</p> <p>'Due dates (If no date is stated, the due date is the last day of each month.)</p> <p style="text-align: right;">The due date in each month is the _____ day of the month'</p>
Clause 1·1	Insert the following (before the definition of Conditions):
[FP]	'Common Valuation Date: the date 7 days before each due date, as specified in the Contract Particulars (item 9) .'
[T] Clause 1·8	<p>Insert as clause 1·8 the following^[a]:</p> <p>'Transparency</p> <p>The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 ('FOIA'), the content of this Contract is not confidential. The Employer shall be responsible for determining in his absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding any other term of this Contract:</p> <ul style="list-style-type: none"> ·1 the Contractor hereby consents to the Employer publishing any amendments to the standard form JCT contract in their entirety, including changes to the standard form agreed from time to time, but in each case with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted; ·2 the Employer shall promptly inform the Contractor of any request for disclosure that he receives in relation to this Contract.'
Clause 2·7	<p>Alter the clause heading to 'Programme and further information'</p> <p>ReNUMBER the existing clause 2·7 as clause 2·7·1</p> <p>Insert as clause 2·7·2 the following</p> <ul style="list-style-type: none"> '2 In addition the Contractor shall on request and without charge provide such further information regarding the carrying out of each Order as may be required by the Contract Documents or the Order.'

Clause number	Modification
[FP] Clause 3-2	<p>Renumber the existing clause 3-2 as clause 3-2-1</p> <p>Insert as clause 3-2-2 the following</p> <p>‘2 It shall be a term of any such consent that under the sub-contract and any sub-subcontract under it, the due dates for payments shall each be the same date as under this Contract and each valuation for a payment shall be made as at the Common Valuation Date; the final date for each payment under the sub-contract shall be not later than 19 days after due date and, under any sub-subcontract, not later than 23 days after due date.’</p>
[FP] Clause 4-3-1 hanging paragraph	<p>Delete the existing text of the hanging paragraph and insert the following:</p> <p>‘the Contractor may on or before each subsequent Common Valuation Date make an application to the Contract Administrator for a progress payment of the amount he considers due for the work carried out or supplies made pursuant to the Order up to the Common Valuation Date. The application shall state the basis on which that sum has been calculated and shall be accompanied by such further information as may be specified in the Contract Documents.’</p>
[FP] Clauses 4-3-2 and 4-3-3	<p>Delete the existing text and insert as clauses 4-3-2 and 4-3-3 the following:</p> <p>‘2 The due date for a progress payment shall in each case be the next monthly date specified in the Contract Particulars (item 9).</p> <p>·3 Where an application is made in accordance with clause 4-3-1, the Contract Administrator shall not later than 5 days after the due date issue a certificate, stating the sum that he considers to be due to the Contractor in respect of the progress payment, after taking into account any amounts previously certified and (where relevant) any sums paid under clause 4-6-3 in respect of any application made after the issue of the latest certificate. The certificate shall state the basis on which that sum has been calculated.’</p>
[FP] Clause 4-4-1	<p>Delete the existing text and insert the following^[b]:</p> <p>‘the due date shall be the next monthly date following the Order Completion Date and (where applicable) expiry of the 14 day period referred to in clause 2-11-1 or, for Orders where progress payments are to be made, a date not later than 65 days after the Order Completion Date;’</p>
[FP] Clause 4-5-1	<p>Insert the following after ‘the basis on which that sum has been calculated’:</p> <p>‘, accompanied by such further information as may be specified in the Contract Documents’</p>
[FP] Clause 4-5-2	<p>Delete the first sentence and insert the following:</p> <p>‘the due date for payment in respect of the completed Order shall be the next monthly due date following receipt of the Contractor’s application and (where applicable) expiry of the 14 day period referred to in clause 2-11-1.’</p>
[FP] Clause 4-6-3	<p>Delete the existing text and insert the following:</p> <p>‘If a certificate is not issued in accordance with clause 4-3-3, 4-4-2, 4-5-2 or 4-5-4, the sum to be paid by the Employer shall, subject to any notice given under clause 4-6-5, be the sum stated as due in the Contractor’s application.’</p>

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- [a] Applicable only for Employers in the Public Sector: in other cases the modification should be deleted.
- [b] In the case of Orders for which there are no progress payments, it is considered that a shorter period is appropriate for the sole/final certificate and payment and may be necessary in order to comply with Fair Payment principles (though this is not directly covered by OGC Guidance). Such Orders will generally be smaller and valuation should not be as onerous as for those of greater duration or value. Consultation with practitioners has, however, served to underline the logistical challenges of valuations that often cover a multiplicity of small jobs spread over a wide area. Where there are progress payments, they should continue up to Order completion, thus substantially satisfying Fair Payment requirements. The existing 65 day period has therefore been retained for final valuations in those cases.

Note:

Technical and financial information

It appears that Building Information Modelling is unlikely to be directly relevant to normal Measured Term work and no express provision for it is made here. However, if feedback of technical information additional to that specified in the Contract is required for that or similar purposes, it may under clause 2.7.2 be requested as a term of the Order.

In terms of accounting information requirements, consultation with practitioners indicated that to avoid subsequent and wider requests for information, sometimes with a view to delaying payment rather than verification, express reference (and impliedly a limitation) should be made (and is here made in clauses 4.3, 4.4 and 4.5) to information specified up-front in the Contract Documents.

Incorporation of modifications

As regards incorporation of this schedule of modifications in the Contract, see Part 3 of this Supplement.

Construction Management 2011

Construction Management Trade Contract 2011

Public Sector Supplement

Fair Payment [FP], Transparency [T] and Building Information Modelling [BIM]

Issued December 2011

	Clause number	Modification
[FP]	Trade Contract Particulars, clause 4-10-1	Above the existing clause 4-10-1 entry insert the following new entry, also by reference to clause 4-10-1: <i>'Interim Payments – due dates (If no date is stated, the due date is the last day of each month.)</i> <p style="text-align: right;">The due date in each month is the _____ day of the month^[a]</p>
[FP]	Trade Contract Particulars, clause 4-10-2	Delete the entire text of the existing entry
[FP]	Trade Contract Particulars, clause 4-10-3	In the left-hand column, delete '4-10-3' and insert '4-10-1'
	Clause 1-1	Insert the following (before the definition of Completion Period):
[FP]		'Common Valuation Date: the date 7 days before each due date, as specified in the Trade Contract Particulars (against the reference to clause 4-10-1).' In the definition of 'Retention' delete '4-10-3' and insert '4-10-4'
[BIM]		In the definition of 'Trade Contract Documents' insert after 'TCDP Analysis' 'and any agreed Building Information Modelling protocol' ^[b]
[T]	Clause 2-7-5	Insert as clause 2-7-5 the following ^[c] : '5 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 ('FOIA'), the content of this Trade Contract is not confidential. The Employer shall be responsible for determining in his absolute discretion whether any of the content of this Trade Contract is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding clause 2-7-4 or any other term of this Trade Contract: ·1 the Trade Contractor hereby consents to the Employer publishing any amendments to the standard form JCT contract in their entirety, including changes to the standard form agreed from time to time, but in each case with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted; ·2 the Employer shall promptly inform the Trade Contractor of any request for disclosure that he receives in relation to this Trade Contract.'
[FP]	Clause 3-7-2-6	Insert as clause 3-7-2-6 the following: '6 that under the sub-contract and any sub-subcontract under it, the due dates for interim payments shall each be the same date as under this Trade Contract and each valuation for an interim payment shall be made as at the Common Valuation Date; the final date for each payment under the sub-contract shall be not later than 19 days after due date and, under any sub-subcontract, not later than 23 days after due date.'

	Clause number	Modification
[FP]	Clause 4-10-1	Delete the existing text and insert the following: 'During the period commencing with the monthly date specified in the Trade Contract Particulars that next follows commencement of the Works on site up to the due date for the final payment under clause 4-16-3, the due dates for interim payments shall be the specified monthly dates, whether periodic payments or stage payments.'
[FP]	Clauses 4-10-2 and 4-10-3	Delete the existing text and insert 'Not used'
[FP]	Clauses 4-12-1 and 4-12-2-2	Delete '4-10-2 or 4-10-3, as applicable,' and insert '4-10-1'
[FP]	Clause 4-16-3	Delete '28 days' and insert '14 days'
[FP]	Clause 4-17 (introductory paragraph)	Delete 'a date not more than 7 days before the due date of an interim payment' and insert 'the Common Valuation Date'

[a] It is assumed that, as a matter of convenience, the same monthly due date will apply under all Trade Contracts but that is not mandatory: Fair Payment requirements are simply that the same date that applies under a Trade Contract should apply to all Tier 2 and Tier 3 sub-contracts and sub-subcontracts under it.

[b] It is suggested that any agreed BIM protocol should be included in the Employer's Requirements (see the Trade Contract Particulars entry for the Eleventh Recital) or suitable section of another Trade Contract Document: if so included, this modification may be deleted.

(Where included in or as a Trade Contract Document, the BIM protocol may make appropriate amendments to the Trade Contractor's Design Submission Procedure (Schedule 1) without further modifications to the Trade Contract form (see clause 2-8-5.)

[c] Applicable only for Employers in the Public Sector: in other cases the modification should be deleted.

Notes:

Incorporation of modifications

As regards incorporation of this schedule of modifications in the Trade Contract, see Part 3 of this Supplement.

Construction Management Agreement (CM/A)

Under the CM/A, the Construction Manager will be involved in the negotiation of the Trade Contracts and responsible for their management. He should therefore familiarise himself with Fair Payment requirements. Prima facie these requirements will also apply directly to him as employer of the (Tier 2) sub-contractors that he engages to perform the Services and to provide the Site Facilities set out in CM/A Schedules 5 and 6 and to those sub-contractors' (Tier 3) sub-subcontracts.

Under CM/A, the valuation date is the same as due date, with a final payment date 17 days thereafter, well within the OGC's 21 day period. To avoid unnecessary amendment of the contract form, the Construction Manager should agree with his Tier 2 sub-contractors the same valuation/due date and a final payment date that is not later than 26 days thereafter and require that they employ their Tier 3 sub-subcontractors on the basis of the same valuation/due date with a final payment date not later 30 days thereafter.

Transparency may be dealt with using the clause suggested for the Major Project Construction Contract, either as a separate acknowledgement or perhaps as an additional Article or clause in section 1. Any agreed BIM or similar protocol may simply be reflected in the Schedule 5 listing of services.

Part 5 – Suggested modifications to JCT Sub-Contracts

Standard Building Sub-Contract (both versions – SBCTSub and SBCTSub/D)

Design and Build Sub-Contract

Major Project Sub-Contract

Management Works Contract

Intermediate Sub-Contract (ICSub and ICSub/D versions)

Intermediate Named Sub-Contract

Minor Works Sub-Contract with sub-contractor's design

Short Form of Sub-Contract

Sub-subcontract

Standard Building Contract 2011
Standard Building Sub-Contract 2011
 (both versions – SBCTSub and SBCTSub/D)

Public Sector Supplement

Fair Payment [FP] and Building Information Modelling [BIM]

Issued September 2011

Clause number	Modification
<u>Agreement</u>	
[FP] Sub-Contract Particulars, item 7 – clause 4.9.1 entry	Delete 'The first due date is _____ 20 _____' and insert 'The due date in each month is the _____ day of the month' ^[a]
<u>Conditions</u>	
[FP] Clause 1.1	Insert the following (before the definition of Completion Date): 'Common Valuation Date: the date 7 days before each due date, as specified in the Sub-Contract Particulars (item 7) .'
[FP] Clause 3.3.2.2	Insert as clause 3.3.2.2 the following: '2 the due dates for interim payments under the sub-subcontract shall each be the monthly date specified in the Sub-Contract Particulars for clause 4.9.1 of this Sub-Contract, each valuation for an interim payment under the sub-subcontract shall be made as at the Common Valuation Date and the final date for each payment shall be not later than 23 days after due date;' Renumber existing paragraph 2 as 3
[FP] Clause 4.9.1	Delete the existing text of the entire clause and insert the following: 'Unless the Sub-Contract Particulars (item 7) state that clause 4.9.2 applies, the due dates for interim payments shall in each case be the monthly date specified in the Sub-Contract Particulars, commencing (unless otherwise agreed) with the date next following the commencement of the Sub-Contract Works on site and ending with the monthly date immediately preceding the due date for the final payment under clause 4.12.'
[FP] Clause 4.9.2	Delete the existing text of the entire clause and insert the following: 'Where the Sub-Contract Particulars (item 7) state that clause 4.9.2 applies, the Sub-Contractor shall submit an application to the Contractor each month stating the sum the Sub-Contractor considers will become due to him in accordance with clause 4.9.4 and the basis on which that sum has been calculated (a 'Payment Application'). Where the Payment Application is received not later than 7 days prior to the Common Valuation Date, the due date shall be the date that would apply under clause 4.9.1; if the Payment Application is received later, the due date shall be 14 days after the date of receipt.'
[FP] Clause 4.9.3.1	Delete the existing text and insert the following: 'so as to be received not later than 4 days prior to the Common Valuation Date for the relevant payment; or'

	Clause number	Modification
[FP]	Clause 4-10-1	Delete '21 days' and insert '19 days'
[FP]	Clause 4-12-3	Delete '28 days' and insert '19 days'
[FP]	Clause 4-13 (introductory paragraph)	Delete 'applied up to and including a date not more than 7 days ... becomes or would become due' and insert 'as at the Common Valuation Date'

[a] Contractors should ensure that the date inserted is the same monthly date as applies under the Main Contract.

Notes:

BIM protocols

Where there is an agreed BIM protocol, it (or relevant parts of it) should be included in the Contractor's Requirements (SBCSub/D) or in a Numbered Document.

The protocol may involve consequential changes in the (Main Contract) Contractor's Design Submission Procedure which, for the convenience of Sub-Contractors, is shown in Schedule 6 of the Sub-Contract Conditions. Changes should be indicated.

Incorporation of modifications

As regards incorporation of this schedule of modifications in the Sub-Contract, see Part 3 of this Supplement.

Design and Build Contract 2011

Design and Build Sub-Contract 2011

Public Sector Supplement

Fair Payment [FP] and Building Information Modelling [BIM]

Issued September 2011

Clause number	Modification
<u>Agreement</u>	
[FP] Sub-Contract Particulars, item 7 – clause 4-9-1 entry	Delete 'The first due date is _____ 20 _____' and insert 'The due date in each month is the _____ day of the month' ^[a]
<u>Conditions</u>	
[FP] Clause 1-1	Insert the following (before the definition of Completion Date): 'Common Valuation Date: the date 7 days before each due date, as specified in the Sub-Contract Particulars (item 7) .'
[FP] Clause 3-3-2-2	Insert as clause 3-3-2-2 the following: '2 the due dates for interim payments under the sub-subcontract shall each be the monthly date specified in the Sub-Contract Particulars for clause 4-9-1 of this Sub-Contract, each valuation for an interim payment under the sub-subcontract shall be made as at the Common Valuation Date and the final date for each payment shall be not later than 23 days after due date;' Renumber existing paragraph 2 as 3
[FP] Clause 4-9-1	Delete the existing text of the entire clause and insert the following: 'Unless the Sub-Contract Particulars (item 7) state that clause 4-9-2 applies, the due dates for interim payments shall in each case be the monthly date specified in the Sub-Contract Particulars, commencing (unless otherwise agreed) with the date next following the commencement of the Sub-Contract Works on site and ending with the monthly date immediately preceding the due date for the final payment under clause 4-12.'
[FP] Clause 4-9-2	Delete the existing text of the entire clause and insert the following: 'Where the Sub-Contract Particulars (item 7) state that clause 4-9-2 applies, the Sub-Contractor shall submit an application to the Contractor each month stating the sum the Sub-Contractor considers will become due to him in accordance with clause 4-9-4 and the basis on which that sum has been calculated (a 'Payment Application'). Where the Payment Application is received not later than 7 days prior to the Common Valuation Date, the due date shall be the date that would apply under clause 4-9-1; if the Payment Application is received later, the due date shall be 14 days after the date of receipt.'
[FP] Clause 4-9-3-1	Delete the existing text and insert the following: 'so as to be received not later than 4 days prior to the Common Valuation Date for the relevant payment; or'
[FP] Clause 4-10-1	Delete '21 days' and insert '19 days'

	Clause number	Modification
[FP]	Clause 4-12.3	Delete '28 days' and insert '19 days'
[FP]	Clause 4-13 (introductory paragraph)	Delete 'applied up to and including a date not more than 7 days ... becomes or would become due' and insert 'as at the Common Valuation Date'

[a] Contractors should ensure that the date inserted is the same monthly date as applies under the Main Contract.

Notes:

BIM protocols

Where there is an agreed BIM protocol, it (or relevant parts of it) should be included in the Contractor's Requirements or in a Numbered Document.

The protocol may involve consequential changes in the (Main Contract) Contractor's Design Submission Procedure which, for the convenience of Sub-Contractors, is shown in Schedule 6 of the Sub-Contract Conditions. Changes should be indicated.

Incorporation of modifications

As regards incorporation of this schedule of modifications in the Sub-Contract, see Part 3 of this Supplement.

Major Project Construction Contract 2011

Major Project Sub-Contract 2011

Public Sector Supplement

Fair Payment [FP] and Building Information Modelling [BIM]

Issued December 2011

	Clause number	Modification
[FP]	Clause 1	Insert the following (before the definition of Construction Act): 'Common Valuation Date: the date 7 days before each due date, as specified in the Sub-Contract Particulars (against the reference to clause 31.1).'
[BIM]	Clause 18.1 ^[a]	Insert the following after 'Sub-Contract Works': 'and subject to any modifications set out in the Requirements or the Proposals or in any Building Information Modelling or similar protocol agreed by the Parties, the following provisions of this clause 18 shall apply'
[FP]	Clause 31.1	Delete '7 days before that date' and insert '7 days prior to the Common Valuation Date'
[FP]	Clause 31.4	Delete '21 days' and insert '19 days'
[FP]	Sub-Contract Particulars, clause 31.1	In the middle column delete 'the 25 th day of each month' and insert ^[b] 'the same day as is specified in the Main Contract'
[FP]	Schedule 2, paragraphs 3 and 4.1	In each paragraph, delete 'a date not more than 7 days before that date' and insert 'the Common Valuation Date'

[a] Applicable only where a BIM or similar protocol or provision of the Requirements or the Proposals is intended to vary or alter the procedure. Where there is no such protocol or provision, the modification may be deleted.

[b] If the due date is inserted, it should be the Main Contract date.

Notes:

Clause 31.2

The 'de minimis' provision at the end of clause 31.2 reflects clause 29.2 of the Main Contract in providing that, after the payment on practical completion, no interim payment becomes due and no payment advice is required if the sum due is less than an amount specified in the (Sub-)Contract Particulars, the default amount being £10,000 for the Main Contract and £5,000 in the Sub-Contract. For substantial projects the provision makes commercial sense and is not a matter commented on in OGC Guidelines.

The basic point of the Fair Payment Charter, as interpreted in the Guidelines, is to ensure Tier 3 (Sub-subcontractors) are paid within 30 days of valuation date, so that if contractors or sub-contractors are prepared to accept it and continue to finance payment to the Tier below in full so that Tier 3 continues to be paid within 30 days, it appears unlikely that objections would arise, particularly as the sub-contract makes no provision for retention.

However, if the default de minimis levels apply and there are several sub-contractors with claims for amounts just below the Sub-Contract level, the contractor would receive the aggregate amount with no immediate obligation to pass it on and the view taken by Government procurement bodies might then be rather different.

If the Main Contract de minimis is disapplied, it is suggested that the same should be done in sub-contracts (either by setting it at a minimal amount or making the appropriate deletion). In any event, if contractors wish to operate a sub-contract de minimis, they should ensure that it is set at a reasonable level and sub-contractors should not seek to replicate the provision in sub-subcontracts.

Incorporation of modifications

As regards incorporation of this schedule of modifications in the Sub-Contract, see Part 3 of this Supplement.

Management Building Contract 2011

Management Works Contract 2011

Public Sector Supplement

Fair Payment [FP] and Building Information Modelling [BIM]

Issued December 2011

Clause number	Modification
<u>Agreement</u>	
[FP] Works Contract Particulars, item 8 – clause 4-9-1 entry	Delete 'The first due date is _____ 20 _____' and insert 'The due date in each month is the _____ day of the month' ^[a]
<u>Conditions</u>	
[FP] Clause 1-1	Insert the following (before the definition of Completion Date): 'Common Valuation Date: the date 7 days before each due date, as specified in the Works Contract Particulars (item 8). '
[FP] Clause 3-3-2-2	Insert as clause 3-3-2-2 the following: '2 the due dates for interim payments under the sub-contract shall each be the monthly date specified in the Works-Contract Particulars for clause 4-9-1 of this Works Contract, each valuation for an interim payment under the sub-contract shall be made as at the Common Valuation Date and the final date for each payment shall be not later than 23 days after due date;' Renumber existing paragraph ·2 as ·3
[FP] Clause 4-9-1	Delete the existing text of the entire clause and insert the following: 'The due dates for interim payments shall in each case be the monthly date specified in the Works Contract Particulars, commencing (unless otherwise agreed) with the date next following the commencement of the Works on site and ending with the monthly date immediately preceding the due date for the final payment under clause 4-12.'
[FP] Clause 4-9-2-1	Delete the existing text and insert the following: 'so as to be received not later than 4 days prior to the Common Valuation Date for the relevant payment; or'
[FP] Clause 4-10-1	Delete '21 days' and insert '19 days'
[FP] Clause 4-12-3	Delete '28 days' and insert '19 days'
[FP] Clause 4-13 (introductory paragraph)	Delete 'applied up to and including a date not more than 7 days before the due date of an interim payment' and insert 'as at the Common Valuation Date'

[a] Management Contractors should ensure that the date inserted is the same monthly date as applies under the Management Contract.

Notes:

BIM protocols

Where there is an agreed BIM protocol, it (or relevant parts of it) should be included in the Management Contractor's Requirements.

Incorporation of modifications

As regards incorporation of this schedule of modifications in the Works Contract, see the section on Sub-Contracts in Part 3 of this Supplement.

Intermediate Building Contract 2011
Intermediate Sub-Contract 2011
 (ICSub and ICSub/D versions)

Public Sector Supplement

Fair Payment [FP] and Building Information Modelling [BIM]

Issued September 2011

Clause number	Modification
<u>Agreement</u>	
Sub-Contract Particulars, item 7 – clause 4.9.1 entry	Delete 'The first due date is _____ 20 _____' and insert 'The due date in each month is the _____ day of the month' ^[a]
<u>Conditions</u>	
Clause 1.1	Insert the following (before the definition of Completion Date): 'Common Valuation Date: the date 7 days before each due date, as specified in the Sub-Contract Particulars (item 7) .'
Clause 3.3.2.2	Insert as clause 3.3.2.2 the following: '2 the due dates for interim payments under the sub-subcontract shall each be the monthly date specified in the Sub-Contract Particulars for clause 4.9.1 of this Sub-Contract, each valuation for an interim payment under the sub-subcontract shall be made as at the Common Valuation Date and the final date for each payment shall be not later than 23 days after due date;' Renumber existing paragraph ·2 as ·3
Clause 4.9	Delete the existing text of clauses 4.9.1 and 4.9.2 and insert the following: '1 The due dates for interim payments shall be the monthly dates specified in the Sub-Contract Particulars (item 7), commencing (unless otherwise agreed) with the date next following the commencement of the Sub-Contract Works on site. '2 Interim payments shall thereafter become due upon each of those dates, ending with the monthly date immediately preceding the due date for the Final Payment under clause 4.14.1.' Delete the existing text of clause 4.9.4.2 and insert the following: '2 the interim payment next following the Final Release Date or, if at that date practical completion has not been achieved or there are any such defects, shrinkages or other faults as are referred to in clause 2.16.1, the payment next following the date at which practical completion and the making good of any such defects in accordance with clause 2.16.2 have been achieved; and '3 any interim payment after the payment referred to in clause 4.9.4.1 or 4.9.4.2.'
Clause 4.10 (introductory paragraph)	Delete 'a date not more than 7 days before the due date' and insert 'the Common Valuation Date'

Clause number	Modification
Clause 4-12-1	Delete '21 days' and insert '19 days'
Clause 4-14-1	Delete 'the last interim payment as specified in clause 4-9-2' and insert 'the interim payment referred to in clause 4-9-4-2'
Clause 4-14-3	Delete '28 days' and insert '19 days'

[a] Contractors should ensure that the date inserted is the same monthly date as applies under the Main Contract.

Notes:

BIM protocols

Where there is an agreed BIM protocol, it (or relevant parts of it) should be included in the Contractor's Requirements (ICSub/D) or in a Numbered Document.

Incorporation of modifications

As regards incorporation of this schedule of modifications in the Sub-Contract, see Part 3 of this Supplement.

Intermediate Building Contract 2011

Intermediate Named Sub-Contract 2011

Public Sector Supplement

Fair Payment [FP] and Building Information Modelling [BIM]

Issued September 2011

Clause number	Modification
<u>Invitation to Tender</u>	
[FP] Sub-Contract Information, item IT12 – clause 4.9.1 entry	Delete 'The first due date is _____ 20 _____' and insert 'The due date in each month is the _____ day of the month' ^[a]
<u>Conditions</u>	
[FP] Clause 1.1	Insert the following (before the definition of Conditions): 'Common Valuation Date: the date 7 days before each due date, as specified in the Invitation to Tender (item IT12) .'
[FP] Clause 3.3.2.2	Insert as clause 3.3.2.2 the following: '2 the due dates for interim payments under the sub-subcontract shall each be the monthly date specified in the Sub-Contract Particulars for clause 4.9.1 of this Sub-Contract, each valuation for an interim payment under the sub-subcontract shall be made as at the Common Valuation Date and the final date for each payment shall be not later than 23 days after due date;' Renumber existing paragraph .2 as .3
[FP] Clause 4.9	Delete the existing text of clauses 4.9.1 and 4.9.2 and insert the following: '1 The due dates for interim payments shall be the monthly dates specified in the Sub-Contract Documents, commencing (unless otherwise agreed) with the date next following the commencement of the Sub-Contract Works on site. '2 Interim payments shall thereafter become due upon each of those dates, ending with the monthly date immediately preceding the due date for the Final Payment under clause 4.14.1.' Delete the existing text of clause 4.9.4.2 and insert the following: '2 the interim payment next following the Final Release Date or, if at that date practical completion has not been achieved or there are any such defects, shrinkages or other faults as are referred to in clause 2.16.1, the payment next following the date at which practical completion and the making good of any such defects in accordance with clause 2.16.2 have been achieved; and '3 any interim payment after the payment referred to in clause 4.9.4.1 or 4.9.4.2.'
[FP] Clause 4.10 (introductory paragraph)	Delete 'a date not more than 7 days before the due date' and insert 'the Common Valuation Date'

	Clause number	Modification
[FP]	Clause 4-12-1	Delete '21 days' and insert '19 days'
[FP]	Clause 4-14-1	Delete 'the last interim payment as specified in clause 4-9-2' and insert 'the interim payment referred to in clause 4-9-4-2'
[FP]	Clause 4-14-3	Delete '28 days' and insert '19 days'

[a] The Employer should ensure that the date inserted is the same monthly date as applies under the Main Contract.

Notes:

BIM protocols

Where there is an agreed BIM protocol, it (or relevant parts of it) should be included in the ICSUB/NAM Main Contract Information at Item IT5 (last section) and/or in a Numbered Document listed in the Sub-Contract Particulars.

Incorporation of modifications

The Invitation to Tender (ICSUB/NAM/IT), which forms part of the ICSUB/NAM Tender and Agreement, is issued by or on behalf of the Employer, not the Contractor. These modifications may be included as, or as part of, the Schedule of Modifications referred to in the Invitation to Tender at Item IT6 in the Sub-Contract Information section.

Minor Works Building Contract 2011

Minor Works Sub-Contract with sub-contractor's design 2011

Public Sector Supplement

Fair Payment [FP] and Building Information Modelling [BIM]

Issued September 2011

	Clause number	Modification
[FP]	Sixth Recital	After 'For the purposes of clause 12:' insert the following as a new paragraph: 'The due date for payment in each month is the _____ day of the month and the common valuation date shall be the date 7 days before the due date' ^[a]
[FP]	Clause 5-6	After 'Contractor's written consent.' insert : 'The due dates for interim payments under any sub-subcontract shall each be the monthly date specified in the Sixth Recital of this Sub-Contract, each valuation for an interim payment under the sub-subcontract shall be made as at the common valuation date and the final date for each payment shall be not later than 23 days after due date.'
[FP]	Clause 12-1	Delete the existing text and insert the following: 'The due dates for interim payments to the Sub-Contractor shall each be the monthly dates specified in the Sixth Recital, commencing (unless otherwise agreed) with the date next following the commencement of the Sub-Contract Works on Site and ending with the monthly date immediately preceding the due date for the final payment under clause 12-6.'
[FP]	Clause 12-2	After 'value of work properly carried out by the Sub-Contractor' insert 'as at the common valuation date'
[FP]	Clause 13-1	Delete '21 days' and insert '19 days'

[a] Contractors should ensure that the date inserted is the same monthly date as applies under the Main Contract.

Notes:

BIM protocols

Where there is an agreed BIM protocol that is relevant to this Sub-Contract, it (or relevant parts of it) may be incorporated in the Sub-Contract by including reference to it in the last entry in the Second Recital.

Incorporation of modifications

As indicated in Part 3 of this Supplement, this schedule of modifications may also be incorporated in the Sub-Contract by including reference to it in the last entry in the Second Recital.

Generic Contracts 2011

Short Form of Sub-Contract 2011

Public Sector Supplement

Fair Payment [FP] and Building Information Modelling [BIM]

Issued September 2011

	Clause number	Modification
[FP]	Fifth Recital	After 'For the purposes of clause 12:' insert the following as a new paragraph: 'The due date for payment in each month is the _____ day of the month and the common valuation date shall be the date 7 days before the due date.' ^[a]
[FP]	Clause 5-5	After 'Contractor's written consent.' insert : 'The due dates for interim payments under any sub-subcontract shall each be the monthly date specified in the Fifth Recital of this Sub-Contract, each valuation for an interim payment under the sub-subcontract shall be made as at the common valuation date and the final date for each payment shall be not later than 23 days after due date.'
[FP]	Clause 12-1	Delete the existing text and insert the following: 'The due dates for interim payments to the Sub-Contractor shall each be the monthly dates specified in the Fifth Recital, commencing (unless otherwise agreed) with the date next following the commencement of the Sub-Contract Works on Site and ending with the monthly date immediately preceding the due date for the final payment under clause 12-6.'
[FP]	Clause 12-2	After 'value of work properly carried out by the Sub-Contractor' insert 'as at the common valuation date'
[FP]	Clause 13-1	Delete '21 days' and insert '19 days'

[a] Contractors should ensure that the date inserted is the same monthly date as applies under the Main Contract.

Notes:

BIM protocols

Where there is an agreed BIM protocol that is relevant to this Sub-Contract, it (or relevant parts of it) may be incorporated in the Sub-Contract by including reference to it in the last entry in the Second Recital.

Incorporation of modifications

As indicated in Part 3 of this Supplement, this schedule of modifications may also be incorporated in the Sub-Contract by including reference to it in the last entry in the Second Recital.

Generic Contracts 2011

Sub-subcontract 2011

Public Sector Supplement

Fair Payment [FP] and Building Information Modelling [BIM]

Issued September 2011

	Clause number	Modification
[FP]	Third Recital	<p>Insert the following as a new final paragraph:</p> <p>'the due date for payment in each month is the _____ day of the month and the common valuation date shall be the date 7 days before the due date'^[a]</p>
[FP]	Clause 12-1	<p>Delete the existing text and insert the following:</p> <p>'The due dates for payments to the Sub-subcontractor shall each be the monthly dates specified in the Third Recital, commencing (unless otherwise agreed) with the date next following the commencement of the Sub-subcontract Works on Site.'</p>
[FP]	Clause 12-2	<p>After 'value of work properly carried out by the Sub-subcontractor' insert 'as at the common valuation date'</p>
[FP]	Clause 13-1	<p>Delete '24 days' and insert '23 days'</p>

[a] Sub-Contractors should ensure that the date inserted is the same monthly date as applies under the Main Contract and Sub-Contract.

Notes:

BIM protocols

Where there is an agreed BIM protocol that is relevant to this Sub-subcontract, it (or relevant parts of it) may be incorporated in the Sub-subcontract by including reference to it in the penultimate entry in the Third Recital.

Incorporation of modifications

As indicated in Part 3 of this Supplement, this schedule of modifications may also be incorporated in the Sub-subcontract by including reference to it in the last entry in the Third Recital.



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Building Information Modelling**

