

**Public Lecture**  
**at**  
**Engineers Ireland**  
**on**  
**How the Public Works Contracts**  
**might be used in the Private Sector**

**by**  
**Ciaran Fahy**  
**Anthony Hussey**

**Proposed Contract**  
**comprising**

**Articles of Agreement**  
**Conditions of Contract**  
**Schedules**

**4 July 2013**

**Proposed Contract**  
**For use in the Private Sector**  
**(Based on the Public Works Contract)**

**Articles of Agreement**

**Agreement**

**THIS AGREEMENT** is made on [date] **BETWEEN:**

<i>The <b>Employer</b></i>	
<i>Principal Office of the Employer</i>	
<b>AND</b>	
<i>The <b>Contractor</b></i>	
<i>Registered office / principal place of business of Contractor</i>	

**BACKGROUND**

The Employer has accepted the Contractor's tender to complete the Works, which consist, in general, of

**THE EMPLOYER AND THE CONTRACTOR AGREE** as follows:

**Article 1** The Contractor shall execute and complete the Works subject to and in accordance with the Contract and shall comply with its other obligations in the Contract.

**Article 2** The Employer shall pay the Contractor the Contract Sum subject to and in accordance with the Contract and shall comply with its other obligations in Contract.

**Article 3** The initial Contract Sum is

Insert in words
(€insert in figures).

**Article 4** The initial Contract Sum is a lump sum and shall only be adjusted when the Contract says so. The Contractor has satisfied itself before entering into the Contract of all the circumstances that may affect the cost of executing and completing the Works and of the correctness and sufficiency of the Contract Sum to cover the cost of performing the Contract.

**Article 5** The Contract consists of the following documents:-

- this Agreement
- the Contractor's tender and the Letter of Acceptance and any post-tender clarifications listed in it
- the attached Conditions and completed Schedule
- the Works Requirements, completed Pricing Document, and Works Proposals identified in the attached Schedule

**Article 6** The Contract takes effect from the Contract Date.

***The Employer<sup>1</sup>***

**Given under the Employer's seal**

*Affix Employer's Seal*


*Signatures of persons authorised to authenticate the seal:*

OR

**Signed on behalf of the Employer:**

*Signature of person authorised to sign contracts on behalf of the Employer:*

--

**In the presence of**

*Name of witness*

--

*Signature of witness*

--

*Witness's occupation*

--

*Witness's address*

--

***The Contractor***

**Signed on behalf of the Contractor:**

*Signature of person authorised to sign contracts on behalf of the Contractor:*

--

**In the presence of**

*Name of witness*

--

*Signature of witness*

--

*Witness's occupation*

--

*Witness's address*

--

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<sup>1</sup> Execution in accordance with the legislation governing the authority, or articles of association if a company

**Proposed Contract**  
**For use in the Private Sector**  
**(Based on the Public Works Contract)**

**Conditions of Contract for**  
**Construction Works Designed by the Employer**

# Conditions

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# Conditions

## 1. THE CONTRACT

### 1.1. Definitions

The following terms have the following meanings in the Contract:

<b>Term</b>	<b>Meaning</b>
<b>Change Order</b>	an instruction of the Employer's Representative to change [including add to or omit from] the Works or to change [including impose or remove] constraints in the Contract on how the Works are to be executed.
<b>Consent</b>	planning permission, order, approval, certificate, fire certificate, licence, permit, environmental impact statement, or other consent required by Legal Requirement for the execution or completion of the Works, or identified as a Consent in the Works Requirements.
<b>Contract Date</b>	the date the Employer issued the Letter of Acceptance.
<b>Contract Sum</b>	the amount identified in the Agreement as the initial Contract Sum, as adjusted in accordance with the Contract.
<b>Contractor's Documents</b>	drawings, specifications, manuals, reports and other [eye readable and machine readable] written material relating to the Works that the Contractor uses, prepares or gives to the Employer or any other person, or is to use, prepare or give to the Employer or any other person <ul style="list-style-type: none"> <li>• under the Works Requirements or</li> <li>• under any Legal Requirement or</li> <li>• to obtain any Consent.</li> </ul>
<b>Contractor's Things</b>	equipment, facilities and other things the Contractor [or Contractor's Personnel] uses on or adjacent to the Site to execute the Works, except Works Items.
<b>Contractor's Personnel</b>	the Contractor's representative, supervisor and Subcontractors, employees and other persons working on or adjacent to the Site for the Contractor or Subcontractors, and other persons assisting the Contractor to perform the Contract.
<b>Date for Substantial Completion of the Works or a Section</b>	the date identified as the Date for Substantial Completion of the Works or Section in the Schedule, part 1G or 2C, and, if the Schedule states a period, the last day of that period, starting on the Contract Date, in either case as adjusted in accordance with the Contract.
<b>Defect</b>	non-compliance of the Works or a Works Item with the Contract [including a failed test and, after Substantial Completion, work that has not been completed].
<b>Defects Certificate</b>	a certificate of the Employer's Representative that the Defects Period has ended.
<b>Defects Period</b>	the period starting on Substantial Completion of the Works and continuing for the period stated in the Schedule, as may be extended under sub-clause 8.6.2.
<b>Designated Date</b>	the date 10 days before the last day for receipt of the Contractor's tender for the Works, or, if there was none, 10 days before the Employer received the Contractor's tender for the Works.

<b>Term</b>	<b>Meaning</b>
<b>Employer's Personnel</b>	any of the following: <ul style="list-style-type: none"> <li>• the Employer's Representative</li> <li>• the Employer's employees, agents and consultants in connection with the Contract when acting on behalf of the Employer but not when exercising authority under Law</li> <li>• other contractors of the Employer working on the Site when acting within the scope of their contracts with the Employer</li> <li>• anyone else the Employer's Representative notifies the Contractor is Employer's Personnel.</li> </ul>
<b>Employer's Representative</b>	the architect, engineer, quantity surveyor or other person appointed by the Employer as its representative in accordance with the Contract.
<b>Law</b>	enactments and statutory instruments, each as defined by the Interpretation Act 2005, and regulations, directives and decisions of the European Union having direct effect in Ireland.
<b>Legal Requirement</b>	a requirement that applies to the Works as a result of any of the following: <ul style="list-style-type: none"> <li>• Law</li> <li>• a Consent</li> <li>• a decision of an Irish court, the European Court of Justice or the European Court of First Instance</li> <li>• the requirements of any person having authority in connection with the Works under any Law</li> <li>• the requirements of any person with whose systems the Works will connect</li> <li>• the legal rights of any person.</li> </ul>
<b>Letter of Acceptance</b>	the Employer's letter to the Contractor accepting the Contractor's tender.
<b>Section</b>	a part of the Works identified as a Section in the Schedule, part 1G.
<b>Site</b>	any place <ul style="list-style-type: none"> <li>• where the Works are to be executed according to the Contract or</li> <li>• provided by the Employer for the Works or</li> <li>• where the Contractor is to operate or maintain Employer's facilities or</li> <li>• that the Works Requirements identify as part of the Site.</li> </ul>
<b>Site Working Day</b>	a day on which, according to the Contract and the Contractor's programme most recently submitted to the Employer's Representative, the Contractor is to execute the Works on the Site.
<b>Specialist</b>	any of the following: <ul style="list-style-type: none"> <li>• a Subcontractor or supplier of a Works Item named in the Contract</li> <li>• Contractor's Personnel who do or are to do design</li> <li>• Contractor's Personnel stated in the Works Requirements to be Specialists.</li> </ul>
<b>Starting Date</b>	the day the Contractor proposes to start executing the Works, as notified by the Contractor to the Employer's Representative under sub-clause 9.1.
<b>Subcontractor</b>	a person to whom the execution of part of the Works is subcontracted [by the Contractor or another Subcontractor].

<b>Term</b>	<b>Meaning</b>
<b>Substantial Completion of the Works or a Section</b>	<p>all of the following have happened:</p> <p>(1) the Works or Section are complete so that they can be taken over and used by the Employer for their intended purpose and there are no Defects other than</p> <p>(a) Defects accepted by the Employer under sub-clause 8.5.4 or</p> <p>(b) minor Defects to which all of the following apply:</p> <p>(i) they do not prevent the Works or the part from being used for their intended purpose</p> <p>(ii) the Employer's Representative considers the Contractor has reasonable grounds for not promptly rectifying them</p> <p>(iii) rectification will not prejudice the safe and convenient use of the Works or the part</p> <p>(2) all tests that are required by the Contract to be passed before Substantial Completion have been passed</p> <p>(3) the Contractor has given the Employer's Representative the Contractor's Documents that the Contract requires be provided before Substantial Completion.</p> <p>(4) not used</p>
<b>VAT</b>	value-added tax payable in Ireland under Law.
<b>Works Item</b>	a part of the Works, anything that the Contractor intends will become part of the Works, or temporary works for the Works.

## 1.2. Interpretation

1.2.1. Not Used.

1.2.2. Unless the context indicates otherwise, in the Contract

- (1) References to the **Works** are to the works described in the Works Requirements.
- (2) Words in the singular include the plural and vice versa.
- (3) References to an **individual** are to a human person.
- (4) References to a **person** include human persons and corporate and unincorporated bodies.
- (5) Words in any gender include all genders.
- (6) References to any **Law** include amendments and replacements.
- (7) References to the **Contract** or any other writing include amendments.
- (8) References to a **day** mean a calendar day.
- (9) References to a **week** mean a period of 7 days.
- (10) References to a **month** mean a calendar month.
- (11) References to a **working day** mean a day that is not Saturday, Sunday, a public holiday established under the Organisation of Working Time Act 1997 or Good Friday.
- (12) References to a requirement to **submit** a document or proposed course of action to Employer's Representative mean to submit it according to sub-clause 4.7, or another procedure that applies according to the Works Requirements, and sub-clause 4.7 or the Works Requirements shall apply in every such case. [Accordingly the Contractor may not implement the submission until permitted by sub-clause 4.7 or the Works Requirements.]
- (13) References to the Contractor's **current programme** are to the programme

in the Works Proposals, if there is one, if not, to the programme first submitted by the Contractor under sub-clause 4.9, or, in either case, to any later programme submitted by the Contractor if the period for the Employer's Representative to review it has passed and there is no outstanding objection.

- (14) References to **liability** include claims, demands and proceedings.
  - (15) Terms such as **including, in particular, such as, and for example**, are not to be read as exhaustive, or to limit, but may extend, the generality of the provisions to which they relate.
  - (16) References to the **Agreement** and **Schedule** are to the attached agreement and completed schedule.
  - (17) References to the **Works Requirements, Works Proposals** and the **Pricing Document** are to the Works Requirements, Works Proposals and Pricing Document identified in the Schedule, part 1B; in the case of Works Requirements, as changed by Change Orders; and in the case of Works Proposals, as changed under sub-clause 4.6.2.
  - (18) References to **Delay Events** and **Compensation Events** are to events identified as Delay Events and Compensation Events in the Schedule, part 1K.
  - (19) References to the initial **Contract Sum** are to the Contract Sum stated in the Agreement; references to an initial Date for Substantial Completion are to a Date for Substantial Completion identified in the Schedule; and references to the initial Works Requirements are to the Works Requirements identified in the Schedule.
- 1.2.3. Clarifications, examples and reminders are included occasionally in square brackets to show that no significance is to be given to their absence elsewhere.
- 1.2.4. No rule of legal interpretation applies to the disadvantage of a party on the basis that the party provided the Contract or any of it or that a term of the Contract is for the party's benefit.

### 1.3. Inconsistencies

- 1.3.1. Except when the Contract states otherwise, the documents in the Contract are to be taken as mutually explanatory of each other if possible. If there is an inconsistency between the documents, they take precedence as follows:
- First, the Agreement, even if it has not been executed
  - Second, the attached Schedule and the Letter of Acceptance and any post-tender clarifications listed in it
  - Third, the Contractor's completed form of tender (excluding other documents in the tender)
  - Fourth, these Conditions
  - Fifth, the Works Requirements
  - Sixth, the Pricing Document
  - Seventh, the Works Proposals, if there are any
  - Eighth, any other documents in the Contract
- 1.3.2. If either party becomes aware of any inconsistency between terms of the Contract, it shall promptly inform the other party.
- 1.3.3. If there is an inconsistency between figured and scaled dimensions, the figured

dimensions prevail.

- 1.3.4. If the Works Requirements include a Bill of Quantities, and the Bill of Quantities is inconsistent with any other Works Requirements, the other Works Requirements prevail.

#### **1.4. Pricing Document and Works Proposals**

Nothing in and no omission from the Pricing Document or Works Proposals limits the scope of the Works or the Contractor's obligations. Nothing in the Pricing Document or Works Proposals imposes obligations on the Employer.

#### **1.5. Performance Bond**

Before the Starting Date, unless the Schedule, part 1E, says that no bond is required, the Contractor shall give the Employer a performance bond in the form in the Works Requirements, or, if there is none, a form approved by the Employer. The performance bond shall be in the amount stated in the Schedule, part 1E, and shall be executed by the Contractor and by a surety approved by the Employer.

#### **1.6. Not Used**

#### **1.7. Joint Ventures**

If the Contractor is a joint venture, consortium or other unincorporated grouping of two or more persons, those persons shall be jointly and severally liable to the Employer for the performance of the Contract.

#### **1.8. Assignment**

Neither party may assign the benefit of the Contract, or any part of it, without the written consent of the other party.

#### **1.9. Miscellaneous**

- 1.9.1. The Contract and the documents referred to in it supersede all previous representations, arrangements, understandings and agreements between the parties about the subject-matter of the Contract, and set out the entire agreement between the parties about the subject-matter of the Contract. Neither party has relied on any other written or oral representation, arrangement, understanding or agreement.
- 1.9.2. All the terms of the Contract are severable, and if any part is unenforceable, illegal or void, it is to that extent considered not to form part of the Contract, and the enforceability, legality and validity of the rest of the Contract will not be affected.
- 1.9.3. The Contract may only be changed by a document in writing signed by an authorised representative of each party.
- 1.9.4. The rights of a party will not be prejudiced or restricted by any indulgence or forbearance extended to the other party, and no waiver by a party of any breach will waive any other breach.

#### **1.10. Not Used**

## 2. THE LAW

### 2.1. Law Governing the Contract

Irish law governs the Contract and its interpretation.

### 2.2. Compliance with Legal Requirements

The Contractor shall in performing the Contract comply with all Legal Requirements and ensure that the Contractor's Personnel comply with all Legal Requirements.

### 2.3. Consents

2.3.1. The Employer has obtained, or shall obtain, the Consents that are necessary, or become necessary to enable the Works be carried out in accordance with the Works Requirements. The Contractor shall obtain such Consents as are necessary to enable it complete the Works by its chosen methods.

2.3.2. The Contractor shall give and comply with all notices and pay all taxes, fees and charges required under Legal Requirements to be paid in connection with performing the Contract, unless the Works Requirements say otherwise.

### 2.4. Project Supervisor

2.4.1. If the Schedule, part 1C, states that the Contractor is to be appointed project supervisor for the construction stage in accordance with the Safety, Health and Welfare at Work (Construction) Regulations 2006 (the **Construction Regulations**) for the Works, or a project including the Works, the Contractor shall accept the appointment by entering into the appointment in the form in the Works Requirements. If the Schedule, part 1C, states that an individual or body corporate named in the Works Proposals is to be appointed project supervisor for the construction stage in accordance with the Construction Regulations for the Works, or a project including the Works, the Contractor shall ensure that the individual or body corporate named in the Works Proposals accepts the appointment by entering into the appointment in the form in the Works Requirements. The Contractor shall, if appointed as project supervisor, comply with its obligations under the Construction Regulations in connection with that appointment. If the Employer terminates the appointment of the Contractor or other person named in the Works Proposals as project supervisor for the construction stage as a result of that project supervisor's failure to comply with its obligations, the Contractor shall pay to the Employer all the Employer's cost resulting from the termination [including the cost of appointing and fees and expenses paid to a replacement project supervisor, or, if the Employer acts as project supervisor itself, the Employer's cost of doing so].

2.4.2. If the Contractor or a person named in the Works Proposals is to be appointed as project supervisor for the construction stage, the Contractor represents and warrants to the Employer that the Contractor or person named in the Works Proposals is competent and will allocate adequate resources to enable itself to perform its duties under the Construction Regulations.

2.4.3. If the Contractor or a person named in the Works Proposals is appointed as project supervisor for the construction stage the Contractor shall ensure that the project supervisor has the insurances required of the project supervisor under its appointment.

2.4.4. The Contractor shall comply with all the lawful directions of the project

supervisors appointed for the construction stage and the design process in accordance with the Construction Regulations for the Works, or any project including the Works, and give them any copies of Contractor's Documents that they may request.

2.4.5. The Contractor shall, before Substantial Completion of the Works or any Section, give the Employer the documents required for the safety file (as defined in the Construction Regulations).

2.5. **Safety, Health and Welfare at Work Act 2005 and Safety, Health and Welfare at Work (Construction) Regulations 2006**

2.5.1. The Contractor shall [without limiting other obligations] ensure, so far as is reasonably practicable, that the Works are constructed to be safe and without risk to health, and that the Works comply in all respects, as appropriate, with the relevant statutory provisions.

2.5.2. The Contractor represents and warrants to the Employer that the Contractor is, and will, while performing the Contract, be a competent person for the purpose of ensuring, so far as is reasonably practicable, that the Works are constructed to be safe and without risk to health and that they comply in all respects, as appropriate, with the relevant statutory provisions.

2.5.3. The Contractor represents and warrants to the Employer that the Contractor is and will, while performing the Contract, be a competent person to carry out the Works and has allocated and will allocate sufficient resources to enable itself to comply with the requirements and prohibitions imposed on the Contractor by or under the relevant statutory provisions.

2.5.4. In this sub-clause 2.5 and sub-clause 2.4, **competent person, reasonably practicable and relevant statutory provisions** are construed according to section 2 of the Safety, Health and Welfare at Work Act 2005.

2.6. **Not Used**



### 3. LOSS, DAMAGE AND INJURY

#### 3.1. Employer's Risks of Loss and Damage to the Works

**The Employer shall bear the risk of loss of or damage to the Works resulting from any of the following:**

- (1) war, invasion, act of foreign enemies, hostilities whether war is declared or not, civil war, rebellion, revolution, insurrection, military or usurped power
- (2) pressure waves caused by aircraft or other airborne objects travelling at sonic or supersonic speeds
- (3) contamination by radioactivity or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or its components, in each case not caused by the Contractor or the Contractor's Personnel
- (4) terrorism, but only if terrorism is a permitted exclusion from the Contractor's insurance of the Works
- (5) use or occupation of the Works by the Employer or the Employer's Personnel, other than
  - (i) as provided for in the Contract or
  - (ii) to the extent that the loss or damage is caused by the negligence of the Contractor or the Contractor's Personnel, or the Contractor's breach of the Contract (subject to sub-clause 3.8 if it applies)
- (6) design of the Works by the Employer or Employer's Personnel, but not if the design is covered by insurance required under the Contract.

#### 3.2. Care of the Works

3.2.1. The Contractor shall have full responsibility for the care of, and risk of loss of and damage to, the Works, Works Items, Contractor's Things, Works Requirements, Works Proposals, Contractor's Documents, and anything the Employer gives the Contractor for the Works (together, **Risk Items**) from and including the Starting Date until and including the date the Employer's Representative issues the certificate of Substantial Completion of the Works or relevant Section. After that date, the Contractor shall be responsible for loss of and damage to Risk Items due to any of the following:

- (1) Defects
- (2) occurrences before the Employer's Representative issued the certificate of Substantial Completion
- (3) activities of the Contractor or Contractor's Personnel.

But the Contractor's responsibility under this sub-clause 3.2 excludes loss of and damage to the Works that is at the Employer's risk under sub-clause 3.1.

3.2.2. The Contractor shall promptly rectify any loss and damage to Risk Items for which it is responsible under this sub-clause 3.2 [at its own expense if there are not sufficient insurance proceeds].

3.2.3. If loss of or damage to the Works, for which the Contractor is not responsible under this sub-clause 3.2, occurs before the Defects Certificate is issued, the Contractor shall rectify it in accordance with any instruction of the Employer.

### **3.3. Insurance of the Works and Other Risk Items**

- 3.3.1. From the Starting Date, the Contractor shall insure the Works and other Risk Items against loss and damage. The insurance shall name the Contractor, the Employer and any other persons the Employer requires as insured. The insurance shall be kept in place for each Section until the date that the certificate of Substantial Completion of the Section is issued, and for the Works, except Sections that have a certificate of Substantial Completion, until the date that the certificate of Substantial Completion of the Works is issued. If so required in the Schedule, part 1D, the insurance for any Section or part of the Works that has reached Substantial Completion shall be extended until the Employer's Representative certifies Substantial Completion of the whole of the Works. In any event, after Substantial Completion, the insurance shall be kept in place until the Defects Certificate is issued, to cover loss and damage for which the Contractor remains responsible under the Contract. The limit of the insurance shall be, except for loss of or damage to Contractor's Things and Employer's property, for the full reinstatement cost of the property insured, including the cost of demolition, removal of debris, delivery, professional fees, inflation occurring during the construction and reinstatement periods, and profit. The sum insured for professional fees shall include at least the percentage of the Contract Sum stated in the Schedule, part 1D. The insurance shall include any Employer's property listed in the Schedule, part 1D, and the indemnity limit for those items shall be as stated in the Schedule.
- 3.3.2. The proceeds of the insurance of the Works, less the portion to cover professional fees that the Employer is to pay, shall be paid into a bank account in the joint names of the Employer and the Contractor. They shall be paid out of the account to the Contractor in instalments on the basis of interim payment certificates of the Employer's Representative of the Contract value of the work done and Works Items delivered to the Site to rectify the loss or damage, following generally sub-clause 11.1, and also paid out of the account to the Employer for its other costs. Any balance remaining in the account after the work of rectification is complete shall be paid to the Employer.

### **3.4. Contractor's Indemnity**

- 3.4.1. The Contractor shall indemnify the Employer and the Employer's employees against
- (1) liability and
  - (2) loss of and damage to the Employer's property [including the Site], unless excluded under sub-clause 3.8
- arising from or in the course of the Contractor's performance or non-performance of the Contract.
- 3.4.2. The Contractor's indemnity in this sub-clause 3.4 does not apply to the Employer's liability under the Contract to the Contractor; nor does it apply to liability to the extent that the liability is covered by the Employer's indemnities in sub-clauses 3.5 and 6.2.

### **3.5. Employer's Indemnity**

The Employer shall indemnify the Contractor against:

- (1) liability for death, injury, or illness of any person or loss of or damage to any physical property that the Contractor incurs in the course of performing the Contract and to the extent caused by the negligence of the Employer or the Employer's Personnel and

- (2) liability for property damage that is the unavoidable result of executing the Works in accordance with the Works Requirements

From the Starting Date the Employer shall insure the Works and other Risk Items against such liability. The indemnity limit shall be at least that stated in the Schedule Part 1D. This insurance shall include retroactive cover to when the Employer or Employer's Personnel design of the Works and Works Items started to the extent that such liability may arise from defective design.

### **3.6. Public Liability and Employer's Liability Insurances**

3.6.1. From the Starting Date until the date the Defects Certificate is issued, the Contractor shall insure the Employer and the Contractor against their respective liabilities for

- (1) death, injury or illness of any person and
- (2) loss of or damage to any physical property and
- (3) obstruction, loss of amenities, nuisance, trespass, stoppage of traffic and infringement of light, easement or quasi-easement

resulting from an accident arising from or in the course of the performance or non-performance of the Contract except to the extent covered by the Employer's indemnities in sub-clause 3.5 or sub-clause 6.2.2(2).

3.6.2. From the Starting Date until the date the Defects Certificate is issued, the Contractor shall insure itself against liability for death, injury or illness of Contractor's Personnel. For employees of Subcontractors, this obligation may be satisfied by ensuring that the Subcontractor maintains the insurance. The Contractor shall ensure that this insurance includes a provision that indemnifies the Employer against any liability for which the Contractor would be entitled to an indemnity, including costs, charges and expenses.

3.6.3. The minimum indemnity limit of the Contractor's public liability and employer's liability insurances shall be as stated in the Schedule, part 1D.

3.6.4. If the Contractor or the Contractor's Personnel return to the Site in connection with the Works after the Defects Certificate is issued, the Contractor shall ensure the insurances required by this sub-clause 3.6 are in place at all times that the Contractor or Contractor's Personnel are on Site.

### **3.7. Professional Indemnity Insurance**

If the Schedule states that professional indemnity insurance is required, from the Starting Date until the sixth anniversary of the date that the Employer's Representative certifies Substantial Completion of the Works, or any other period stated in the Schedule, part 1D, the Contractor shall maintain professional indemnity insurance for its performance of the Contract. The indemnity limit shall be at least that stated in the Schedule, part 1D. This insurance shall include retroactive cover to when the Contractor's design of the Works and Works Items started.

### **3.8. Existing Facilities and Use or Occupation by Employer**

This sub-clause 3.8 shall apply only if so stated in the Schedule, part 1D.

To the extent that (a) the Works involve alteration or extension of existing facilities owned by the Employer, or (b) the Employer uses or occupies the Works, the Employer shall bear the risk of loss of or damage to those facilities and the part of the Works used or occupied by the Employer, and their contents owned by the Employer, caused by any of the following perils, as defined in the Works Requirements or, if not defined there, in

standard fire and specified perils insurance policies available in Ireland:

- (1) fire, storm, tempest, flood
- (2) bursting or overflowing of water tanks, apparatus or pipes
- (3) explosion, impact, aircraft
- (4) riot, civil commotion or malicious damage.

but the Contractor shall bear the risk of such loss and damage to the extent caused by the negligence of the Contractor or Contractors Personnel to the extent (and up to the limit) required to be insured under sub-clause 3.6.1.

### 3.9. General Requirements Concerning Insurance

- 3.9.1. The insurance required by the Contract (the **Insurance**) shall be placed with reputable insurers.
- 3.9.2. The only exclusions from the Insurance shall be those listed in the Schedule, part 1D. The levels of excess shall be no higher than stated in the Schedule, part 1D.
- 3.9.3. Liability Insurance on which the Employer is required to be insured shall include a cross liability clause. All Insurance on which the Employer is required to be insured shall provide that the insurer accepts the term "insured" as applying to each insured person as if a separate policy of insurance had been issued to each of them, but without the overall limit of indemnity being increased as a result, and that non-compliance by the Contractor or any other insured will not affect the Employer's rights
- 3.9.4. Both Parties shall comply with the terms of the Insurance policies. If either the Contractor or the Employer fails to comply with the conditions attaching to the insurances effected pursuant to the Contract, the party so failing to comply shall indemnify the other party against all losses and claims arising from such failure.
- 3.9.5. Within 10 working days of being requested to do so, the Contractor or the Employer shall give evidence to the other's satisfaction that the Insurances are in effect, including copies of policies and receipts for premiums. For professional indemnity insurance, a certificate in the form included in the Works Requirements, or, if there is none, a form approved by the Employer, signed by the broker or underwriter, may be given instead of a copy of the professional indemnity policy.
- 3.9.6. Neither the Contractor nor the Employer shall make any material reduction to the Insurance cover unless approved in advance by the other. The Contractor or Employer shall promptly notify the other of any cancellation, renewal, non-renewal or material reduction by the insurer of any Insurance policy.
- 3.9.7. If the Contractor or Employer fails to maintain any of the Insurances in the terms required by the Contract, the other shall be entitled [without affecting its other rights] to take out the insurance and pay the premiums, and the party in default shall pay the amount of the premiums to the party making such payment on demand.

## **4. MANAGEMENT**

### **4.1. Co-operation**

- 4.1.1. The Employer and the Contractor shall support reciprocal co-operation for the Contract purposes, including co-operation with and between Contractor's Personnel and Employer's Personnel.
- 4.1.2. Such support may be relevant particularly to any of the following:
  - (1) negotiation of agreements provided for in the Contract
  - (2) use of most effective and compatible electronic and other methods of communicating and recording
  - (3) efficient order and timing of information provided for in the Contract
  - (4) minimising the effects of suspension
  - (5) efforts by the Contractor to minimise delay and Compensation Events and their effects
  - (6) Contractor's flexible management
- 4.1.3. Either party, or the Employer's Representative, may request clarifications, consultations, workshops, exchange of information and expertise, or investigations, although not provided for elsewhere in the Contract. The request shall specify purposes and, as relevant, proposed participants, arrangements, methods and any proposals for recording or agreeing results.
- 4.1.4. The parties may agree to consult or communicate, without prejudice. In any case, offering or giving co-operation does not imply any admission of any responsibility or alter either party's rights or duties unless otherwise agreed in writing.
- 4.1.5. Not used.

### **4.2. Contractor's Representative and Supervisor**

- 4.2.1. The Contractor shall appoint, before the Starting Date
  - (1) a representative with full authority to act on behalf of the Contractor in all matters concerning the Contract and
  - (2) a supervisor of all the Contractor's activities on the Site, with full authority to receive instructions and other communications on behalf of the Contractor in all matters concerning the Contract.
- 4.2.2. Matters of which the Contractor's representative or supervisor are aware [including communications and instructions] are presumed to be within the Contractor's knowledge.
- 4.2.3. If the Contractor's representative or supervisor are named in the Works Proposals, the Contractor shall appoint the individuals named. If not, or either of them is changed, the Contractor shall submit details of the proposed representative or supervisor to the Employer's Representative. If the Contractor's representative or supervisor dies, or becomes incapable of performing their role, or is no longer available to the Contractor, the Contractor shall appoint a suitable replacement, having submitted details to the Employer's Representative. If the Employer's Representative so requires because of the misconduct, negligence or incompetence of either of them, the Contractor shall remove its representative or supervisor and appoint a suitable replacement, having submitted details to the Employer's Representative.

### **4.3. Employer's Representative**

- 4.3.1. If the Employer's Representative is not named in the Schedule, part 1A, the Employer shall, promptly after the Contract Date, appoint, and notify the Contractor of the identity of, the Employer's Representative. The individual appointed shall be suitably qualified and experienced to carry out the duties assigned to the Employer's Representative in the Contract. The Employer's Representative staff shall include suitably qualified construction professionals who are competent to carry out these duties.
- 4.3.2. The Employer's Representative shall have no authority to amend the Contract. If there are limitations on the authority of the Employer's Representative to perform its functions or powers under the Contract, they are stated in the Contract. However any act or instruction of the Employer's Representative under the Contract shall have effect as if within the Employer's Representative's authority, and the Contractor need not inquire into whether the Employer has actually authorised it.
- 4.3.3. The Employer's Representative may delegate in writing to named representatives any functions or powers under the Contract and revoke any delegation. The appointment of such a representative shall not prevent the Employer's Representative from exercising directly any functions or powers. The Employer's Representative shall notify the Contractor and the Employer of any delegation, and the names of representatives, and of any subsequent changes, within 5 working days after the event in each case.
- 4.3.4. Except as provided otherwise in the Contract the Employer's Representative shall be deemed to act for the Employer whenever carrying out duties or exercising authority, specified in or implied by the Contract. Any opinion, certificate, determination, assessment or objection of the Employer's Representative under the Contract may be revised in accordance with clause 13.
- 4.3.5. Whenever the contract provides that the Employer's Representative shall agree or determine any matter, the Employer's Representative shall consult with each party in an effort to reach agreement. If agreement is not achieved, the Employer's Representative shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.
- 4.3.6. The Employer may replace the Employer's Representative at any time, notifying the Contractor of the replacement, and shall do so promptly if the position of Employer's Representative becomes vacant before the Defects Certificate (or alternatively the certificates required following termination) have been issued. Pending appointment of a replacement, the Employer shall carry out the functions and powers of the Employer's Representative.

### **4.4. Employer's Representative's Communications**

- 4.4.1. The Employer's Representative may give the Contractor
  - (1) instructions, which are either
    - a) directions in accordance with the Contract or
    - b) Change Orders and
  - (2) objections, in accordance with sub-clause 4.7
- 4.4.2. The Employer's Representative may give the Contractor or the Employer, or both
  - (1) opinions, assessments, determinations and certificates, in accordance with

the Contract and

(2) other communications [including clarifications] in accordance with the Contract or the Employer's Representative considers appropriate.

4.4.3. The time provided in the Contract for the giving of all such instructions (other than those required under sub-clause 4.11.2), objections or other communications may be varied by the Employer's Representative after consultation with the Employer and the Contractor; however when making any such changes the Employer's Representative shall attempt to ensure the time involved is as short as practicable in order to ensure the timely completion of the contract.

#### **4.5. Instructions**

- 4.5.1. The Employer's Representative may issue instructions to the Contractor on any matter connected with the Works [whether or not mentioned elsewhere in the Contract] at any time up to the date the Defects Certificate is issued. The Contractor shall comply with an instruction of the Employer's Representative.
- 4.5.2. If the Employer's Representative gives an instruction and calls it a direction, but the Contractor considers that it is a Change Order, the Contractor shall be entitled to give notice under sub-clause 10.3, and have the issue determined under clause 10. In addition to the requirements of sub-clause 10.3, the Contractor must give this notice before starting to implement the instruction, otherwise it will be taken to be a direction.
- 4.5.3. The Employer's Representative shall not give a Change Order concerning the Works or a Section after its Substantial Completion has been certified, except concerning Defects or work to be done after Substantial Completion.
- 4.5.4. The Employer's Representative shall give an instruction that is, in the Employer's Representative's opinion, necessary for the completion of the Works. If, in the Employer's Representative's opinion, it is physically impossible or contrary to Legal Requirements to complete the Works in accordance with the Works Requirements, the Employer's Representative shall give a Change Order. The Employer's Representative shall give an instruction required under this sub-clause 4.5.4 within the time required by sub-clause 4.11.
- 4.5.5. Instructions of the Employer's Representative shall be given in writing except when there is imminent danger to safety or health or of damage to property, in which case the Employer's Representative may give oral instructions, and shall confirm them in writing as soon as practicable.

#### **4.6. Works Proposals**

- 4.6.1. The Contractor shall ensure that all Works Proposals comply with the Works Requirements.
- 4.6.2. If any Works Proposals do not comply with the Contract or the Works Requirements or Legal Requirements or are physically impossible to comply with, the Contractor shall propose a change to the Works Proposals as necessary. [There shall be no extension of time or adjustment to the Contract Sum for this.] If the Works Proposals need to be changed because of a change to the Works Requirements, the Contractor shall propose a change. The Contractor shall submit any change to the Works Proposals to the Employer's Representative.

#### **4.7. Required Contractor Submissions**

Unless the Works Requirements say that a different procedure is to apply, whenever the Contract requires that a document or proposed course of action be submitted to the Employer's Representative, the following shall apply:

- 4.7.1. The Contractor shall give the document or a statement of the proposed action and all necessary supporting information to the Employer's Representative.
- 4.7.2. The Employer's Representative may [but is not bound to] make a written objection to a Contractor's submission, giving reasons.
- 4.7.3. The Employer's Representative may request additional information.
- 4.7.4. The Employer's Representative's period for objection is 5 working days from when the Employer's Representative has received from the Contractor enough information to make a purposeful review of the matter submitted should it wish to make one.
- 4.7.5. The Employer's Representative may alter or withdraw an objection.
- 4.7.6. The Contractor shall not implement any submission before the period has ended, or contrary to any outstanding objection given within the period.
- 4.7.7. The Contractor shall make a new submission to meet any objection given within the period.
- 4.7.8. The Contractor shall also make new submissions as necessary to perform its duties under the Contract [whether or not it has received any objection], and in particular so that its submitted programme shows actual and current planned progress.
- 4.7.9. The Employer's Representative may object on the grounds that to proceed according to the submission would not comply with the Contract or would be contrary to a Legal Requirement.
- 4.7.10. Neither the Employer's Representative's rights to object, nor objections or their absence, reduce any of the Employer's Representative's other powers, or reduce any of the Contractor's responsibilities.

#### **4.8. Not Used**

#### **4.9. Programme**

- 4.9.1. Before the Starting Date, the Contractor shall submit to the Employer's Representative a detailed programme. If there is a programme in the Works Proposals that complies with the Contract, the Contractor shall submit that programme, with any required additional information [such as the actual programmed dates]. The programme shall be of a quality that will permit effective monitoring of the Works and shall include details of when the Contractor will require any instructions, Works Items or other things to be given by the Employer, or anything else the Contract requires the Employer, the Employer's Representative or others to give the Contractor.
- 4.9.2. The Contractor's programme shall allow reasonable periods of time for the Employer and the Employer's Personnel to comply with their obligations under the Contract.
- 4.9.3. If the Contractor's programme most recently submitted to the Employer's Representative does not correspond with actual or reasonably projected progress or the Contractor's obligations, the Contractor shall, if so directed by the Employer's Representative, submit to the Employer's Representative a revised programme that complies with this sub-clause and the other provisions



of the Contract, showing actual progress and progress projected by the Contractor. If the Contractor asserts that it is not possible to reach Substantial Completion of the Works or a Section by its Date for Substantial Completion, the revised programme shall show Substantial Completion by the earliest possible date. [Neither the programme nor its review will limit the Contractor's responsibility or liability for the delay] If the Contractor fails to submit the revised programme within 15 working days of a request from the Employer's Representative, the Employer shall be entitled to withhold from the Contractor 7½% of any payment to be made to the Contractor until the revised programme is submitted.

#### **4.10. Progress Reports**

The Contractor shall give the Employer's Representative monthly progress reports from the Starting Date until the Contractor has completed all work outstanding on Substantial Completion of the Works. The first report shall cover the period from the Starting Date up to the end of the month in which it occurs, and each subsequent report shall cover one month. The Contractor shall give each progress report within 7 days after the end of the month it relates to. Each progress report shall be in a form agreed by the Employer's Representative and shall include detailed description of progress of each stage of the Works against the Contractor's current programme and anything else relevant to a progress report that the Employer's Representative directs.

#### **4.11. Notice and Time for Employer's Obligations**

- 4.11.1. The Contractor shall give the Employer's Representative at least 10 working days advance notice of the date by which the Contractor requires any instructions that the Employer's Representative is to give, or Works Items or other things that the Employer is to give.
- 4.11.2. The latest date for the Employer's Representative to give required instructions, or the Employer to give the Contractor any required Works Item or other thing, shall be the latest of the following:
  - (1) the date stated in the Contract, if any
  - (2) the date shown in the Contractor's current programme
  - (3) the date for which the Contractor first notifies the Employer's Representative under this sub-clause that it is required
  - (4) the date the Contractor requires the instruction, Works Item or other thing in accordance with its actual progress.

#### **4.12. Documents**

The Contractor shall keep on the Site all of the following:

- (1) a full up-to-date set of the Contract documents (but the Pricing Document may be unpriced), instructions of the Employer's Representative, and Contractor's Documents
- (2) a log of all instructions and Contractor's Documents showing dates of issue for each and any subsequent revisions
- (3) Not used
- (4) wage records [including time sheets and copies of all pay slips] applicable to all workers.

The Employer's Representative, and any person authorised by the Employer's

Representative, shall have a right of access to these at all reasonable times.

#### **4.13. Contractor's Management**

- 4.13.1. The Contractor's business includes expertise and experience in construction management.
- 4.13.2. The Works Proposals include details of the Contractor's initial management arrangements for performing its Contract responsibilities.
- 4.13.3. The Contractor shall implement the arrangements, and shall add to and otherwise change them, as desirable for its efficient performance.
- 4.13.4. The arrangements shall include systems, methods, planning and other preparations for providing personnel and resources, programming, recording, consultation, co-ordination, and co-operation, and for flexibility, as referred to in the Contract.
- 4.13.5. The Contractor shall keep the Employer's Representative fully informed about its current arrangements, in advance, and about their implementation.
- 4.13.6. The Contractor shall give the Employer's Representative all information, documents and records in the possession of, or available to, the Contractor or the Contractor's Personnel, that the Employer's Representative requires to perform its functions and powers under the Contract.

#### **4.14. Communications**

- 4.14.1. The parties intend all communications between them to be interpreted purposefully, having regard to the Contract's purposes.
- 4.14.2. Whenever any communication [including a notice, decision, objection, approval, certificate, determination, instruction or request] is to be given under the Contract it shall, unless the Contract provides otherwise, be in English, in writing and delivered as follows:
  - (1) for notices under clause 12 or clause 13, delivered by hand or sent by pre-paid registered post to the address for those notices in the Schedule, part 1A, as updated by the relevant party
  - (2) for other communications, delivered by hand or sent by pre-paid post or email according to the particulars for other communications in the Schedule, part 1A, as updated by the relevant party.
- 4.14.3. Communications by pre-paid registered post are presumed to have been received at 10:00 a.m. two working days after posting. Email communications are presumed to have been received when receipt is electronically recorded.

#### **4.15. Meetings**

- 4.15.1. The Contractor's representative and the Employer's Representative shall attend regular meetings scheduled by the Employer's Representative and any special meeting called by either of them to discuss a particular issue identified when calling the meeting. The Employer's Representative may invite other Employer's Personnel and the Contractor may invite Contractor's Personnel to attend meetings. The Contractor shall arrange for the attendance at a meeting of any Contractor's Personnel requested by the Employer's Representative. The time and place of meetings shall be set by the Employer's Representative, after consulting the Contractor, acting reasonably.
- 4.15.2. Within 5 working days after each meeting the Employer's Representative shall

issue minutes of the meeting to the Employer and the Contractor. The Contractor shall notify the Employer's Representative of any objection to the minutes within 5 working days of receiving them, otherwise, unless clearly wrong, they shall be considered correct. All minutes issued by the Employer's Representative shall highlight the provisions of this sub-clause.

#### **4.16. Confidentiality and Secrecy**

- 4.16.1. The Contractor shall [and shall ensure that the Contractor's Personnel shall] keep confidential:
- (1) official information as defined in the Official Secrets Act 1963 and
  - (2) other information stated in the Works Requirements to be confidential or secret, or that the Employer or the Employer's Representative notifies the Contractor is confidential or secret.
- 4.16.2. The Employer shall keep confidential the Contractor's rates and prices in the Pricing Document or provided in accordance with the Contract, and any records given by the Contractor under the Contract that the Contractor notifies the Employer's Representative are confidential.
- 4.16.3. This sub-clause 4.16 shall not prevent disclosure of information, to the extent permitted by Law
- (1) to the Contractor's Personnel, the Employer's Personnel or other professional advisors to the Contractor or Employer, who have first entered an undertaking in the terms of this sub-clause 4.16, to the extent necessary for the execution of the Works or to enforce the Contract or
  - (2) when required by Law or order of a court or, in the case of disclosure by the Employer, for governmental, parliamentary, statutory, administrative, fiscal or judicial purposes, or the publication of an award notice or
  - (3) that has, except as a result of breach of confidentiality, become available or generally known to the public at the time of the disclosure.
- 4.16.4. The Contractor's and the Employer's obligations under this sub-clause 4.16 shall expire when the commercial sensitivity of the relevant information has ceased and, in any event 5 years after the information was given.

#### **4.17. Contractor's Things Not to Be Removed**

The Contractor shall submit details to the Employer's Representative before removing any Contractor's Things from the Site before the Employer's Representative issues a certificate of Substantial Completion of the Works or relevant Section.

#### **4.18. Contractor's Documents**

All Contractor's Documents shall be in English, except when the Works Requirements or the Law specify another language

## **5. CONTRACTOR'S PERSONNEL**

### **5.1. Contractor's Personnel to Carry Out Contractor's Obligations**

The Contractor is liable for the acts and omissions of Contractor's Personnel [including Specialists and any design they do] as if they were the Contractor's acts and omissions.

### **5.2. Qualifications and Competence**

The Contractor shall ensure that the Contractor's Personnel are suitably qualified and experienced and are competent to carry out their respective tasks.

### **5.3. Pay and Conditions of Employment**

The Contractor shall ensure that the rates of pay and the conditions of employment, including pension contributions, comply with all applicable law. If the Contractor has not complied with this sub-clause 5.3, the Employer shall [without limiting its other rights or remedies] be entitled to estimate the amount that should have been paid to workers and contributions that should have been made on their behalf, and the Employer may deduct the estimated amount from any payment due to the Contractor, until the Employer is satisfied that all proper amounts have been paid.

### **5.4. Subcontractors and Specialists**

- 5.4.1. The Contractor shall not subcontract all of the Works to one or more Subcontractors. If the Contractor intends to subcontract part of the Works, other than when the Subcontractor and its scope are set out in the Contract, or the Contract provides other procedures, the Contractor shall first submit details to the Employer's Representative of the proposed Subcontractor and its proposed scope of work. The Contractor shall also submit details to the Employer's Representative of any proposed Specialist, other than one named in the Contract or when the Contract provides other procedures.
- 5.4.2. If Specialists or other Contractor's Personnel are named in the Contract, the Contractor shall ensure that they are engaged for and perform the work for which they are named.
- 5.4.3. If the Works Requirements name a Specialist whose contract with the Employer is to be novated to the Contractor, and include a copy of that contract, the Contractor shall accept the novation, and the parties shall, at the same time as entering the Agreement, enter the novation agreement in the Works Requirements.
- 5.4.4. The Employer's Representative may not instruct the Contractor to enter a contract with a particular Specialist selected by the Employer's Representative unless the Specialist is named in the Contract.
- 5.4.5. The Contractor shall fully comply with its obligations under any contract with a Specialist and shall not terminate, allow to be terminated or accept a repudiation of such a contract without first submitting details to the Employer's Representative, except when an insolvency event, as set out in sub-clause 12.1, occurs in respect of the Specialist, or the Specialist has committed a serious breach of Law concerning safety, or the Specialist has failed to put or keep in effect insurance as required by the Specialist's contract. On any termination, the Contractor shall replace the Specialist, having submitted details of the replacement to the Employer's Representative. The Contractor and the

Employer's Representative will co-operate with one another in relation to the selection of a replacement Specialist to ensure that the minimum possible delay or disruption is caused to the Works by the necessity to replace the Specialist.

- 5.4.6. The Employer's Representative may object to the proposed replacement of Contractor's Personnel because the proposed replacement does not have at least the level of experience, qualifications, competence, technical capacity, and financial standing of the person being replaced.

#### **5.5. Collateral Warranties**

If the Schedule, part 1F, states that a collateral warranty is required from any Specialist, , the Contractor shall give the Employer a collateral warranty in the form set out in the Schedule, Part 3. The minimum indemnity limit and maximum excess of professional indemnity insurance required of the Specialist shall be as stated in the Schedule, part 1F.

#### **5.6. Removal of Workers**

The Contractor shall remove from the Site any Contractor's Personnel that the Employer's Representative directs, because of the Contractor's Personnel's negligence or incompetence, or on the basis that the Contractor's Personnel's presence on the Site is not conducive to safety, health or good order.

#### **5.7. Not Used**

## **6. PROPERTY**

### **6.1. Ownership of Works Items**

It is agreed, and the Contractor shall ensure, that each Works Item shall become the property of the Employer on the earliest of the following:

- (1) Not Used
- (2) when it is incorporated in the Works
- (3) when any payment for the Works Item is made by the Employer to the Contractor.

### **6.2. Infringement of Property Rights**

6.2.1. The Contractor shall indemnify the Employer against any liability resulting from any of the following infringing the property [including intellectual property] rights of any person:

- (1) the Contractor's performance or non-performance of this Contract, unless the liability is covered by the Employer's indemnity in this sub-clause
- (2) use of Works Items, Contractor's Things, or Contractor's Documents by
  - a) the Contractor or Contractor's Personnel or
  - b) the Employer or any other person to complete the Works following termination of the Contractor's obligation to complete the Works
- (3) use by the Employer of the Works, Works Items, or the Contractor's Documents for the purpose for which they were given.

6.2.2. The Employer shall indemnify the Contractor against any liability resulting from any of the following infringing the property [including intellectual property] rights of any person:

- (1) the use by the Contractor, in accordance with the Contract, of the Works Requirements or Works Items or other things provided by the Employer
- (2) the use or occupation by the Works of the Area Provided by the Employer (defined in sub-clause 7.1.1), when that is the unavoidable result of performing the Contract.

### **6.3. Works Requirements**

The Works Requirements shall remain the property of the Employer and the Contractor shall not use them [and shall ensure that the Contractor's Personnel do not use them] for any purpose other than to perform the Contract or to prosecute or defend a dispute in connection with the Contract.

### **6.4. Rights in Contractor's Documents**

6.4.1. The Employer may use, copy, modify, adapt and translate for any purpose in connection with the Works [including to construct, maintain, extend, use, operate, let, sell, promote, advertise, reinstate and repair the Works] the Contractor's Documents that are given, or, according to the Contract, must be given, to the Employer and the Works Proposals.

6.4.2. Where the Schedule, part 1O, so states, all copyright and other rights in the

Contractor's Documents that are prepared for the Works and are given, or according to the Contract, must be given, to the Employer and the Works Proposals transfers to the Employer when the Employer receives them.

- 6.4.3. The Contractor shall ensure that the Employer obtains the rights and interests described in this sub-clause 6.4.
- 6.4.4. The Contractor has no liability for the use of the Contractor's Documents for any purpose other than that for which they were given to the Employer.

## **7. THE SITE**

### **7.1. Lands Made Available for the Works**

- 7.1.1. The extent of the Site to be provided by the Employer for use and occupation by the Contractor in carrying out the Works shall be set out in the Works Requirements which will also specify when and under what conditions parts of the site are to be made available. The latest date for the provision of the Site (or the parts of the Site as set out in the Works Requirements) shall be the latest of the following:
- (1) the Starting Date
  - (2) the day after the Contractor has done what sub-clause 9.1 requires the Contractor to do before the Starting Date (except 9.1.2(5)).
  - (3) the date stated in the Works Requirements, if any
  - (4) the day after the Contractor has submitted its programme according to sub-clause 4.9
  - (5) the date stated for work to start on that part in the Contractor's current programme.
  - (6) The date the Contractor requires the part of the Site in accordance with its actual progress.
- 7.1.2. Subject to the limitations in the Works Requirements, as referred to above, the Contractor shall be entitled to exclusive possession of any part of the Site provided by the Employer for the sole purpose of performing the Contract
- 7.1.3. Not used.
- 7.1.4. The Contractor's right to occupy and use any part of the Site provided by the Employer shall end when the Employer's Representative certifies the Works or the relevant Section as Substantially Complete. After then the Employer shall allow the Contractor access to comply with sub-clause 8.6.1.
- 7.1.5. The Contractor's right to occupy and use any part of the Site provided by the Employer shall end if the Contractor's obligation to complete the Works is terminated.

### **7.2. Trespassers**

After the Employer has allowed the Contractor to occupy and use any part of the Site, the Contractor shall take and maintain all reasonable measures to secure the part provided. The Contractor shall be liable for the consequences of any trespassers entering any part of the Site under its control. However, the Employer will be liable to the extent that Works are adversely affected by protests arising by reason of the nature of the Works as set out in the Works Requirements or by reason of those Works being carried out by the Employer, provided the Contractor has taken and maintained such measure. The Employer shall have no liability for protests arising as a result of a construction method chosen by the Contractor.

### **7.3. Contractor Responsible for All Site Operations**

The Contractor shall be responsible for all operations on the Site connected with the execution of the Works.



#### **7.4. Services for Employer's Facilities**

The Contractor shall operate and maintain parts of the Site and facilities of the Employer if the Works Requirements so require.

#### **7.5. Security and Safety of the Site and Nuisance**

7.5.1. From and including the Starting Date until the Employer's Representative certifies the Works or the relevant Section as Substantially Complete, the Contractor shall do all of the following [without limiting other obligations]:

- (1) subject to sub-clause 7.2, be responsible for securing the Site and for keeping off the Site persons other than any of the following:
  - a) the Contractor's Personnel and the Employer's Personnel
  - b) any other person notified to the Contractor by the Employer or the Employer's Representative as authorised to enter the Site
  - c) persons exercising public access to any roads, footpaths and areas on the Site
  - d) persons having a right to enter the Site under Legal Requirements
- (2) keep the Site in good order and free from unnecessary obstructions
- (3) take all necessary steps to secure the safety of all persons entitled to be on the Site and to protect users, owners and occupiers of land adjacent to the Site from hazards and interference arising from the Works [including providing any required fences, lighting, guarding, watching, roads and footpaths]
- (4) take all necessary steps to ensure that the Contractor, the Contractor's Personnel and the execution of the Works do not do any of the following:
  - a) unnecessarily cause a nuisance or inconvenience to the public or any user, owner or occupier of any land, road or footpath on or adjacent to the Site
  - b) unnecessarily interfere with the use of any such land, road or footpath.

7.5.2. The Employer shall ensure that Employer's Personnel on the Site comply with the Contractor's reasonable safety rules that have been notified to them by the Contractor.

7.5.3. This sub-clause 7.5 is subject to any exceptions in the Works Requirements

#### **7.6. Other Contractors**

Where so stated in the Works Requirements, the Employer may arrange for work to be executed on the Site by Employer's Personnel. The Contractor shall co-operate with such Employer's Personnel and shall, as far as practicable, coordinate their activities with the execution of the Works.

#### **7.7. Setting Out the Works**

The Contractor shall set out the Works by reference to the points, lines and levels of reference in the Works Requirements. The Contractor shall be responsible for the correct positioning of all parts of the Works and shall rectify any errors in the positions, levels, dimensions or alignment of the Works. Before setting out the Works the Contractor shall make all reasonable efforts to verify the accuracy of the setting out information in the Works Requirements.

## **7.8. Archaeological Objects and Human Remains**

If any fossils, coins, antiquities, monuments or other items of value or of archaeological or geological interest or human remains are discovered on or adjacent to the Site unless the Works Requirements say otherwise, the Contractor shall not disturb them, but shall take all necessary steps to preserve them, and shall promptly notify the Employer's Representative [and comply with any instructions]. As between the parties, these items shall be the Employer's property.

## **7.9. Access and Facilities**

7.9.1. The Employer shall provide necessary access to the Site to enable the Works be completed in accordance with the Works Requirements. The Contractor will be deemed to have satisfied itself as to the suitability of such access for any particular method of works to be availed of by it. The Contractor shall use all reasonable efforts to prevent any access route from being damaged by the Contractor's traffic or by the Contractor's Personnel and these efforts shall include the proper use of appropriate vehicles and routes.

7.9.2. Subject to what is stated in the Works Requirements:

- (1) The Contractor [and not the Employer] shall be responsible for the suitability and availability of access routes , and any required maintenance or upgrading of them, and any charges for use of them
- (2) The Contractor shall provide all necessary signs for directions along access routes, and shall obtain any permission which may be required from the relevant authorities for the use of routes, signs and directions
- (3) The Employer shall not be responsible for any claims which may arise from the use or otherwise of any access route
- (4) The Employer does not guarantee the suitability or availability of any particular access route
- (5) costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor.

7.9.3. The Contractor shall also be responsible for obtaining any additional facilities, and for providing all power, water and other services it requires to perform the Contract.

## **7.10. Not Used**

## **7.11. Not Used**

## **7.12. Charges**

The Contractor shall pay any charges provided for in the Works Requirements for occupation of the Site or any part of it or other place, or in respect of operation or maintenance of Employer's facilities, or in respect of services, or otherwise. [The Employer may deduct the amount of charges from payments to the Contractor. Payment of charges does not excuse the Contractor from any of its obligations].

## **8. QUALITY, TESTING AND DEFECTS**

### **8.1. Standards of Workmanship and Works Items**

- 8.1.1. The Contractor shall ensure all of the following:
- (1) that the Works are executed and completed
    - a) in accordance with all the requirements in, and reasonably inferred from, the Contract [including, where so required by the Contract, in accordance with Contractor's Documents that have been submitted to the Employer's Representative] and
    - b) in a proper and workmanlike manner and using good practice
  - (2) that all Works Items [whether or not the Contractor is required to select them]
    - a) comply with the Contract and the Legal Requirements and
    - b) are of good quality and, unless the Contract provides otherwise, new
  - (3) that all materials and goods that are Works Items (other than materials and goods supplied by the Employer) are fit for the purpose for which they are normally used
  - (4) that all Works Items selected or designed by the Contractor [including by any Specialist] are fit for their intended purpose in the Works.
- 8.1.2. The Employer shall ensure that all materials and goods that are supplied by the Employer are fit for the purpose for which they are to be used in the Works.

### **8.2. Quality Assurance**

The Contractor shall establish and implement quality assurance procedures as required by the Works Requirements, including procedures for establishing quality assurance systems for itself and Subcontractors. The quality assurance procedures shall be reflected in appropriate quality plans submitted to the Employer's Representative. The Contractor shall give the Employer's Representative copies of all reports prepared in accordance with the Contractor's quality assurance procedures. The Employer's Representative may monitor, spot check and audit the Contractor's quality assurance procedures.

### **8.3. Inspection**

- 8.3.1. The Contractor shall ensure that the Employer's Representative, and anyone authorised by the Employer's Representative, is able at all reasonable times to have access to all places where the Works are being executed [whether or not at the Site] and any place where any Works Items are produced, stored, extracted or prepared, or any other obligation of the Contractor under the Contract is being performed, and are able there to inspect, test, observe and examine all such items and activities.
- 8.3.2. The Contractor shall promptly give the Employer's Representative all particulars the Employer's Representative requests about the mode, place and time of manufacture, the source of supply and the performance capabilities of Works Items and any related information, including any test certificates that the Contract provides for.
- 8.3.3. The Contractor shall notify the Employer's Representative before any Works Item is covered or any Works Item that is to be inspected is packed or made

impossible or difficult to inspect, in either case giving the Employer's Representative, and any person authorised by the Employer's Representative, a reasonable opportunity to inspect the Works Item.

#### **8.4. Tests**

- 8.4.1. The Contractor shall supply all Contractor's Things, documents, information, suitably qualified and experienced personnel, power, consumables and instruments required to carry out tests that the Contract requires the Contractor to do [both before and after Substantial Completion]. The Contractor shall agree with the Employer's Representative the time and place for these tests. The Employer's Representative, and others authorised by the Employer, may attend and observe the tests, and the Contractor shall facilitate their attendance and observation. Regardless of whether any Employer's Personnel attends, the Contractor shall promptly give the Employer's Representative a certified report of the result of every test.
- 8.4.2. If a test is failed, the Contractor may elect to repeat the test, or the Employer's Representative may require that the test be repeated. The Contractor shall, on request, pay the Employer any costs the Employer reasonably incurs as a result of any re-testing.
- 8.4.3. If the Contractor rectifies a Defect, it shall repeat any relevant test the Contract specifies for the relevant Works Item, if the Employer's Representative so directs.

#### **8.5. Defects**

- 8.5.1. The Employer's Representative may direct the Contractor to search for a Defect or suspected Defect or its cause. This may include uncovering, dismantling, recovering and re-erecting work, providing facilities for tests, testing and inspecting. If, through searching or otherwise, the Contractor discovers a Defect, the Contractor shall notify the Employer's Representative as soon as practicable.
- 8.5.2. If, through notification or otherwise, the Employer's Representative becomes aware of a Defect, the Employer's Representative may direct the Contractor to do any of the following [or any combination of them]:
  - (1) to remove the Works Item with the Defect from the Site
  - (2) to demolish the Works Item with the Defect, if incorporated in the Works
  - (3) to reconstruct, replace or correct the Works Item with the Defect
  - (4) not to deliver the Works Item with the Defect to the Site.
- 8.5.3. The Contractor shall comply with any direction under this sub-clause 8.5 within the reasonable times, if any, the Employer's Representative directs. If the Contractor fails to begin the work required to comply with the direction within the reasonable time directed, if any, or if none, to complete it as soon as practicable, the Employer may have the work done by others and the Contractor shall, on request, pay the Employer its cost of doing so.
- 8.5.4. Alternatively, the Employer's Representative may decide that the Employer shall accept the defect, either in whole or in part and subject to a possible change in the Works Requirements, and shall do so where the cost of remedying the defect is grossly disproportionate to the impact of the defect. Where the defect is accepted the Contract Sum shall be reduced by the amount that, in the opinion of the Employer's Representative, is the resulting decrease in the value of the Works to the Employer.

8.5.5. The Employer's Representative may give a direction or rejection under this sub-clause 8.5 at any time before the Defects Certificate is issued. [The Contractor shall not be entitled to any adjustment to the Contract Sum or extension of time because of a direction given to deal with, or as a result of, a Defect or any other breach of the Contract by the Contractor.]

#### **8.6. Defects Period**

8.6.1. As soon as practicable after Substantial Completion of the Works or any Section, the Contractor shall complete any outstanding work and rectify any Defects that the Employer's Representative directs before the end of the Defects Period. In doing so, and in doing any tests after Substantial Completion, the Contractor shall cause as little disruption as possible to occupants and users of the Works.

8.6.2. If work remains outstanding or Defects remain uncorrected at the end of the Defects Period, or if the Contractor has completed outstanding work or rectified Defects after Substantial Completion of the Works or relevant Section and before the end of the Defects Period, the Employer's Representative may [without limiting the Employer's other rights] make an appropriate extension to the Defects Period. With the Employer's agreement the Employer's Representative may, at the time that the Defects Period would have ended without this extension, issue an interim payment certificate making an appropriate reduction in retention, and the Contractor shall be entitled to invoice the Employer for that amount.

#### **8.7. Defects Certificate**

The Employer's Representative shall issue the Defects Certificate to the Contractor and the Employer within 20 working days after the end of the Defects Period. [Nothing in this clause 8, nor any exercise or non-exercise by the Employer or the Employer's Representative of their rights under this clause 8, nor the Defects Certificate, relieves the Contractor of any obligation, except to the extent that a Defect is allowed to remain in the Works under sub-clause 8.5.4.]

## **9. TIME AND COMPLETION**

### **9.1. Starting Date**

- 9.1.1. The Contractor shall set the Starting Date, giving the Employer's Representative at least 15 working days notice, or any shorter period the Employer's Representative may agree, or any different period stated in the Works Requirements. The Starting Date shall, unless otherwise stated in the Works Requirements, be no more than 20 working days after the Contract Date.
- 9.1.2. Before the Starting Date [unless already given by the Contractor before the Contract Date, for example in response to a letter of intent] the Contractor shall give the Employer all of the following, all executed, as relevant, by the relevant persons:
- (1) the Agreement
  - (2) a performance bond, if required by the Contract
  - (3) if the Works Requirements state that the Contractor or the Contractor's nominee is to be appointed as project supervisor for the construction stage, the required appointment, and the developed safety and health plan required by the Construction Regulations
  - (4) evidence that the insurances required by the Contract are in effect
  - (5) any collateral warranties required by the Contract. However, Collateral Warranties may be given on such later date as the Employer's Representative may agree, or if the person required to give the Collateral Warranty has not yet been appointed by the Contractor, the Collateral Warranty shall be provided as soon as is practicable.
- 9.1.3. On the Starting Date, the Contractor shall start to execute the Works on the Site. The Contractor shall, unless the Employer's Representative directs otherwise, proceed regularly and diligently in order to achieve Substantial Completion of the Works and each Section by its Date for Substantial Completion.

### **9.2. Suspension**

- 9.2.1. The Employer's Representative may at any time direct the Contractor to suspend all or part of the work under the Contract. The Contractor shall comply with the direction and, during suspension, shall protect, store and secure the affected Works Items against deterioration, loss and damage and maintain the Insurances.
- 9.2.2. After a suspension under clause 9.2.1, the Contractor shall resume work when so directed by the Employer's Representative. When a direction to resume is given, the Contractor and the Employer's Representative shall jointly examine the Works and Works Items affected by the suspension. If the Contractor is entitled to an adjustment of the Contract Sum or an extension of time because of the suspension, the Contractor's cost of rectifying any deterioration in or loss of the Works or Work Items that the Contractor could not have avoided shall be included in the determination of the adjustment, and any resulting delay shall be taken into account in determining the extension.
- 9.2.3. If a suspension, that did not result from a breach of the Contractor's obligations, has continued for more than 30 days, the Contractor may request the Employer's Representative's permission to proceed. If the Employer's Representative does not give permission within 14 days after being requested to do so, the Contractor may, by giving notice to the Employer's Representative

- (1) if the suspension affects part of the Works, treat the suspension as a Change Order to omit that part of the Works or
- (2) if the suspension affects the whole of the Works, give notice to terminate the Contractor's obligation to complete the Works under the Contract.

### **9.3. Delay and Extension of Time**

9.3.1. If the Contractor becomes aware that work under the Contract is being or is likely to be delayed for any reason, it shall as soon as practicable notify the Employer's Representative of the delay and its cause. As soon as practicable after that, and in any event within 40 working days after the Contractor became aware of the delay, the Contractor shall give the Employer's Representative full details of the delay and its effect on the progress of the Works. But if the Contractor has given notice and details of the delay under sub-clause 10.3.1 it does not have to give notice or details again under this sub-clause 9.3.1 for the same delay. In any event, the Contractor shall promptly give any further information about the delay the Employer's Representative directs.

9.3.2. If Substantial Completion of the Works or any Section has been, is being or will be delayed beyond the Date for Substantial Completion by a Delay Event and if all of the following apply:

- (1) the Delay Event is not a result of the Contractor's or Contractor's Personnel's act or omission or the Contractor's breach of the Contract
- (2) the Contractor makes all reasonable efforts to avoid and minimise the delay
- (3) the Contract does not provide otherwise

then, subject to this sub-clause 9.3 and clause 10, there shall be an extension to the Date for Substantial Completion of the Works and any affected Section equal to the amount of the delay beyond the Date for Substantial Completion caused by the Delay Event taking into account only Site Working Days. The Contractor and the Employer's Representative shall follow the procedure in clause 10.

9.3.3. The Employer's Representative may, at any time, revise a determination of an extension to the Date for Substantial Completion of the Works or any Section, but shall not bring those dates forward except following consultation with the Contractor under sub-clause 9.5 when work has been omitted.

### **9.4. Not Used**

### **9.5. Omissions and Reduction of Time**

If a Change Order omits any of the Works, and the omission will result, or has resulted, in a reduction of the time required to complete the Works or any Section, the Date for Substantial Completion shall be reduced by any amount determined by the Employer's Representative following consultation with the Contractor.

### **9.6. Substantial Completion**

9.6.1. The Contractor shall achieve Substantial Completion of the Works and each Section by its Date for Substantial Completion.

9.6.2. Within 20 working days after receiving the Contractor's request to certify Substantial Completion of the Works or a Section, the Employer's Representative shall give to the Contractor and the Employer

- (1) a certificate stating the date that Substantial Completion occurred or
- (2) the reasons for not issuing the certificate.

The certificate may include a list of Defects and any outstanding work [but nothing in the certificate, including the failure to list any Defect, relieves the Contractor of any obligations].

#### 9.7. Not Used

#### 9.8. Liquidated Damages

- 9.8.1. If the Works do not reach Substantial Completion by the Date for Substantial Completion of the Works, the Contractor shall pay the Employer [and the Employer may deduct from payments to the Contractor] liquidated damages calculated at the rate stated in the Schedule, part 1G, for the period from the Date for Substantial Completion of the Works to the date of substantial completion of the Works.
- 9.8.2. If a Section does not reach Substantial Completion by its Date for Substantial Completion, the Contractor shall pay to the Employer liquidated damages calculated at the rate stated in the Schedule for the period from the Date for Substantial Completion of the Section to the date of substantial completion of the Section (or, if earlier and if the Schedule states a rate of liquidated damages for the Works, to the Date for Substantial Completion of the Works).
- 9.8.3. In this sub-clause 9.8 **date of substantial completion** means the date certified by the Employer's Representative that the Works or Section reached Substantial Completion.
- 9.8.4. The entitlement to receive the benefit of liquidated damages under sub-clauses 9.8.1 and 9.8.2, is subject to the Employer's Representative certifying that the delay to which the liquidated damages apply is the Contractor's liability under the Contract.



## **10. CLAIMS AND ADJUSTMENTS**

### **10.1. Compensation Event**

10.1.1. Subject to and in accordance with this sub-clause 10.1, if a Compensation Event occurs the Contract Sum shall be adjusted [upward or downward] by the amount provided in sub-clause 10.6. However, if the adjustment is an increase it shall only take effect to the extent that all of the following apply to the Compensation Event:

- (1) The Compensation Event is not a result of the Contractor's or Contractor's Personnel's act or omission or the Contractor's breach of the Contract
- (2) The Contractor makes all reasonable efforts to avoid and minimise the adverse effects of the Compensation Event
- (3) The Contractor has complied with this clause 10 in full [including giving notices within the time required]
- (4) The Contract does not provide otherwise.

10.1.2. The Contractor's sole remedies for a Compensation Event shall be those stated in the Contract.

### **10.2. Contractor to Pay Employer's Cost of Checking Quantities**

The Contractor shall pay the Employer's cost of having a check done if the Contractor calls for an adjustment to the Contract Sum because of a difference between the Contract value of the Works according to the quantities and descriptions in a Bill of Quantities (if any) in the Pricing Document and the Contract value of the Works according to the Works Requirements (when this is a Compensation Event), and it is found that no increase is to be made to the Contract Sum.

### **10.3. Contractor Claims**

10.3.1. If the Contractor considers that under the Contract there should be an extension of time or an adjustment to the Contract Sum, or that it has any other entitlement under or in connection with the Contract, the Contractor shall, as soon as practicable and in any event within 20 working days after it became aware, or should have become aware (whichever is the earlier), of something that could result in such an entitlement, give notice of this to the Employer's Representative. The notice must be given according to sub-clause 4.14 and prominently state that it is being given under sub-clause 10.3 of the Contract. Within a further 20 working days after giving the notice, the Contractor shall give the Employer's Representative details of all of the following:

- (1) all relevant facts about the claim
- (2) a detailed calculation and, so far as practicable, a proposal, based on that calculation, of any adjustment to be made to the Contract Sum and of the amount of any other entitlement claimed by the Contractor
- (3) if the Contractor considers that there should be an extension of time, the information required under sub-clause 9.3, and a proposal for the extension to the Date for Substantial Completion of the Works and any affected Section.

The Contractor shall give any further information about the event or circumstance requested by the Employer's Representative.

- 10.3.2. If the Contractor does not give notice in accordance with and within the time provided in this sub-clause 10.3, except where the Contractor has been required to and has given a proposal complying in full with sub-clause 10.4 [notwithstanding anything else in the Contract] the Contractor shall not be entitled to an increase to the Contract Sum or extension of time [and the Employer shall be released from all liability to the Contractor in connection with the matter].
- 10.3.3. If the cause of the claim has a continuing effect, the Contractor shall update the information at monthly intervals
- (1) stating the extension of time and adjustment to the Contract Sum claimed for delay and cost already incurred and
  - (2) so far as practicable, proposing a final adjustment to the Contract Sum and Date for Substantial Completion of the Works and any affected Section and
  - (3) providing any other information the Employer's Representative reasonably requires.
- 10.3.4. The Contractor shall keep detailed contemporary records to substantiate any aspect of an event or circumstance about which it has given, or is entitled to give, notice under this sub-clause 10.3, and its resulting costs. These shall include any records the Employer's Representative directs the Contractor to keep. The Contractor shall give the records to the Employer's Representative if so directed.

#### **10.4. Proposed Instructions**

The Employer's Representative may direct the Contractor to make proposals for a proposed instruction. The Contractor shall not implement the proposed instruction unless and until the Employer's Representative has confirmed the instruction as given. Within 20 working days after the Employer's Representative directs the Contractor to make proposals, the Contractor shall give to the Employer's Representative all of the following:

- (1) a detailed calculation and proposal, based on the calculation, of any adjustment to the Contract Sum that would result from the proposed instruction
- (2) if the proposed instruction would cause a delay, the information required under sub-clause 9.3, and a proposal, based on that information for any extension to the Date for Substantial Completion of the Works and any affected Section
- (3) if the proposed instruction is to omit any of the Works, a revised programme and, if appropriate, a proposed earlier Date for Substantial Completion of the Works and any affected Section
- (4) any Contractor's Documents required in connection with the proposed instruction, or a timetable for them.

#### **10.5. Employer's Representative's Determination**

- 10.5.1. If the Contractor has made a claim or proposal under sub-clauses 10.3 or 10.4, the Employer's Representative shall, within 20 working days of receiving it, do one of the following:
- (1) direct the Contractor to give additional information or revised proposals, in which case the Contractor shall do so within 10 working days and the Employer's Representative shall reply in accordance with this sub-clause within a further 10 working days, but that reply must not require the Contractor to give additional information or a revised proposal

- (2) notify the Contractor and the Employer that the Contractor's proposals are agreed and make any resulting adjustments to the Contract Sum, or extension to the Date for Substantial Completion of the Works and any affected Section
  - (3) make a determination of any adjustments to the Contract Sum, or extension to the Date for Substantial Completion of the Works and any affected Section, and notify the Contractor and the Employer
  - (4) in response to a proposal under sub-clause 10.4, notify the Contractor that the proposed instruction will not be given.
- 10.5.2. The Employer's Representative may [but is not bound to] determine an extension of time for a Compensation Event that is a breach of the Contract by the Employer on its own initiative even if the Contractor has not made a claim or proposal under sub-clauses 10.3 or 10.4.
- 10.5.3. If the Employer's Representative fails to take any of the actions in sub-clause 10.5.1 within the time stated, the Employer's Representative will be taken to have made a determination that the Contract Sum be adjusted and that an extension of time be granted in accordance with the Contractor's proposal. The determination will be deemed to have been made on the last day of the time provided for in sub-clause 10.5.1.
- 10.5.4. A determination of the Employer's Representative notified to the Contractor and the Employer under sub-clause 10.5.1(3) or 10.5.2 shall be final and binding on the parties unless, within 28 days after receiving notice of the determination (or, if sub-clause 10.5.3 applies, within 28 days after the determination is taken to have been made), the Contractor or the Employer gives notice to the other under clause 13 referring the dispute to adjudication.
- 10.5.5. Notice of an agreement under sub-clause 10.5.1(2) shall be final and binding on the parties unless, within 28 days after receiving the notice, either:
- (1) the Contractor both (a) notifies the Employer's Representative and the Employer that the Contractor disagrees that the notice correctly records agreed terms and (b) gives notice to the Employer under sub-clause 13.1.1 referring the dispute to adjudication or
  - (2) the Employer both (a) notifies the Employer's Representative and the Contractor that the Employer does not agree with the terms notified by the Employer's Representative and (b) gives notice to the Contractor under clause 13 referring the dispute to adjudication.

## **10.6. Adjustments to the Contract Sum**

- 10.6.1. Adjustments to the Contract Sum for a Compensation Event shall only be for the value of any additional, substituted, and omitted work required as a result of the Compensation Event under sub-clause 10.6.2 and any delay cost under sub-clause 10.7.
- 10.6.2. Additional, substituted, and omitted work shall be valued by the Employer's Representative, following consultation with the Employer and the Contractor in an effort to reach agreement. If agreement is not reached the Employer's Representative shall proceed on the basis of fair valuation and in making such a determination the Employer's Representative may have regard to:
- (1) The rates in the Pricing Document.
  - (2) Rates for similar work carried out in the locality.
  - (3) The reasonable cost of labour, plant and materials to the Contractor in order to carry out the work in question. In valuing additional and substituted work

an allowance of 5% shall be provided for reasonable profit together with an additional 7½% in respect of all on-site and off-site overheard.

10.6.3. Not used.

10.6.4. Not used.

#### **10.7. Delay Cost**

10.7.1. If the Date for Substantial Completion of the Works has been extended because of a Compensation Event [and not otherwise], there shall be added to the Contract Sum an amount for delay cost, either (whichever it says in the Schedule, part 1K)

- (1) for each Site Working Day for which the Date for Substantial Completion of the Works has been extended because of the Compensation Event, the daily rate of delay cost stated in the Schedule, part 2D or
- (2) the expenses unavoidably incurred by the Contractor as a result of the delay to the Date for Substantial Completion of the Works caused by the Compensation Event in respect of which that date has been extended under the Contract. The Contractor will in addition be entitled to 5% of the expenses to compensate him fully for all entitlements by way of profit, loss of profit and contribution to off-site overheads

10.7.2. Not Used.

10.7.3. Not Used.

10.7.4. [There shall be no delay cost paid as a result of extensions to the Date for Substantial Completion of a Section].

10.7.5. If the Schedule states more than one rate for delay cost, the rate for the period when the delay occurred or delayed part of the Works shall be used. This shall be determined by the Employer's Representative.

#### **10.8. Not Used**

#### **10.9. Employer's Claims**

10.9.1. If the Employer or the Employer's Representative considers that, under the Contract, there should be a reduction of the Contract Sum, or that any amount is due to the Employer from the Contractor under the Contract, the Employer or the Employer's Representative shall, as soon as practicable, give notice and particulars of the event or circumstances to the other, and to the Contractor. The notice shall include

- (1) details of the event or circumstances giving rise to the notice, and all relevant facts and
- (2) a calculation, and a proposal based on that calculation, of any adjustment to be made to the Contract Sum or any amount due by the Contractor to the Employer.

10.9.2. The Contractor shall be entitled, within 20 working days of receipt of such a notice, to give a response to the Employer's Representative and shall, if the notice was given by the Employer, give a copy of any response to the Employer. Within 20 working days after receiving the Contractor's response, or after the time for responding has elapsed, if the Contractor has not responded within that time, the Employer's Representative shall determine the matter in accordance with the Contract.

- 10.9.3. The Employer may deduct from any amount due to the Contractor
- (1) any amount determined by the Employer's Representative to be due, or likely to become due, from the Contractor to the Employer under the Contract and
  - (2) any amount due from the Contractor to the Employer under any contract.
- 10.9.4. The procedure in this sub-clause 10.9 shall apply until either the Defects Certificate or the certificates required following termination have been issued, but this does not limit the Employer's rights after then.

## **11. PAYMENT**

### **11.1. Interim Payment**

11.1.1. At each of the following times

- (1) the periods for interim payment stated in the Schedule, part 1L, if the amount payable is more than the minimum amount stated in the Schedule and
- (2) upon issue of the certificate of Substantial Completion for the Works or any Section

the Contractor shall give a statement to the Employer's Representative showing all of the following:

- (3) the progress of the Works
- (4) the instalment of the Contract Sum that the Contractor considers should, under the Contract, be paid on an interim basis
- (5) a detailed breakdown
- (6) any supporting evidence the Employer's Representative requires and
- (7) amounts included in the Pricing Document for Contractor's Documents properly completed and supplied as required by the Contract.

The statement given on Substantial Completion shall include all amounts due to the Contractor for the Works or Section.

11.1.2. The instalment of the Contract Sum that the Contractor shall be entitled to be paid on an interim basis shall be

- (1) the Contract value of the Works properly executed by the Contractor [according to the Pricing Document, as a portion of the Contract Sum] and
- (2) any amount the Employer's Representative considers proper under sub-clause 11.2 and
- (3) amounts for adjustments to the Contract Sum for Compensation Events, as determined under the Contract and
- (4) Not Used.

11.1.3. Within 10 working days of receipt of the Contractor's statement the Employer's Representative shall give the Contractor a certificate, sending a copy to the Employer, setting out the amount of interim payment that, in the Employer's Representative's opinion, is to be made by the Employer to the Contractor, taking account of retention under sub-clause 11.3 and deductions and amounts due from the Contractor to the Employer [including damages for delay and charges referred to in sub-clause 7.12 and deductions under sub-clause 11.4], together with calculations and the reasons for the opinion.

11.1.4. If there is a sum due to the Contractor, the Contractor shall send an invoice to the Employer for that sum after receiving the interim certificate. The Employer shall pay the amount due on the invoice within 15 working days after receiving the invoice.

### **11.2. Unfixed Works Items**

The Employer's Representative shall include in certificates for interim payments any amount not exceeding the percentage of value stated in the Schedule, Part 1L, the Employer's Representative considers proper for each of the following:

- (1) the Contract value of any Works Items that comply with all of the following requirements, all to the satisfaction of the Employer's Representative:
  - a) they have been completed and are substantially ready to be incorporated in the Works
  - b) title to them has been vested in the Employer
  - c) they are stored suitably at the Site
  - d) they have not been delivered to the Site prematurely
- (2) the Contract value of any Work Items not delivered to the Site that comply with all of the following requirements, all to the satisfaction of the Employer's Representative:
  - a) they have been completed and are substantially ready to be incorporated in the Works
  - b) title to them has been vested in the Employer
  - c) they are stored suitably and set aside and marked to show clearly that their destination is the Site and that they are the property of the Employer
  - d) they are clearly identified in a list given to the Employer's Representative, together with documentary evidence that title is vested in the Employer
  - e) they are insured as required by the Contract, and will be insured as required while in transit
  - f) the Contractor has given the Employer a bond in the form for such bonds in the Works Requirements, or if there is none, a form approved by the Employer, executed by a surety approved by the Employer's Representative, for the amount to be paid.

In this clause 11.2, the Contract value of a Works Item means a portion of the Contract Sum the Employer's Representative determines is for supplying of the Works Item, having regard to the Pricing Document. [If the Pricing Document has a rate or price for supplying and fixing a Works Item, the Contract value includes only the portion for supplying the Works Item, as determined by the Employer's Representative.]

### 11.3. Retention

- 11.3.1. There shall be deducted from each interim payment to the Contractor the retention percentage stated in the Schedule, part 1L.
- 11.3.2. Upon issue of the certificate of Substantial Completion of the Works, the Contractor shall be entitled to invoice the Employer for half of the amount so retained. Upon the issue of the Defects Certificate, the Contractor shall be entitled to invoice the Employer for the balance of the money so retained.
- 11.3.3. If, within 10 working days of the issue of the certificate of Substantial Completion of the Works, or another date agreed by the Employer's Representative, the Contractor provides to the Employer a retention bond in the form in the Work Requirements, or, if there is none, a form approved by the Employer, for the amount retained by the Employer, and executed by a surety approved by the Employer, the Contractor shall be entitled to invoice the Employer for the balance of the money retained.

- 11.3.4. Upon issue of the certificate of Substantial Completion of a Section of the Works, the retention amount to be withheld until issue of the certificate of Substantial Completion of the Works shall be reduced by the amount stated in the Schedule, part 1G, and the Contractor shall be entitled to invoice the Employer for that amount.
- 11.3.5. The Employer shall pay the Contractor the amount due on an invoice under this sub-clause 11.3 within 15 working days after receiving the invoice [less any amount that the Employer is entitled to deduct according to sub-clause 10.9].

#### **11.4. Full Payment**

The payments to the Contractor under this Contract are for compliance in full with the Contractor's obligations to the time of payment [including construction management, programming, reporting, payment of wages and observing employment requirements] [but payment does not imply acceptance that the obligations have been performed]. When the Contractor has not fully complied with its obligations, the Employer is not required to make payment in full [without limiting its other rights or remedies]. In particular

- 11.4.1. If the Contractor has not given a collateral warranty by the date stated in sub-clause 9.1.2(5) hereof the Employer is entitled to deduct 5% from payments due to the Contractor until the collateral warranty is given.
- 11.4.2. If the Contractor has not submitted a programme or given a progress report when required by sub-clauses 4.9 and 4.10, the Employer is entitled to deduct 7½% from payments due to the Contractor until the programme or report has been submitted or given.
- 11.4.3. Not Used.
- 11.4.4. Not Used.
- 11.4.5. Not Used.
- 11.4.6. The Employer will place any monies deducted from sums otherwise payable to the Contractor under this sub-clause and under sub-clause 5.3 on joint deposit in a reputable bank to be agreed with the Contractor and monies so withheld will be retained in that deposit account until the Contractor complies with the relevant contract requirement. Thereafter the sum on deposit plus any interest accrued thereon will be released to the Contractor.

#### **11.5. Final Statement**

- 11.5.1. Within 3 months after Substantial Completion of the Works is certified, the Contractor shall give to the Employer's Representative a final statement. The Contractor shall include in that statement all money that the Contractor considers to be due from the Employer to the Contractor under or in connection with the Contract. The Employer shall have no liability to the Contractor under or in connection with the Contract for any matter not detailed in the final statement, except under the indemnities in the Contract or Compensation Events occurring after Substantial Completion of the Works was certified. If no final statement is given within the time required, the Employer may give notice to the Contractor that unless a final statement is provided within a further twenty-one days of that notice, the Employer shall be released from all liability to the Contractor under or in connection with the Contract, except in so far as there are any disputes referred under clause 13, and if the Contractor fails to deliver its final statement within the said period of twenty-one days the Employer shall be so released.
- 11.5.2. Within 3 months after receipt of the Contractor's final statement, the Employer's Representative shall issue to the Contractor and to the Employer a penultimate



payment certificate certifying the amount that, in the Employer's Representative's opinion, will be due from the Employer to the Contractor, less any final retention to be paid after the Defects Certificate is issued, or from the Contractor to the Employer.

- 11.5.3. As soon as practicable, no more than 3 months, after the Defects Certificate is issued, the Employer's Representative shall issue a final payment certificate certifying the amount that, in the Employer's Representative's opinion, is finally due from the Employer to the Contractor, or from the Contractor to the Employer. The amount in the final payment certificate shall be the same as the amount in the penultimate payment certificate, except for
- (1) the final payment of retention and
  - (2) adjustments to the Contract Sum because of Compensation Events that happen after Substantial Completion of the Works is certified and
  - (3) amounts owed by the Contractor that were not included in the penultimate certificate [for example, for Defects that the Contractor has not rectified] and
  - (4) deductions from the Contract Sum under sub-clause 11.4 and
  - (5) other amounts that, according to the Contract, are to be paid after Substantial Completion of the Works [such as payments for testing after Substantial Completion].
- 11.5.4. If the penultimate or final payment certificate states that there is a sum owing to the Contractor, the Contractor shall issue an invoice to the Employer for that sum and the Employer shall pay the amount due on the invoice within 15 working days after receiving the invoice. If the penultimate or final payment certificate states that there is a sum owing to the Employer, the Contractor shall pay the amount due within 10 working days of receipt of the Employer's demand for payment. [Payments and certificates, including the penultimate and final payment certificates and the Defects Certificate, will not relieve the Contractor of any obligations, or be evidence of the value of work or that work has been completed satisfactorily].

#### **11.6. Time for Payment and Interest**

- 11.6.1. When a payment is to be made under the Contract, and no time for payment is stated, the amount due shall be paid within 30 days of receipt of a demand for payment.
- 11.6.2. Interest shall be added to any payment not made within the time provided in the Contract, from the date the payment was due under the Contract, at the rate provided in the European Communities (Late Payment in Commercial Transactions) Regulations 2002.

#### **11.7. Value Added Tax**

- 11.7.1. The Contractor's completed form of tender states whether, and to what extent, the Contract Sum includes VAT.
- 11.7.2. To the extent that the Contract Sum excludes VAT, the Employer shall pay the Contractor (or the Revenue Commissioners when required by Law or their practice) any VAT arising on the supply under the Contract in addition to the Contract Sum.
- 11.7.3. To the extent that the Contract Sum includes VAT,
- (1) adjustments to the Contract Sum shall be on a net-of-Vat basis, and the appropriate sum for VAT shall be added or subtracted and

(2) any VAT included in the Contract Sum that the Employer is required to pay the Revenue Commissioners (by Law or their practice) shall be deducted from the Contract Sum.

11.7.4. So therefore, if the Contract Sum includes VAT chargeable at the standard rate only, then the Employer shall pay the Contractor (or the Revenue Commissioners when required by Law or their practice).

- The Contract Sum, including the VAT chargeable at the standard rate that is included in the Contract Sum and also
- Any VAT arising on the supply under the Contract that is chargeable at another rate.

In the Contract 'standard rate' means the VAT rate specified in section 11(1)(a) of the Value- Added Tax Act 1972 (which was 21.5% on 1 January 2009).

11.7.5. Amounts in the Contract other than the Contract Sum exclude VAT, unless otherwise stated.

11.7.6. The Contractor shall send the Employer, for each payment, an invoice complying with section 17 of the Value-Added Tax Act 1972.

#### **11.8. Withholding Tax**

The Employer shall be entitled to make any deduction or withholding on account of tax required by Legal Requirements or the practice of the Revenue Commissioners.

## 12. TERMINATION

### 12.1. Termination on Contractor Default

- 12.1.1. The Employer may, without limiting any other right or remedy, terminate the Contractor's obligation to complete the Works by notice to the Contractor if any of the following occurs:
- (1) the Contractor materially fails to comply with its obligations under the Contract, and, if the failure can be cured, the Employer's Representative has directed the Contractor to put the matter right, and the Contractor has not done so within 14 days after receiving the direction
  - (2) the Contractor abandons or, except where required or permitted by the Contract, suspends the execution of the Works
  - (3) the Contractor fails to proceed regularly and diligently with the execution of the Works despite a request in writing, stated to be given under this clause 12.1, requesting the Contractor to do so
  - (4) the Contractor fails to maintain the required insurances or performance bond, despite a request in writing, stated to be given under this clause 12.1, requesting the Contractor to do so
  - (5) the Starting Date has not occurred or the Contractor has not started to execute the Works on the Site within 6 weeks of the date the Contract requires
  - (6) Not used
  - (7) the Contractor has committed or caused the Employer to commit a serious breach of Legal Requirements concerning the Works
  - (8) the Contractor or Contractor's Personnel have committed a serious breach of the Safety, Health and Welfare at Work Act 2005 or any regulations or code of practice made under it concerning the Works
  - (9) Not used
  - (10) the Contractor has subcontracted all or any substantial part of the Works in breach of the Contract
  - (11) any of the following **insolvency events** occur:
    - a) a petition is presented to wind up the Contractor and is not dismissed within 10 working days of presentation
    - b) any meeting of creditors or members of the Contractor is convened or held for the purpose of considering a resolution to wind up the Contractor
    - c) any arrangement or composition with or for the benefit of its creditors [including any compromises or arrangements entered into under sections 201 to 204 of the Companies Act 1963] are proposed or entered into by or in respect of the Contractor
    - d) a liquidator, supervisor, receiver, administrator, administrative receiver, trustee or encumbrancer takes possession of or is appointed over the Contractor or any of its assets, or any distress, execution or other process is levied or enforced, and not discharged within 10 working days, on the Contractor or any of its assets
    - e) the Contractor ceases or threatens to cease carrying on business, or is, or is regarded by law or by a court to be, or declares itself to be,

insolvent or unable to pay its debts as they fall due

- f) a petition is presented to appoint an examiner to the Contractor, or an order is made appointing an examiner to the Contractor
- g) the Contractor, being an individual, becomes bankrupt
- h) any event similar to the above insolvency events occurs in respect of the Contractor in any jurisdiction in which it is incorporated or has a place of business

(12) the Contractor, if an individual, dies or becomes incapable of performing the Contract.

- 12.1.2. If the Contractor is more than one person, if any of the insolvency events occur in respect of any of them, the Employer may either
  - (1) terminate the Contractor's obligation to complete the Works or
  - (2) terminate the obligation to complete the Works of the person concerned and the others shall remain liable to perform the Contractor's obligations.
- 12.1.3. If any insolvency events occur in respect of any person who has guaranteed the Contractor's performance of the Contract to the Employer, or a guarantee ceases to be enforceable against the guarantor, the Employer may terminate the Contractor's obligation to complete the Works unless, within 10 working days of the event, the Contractor has arranged a replacement guarantee and guarantor to the Employer's satisfaction.

## 12.2. Consequences of Default Termination

If the Contractor's obligation to complete the Works is terminated under sub-clause 12.1, the following shall apply:

- 12.2.1. The Contractor shall leave the Site in an orderly manner.
- 12.2.2. Payment of all sums of money that may then be due from the Employer to the Contractor shall be postponed, and the Employer shall not be required to make any further payment to the Contractor except as provided in this sub-clause.
- 12.2.3. The Employer's Representative shall, as soon as practicable, determine the amount due to the Contractor under the Contract for the Works completed in accordance with the Contract and unpaid (the **termination value**).
- 12.2.4. The Contractor shall not remove any Works Items or Contractor's Things from the Site unless directed to do so by the Employer or the Employer's Representative, and if directed, shall promptly remove from the Site any Works Items and Contractor's Things, as directed.
- 12.2.5. The Employer may engage other contractors, use any Works Items and Contractor's Things on the Site and do anything necessary for the completion of the Works.
- 12.2.6. The Contractor shall, if so directed by the Employer's Representative, assign to the Employer [without further payment] the benefit of any subcontract, contract for the supply of any Works Item, or other contract concerning the Contract.
- 12.2.7. The Employer may pay to any Subcontractor or supplier to the Contractor any amount due to it that the Employer's Representative certifies as included in any previous interim payment to the Contractor. The Contractor shall re-pay to the Employer such an amount on request.
- 12.2.8. The Contractor shall give the Employer all Works Requirements and Contractor's Documents it [or Contractor's Personnel] has.
- 12.2.9. When the Works have been completed and the termination amount as described

below has been determined, the Employer's Representative shall give a certificate to the Contractor and the Employer setting out the total of the following (the **termination amount**):

- (1) the Employer's additional cost of completing the Works compared with the cost that would have been incurred if the Works had been completed by the Contractor in accordance with the Contract
- (2) loss and damage incurred by the Employer as a result of the termination and its cause
- (3) amounts due to the Employer by the Contractor under or in connection with the Contract or in connection with the Works.

12.2.10. If the Employer does not begin to put in place arrangements to complete the Works within 6 months after the termination, the Employer's Representative shall issue this certificate as soon as practicable after the end of this 6 month period, based, if necessary, on estimates.

12.2.11. If the termination amount is less than the termination value, the Contractor shall issue an invoice to the Employer for the difference and the Employer shall pay the amount due on the invoice within 15 working days after receiving the invoice. If the termination amount is more than the termination value, the Contractor shall pay the Employer the difference within 15 working days of receiving the Employer's demand for payment.

### 12.3. **Suspension by the Contractor**

If the Employer fails to pay any amount due under a certificate issued by the Employer's Representative under the Contract, the Contractor may make of the Employer a written demand for payment, and if the payment has not been made within 5 working days of the receipt of the demand, the Contractor may, on giving notice to the Employer, suspend execution of the Works until the amount has been paid. On receiving the payment, the Contractor shall resume execution of the Works.

### 12.4. **Termination by the Contractor**

12.4.1. The Contractor shall be entitled to terminate the Contractor's obligation to complete the Works by notice to the Employer if any of the following occur:

- (1) the Contractor has suspended the execution of the Works in accordance with sub-clause 12.3, and the Employer has still not paid within 10 working days of the commencement of the suspension
- (2) work has been suspended by direction of the Employer's Representative under sub-clause 9.2 and a right to terminate has arisen under that sub-clause
- (3) the execution of the Works or a substantial part of the Works has been suspended for a period of at least 3 months as a consequence of loss or damage that is at the Employer's risk under sub-clause 3.1
- (4) an event or circumstance outside the control of the parties makes it physically impossible or contrary to Law for the Contractor to fulfil its obligations under the Contract for a period of at least 6 months.

### 12.5. **Termination at Employer's Election**

12.5.1. The Employer shall be entitled to terminate the Contractor's obligation to complete the Works at its election on 20 working days notice to the Contractor.

- 12.5.2. The Employer may not terminate the Contractor's obligation to complete the Works under this sub-clause 12.5 for the purpose of retaining another contractor to execute the Works.
- 12.5.3. The Employer shall return any performance bond required under this Contract to the Contractor on termination under sub-clause 12.4 and this sub-clause 12.5.

## 12.6. Consequences of Termination by Contractor or at Employer's Election

If the Contractor's obligation to complete the Works is terminated under sub-clause 12.4 or sub-clause 12.5 the following shall apply:

- 12.6.1. The Contractor shall leave the Site in an orderly manner and remove any Contractor's Things.
- 12.6.2. The Contractor shall give the Employer all Works Requirements documents and hand over Contractors' Documents, Plant, Materials and other work, for which the Contractor has received payment.
- 12.6.3. The Contractor shall, as soon as practicable, give the Employer's Representative a statement of the total of the following (the **termination sum**):
  - (1) the unpaid value of the parts of the Works completed to the date of termination in accordance with the Pricing Document, disregarding any provision limiting the Employer's obligation to pay for partially completed work
  - (2) the Contractor's reasonable costs of removal from the Site as a consequence of the termination
  - (3) any other cost or liability which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the Works
  - (4) in the case of termination under sub-clause 12.5 [but not under sub-clause 12.4 ] the termination sum shall include 2.5% of the difference between the Contract Sum and the sum otherwise certified by the Employer's Representative under sub-clause 12.6.4 hereof.
  - (5) In the case of termination under sub-clause 12.4 [but not under sub-clause 12.5] the termination sum shall include 5% of the difference between the Contract Sum and the sum otherwise certified by the Employer's Representative under sub-clause 12.6.4 hereof to compensate the Contractor for loss of profit. The Contractor will also be entitled to recover any additional loss and damage sustained by it as a result of the termination.
- 12.6.4. Within 10 working days of receiving this statement, the Employer's Representative shall issue a certificate to the Contractor and the Employer of the amount due from the Contractor to the Employer or the Employer to the Contractor, including the termination sum in the calculation of the amount due from the Employer to the Contractor. If the certificate shows an amount owing to the Contractor, the Contractor shall issue an invoice to the Employer for that amount, and the Employer shall pay the amount due on the invoice within 15 working days after receiving the invoice. If the certificate shows an amount due to the Employer, the Contractor shall pay the amount due within 10 working days of receiving the Employer's demand for payment.

## 12.7. Survival

Termination of the Contractor's obligation to complete the Works shall not affect the Contractor's obligations under the Contract, other than the obligation to complete the Works. [In particular the following provisions of the Contract continue to have effect after

termination: sub-clauses 1.1, 1.2, 1.3, 1.4, 1.7, 1.8, 1.9, 2.1, 2.6, 3.4, 3.5, 4.16, 4.17, clause 6, this clause 12 and clause 13.]

#### **12.8. Payment**

On termination of the Contractor's obligation to complete the Works, the Employer's liability to the Contractor under or in connection with the Contract shall be limited to payment of the amount provided for in this clause 12, and any other amount that fell due under the Contract before the termination.

#### **12.9. Not Used**

## **13. DISPUTE RESOLUTION**

### **13.1. Non Adjudicative Resolution**

The purpose of this clause 13 is to provide for speedy and proportionate resolution of any dispute that may arise between the parties who shall be alert to the possibility of resolving matters amicably and cost efficiently at all stages after the dispute has arisen. The parties shall attempt to resolve any dispute by direct negotiation involving, if necessary, senior personnel from each side not involved in the day to day running of the Contract. The parties shall also consider the use of assisted negotiation using either the Engineers Ireland Conciliation Procedure 2000 or the Mediation Procedure 2011.

### **13.2. Adjudication**

- 13.2.1. Any dispute arising in relation to the Contract may be referred by either party to adjudication in accordance with the Adjudication Procedure. (Note Adjudication Procedure will have to be defined in due course. In the meantime a draft Adjudication Procedure is attached.)
- 13.2.2. An Adjudicator appointed in accordance with the Adjudication Procedure shall deal with any subsequent dispute referred to adjudication unless the parties agree otherwise.
- 13.2.3. The conduct of the adjudication shall be confidential as provided in the Adjudication Procedure. However any Adjudicator's decision or document presented at the adjudication may be relied upon or produced in subsequent arbitral or litigation proceedings.
- 13.2.4. Any Adjudicator's decision shall be binding as provided in Rules 1.6 and 1.7 of the Adjudication Procedure and implemented without delay.

### **13.3. Arbitration**

- 13.3.1. Any dispute arising in relation to this Contract shall be finally resolved by Arbitration where the place of any such Arbitration shall be Ireland and it shall be governed by the Arbitration Act 2010. Unless stated or agreed otherwise the Arbitration shall be carried out in accordance with the Engineers Ireland Arbitration Procedure 2011.
- 13.3.2. Either party may refer a dispute, which has been dealt with in an Adjudicator's decision, to Arbitration by sending a Notice to Refer to the other party in accordance with the Arbitration Procedure 2011.
- 13.3.3. Both parties may agree to submit a dispute at any time directly to Arbitration.
- 13.3.4. Where the amount sought in the Notice to Refer is less than €1,000,000 the Arbitration shall be conducted in accordance with the Engineers Ireland 100 Day Arbitration Procedure.

### **13.4. Not Used**

### **13.5. Not Used**



**Proposed Contract**  
**For use in the Private Sector**  
**(Based on the Public Works Contract)**

**Schedules**

# SCHEDULE

## PART 1

### **A** **Employer's Representative and Communications** (Sub-clauses 4.3 and 4.14)

Details for sending notices under clauses 12 and 13 to the Employer are:

*For the attention of:*

*Address:*


Details for sending other notices and communications to the Employer are:

*For the attention of:*

*Address:*

*eMail:*

*The Employer's  
Representative is:*


--

Details for sending notices and other communications to the Employer's Representative are:

*For the attention of:*

*Address:*

*eMail:*


**Limitations on the Employer's Representative's authority to perform its functions and powers under the Contract**

- Maximum adjustment to the Contract Sum for a single Change Order: € \_\_\_\_\_ , unless approved by the Employer
- Maximum cumulative value of adjustments to the Contract Sum for Change Orders in any 3 month period: € \_\_\_\_\_ , unless approved by the Employer
- The Employer's Representative shall not make a Change Order causing or contributing to a reduction in safety, scope, quality or usefulness of the Works without the Employer's approval

**B Documents**

The **Works Requirements** are:

The **Pricing Document** is:

The **Works Proposals** are:

**C Project Supervisor** (Sub-clause 2.4)

The Contractor, or an individual or body corporate named in the Work Proposals, is to be appointed project supervisor for the construction stage for the Works and any other work on the Site between the Starting Date and the date of Substantial Completion of the Works contemplated in the Works Requirements.

**D Insurance** (Clause 3)

Insurance of the Works: minimum amount insured for professional fees 12½%<sup>2</sup> of the Contract Sum.

- Minimum indemnity limit for Public liability insurance: €6,500,000<sup>3</sup> for any one event, but this limit may be on an annual aggregate basis for products liability, collapse, vibration, subsidence, removal and weakening of supports and sudden and accidental pollution.
- Minimum indemnity limit for Employers' liability insurance: €13,000,000<sup>4</sup> for any one event.
- Maximum excess for Insurance of Works and other Risk items: €10,000<sup>5</sup>.
- Maximum excess for Public liability and Employer's liability: €6,500<sup>6</sup>.

*Permitted exclusions from all Insurances*

<sup>2</sup> If no percentage stated, 12 ½% applies.

<sup>3</sup> If no minimum specified, €6,500,000 applies.

<sup>4</sup> If no minimum stated, €13,000,000 applies.

<sup>5</sup> If no amount stated, €10,000 applies.

<sup>6</sup> If no amount stated, €6,500 applies.

- War, invasion, act of foreign enemies, hostilities [whether war is declared or not], civil war, rebellion, revolution, insurrection or military or usurped power
- Pressure waves caused by aircraft or other airborne objects travelling at sonic or supersonic speeds
- Contamination by radioactivity or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or its components, in each case not caused by the Contractor or the Contractor's Personnel
- Terrorism
- Asbestos
- 
- 
- 

*Permitted exclusions from insurance of the Works and other Risk Items*

- Use or occupation of the Works by the Employer except in connection with the Works
- Unless otherwise specified in the Works Requirements, cost of making good defects in the Works but not damage caused by such defects to other sound parts of the Works
- Wear, tear, normal upkeep or normal repair or gradual deterioration
- Inventory losses
- Loss of use or any consequential loss of any nature including penalties for delay, non-completion or non-compliance
- Failure of information technology
- Mechanical or electrical breakdown but not resulting damage
- Cessation of the Works for more than 3 months
- 
- 
- 

*Permitted exclusions from public liability insurance:*

- Persons under a contract or service or apprenticeship with the insured
- Property of the insurance or in the insured's custody or control other than existing premises and their contents temporarily occupied for the purposes of the Works
- Defective workmanship or materials but not resulting damage
- Mechanically propelled vehicles within the meaning of the Road Traffic Acts
- Loss or damage due to design for a fee or for which a fee would normally be charged / design / defective workmanship, materials or design, but including its consequences (Delete two. If none deleted, permitted exclusion is "loss or damage due to design for a fee or for which a fee would normally be charged").
- 
- Gradual pollution or contamination
- Territorial limits
- Unless otherwise specified in the Works Requirements, aircraft and waterborne craft
- Fines, penalties, liquidated damages
- 
-

*Permitted exclusions from employer's liability insurance:*

- Offshore work
- Liability compulsorily insurance under the Road Traffic Acts
- 

*Permitted exclusions from professional indemnity insurance*

- Persons under a contract of service or apprenticeship with the insured.
- Ownership, use, occupation or leasing of mobile or immobile property
- Effecting or maintenance of insurance of or in connection with the provision of finance or advice on financial matters
- Dishonest, malicious, criminal or deliberate illegal acts
- Libel and slander
- Insolvency
- Fines, penalties, liquidated damages or any penal, punitive, exemplary, non-compensatory or aggravated damages
- Failure of information technology
- Contractual liability that would not apply in the absence of the contract
- 
- 

*Optional insurance provisions*

The Employer shall not have the risk of loss of and damage to its existing facilities and parts of the Works it uses or occupies, in accordance with sub-clause 3.8.

Insurance of the Works and other Risk Items shall include the following property of the Employer, other than the Works and Works Items:

and the minimum sum for which this property is to be insured shall be € .

If Insurance of the Works and other Risk Items is to include terrorism cover, the minimum sum insured shall be € .

The Contractor is not required to extend the insurance of the Works and other Risk Items for a Section that has reached Substantial Completion until the Employer's Representative issues the certificate of Substantial Completion for the whole Works.

*Required extensions to Insurance*

Professional indemnity insurance is required. If required, the professional indemnity insurance is to be kept in place for \_\_\_\_\_ years after Substantial Completion of the Works is certified by the Employer's Representative. If required, the minimum indemnity limit for professional indemnity

insurance shall be € \_\_\_\_\_ for each and every claim or series of claims arising from the same originating cause / annual aggregate limit (Delete one. If none deleted, read as “annual aggregate limit”). The maximum excess shall be €50,000<sup>7</sup>.

**E Performance Bond** (Sub-clause 1.5)

A performance bond is required.

The amount of the performance bond shall be 10%<sup>8</sup> of the initial Contract Sum up to certification of Substantial Completion of the Works, and 5%<sup>9</sup> of the initial Contract Sum for the subsequent period stated in the form of bond in the Works Requirements / 450 days after that. (Delete one. If none deleted, read as “450 days after that”).

**F Collateral Warranties** (Sub-clauses 5.5 and 9.1.2(5))

Collateral Warranties are required from the following categories of Specialists and Sub-Contractors:-

Category			Minimum indemnity limit for professional indemnity insurance	Maximum excess for professional indemnity insurance

**G Dates for Substantial Completion, Sections, Liquidated Damages, Retention**

	Date for Substantial Completion	Rate of liquidated damages	Reduction in retention on Substantial Completion of Section (%)
The Works	(Last day of period starting on the Contract Date or date) (unless to be completed by	€ per	

<sup>7</sup> If no amount specified, €50,000 applies.  
<sup>8</sup> If no percentage stated, 10% applies  
<sup>9</sup> If no percentage stated, 5% applies

	Contractor in part 2)		
Section: (Employer to complete names of sections)		€	per
Section: (Employer to complete names of sections)		€	per
Section: (Employer to complete names of sections)		€	per
Section: (Employer to complete names of sections)		€	per

**H Not Used.**

**I Defects Period**

The initial Defects Period is one year<sup>10</sup> from the date of Substantial Completion of the Works.

**J Not Used.**

**K Delay Events, Compensation Events, Programme Contingency, Delay Costs, Adjustments**

(Sub-clauses 9.3, 9.4, 10.1, 10.6, 10.7)

Delay Events and Compensation Events are as follows:

Event	Delay Event	Compensation Event
1. The Employer's Representative gives the Contractor a Change Order	Yes	Yes
2. The Employer's Representative directs the Contractor to search for Defects or their cause and no Defect is found, and the search was not required because of a failure of the Contractor to comply with the Contract.	Yes	Yes
3. The Employer's Representative directs the Contractor to suspend work under sub-clause 9.2.	Yes	Yes
4. The Contractor suspends work in accordance with sub-clause 12.3.	Yes	Yes
5. There is a factual error in information about the Site or setting out information in the Works Requirements. [This does not include an error of interpretation].	Yes	Yes
6. The Employer takes over part of the Works before Substantial Completion of the Works and any relevant	Yes	Yes

<sup>10</sup> If no period stated, one year applies.

Event	Delay Event	Compensation Event
Section.		
7. The Employer's Representative does not give the Contractor an instruction required under sub-clause 4.5.4 within the time required under sub-clause 4.11.2 when the Contractor has asked for the instruction in accordance with sub-clause 4.11.1.	Yes	Yes
8. The Contractor is unable to occupy and use a part of the Site because of a failure of the Employer under sub-clause 7.1 or the actions of trespassers for which the Employer is liable under sub-clause 7.2.	Yes	Yes
9. The Employer does not give the Contractor a Works Item or other thing as required by the Contract when the Contractor has asked for it in accordance with sub-clause 4.11.1.	Yes	Yes
10. Employer's Personnel working on the Site under clause 7.6 interfere with the execution of the Works on the Site, and the interference is unforeseeable and not in accordance with the Contract.	Yes	Yes
11. The Employer instructs the Contractor under sub-clause 3.2.3 to rectify loss of or damage to Risk Items for which the Contractor is not responsible.	Yes	Yes
12. Loss of or damage to the Works that is at the Contractor's risk in accordance with sub-clause 3.2.	Yes	No
13. A <b>weather event</b> as described below.	Yes	No
14. A strike or lockout affecting the construction industry generally or a significant part of it, and not confined to employees of the Contractor or any Contractor's Personnel.	Yes	No
15. Delay and disruption to the Works caused by Legal Requirements that did not arise as a result of or in connection with an act, omission or breach of contract of the Contractor or the Contractor's Personnel.	Yes	Yes
16. A breach by the Employer of the Contract delaying or disrupting the Works that is not listed elsewhere in this table.	Yes	Yes
17. A difference between the Contract value of the Works according to the quantities and descriptions in a Bill of Quantities in the Pricing Document, if there is one, [taking into account the method of measurement and any amendments identified below] and the Contract value of the Works described in the Works Requirements, because the Bill of Quantities, when compared with the Works Requirements <ul style="list-style-type: none"> <li>▪ includes an incorrect quantity or</li> </ul>	No	No



Event	Delay Event	Compensation Event
<ul style="list-style-type: none"> <li>▪ includes an item that should not have been included or</li> <li>▪ excludes an item that should have been included or</li> <li>▪ gives an incorrect item description</li> </ul> and the difference for an item in, or that should have been in, the Bill of Quantities is more than €500.		
18. An item of archaeological interest or human remains is found on the Site, and it was unforeseeable.	Yes	Yes
19. The Contractor encounters on the Site unforeseeable ground conditions (not resulting from weather) or unforeseeable human-made obstructions in the ground, other than Utilities.	Yes	Yes
20. The Contractor encounters unforeseeable Utilities in the ground on the Site.	Yes	Yes
21. Owners of Utilities on the Site do not relocate or disconnect Utilities as stated in the Works Requirements, when the Contractor has complied with their procedures and the procedures in the Contract, and the failure is unforeseeable.	Yes	Yes
22. The Works are adversely affected by reason of Consents for which the Employer is responsible provided the requirement for the Consent is not as a result of any breach of the Contract or any default on the part of the Contractor.	Yes	Yes

In the above table

**Utilities** means conducting media and apparatus for water, sewage, electricity, gas, oil, telecommunications, data, steam, air, or other services, and associated apparatus and structures.

A condition, circumstance or occurrence is **unforeseeable** if an experienced contractor tendering for the Works could not have reasonably foreseen it on the Designated Date, having inspected the Site and its surroundings and having satisfied itself, insofar as practicable and taking into account any information in connection with the Site provided by the Employer, as to all matters concerning the Site, including its form and nature and its geotechnical, hydrological and climatic conditions.

If there is a Bill of Quantities, the **method of measurement** according to which it was prepared and measurements are to be made is

except when any statement or general or detailed description of the work in the Contract shows the contrary.

**WE 1.0** is the document entitled Weather Events WE 1.0 published on [www.constructionprocurement.gov.ie](http://www.constructionprocurement.gov.ie) on the Designated Date.

A **weather measurement** for a month means each of the following:

- the number of days with rainfall exceeding 10 millimetres

- the number of days with minimum air temperature less than 0 degrees Celsius and
- the number of days with maximum mean 10 minute wind speed exceeding 15 metres per second as recorded at \_\_\_\_\_ weather station.

If no weather station is named, the Met Eireann station nearer the Site is used. If the station named, or the nearest one, does not record the weather measurements, the station nearest the Site that records that weather measurement is used.

A **weather event** is when in a month between the Starting Date and the Date for Substantial Completion of the Works a weather measurement exceeds the number of days for the same item, the same weather station, and the corresponding month in WE 1.0.

The extension to the Date for Substantial Completion of the Works in each month shall be the difference between the weather measurement and the number of days for the corresponding item in WE 1.0

In **sub-clause 10.7**, the amount to be added for delay cost is the daily rate stated in the Schedule, part 2D (sub-clause 10.7.1(1)) / the expenses unavoidably incurred as a result of the delay (sub-clause 10.7.1(2)) (Delete as applicable. If neither deleted, "expenses unavoidably incurred as a result of the delay" to be read as deleted).

For the purposes of sub-clause 10.7, a single daily rate for delay costs / separate daily rates for delay costs for each of the following periods or parts of the Works is / are to apply:

- 
- 
- 

(If the above are blank, and sub-clause 10.7.1(1) applies, Contractor is to tender a single daily rate).

**L Payment Particulars** (Clause 11)

Period for interim payment is Monthly.<sup>11</sup>

Minimum amount for interim payments, except release of retention, €0.00<sup>12</sup>

Up to the percentage stated below of the Contract value of the following unfixed Works Items may be included in an interim payment in accordance with sub-clause 11.2.

On-Site Materials	% of Contract Value
	90

Off-Site Materials with Bond	% of Contract Value
	90

The retention percentage is 5%<sup>13</sup>

**M Not Used.**

<sup>11</sup> If no period specified, monthly applies.

<sup>12</sup> If none stated, no minimum applies.

<sup>13</sup> Not Used

**N**      **Not Used.**

**O**      ***Rights in Contractor's Documents*** (Sub-clause 6.4)

Copyright and all other rights in the following Contractor's Documents and Works Proposals described in sub-clause 6.4.2 transfers to the Employer in accordance with sub-clause 6.4.

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**PART 2**

**A Communications** (Sub-clause 4.14)

Details for sending notices under clauses 12 and 13 to the Contractor are:

*For the attention of:*

*Address:*


Details for sending other notices to the Contractor are:

*For the attention of:*

*Address:*

*eMail:*


*The Employer's  
Representative is:*

--

The Contractor's agent<sup>14</sup> in the Republic of Ireland for service of legal process is:

*Name:*

*Address:*


**B Not Used.**

**C Not Used.**

**D Adjustments to the Contract Sum as a Result of Delay Costs (sub-clause 10.7).**

The Contractor's rate of delay costs is €                      excluding VAT per Site Working Day

*(If left blank, or stated as a negative value, read as zero).*

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<sup>14</sup> An agent in the State must be named if the Contractor's registered office or other principal place of business is outside the State.

If part 1K states that separate rates are to be stated for separate periods or parts of the Works, the Contractor's rates are as follows:

Period or part of the Works (part 1K)	Rate
▪	€.....per Site Working Day
▪	€.....per Site Working Day
▪	€.....per Site Working Day
▪	€.....per Site Working Day

**E Specialists named in the Contract** (Sub-clause 5.4.2)

*One Specialist (and only one) to be identified against each element listed below.*

Element	Name of Specialist	Address and Contact Details
CA entry		
CA entry		
CA entry		
CA entry		
CA entry		
CA entry		
CA entry		
CA entry		
CA entry		
CA entry		
CA entry		
CA entry		
CA entry		

CA entry

CA entry

CA entry

CA entry

**PART 3**

**FORM OF COLLATERAL WARRANTY (Sub-Clause 5.5)**