

NATIONAL PAEDIATRIC HOSPITAL DEVELOPMENT BOARD

[EMPLOYER]

and

BAM BUILDING LIMITED

[CONTRACTOR]

CONDITIONS OF CONTRACT

FOR BUILDING WORKS DESIGNED BY THE EMPLOYER

NEW CHILDREN'S HOSPITAL, ST JAMES'S HOSPITAL CAMPUS, DUBLIN 8

CONDITIONS

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Conditions

1 THE CONTRACT

1.1 Definitions

The following terms have the following meanings in the Contract:

<i>Term</i>	<i>Meaning</i>
Ancillary Certificate	a certificate as prescribed by the Building Control Regulations, other than a statutory certificate of compliance, given by a competent person to confirm compliance of elements of the building, design or Works with Building Regulations; and “Ancillary Certifier” means the person proposed to issue such a certificate.
Affiliate	shall have the meaning in the Companies Act 2014.
Adjudication	means adjudication under the Construction Contracts Act 2013
Adjusted Contract Sum	shall have the meaning in Appendix 3 of the Agreement
Ascertained Phase B Final Sum	shall have the meaning in Exhibit A of Appendix 2 of the Agreement.
Assigned Certifier	the person so assigned by the Employer to certify compliance with the relevant requirements under the Building Control Regulations.
BIM Documents	the Building Information Modelling (BIM) related documents and BIM Information Requirements set out in the Works Requirements
BIM Information Requirements	the BIM Information Requirements in the Works Requirements
Beneficiary	including but not limited to constituted Children’s Hospital Group (or such similar, re-constituted or its successor or assigns), the owner or operator of the New Children’s Hospital (operator includes any facility management company managing any part of the New Children’s Hospital), the Health Services Executive (or such similar, re-constituted or its successor or assigns), parties with similar interests, funders, and parties with a proprietary interest in any part of the Site or the Works.
Building Control Regulations	the Building Control Regulations 1997-2015 and any amendments thereto.
Category 1 – Scope Change	has the meaning set out in Paragraph 5.3(a)(i) of Appendix 3 of the Agreement.
Category 2 – Capped Change Order	has the meaning set out in Paragraph 5.3(a)(ii) of Appendix 3 of the Agreement.
Category 3 – Non-Adjustable Change Order	has the meaning set out in Paragraph 5.3(a)(iii) of Appendix 3 of the Agreement.
Change of Control	has the meaning set out in Clause 1.9.
Change Order	an instruction of the Employer’s Representative to change [including add to or omit from] the Works or the Facility Maintenance Services or to change [including impose or remove] constraints in the Contract on how the Works are to be designed by the Contractor [to the extent specified in the Works Requirements] and executed.
Code of Practice for Inspecting and Certifying Buildings and Works	The code of practice published by the Department of Environment, Community and Local Government with reference to Article 20G of the Building Control Regulations.
Consent	planning permission, order, approval, certificate, Ancillary Certificate, fire certificate, disabled access certificate, licence, permit, environmental impact statement, or other consent required by Legal Requirement for the design by the Contractor [to the extent specified in the Works Requirements], execution or completion of the Works or the Facility Maintenance Services,

	or identified as a Consent in the Works Requirements.
Contract Date	the date of the Agreement.
Contract Sum	the amount identified in the Agreement as the initial Contract Sum, as substituted by the Adjusted Contract Sum for the Works in accordance with Appendix 3 of the Agreement and in each case as adjusted in accordance with the Contract up to but not exceeding the Guaranteed Maximum Price.
Contractor's Documents	<p>drawings, specifications, manuals, reports, Consents 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</p> <ul style="list-style-type: none"> ■ under the Works Requirements or ■ under any Legal Requirement or ■ to obtain any Consent or ■ in connection with a proposal under sub-clause 4.8.
Contractor's Things	equipment, facilities and other things the Contractor [or Contractor's Personnel] uses on or adjacent to the Site to execute the Works and perform the Facility Maintenance Services, except Works Items.
Contractor's Personnel	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 and Facility Maintenance Services.
Curtain Wall Facade Package	<p>Elements of the Works comprising</p> <ul style="list-style-type: none"> ■ stone cladding; ■ curtain walling including stick & unitised curtain walling and rainscreen cladding (metal, glass & terracotta), windows and roof glazing; and ■ biome glazing <p>as more particularly defined in the Works Requirements. The Curtain Wall Facade Package may be provided by more than one Specialist.</p>
Date for Substantial Completion of the Works or a Section	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, in either case as adjusted in accordance with the Contract.
Defect	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].
Defects Certificate	a certificate of the Employer's Representative that the Defects Period has ended.
Defects Period	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.
Designated Date	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.
Employer Equipment	any category 2, or category 3 or category 4 equipment or ICT equipment or software supplied by the Employer in accordance with the Works Requirements.
Employer's Personnel	<p>any of the following:</p> <ul style="list-style-type: none"> ■ the Employer's Representative ■ 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 ■ other contractors of the Employer working on the Site when acting within the scope of their contracts with the Employer ■ anyone else the Employer's Representative notifies the Contractor is Employer's Personnel.

	<ul style="list-style-type: none"> Assigned Certifier
Employer's Quantity Surveyor	Linesight, Hoban House, Haddington, Road, Dublin 4, Ireland or such other person appointed by the Employer and notified to the Contractor
Employer's Representative	the person named in the Schedule, part 1A or other person appointed by the Employer as its representative in accordance with the Contract.
Enabling Works	works described in the contract between the Employer and Bam Civil Limited dated 28 July 2016
Expert	an individual appointed under Clause 14 as the Expert.
Facility Maintenance Services	none
Guaranteed Maximum Price	the Guaranteed Maximum Price as may be calculated and adjusted under the Contract in accordance with Appendix 3 of the Agreement.
Inspection Notification Framework	the document prepared by the Assigned Certifier and agreed with the Contractor and the Employer in accordance with the Code of Practice for Inspecting and Certifying Buildings and Works identifying key stages or items of work that individual certifiers and the Assigned Certifier are to be notified by the Contractor as the Works are ready for inspection.
Inspection Plan	the document prepared by the Assigned Certifier in accordance with the Code of Practice for Inspecting and Certifying Buildings and Works having regard to the Works Requirements. The Inspection Plan also includes the Inspection Notification Framework, both of which may be amended by the Assigned Certifier from time to time.
Law	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.
Legal Requirement	<p>a requirement that applies to the Works as a result of any of the following:</p> <ul style="list-style-type: none"> Law a Consent a decision of an Irish court, the European Court of Justice or the European Court of First Instance the requirements of any person having authority in connection with the Works under any Law the requirements of any person with whose systems the Works will connect the legal rights of any person.
Letter of Intent	Has the meaning set out in Article 8 of the Agreement
Named Specialist	<p>a Specialist</p> <ul style="list-style-type: none"> (a) named, or undertaking a category of work named, in the Schedule, Part 1F(iii); or (b) whom the Employer's Representative instructs the Contractor to employ as a Specialist, or (c) any replacement of a Specialist under (a) or (b) above <p>[For the avoidance of doubt Named Specialist includes Novated Specialists and Reserved Specialists]</p>
Novated Specialist	has the meaning in Clause 5.4.3(1)
Owner Controlled Insurance	the policy of insurance in the form set out in the Works Requirements.
Phase A Works	the part of the Works including certain of the basement, sub-structure, Enabling Works and any works under a Letter of Intent all as more particularly described in the Works Requirements.
Phase B Works	the Works, other than the Phase A Works.
Pre-Phase B Engagement Process	the process set out in the Appendix 3 of the Agreement to establish the Ascertained Phase B Final Sum.

Reserved Sums	has the meaning in Clause 5.9 of the Contract
Project Board	the Project Board as described in Clause 13.1.
Provisional Sums	has the meaning set out in Clause 5.10.1 of the Contract
Reserved Specialist	has the meaning in Clause 5.4.3(2)
Saving Share	Means the total of: <div style="margin-left: 40px;"> a) In the case of the mechanical, electrical and lift Reserved Specialists, $\text{relevant Reserved Specialist's Guaranteed Maximum Sub-Contract Price (as defined in the subcontract)} - \text{Reserved Specialist's final Sub-Contract Sum (as defined in the subcontract)} = \text{(if positive) the saving, 50\% of which is allocated to the relevant Reserved Specialist and if negative, zero.}$ </div> <p style="margin-left: 40px;">and</p> <div style="margin-left: 40px;"> b) In the case of the Contractor, $\text{(Guaranteed Maximum Price (excluding the mechanical, electrical and lift Reserved Specialists' Guaranteed Maximum Sub-Contract Price (as defined in the subcontract)))} - \text{final Contract Sum (excluding the Reserved Specialist's final Sub-Contract Sum (as defined in the subcontract))} = \text{(if positive) the saving, 50\% of which is allocated to the Contractor and if negative, zero.}$ </div>
Section	a part of the Works identified as a Section or Sub-Section in the Schedule, part 1G.
Site	any place <div style="margin-left: 40px;"> <ul style="list-style-type: none"> ■ where the Works are to be executed according to the Contract or ■ provided by the Employer for the Works or ■ where the Contractor is to operate or maintain Employer's facilities or </div> <p>that the Works Requirements identify as part of the Site.</p>
Site Working Day	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.
Specialist	any of the following: <div style="margin-left: 40px;"> <ul style="list-style-type: none"> ■ a Subcontractor or supplier of a Works Item named in the Contract ■ Contractor's Personnel who do or are to do design ■ Contractor's Personnel stated in the Works Requirements to be Specialists. </div>
Standing Conciliator	the person appointed by the Parties, is so stated, in accordance with the procedures as described in Clause 13 and identified in Schedule Part 1 N.
Starting Date	the date specified in the Agreement.
Subcontractor	a person to whom execution of part of the Works [including design to the extent specified in the Works Requirements] is subcontracted [by the Contractor or another Subcontractor].
Substantial Completion of the Works or a part of the Works [including a Section]	all of the following have happened: <div style="margin-left: 40px;"> (1) the Works or the part of the Works 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 <div style="margin-left: 20px;"> (a) Defects accepted by the Employer under sub-clause 8.5.4 or (b) minor Defects to which all of the following apply: </div> </div>

- (i) they do not prevent the Works or the part from being used for their intended purpose
 - (ii) the Employer's Representative considers the Contractor has reasonable grounds for not promptly rectifying them
 - (iii) rectification will not prejudice the safe and convenient use of the Works or the part
- (2) all tests that are required by the Contract to be passed before Substantial Completion have been passed
 - (3) the Contractor has given the Employer's Representative the Contractor's Documents that the Contract requires be provided before Substantial Completion
 - (4) the Contractor has given the Employer's Representative the collateral warranties that the Contract requires for the Works or part
 - (5) In respect of Phase B Work (but not a sub-section), the details in the Certificate of Compliance on Completion of the Works or a part thereof have been included on the Register maintained under Part IV of the Building Control Regulations.

VAT

the value-added tax payable in Ireland under Law.

Works Item

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 The parties intend the Contract to be given purposeful meaning for efficiency and public benefit generally and as particularly identified in the Contract.
- 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.
 - (20) The Parties are the Employer and the Contractor.
- 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 completed Schedule and any appendices to the Agreement including, Post Tender Clarifications, Pre-Phase B Engagement Process, Adjusted Contract Sum and Guaranteed Maximum Price Clause, Tender Inflation Recovery Clause
 - Third, these Conditions
 - Fourth, the Works Requirements
 - Fifth, the Pricing Document
 - Sixth, the Works Proposals, if there are any
 - Seventh, 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 Inconsistencies between the Works Requirements and the Pricing Document shall be resolved by an instruction from the Employer's Representative under sub-clause 4.4.1(1) of the Contract.

Where inconsistencies are found to exist between the Works Requirements and the Pricing Document the Works Requirements take precedence with respect to the Works to be completed and a compensation event shall arise if and to the extent provided for in Schedule, Part 1K (17).

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, the Facility Maintenance Services or the Contractor's obligations. Save as set out in the Schedule part 1K 17, nothing in the Pricing Document or Works Proposals imposes obligations on the Employer.

1.5 Performance Bond

Before the applicable date specified in the Agreement, the Contractor shall give the Employer a performance bond from the Contractor in the form in the Works Requirements, or if there is none, a form approved by the Employer. The performance bond (s) 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 Parent Company Guarantee

If the Schedule, part 2B, says that there is to be a parent company guarantee, the Contractor shall give the Employer such a guarantee before the date specified in the Agreement. It shall be executed by the parent company named in the Schedule, part 2B, and in the form in the Works Requirements, or, if there is none, a form approved by the Employer.

1.7 Works Requirements

- 1.7.1 The Contractor has satisfied itself before entering the Contract of the adequacy of such parts of the Works Requirements applicable to design by the Contractor.
- 1.7.2 The Contractor is fully responsible for the adequacy of the parts of the Works Requirements referred to in sub-clause 1.7.1, but is not liable to the Employer for
- (1) statements of intended purpose of the Works or parts of them
 - (2) criteria for testing or performance of the completed Works or part of them
- 1.7.3 The Employer is not liable to the Contractor for the parts of the Works Requirements referred to in sub-clause 1.7.1.

1.8 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.

1.9 Assignment and Change of Control

1.9.1 The Contractor may not assign the benefit of the Contract, or any part of it, without the Employer's consent.

1.9.2 The Employer may assign the Contract, or any part of it, without the Contractor's consent.

1.9.3 For the purpose of this clause, a "Change of Control" occurs if control of the Contractor passes from the person (or persons acting in concert) who at the date hereof exercise(s) such control provided that:

(a) "control" shall mean either ownership (directly or indirectly) of more than 50 per cent. of the issued share capital of the Contractor or the right to direct the business and/or policies (including dividend policies) and/or affairs of the Contractor whether by Law, contract, governmental decree or regulation, ownership of voting power or otherwise;

(b) there shall be no Change of Control deemed in the event of an amalgamation or reconstruction or transfer to any Affiliate of the Contractor or any change of control arising from any change in legal or beneficial ownership of any shares that are issued on a recognised stock exchange.

1.9.4 The Contractor shall not permit a Change of Control of the Contractor without the approval of the Employer.

1.10 Miscellaneous

1.10.1 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.

1.10.2 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.

1.10.3 The Contract may only be changed by a document in writing signed by an authorised representative of each Party.

1.10.4 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.

1.11 Background Information

1.11.1 In this sub-clause 1.11 Background Information means any information made available on, before or after the Contract Date to the Contractor or to anyone on the Contractor's behalf by the Employer or by anyone acting on the Employer's behalf in connection with the Contractor's tender for the Contract, which information is not included in this Contract. Background Information also includes any information stated to be 'Background Information'.

1.11.2 The Contractor acknowledges and agrees as follows:

(1) The Employer has no liability whatsoever to the Contractor in contract, tort, under statute, or on any other basis whatsoever (including negligence and breach of statutory or other duty) in connection with Background Information.

(2) The Employer has not made and does not make any warranty, representation, or undertaking in connection with Background Information.

(3) The Employer has not authorised anyone to make any warranty, representation, or undertaking on the Employer's behalf in connection with Background Information.

(4) Without limiting anything in this sub-clause 1.11, the Contractor irrevocably and forever waives any liability that the Employer may have to the Contractor in connection with Background Information regardless of any of the following circumstances, and the Contractor acknowledges that the Employer makes no warranty, representation, or

undertaking in regard to those circumstances:

- a) whether or not Background Information is correct
 - b) whether or not Background Information is complete
 - c) whether or not any testing, investigation, surveys, or other work to prepare Background Information was done negligently or in breach of statutory or other duties
 - d) whether or not those who carried out any testing, investigation, surveys, or other work to prepare Background Information were properly selected or supervised
 - e) whether or not Background Information was suitable for the purposes for which the Contractor or anyone on the Contractor's behalf might use it
 - f) whether or not any errors or omissions in Background Information are major or numerous or both
 - g) whether or not Background Information represents all the information available to the Employer
 - h) whether or not any works described in Background Information are done as described in Background Information or at all
 - i) whether or not the Employer had or has other information that might render Background Information misleading
 - j) the manner in which Background Information was made available
 - k) whether or not the Contractor had adequate opportunity to carry out any testing, investigations, surveys, or other work or otherwise to verify Background Information.
- (5) The Contractor has included in the Contract Sum for the risks that the Contractor has agreed to bear under this sub-clause 1.11.

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 the Works Requirements say that the Employer is to obtain. The Contractor shall obtain all other Consents.

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 As stated in the Schedule, part 1C, the Contractor is to be appointed project supervisor for the construction stage in accordance with the Safety, Health and Welfare at Work (Construction) Regulations 2013 (the **Construction Regulations**) for the Works and 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 it 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 [without adjustment to the Contract Sum or extension of time] 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 and the project supervisor design process, 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 2013

2.5.1 The Contractor shall [without limiting other obligations] ensure, so far as is reasonably practicable

(1) in respect of Works to be designed by the Contractor [as specified in the Works Requirements] those Works

(a) are capable of being constructed to be safe and without risk to health;

(b) can be maintained safely and without risk to health during use; and

- (2) that the Works are constructed to be safe and without risk to health, and
 - (3) that the Works comply in all respects, as appropriate, with the relevant statutory provisions and
 - (4) that the Facility Maintenance Services are carried out safely and without risk to health.
- 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
- (1) in respect of Works to be designed by the Contractor [as specified in the Works Requirements] those Works
 - (a) are capable of being constructed to be safe and without risk to health and
 - (b) can be maintained safely and without risk to health during use and
 - (2) that the Works are constructed to be safe and without risk to health, and
 - (3) that the Works comply in all respects, as appropriate, with the relevant statutory provisions and
 - (4) the Facility Maintenance Services are carried out to be safe and without risk to health.
- 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 it 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 Ethics in Public Office

The Contractor warrants that

- 2.6.1 neither the Contractor nor any person on the Contractor's behalf has offered, given or agreed to give to the Employer or to any of the Employer's Personnel any gift or consideration of any kind in connection with the Contract, nor will they make such an offer, gift or agreement and
- 2.6.2 neither the Contractor nor any person on the Contractor's behalf has committed any offence under the Prevention of Corruption Acts 1889 to 2010 or the Ethics in Public Office Acts 1995 and 2001 in connection with the Contract, nor will they commit any such offence and
- 2.6.3 no Minister of the Government or Minister of State, or officer or employee of the Employer, will have or receive any share or part of the Contract or any benefit from the Contract and
- 2.6.4 unless fully disclosed to and agreed by the Employer in advance
 - (1) no former officer nor employee of the Employer nor of a consultant to the Employer whose duties related to the Works will, for 12 months after leaving the employment or office, be engaged as Contractor's Personnel and
 - (2) no consultant or former consultant to the Employer whose duties related to the Works will be engaged as Contractor's Personnel, except for a Specialist whose contract is to be novated from the Employer to the Contractor.

2.7 Legal Opinion

- 2.7.1 If the Contractor or any person executing a bond, guarantee, warranty or other deed or agreement required by the Contract is not an individual or a company incorporated in Ireland the Contractor shall give the Employer, together with the Agreement or other document, a legal opinion that
 - (1) the Contractor, or other counterparty, is an entity duly incorporated under the laws of its place of incorporation and is a separate legal entity, capable of being sued in its own name, is validly existing under the laws of that place and no steps have been taken or are being taken to appoint a receiver, examiner, administrator, liquidator, trustee or similar person over it or to wind it up and
 - (2) the Contractor has the necessary power and authority, and all necessary corporate and other action has been taken, to give it the power to execute, deliver and perform the obligations undertaken by it under the Contract or other document and

- (3) the Contract, or other document, has been duly executed by the Contractor, or other counterparty, or on its behalf, and is binding on it under the laws of the place where it is incorporated and
 - (4) a judgment of an Irish court will be enforceable against the Contractor, or other counterparty, in the place where it is incorporated.
- 2.7.2 The opinion shall be written by a lawyer, approved by the Employer, who is authorised to practice in the place where the counterparty is incorporated. The opinion shall be in a form approved by the Employer. It shall be addressed to the Employer.

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) use or occupation of the Works by the Employer or the Employer's Personnel, other than
 - (a) as provided for in the Contract or
 - (b) 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)
- (5) design of the Works by the Employer or Employer's Personnel, but not
 - (a) any design by the Contractor, or
 - (b) if the design is covered by the Owner Controlled Insurance required under the Contract, or
 - (a) any design in the parts of the Works Requirements referred to in sub-clause 1.7.1.

3.2 Care of the Works and Employer Equipment

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 Contract Date until and including the date the Employer's Representative issues the certificate of Substantial Completion of the Works (or in respect of the Sub-Section to the Phase A Works [utilities tunnel] the date the Employer's Representative issues the certificate of Substantial Completion of that Sub-Section, or in respect of a Sub-Section of the Phase B Works, the date the Employer's Representative issues the certificate of Substantial Completion of the Sub-Section, or in respect of a part of the Works that the Employer takes over under sub-clause 9.7, the date the Employer takes over the part). For the avoidance of doubt, with the exception of the Sub-Section to the Phase A Works [utilities tunnel], the Contractor remains responsible for the Phase A Works until the date the Employer's Representative issues the certificate of Substantial Completion for the Phase B Works. 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 (or, where applicable, before the Employer took over the part)
- (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.
- 3.2.3 The Employer shall supply to the Site the Employer Equipment in accordance with the details stated in the Works Requirements. The Contractor shall then visually inspect it, and shall promptly give notice to the Employer's Representative of any apparent shortage, defect or default in the Employer Equipment.

The Contractor shall have full responsibility for the care of, and risk of loss of and damage to any Employer Equipment delivered to Site prior to Substantial Completion until and including the date the Employer's Representative issues the certificate of Substantial Completion of the Works (or in respect of the Sub-Section to the Phase A Works [utilities tunnel] the date the Employer's Representative issues the certificate of Substantial Completion of that Sub-Section, or in respect of a Sub-Section of the Phase B Works, the date the Employer's Representative issues the certificate of Substantial Completion of the Sub-Section, or in respect of a part of the Works that the Employer takes over under sub-clause 9.7, the date the Employer takes over the part). After that date the Contractor shall be responsible for loss of and damage to the Employer Equipment to the extent that such loss or damage has been caused by the activities of the Contractor or Contractor's Personnel.

3.3 Insurance of the Works and Other Risk Items

- 3.3.1 From the Contract Date, the Employer shall insure the Works and other Risk Items against loss and damage in accordance with the provisions set out in the Owner Controlled Insurance or such other form as the Employer shall determine Provided Always that no warranty is given by the Employer as to the sufficiency of the insurance risks covered. 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. The Contractor shall proceed with due diligence to make good any damage to or destruction of the Works. The insurance proceeds 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 provided however that the Contractor shall be responsible for the deductible in respect of the all risks insurance as set out at sub-clause 3.3 and the occurrence of such loss, damage or destruction shall be disregarded in computing any amounts payable to the Contractor under this Contract. Any balance remaining in the account after the work of rectification is complete shall be paid to the Employer.
- 3.3.3 In the event of substantial loss or damage to the Works, the Employer shall be entitled to terminate this Contract by giving to the Contractor at least 14 (fourteen) days written notice, not more than 30 (thirty) days after the occurrence of the said loss or damage. On such termination the Contractor shall be paid the amount referred to in sub-clause 12.6 in lieu of any other payment, expenses or compensation.
- 3.3.4 The Contractor shall be responsible for and shall maintain appropriate insurance cover in respect of the Contractor's Things and shall require similar cover to be maintained by all Subcontractors of any tier. Details of such insurance shall be provided to the Employer or its insurance advisor as and when reasonably required.

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 to the extent caused by the negligence of the Employer and
- (2) liability for property damage that is the unavoidable result of executing the Works in accordance with the Works Requirements

3.6 Public Liability and Employer's Liability Insurances

- 3.6.1 From the Contract Date until the date the Defects Certificate is issued, the Employer shall take out and maintain public liability insurance in respect of the Contractor's Site activities only in accordance with the provisions of the Owner Controlled Insurance provided always that no warranty is given by the Employer to the Contractor as to the sufficiency of the risk covered by such insurance. Such insurance 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) or the Contractor's insurance under sub-clause 3.6.2.
- 3.6.2 From the Contract 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 employer's liability insurances shall be as stated in the Schedule, part 1D.
- 3.6.4 The Contractor shall take out from the Contract Date and maintain until the Defects Certificate motor insurance covering all mechanically propelled vehicles, owned or non-owned, used in connection with the Works and/or the Facility Management Service. The insurance shall cover liability for damage to third party property for a limit of not less than €6,500,000 (six million, five hundred thousand euro)
- 3.6.5 If the Contractor or the Contractor's Personnel return to the Site in connection with the Works after the Defects Certificate is issued, including in order to perform Facility Maintenance Services, the Contractor shall ensure all the insurances required by this sub-clause 3.6 are in place at all times that the Contractor or Contractor's Personnel or any mechanically propelled vehicles, owned or non-owned, used in connection with the Works and/or the Service are on Site.

3.7 Professional Indemnity Insurance

- 3.7.1 If the Schedule states that professional indemnity insurance is required, from the Contract Date until the twelfth 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.

- 3.7.2 If the Schedule states that professional indemnity insurance is required, from the Contract Date until the twelfth anniversary of the date that the Employer's Representative certifies Substantial Completion of the Works, or any other period stated in the Schedule, part 1F(i), the Contractor shall procure that the Specialists shall take out from the date of their respective appointments by the Contractor and maintain professional indemnity insurance (or product liability insurance, where so agreed with the Employer's Representative) in respect of their respective design obligations under their respective Sub-Contracts and any Collateral Agreements entered into by them relating to the Works.
- 3.7.3 Such Professional Indemnity Insurance to be taken out by the Specialists shall provide in each case a limit of indemnity of not less than the amount stated in the Schedule part 1F(i) for each and every claim or series of claims arising from the same originating cause. The maximum excess shall be the amount stated in the Schedule part 1F(i).

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 Contractor's 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 to be taken out and maintained by the Contractor (including insurance to be procured from a Subcontractor (including Specialists) under the Contract (the **Insurance**) shall be placed with reputable insurers approved by the Employer.
- 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 and F(i).
- 3.9.3 The Insurance shall include any extensions and comply with any additional requirements in the Schedule and the Works Requirements.
- 3.9.4 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.
- 3.9.5 The Contractor shall comply with the terms of the Insurance policies.
- 3.9.6 Within 10 working days of being requested to do so, the Contractor shall give the Employer evidence to the Employer'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.
- 3.9.7 The Contractor shall not make any material reduction to the Insurance cover unless approved in advance by the Employer. The Contractor shall promptly notify the Employer of any cancellation, renewal, non-renewal or material reduction by the insurer of any Insurance policy.
- 3.9.8 If the Contractor fails to maintain any of the Insurances in the terms required by the Contract,

the Employer shall be entitled [without affecting its other rights] to take out the insurance and pay the premiums, and the Contractor shall pay the amount of the premiums to the Employer on demand.

3.9.9 In regard to the public liability insurance referred to in sub-clause 3.6.1 and the all risks insurance referred to in sub-clause 3.3.1 (collectively referred to in this Contract as the **"Employer's Policies"**) the Contractor shall notify the Employer in the event of there being any change occurring materially varying any of the facts within the knowledge of the Contractor existing when the insurance was effected and the Employer may with the consent of the Contractor (which consent shall not be unreasonably withheld or delayed):

- (i) vary the Employer's Policies at any time but not so as to materially reduce the cover to which the Contractor or any sub-contractor is entitled under sub-clauses 3.1.1 and 3.6.1; or
- (ii) cancel the Employer's Policies by not less than (30) thirty days written notice to each co-insured and at least (5) five days prior to the date that cancellation takes effect, procure terms of insurance cover that are not materially less favourable to each co-insured.

Notwithstanding (i) above, the Employer may include from time to time (without objection from the Contractor) additional parties as joint insureds to the Employer's Policies.

3.9.10 The Contractor shall comply with all conditions in the Employer's Policies which are within its competency to comply with and will give written notification of all matters within the knowledge of the Contractor of which notice is required to be given pursuant to such policies. The Employer shall comply with all conditions in the Employer's Policies other than those relating to the design and/or construction of the Works which are the responsibility of the Contractor pursuant to the Agreement.

3.9.11 The Contractor shall at its own expense:

- (i) upon request, supply all material information within the knowledge or possession of the Contractor required to maintain the Employer's Policies or pursuit of any claim;
- (ii) confer and impose on sub-contractors the like rights and duties as are conferred and imposed on the Contractor under sub-clauses 3.3.1 and 3.6.1 insofar as relates to the Employer's Policies;
- (iii) comply with all the terms and conditions of the Employer's Policies. Save as otherwise may be determined by the Employer, process each claim including investigating the claim and prepare document, vouchers and preservational records;
- (iv) attend any meeting called by the Employer's Representative to co-ordinate insurances for this Contract; and
- (v) be responsible for the deductibles under the Employer's Policies;
- (vi) in the event of a claim arising or notification of a circumstance which is required to be notified under such policies arranged by the Employer, the Contractor shall unless otherwise required by the Employer's Representative :
 - a. supply to the insurers of such policies (and in the form prescribed by such insurers) all information reasonably required by such insurers including (without limitation) such detailed particulars, proofs, books of account, other business books, documents, reports and other evidence as the insurer may from time to time require or which may assist the Employer in bringing a claim under such policies;
 - b. cooperate fully with the Employer and the said insurers in the investigation of any claims or notifications made under the said policies;
 - c. comply with the [Insurance and Insurance Claims Management protocol set out in the Works Requirements.]

3.9.12 Should the Employer default in maintaining the Employer's Policies the Contractor may itself insure against any risk in respect of which the default shall have occurred and may add to the Contract Sum the amount paid in respect of the premiums under such insurance.

3.10 Limit of liability

3.10.1 The total liability of the Contractor to the Employer under the Contract in addition to any liability for which the Contractor or the Employer is required by this Contract to maintain insurance shall not exceed [REDACTED] except that this sub-clause shall not limit the liability

of the Contractor:

- (a) under any other provisions of the Contract which expressly impose a greater liability;
- (b) in cases of fraud, wilful misconduct or illegal or unlawful acts; or
- (c) in cases of environmental pollution or environmental damage as a result of an act or omission of the Contractor or his Subcontractors.

4 MANAGEMENT

4.1 Co-operation

- 4.1.1 The Employer [subject to restraints as a public authority] 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. The Employer and the Contractor shall act as stated in this Contract and in a spirit of mutual trust and co-operation.
- 4.1.2 Such support may be relevant particularly to any of the following:
- (1) negotiation of agreements provided for in the Contract
 - (2) value engineering
 - (3) use of most effective and compatible electronic and other methods of communicating and recording
 - (4) efficient order and timing of information provided for in the Contract
 - (5) minimising the effects of suspension
 - (6) efforts by the Contractor to minimise delay and Compensation Events and their effects
 - (7) 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. The Parties shall convene meetings of the Project Board to review, without prejudice, disputes referred thereto.

4.2 Contractor's Representative and Supervisor

- 4.2.1 The Contractor shall appoint on or before the Contract Date
- (1) a representative with full authority to act on behalf of the Contractor in all matters concerning the Contract and
 - (2) a full-time 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.

The representative and the supervisor may, but need not, be the same person.

- 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 and/or supervisor is/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.
- 4.3.2 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. But 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 Any opinion, certificate, determination, assessment or objection of the Employer's Representative under the Contract may be revised in accordance with Clause 13, except for decisions stated in the Contract to be conclusive [such as rejection of a value engineering proposal under sub-clause 4.8 or rejection of a Defect under sub-clause 8.5.4].
- 4.3.5 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.

4.5 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. There shall be no restriction on the time during which the Employer's Representative may give a Change Order concerning the Facility Maintenance Services.
- 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 or where the Contractor considers there to be suitable alternatives to Contractor proposed products and suppliers of equivalent or superior quality to that prescribed by the Works Requirements, 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 10 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 Contractor shall apply in writing for any reduction of the period that it considers desirable in the interests of the Works, which the Employer's Representative may agree if it thinks fit.
- 4.7.6 The Employer's Representative may alter or withdraw an objection.
- 4.7.7 The Contractor shall not implement any submission before the period has ended, or contrary to any outstanding objection given within the period.
- 4.7.8 The Contractor shall make a new submission to meet any objection given within the period.
- 4.7.9 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.
- 4.7.10 The Employer's Representative may object on the grounds that to proceed according to the submission
 - (1) would not comply with the Contract or
 - (2) would have an adverse effect on the Employer or the public interest or
 - (3) would impose an obligation on the Employer that the Contract does not require the Employer to bear or
 - (4) would be contrary to a Legal Requirement or
 - (5) would have an adverse effect on the Contractor's ability to comply with the Contract or any other ground stated in the Contract.
- 4.7.11 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 Value Engineering

- 4.8.1 The Contractor may give to the Employer's Representative a written value engineering proposal that will, if adopted, either
 - (1) reduce the Contract Sum or
 - (2) accelerate the design by the Contractor [to the extent specified in the Works Requirements], execution of Works or otherwise be of benefit to the Employer, with no increase to the Contract Sum.
- 4.8.2 The Contractor's proposal shall include all of the following:

- (1) any proposed changes to the Contract
 - (2) any proposed changes to the Contractor's Documents [including other Consents]
 - (3) a detailed breakdown of the Contractor's original tender cost for the relevant work and the projected cost of the proposal and any proposed adjustment to the Contract Sum (including a breakdown for adjustments to any Specialists sub-contract sum) to reflect all saving (if any)
 - (4) details of any proposed changes to the programme.
- 4.8.3 The Employer's Representative shall, as soon as practicable, notify the Contractor whether the Employer agrees to or rejects the proposal. If the Employer agrees to the proposal, the Employer's Representative shall, if agreed, determine a reduction to the Contract Sum or an adjustment to the Date for Substantial Completion of the Works and any affected Section (or both) in accordance with the agreed proposal and the Contractor shall implement the agreed proposal. If the proposal is rejected, this shall be conclusive. For the avoidance of doubt, if the proposal is accepted, all savings (if any) shall be applied to the reduction of the Contract Sum.
- 4.8.4 If the proposal includes a change in the design of the Works, unless otherwise agreed, the Contractor shall undertake and be liable to the Employer for that design and any other Consents.

4.9 Programme

- 4.9.1 On or before 60 days from the Contract Date, the Contractor shall submit to the Employer's Representative a detailed programme having regard to the requirements of the Inspection Plan and Inspection Notification Framework. 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 and any Inspection Plan requirements]. The programme shall be of a quality that will permit effective monitoring of the Works and shall, except to the extent that the Works Requirements say or the Employer's Representative agrees that anything may be omitted, include details of all of the following:
- (1) 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
 - (2) the order in which and times at which the Contractor proposes to design [to the extent specified in the Works Requirements] and execute the Works, including details of procurement, manufacture, delivery, installation, construction, testing, commissioning and trial operation of Works Items and the sequencing and timing of inspections and of tests
 - (3) when Contractor's Documents will be submitted to the Employer's Representative
 - (4) the Contractor's estimate of each category of Contractor's Personnel and Contractor's Things expected to be on Site for each period
 - (5) work to be carried out at the Site by Employer's Personnel and others as provided in the Works Requirements
 - (6) current critical path, critical resources, floats and other flexibility
 - (7) details of last review made of programme logic and durations, and of the purposes of any changes
 - (8) anything else required by the Works Requirements.
- 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 15% of any

payment to be made to the Contractor until the revised programme is submitted.

4.10 Progress Reports

- 4.10.1 The Contractor shall give the Employer's Representative fortnightly 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 first two weeks from the Starting Date for the Phase A Works up to the end of the month in which it occurs, and each subsequent report shall cover a fortnight. The Contractor shall give each progress report within 7 days after the end of the fortnight it relates to. Each progress report shall be in a form agreed by the Employer's Representative.
- 4.10.2 Each progress report shall include all of the following, except to the extent that the Works Requirements say or the Employer's Representative agrees that any of the following may be omitted:
- (1) a detailed description of progress of each stage of the Works against the Contractor's current programme
 - (2) the names of Specialists (including for the avoidance of doubt, Named Specialists) and the off-site suppliers of the main Works Items and details of Contractor proposed products/suppliers assessed at tender appraisal stage, and progress and location of the design, manufacture, fabrication, delivery, installation, testing and commissioning of Works Items and Contractor proposed products/suppliers
 - (3) details of the Contractor's Personnel and Contractor's Things on the Site
 - (4) status of preparation and review of Contractor's Documents
 - (5) copies of quality assurance documents and test results and certificates
 - (6) details of when any instructions to be given by the Employer's Representative will be required, and any that are outstanding
 - (7) details of when any Works Items or other things to be given by the Employer will be required, and any that are outstanding
 - (8) details of any Delay Events and Compensation Events that have occurred during the period, or are unresolved, including any disputes referred to the Project Board or to conciliation, adjudication or proceedings issued.
 - (9) details of any accidents, injuries, hazardous incidents, environmental incidents, labour relations problems and public relations problems concerning or affecting the Works
 - (10) details of anything that might have an adverse effect on the design by the Contractor [to the extent specified in the Works Requirements] or execution of the Works, the steps the Contractor is taking or proposes to take to reduce those risks, and any steps that the Contractor proposes that the Employer or the Employer's Personnel take to reduce those risks
 - (11) anything else that the Contractor considers relevant to a progress report
 - (12) anything else relevant to a progress report that the Employer's Representative directs
 - (13) Schedule of work to be undertaken in the coming fortnight.

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 Employer Equipment or other things that the Employer or Employer's Representative is to give, including any requirements arising from the Inspection Plan and Inspection Notification Framework.
- 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

4.12.1 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) if requested by the Employer's Representative, all publications named in the Contract and the Contractor's Documents.
- (4) wage records [including time sheets and copies of all pay slips] applicable to all workers [as defined in sub-clause 5.3.1].

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.

4.12.2 The Contractor shall retain the Contractor's Documents in relation to the Works for a period of six [6] years from the date of completion of the Works or if applicable from the date of termination of the Contract for any reason.

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 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 or as set out in the Works Requirements..

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, Project Board Members and the Standing Conciliator. 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. Thereafter within 5 working days the Employer's Representative shall issue copies of the minutes and objections thereto to the Project Board Members, and to the Standing Conciliator where appointed.

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 design by the Contractor [to the extent specified in the Works Requirements] or 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 obligations under this sub-clause 4.16 shall be perpetual. The Employer's obligations under this sub-clause shall expire when the commercial sensitivity of the relevant information has ceased, 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

5.3.1 The Contractor shall prominently exhibit copies of this sub-clause 5.3 for the information of persons at the Site. In this clause 5 **worker** means an individual employed by, or otherwise working for, the Contractor or the Contractor's Personnel on or adjacent to the Site.

5.3.2 The Contractor shall ensure that the rates of pay and the conditions of employment, including pension contributions, comply with all applicable Law and that those rates and conditions are at least as favourable as those for the relevant category of worker in any employment agreements registered under the Industrial Relations Acts 1946 to 2004. This applies to workers who are posted workers (within the meaning of Directive 96/71/EC of the European Parliament and the Council of the 16 December 1996 concerning the posting of workers in the framework provision of services), except that the Contractor's obligation to make pension contributions under registered employment agreements does not apply to posted workers who already contribute, or whose contributions are paid, to a supplementary pension scheme established in another member state of the European Union. The obligations in this sub-clause 5.3 apply regardless of what rates the Contractor has tendered for adjustments to the Contract Sum.

5.3.3 The Contractor shall in respect of

- (i) workers employed by, or otherwise working for, the Contractor and
- (ii) all other workers, ensure that their employers, or the persons for whom they are working,

do all of the following:

- (1) pay all wages and other money due to each worker
- (2) ensure that workers' wages are paid in accordance with the Payment of Wages Act 1991 and are never more than 1 month in arrears or unpaid
- (3) pay all pension contributions and other amounts due to be paid on behalf of each worker
- (4) make all deductions from payments to workers required by Law, and pay them on as required by Law
- (5) keep proper records [including time sheets, wage books and copies of pay slips] showing the wages and other sums paid to and the time worked by each worker, deductions from each worker's pay and their disposition, and pension and other contributions made in respect of each worker, and produce these records for inspection and copying by any persons authorised by the Employer, whenever required by the Employer
- (6) produce any other records relating to the rates of pay, pension and other contributions, deductions from pay and their disposition, conditions of employment of, rest periods, and annual leave for inspection and copying by any persons authorised by the Employer, whenever required by the Employer
- (7) respect the right under Law of workers to be members of trade unions
- (8) observe, in relation to the employment of workers on the Site, the Safety, Health and Welfare at Work Act, 2005 and all employment law including the Employment Equality Act 1998, the Industrial Relations Acts 1946 to 2004, the National Minimum Wage Act 2000, and regulations, codes of practice, legally binding determinations of the Labour Court
- (9) shall pay and shall procure that each of its contractors or sub-contractors (of any tier) shall pay rates of wages and provide pension benefits and observe hours of

employment which are not less favourable than those set out in the relevant registered employment agreement or employment regulation order, notwithstanding the Supreme Court decision of 9 May 2013 (McGowan and others v The Labour Court, Ireland and the Attorney General) or the High Court decision of 7 July 2011 (John Grace Fried Chicken Limited and Others v The Catering Joint Labour Committee and Others) respectively (the "Decisions") declaring such agreements unconstitutional and/or any subsequent amending legislation that may be introduced to address the decision. The expressions "registered employment agreement" and "employment regulation order" shall have the meanings set out in the Industrial Relations Acts, 1946 to 2004.

- 5.3.3A (1) Sub-clause 5.3.3A(2) shall only be included in the Contract if the Schedule, part 1J says so, and if not, neither sub-clause 5.3.3A(2) nor its omission shall be taken into account.
- (2) The Employer shall be entitled to make random checks requiring production of records under sub-clauses 5.3.3(5) and (6).
- 5.3.4 If the Employer so requests, the Contractor shall, within 5 working days after the receipt of the request, give to the Employer a statement showing the amount of wages and other payments due at the date of the request to and in respect of each worker, or, in respect of workers not employed by or otherwise working for the Contractor, ensure that their employer or the person for whom they are working does the same.
- 5.3.5 The Employer may seek information under sub-clause 5.3.3 only for the purpose of ensuring the obligations referred to in this sub-clause 5.3 to workers have been properly discharged. All documents and records received under sub-clause 5.3.3 shall be returned to the person providing them or destroyed if the Employer is satisfied that the relevant employer has complied with legal obligations to workers.
- 5.3.6 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.
- 5.3.7 The Contractor shall give the Employer's Representative with each interim statement under sub-clause 11.1 a certificate in the form in the Works Requirements, that, in respect of the work to which the interim certificate relates, the Contractor has complied in full with this sub-clause 5.3.
- 5.3.8 If the Contractor does not comply with this sub-clause 5.3, it shall pay to the Employer any costs the Employer incurs in investigating and dealing with the non-compliance.
- 5.3.9 The Contractor shall ensure that in the event of an official of a trade union which is party to a registered employment agreement affecting workers having concerns in relation to the Contractors or Contractor's Personnel's compliance with the agreement, that official will have access to a designated member of the Contractor's management who shall engage constructively to resolve all matters at this point.

5.4 Subcontractors and Specialists

- 5.4.1 The Contractor shall not subcontract all of the Works to one or more Subcontractors. The Contractor shall 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 The following shall apply in respect of any Named Specialist:
 - (1) Where the Named Specialist's contract with the Employer is to be novated to the Contractor, and the Works Requirements includes 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.
 - (2) Where the Contractor is required to enter into a sub-contract with a Named Specialist, other than a Novated Specialist ("Reserved Specialist") the Reserved Specialist sub-contract shall be in the form of sub-contract as identified in Schedule Part 1F(iii) together with only such amendments contained in the Works Requirements or otherwise agreed by the Employer. The Contractor shall enter into the sub-contract with the mechanical Reserved Specialist and electrical Reserved Specialist on the Contract Date and with such other Reserved Specialist such later date as instructed pursuant to sub-clause 5.9.

- (3) The Contractor, subject to the prior approval of the Employer's Representative, shall select the Subcontractor to whom it shall sub-contract the execution of the Curtain Walling Facade Package provided that:
 - a. the relevant Subcontractor must meet the requirements set out in the Works Requirements;
 - b. the sub-contract shall be the form of sub-contract as identified in Schedule Part 1F(iii) together with only such amendments contained in the Works Requirements or as otherwise agreed by the Employer; and
 - c. the Subcontractor shall be deemed for the purpose of this Contract to be a Named Specialist.
- (4) No amendment to the Named Specialist sub-contracts shall be made by the Contractor without the prior written consent of the Employer.
- (5) The net amount included in the Employer's Representative's certificate issued under sub-clause 11.1.3 for each Named Specialist for work, materials or goods comprised in the sub-contract shall be paid by the Contractor to each applicable Named Specialist within the time provided in the subcontract, for such amount, on foot of the Named Specialist's appropriate VAT invoice less only any permitted deductions in accordance with the sub-contract.
- (6) Where the Contractor sets off or deducts against any amount specified in a certificate under sub-clause 11.1.3 for a Named Specialist or any other monies due or to become due to the Named Specialists, which have not been agreed or determined as being due to the Contractor in accordance with the subcontract, then the Employer may in its absolute discretion
 - (a) withhold such amount or part thereof from the Contractor pending the earlier of
 - (i) agreement between the Contractor and Named Specialist as to the amount due or
 - (ii) determination by an adjudicator [appointed under or pursuant to the subcontract] as to the amount due; or
 - (b) pay such amount or part thereof to the Contractor; or
 - (c) pay such amount or part thereof directly to the Named Specialist

and the Employer may set off the amount of any payment or payments made by him to the Named Specialist against any monies due or to become due to the Contractor. Payment by the Employer to the Named Specialist direct shall be regarded as payment by the Contractor to the Subcontractor.
- (7) Before any certificate is issued the Contractor shall, if requested by the Employer's Representative furnish to the Employer's Representative reasonable proof that all Named Specialist's accounts included in previous certificates have been duly discharged in default whereof the Employer may pay such accounts directly to the Named Specialist upon a certificate of the Employer's Representative and deduct the amount so paid from any sums due or to become due to the Contractor.
- (8) If the Employer's Representative desires to secure final payment to any Named Specialist before final payment is due to the Contractor and if such Named Specialist has indemnified the Contractor to the Contractor's reasonable satisfaction against any latent defects then the Employer's Representative may in a certificate under Clause 11 of these conditions include an amount to cover the said final payment to the Named Specialist, the retention held by the Employer in accordance with sub-clause 11.3 shall be reduced by the amount therein attributable to the sub-contract and the Contractor shall be discharged from all liability for the work carried out and materials supplied by the Named Specialist except for any latent defects.
- (9) Neither the existence nor the exercise of the foregoing powers nor anything else contained in these Conditions shall render the Employer in any way liable to or for any Named Specialist (including in the event of default by the Named Specialist).
- (10) The Contractor shall fully comply with its obligations under any contract with a Named 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. On any termination, the Contractor shall replace the Named Specialist. The Contractor shall obtain the Employer's prior written consent to the appointment of any replacement Named Specialist provided that the Employer may only withhold its consent:
 - (a) for the reasons in sub-clause 4.7, or
 - (b) the proposed replacement does not meet the minimum standards for a Named

Specialist set out in the Works Requirements.

(11) In the event that a Reserved Specialist's employment is terminated by the Contractor or the Contractor accepts the repudiation of the Reserved Specialist's contract and the Initial Sub-Contract Sum as defined in the contract between the Contractor and the replacement Reserved Specialist is more than 10% higher than the Initial Sub-Contract Sum of the outgoing Reserved Specialist as defined in the contract between the Contractor and the outgoing Reserved Specialist, then the Contract Sum and Guaranteed Maximum Price shall be increased by an amount equal to the amount of the increase above the said 10% provided that such adjustments shall not exceed 10% of the Initial Sub-Contract Sum of the outgoing Reserved Specialist.

- 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 (other than a Named 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 (other than a Named Specialist), having submitted details of the replacement to the Employer's Representative. The replacement Specialist (other than a Named Specialist) proposed by the Contractor must meet minimum standards set out in the Works Requirements and have at least the level of experience, qualifications, competence, technical capacity, and financial standing of the Specialist being replaced.
- 5.4.6 In addition to the reasons in sub-clause 4.7, the Employer's Representative may object to the proposed replacement of Contractor's Personnel because the proposed replacement does not meet the minimum standards set out in the Works Requirements.
- 5.4.7 Where the Contract is terminated, the Employer shall have the right, but not the obligation, to require the Contractor to transfer or novate any or all of the Specialists (including for the avoidance of doubt Reserved and Novated Specialists), as the Employer may determine.
- 5.4.8 The Contractor shall be liable for any error or omissions in the design required to be undertaken by Named Specialists. Save in the case of any error or omission in the design of the Curtain Walling Façade Package the Contractor shall only be liable for any error or omission in design required to be undertaken by Named Specialist to the extent that the Contractor using all reasonable endeavours is able to recover from the relevant Named Specialist, including [without limitation] any amounts recovered under any insurance policy, guarantee, bond or other performance security required under the Named Specialist's subcontract. Nothing in this sub-clause shall reduce the liability of a Named Specialist under its sub-contract or any collateral warranty.

5.5 Collateral Warranties

- 5.5.1 If the Schedule, part 1F(i), states that a collateral warranty is required from the Contractor, before the date stated in the Schedule, the Contractor shall provide a collateral warranty in favour of each Beneficiary in the form included in the Works Requirements, or if there is none, a form approved by the Employer, executed by the Contractor. The minimum indemnity limit and maximum excess of professional indemnity insurance required of the Contractor shall be as stated in the Schedule, part 1D.
- 5.5.2 If the Schedule, part 1F(i), states that a collateral warranty is required from any Specialist (including but not limited any Named Specialist), before the date stated in the Schedule, the Contractor shall provide a collateral warranty in favour of the Employer (or such re-constituted and or its successors or assigns) and any Beneficiary in the form included in the Works Requirements, or if there is none, a form approved by the Employer, executed by the Specialist (including but not limited to Named Specialists) and the Contractor. The minimum indemnity limit and maximum excess of professional indemnity insurance required of the Specialist (including but not limited to Named Specialists) shall be as stated in the Schedule, part 1F(i).

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 Weekly Labour Records

Each Monday (or the next working day if Monday is not a working day) the Contractor shall give the Employer's Representative a list of the name of each worker who worked the week ending the previous Sunday and details of the category of and hours worked by each worker on the list.

5.8 Ancillary Certificates

If the Schedule, part 1F(ii) states that an Ancillary Certificate is required from the Contractor or the Contractor's Personnel, the Contractor shall obtain and provide to the Employer's Representative those Ancillary Certificates. This does not limit the Contractor's obligation to provide all necessary Consents in accordance with sub-clause 2.3.1.

5.9 Reserved Sums

Money provisions in the Pricing Document described as "Reserved" are net of Value Added Tax and are provided to meet payments for the execution of works and/or the supply of goods by Named Specialists. Such provisions shall be expended only in accordance Schedule Part 3B or otherwise in accordance with the directions of the Employer's Representative as to the extent of the work to be executed or the goods to be supplied, the firms to which the payments are to be made and the amounts to be expended. The amount to be expended in each case shall mean the net amount to be paid by the Contractor to the Named Specialist before the addition of Value Added Tax.

The Contractor shall when required produce invoices and other vouchers to prove that the amount to be paid has been computed in accordance with requirements.

If the amount expended in accordance with the Employer's Representative's directions is more or less than the Reserved Sum provided in the Pricing Document the difference shall be added to or deducted from the Contract Sum.

Any amounts included in the Contract Sum separately from the Reserved Sum for fixing, materials required for fixing, or any other charges in connection with the work of the Named Specialist shall be accordingly adjusted and converted to a lump sum prior to the determination of the Adjusted Contract Sum.

5.10 Provisional Sums

5.10.1 Sums, items or quantities marked "Provisional" and included in the Pricing Document shall be at the entire disposal of the Employer's Representative and shall be expended in whole or part or not at all as the Employer's Representative will direct. If the Employer's Representative's directions under this Clause involve the employment of Named Specialists then the amounts expended in respect of such Named Specialists will be treated as if they were Reserved Sums. If compliance with the Employer's Representative's directions under this Clause involves work by the Contractor it shall be valued in accordance with sub-clause 10.6 of the Contract.

5.10.2 In respect of Sub-contracts relating to Provisional Sums equal to or above the amount of €50,000, subject to the prior written approval of the Employer's Representative, the Contractor shall:

(1) seek tenders or quotations from a minimum of three (3) economic operators who in the opinion of the Contractor (acting reasonably) are appropriately qualified to carry out the relevant Sub-contract works. The Contractor shall include any economic operators proposed by the Employer's Representative unless in the Contractor's opinion (acting reasonably) the proposed economic operators are not appropriately qualified to carry out the relevant Sub-contract works;

(2) conduct the tender process as specified in the applicable tender documents provided by the Employer (including a form of sub-contract provided by the Contractor in substantially the form published by the CIF or such other form as agreed between the Parties acting reasonably) and evaluate tenders objectively against the requirements as specified in such applicable tender documents;

(3) select the most economically advantageous tender (having regard to the criteria agreed between the Parties (acting reasonably) and stated in the applicable tender document or, if no such criteria is stated, the tendered amount); and

(4) In respect of the following Provisional Sums comprising group 1 medical equipment; tenders shall be evaluated by a panel comprising a 1:1 split between the Contractor and the Employer. They will jointly select the most economically advantageous tender having regard to the criteria stated in the applicable tender document:

- Pendants
- Theatre lights
- Theatre Control and AV panels
- CDU Autoclaves and Washers
- Mortuary Equipment & Body Storage
- Specialist Contract for Pathology Category 3 lab, Stem Cell Lab, Radio-pharmacy, Pharmacy Aseptic suite and ED Isolation room
- Catering Main Production Kitchen equipment
- Pharmacy & Pathology Cold Storage

In respect of Sub-contracts relating to Provisional Sums below the amount of €50,000, the Contractor shall (acting reasonably) select the most suitable Sub-contractor, having regard to objective criteria, which shall include price.

The Employer's Representative may withhold approval to the inclusion of an economic operator on a list for tenderers or for the appointment of an economic operator as a Sub-contractor only on the reasoned objective basis that such economic operator it is not suitable or that the Contractor has not substantially complied with this Clause in the selection of the proposed Sub-contractor.

The Employer's Representative shall give notice of approval, as provided for in this Clause or, alternatively, provide reasons for withholding such approval, without unreasonable delay.

The Contractor shall use its best endeavours to procure that the Reserved Specialists comply with the provisions of this sub-clause 5.10.2 in respect of Provisional Sums within the relevant Reserved Specialists' Works.

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) when it is delivered to the Site, if owned by the Contractor
- (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 Work or to undertake the Facility Maintenance Services following termination of the Contractor's obligation to complete the Facility Maintenance Services
- (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 unavoidable 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 under 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 Subject to sub-clause 9.1.3, the Employer shall allow the Contractor to occupy and use each part of the area identified in the Works Requirements to be provided by the Employer (the **Area Provided by the Employer**) from the Contract Date.
- 7.1.2 The Contractor's right to occupy and use the Area Provided by the Employer or any part of it shall be subject to any limitations in the Works Requirements.
- 7.1.3 The Contractor shall not be entitled to exclusive possession of the Area Provided by the Employer or any part of it and shall facilitate any occupation and use of it by the Employer and others stated in the Works Requirements. The Contractor's occupation and use of the Area Provided by the Employer shall be solely for the purpose of performing the Contract.
- 7.1.4 The Contractor's right to occupy and use a part of the Area 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 and to perform the Facility Maintenance Services.
- 7.1.5 The Contractor's right to occupy and use a part of the Area Provided by the Employer shall end if the Employer takes over the relevant part of the Works under sub-clause 9.7.
- 7.1.6 The Contractor's right to occupy and use the Area 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 Area Provided by the Employer, the Contractor shall be responsible for activities of trespassers, protesters and others, that are not Employer's Personnel on the Site, and the Employer shall have no responsibility to the Contractor for their activities or presence.

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 perform the Facility Maintenance Services for such parts of the Site and facilities of the Employer as set out in the Works Requirements.

The scope of the Facility Maintenance Services are set out in the Works Requirements and include:

- (a) all Facility Maintenance Services specifically referred to in or reasonably inferred from the Contract; and
- (b) all services not specifically referred to in the Contract but nonetheless required to complete the Facility Maintenance Services.

The Employer may at any time, including following Substantial Completion, vary or omit all or any part of the Facility Maintenance Services, including to appoint another contractor to provide those services. The Contractor shall, if requested by the Employer, novate to the Employer the sub-contracts for the Facility Maintenance Services. The Contractor shall not be entitled to any compensation for the omission of Facility Maintenance Services (including where the Employer self performs or engages another contractor to provide the Facility Maintenance Services) or the novation of the sub-contracts for the Facility Maintenance Services to the Employer.

When carrying out the Facility Maintenance Services, the Contractor must use the standard of skill, care, and professional conduct reasonably to be expected from a contractor with qualifications and experience suitable for the Facility Maintenance Services.

The Contractor shall start the Facility Maintenance Services when instructed by the Employer's Representative and perform them regularly and diligently.

7.5 Security and Safety of the Site and Nuisance

7.5.1 From and including the Contract Date until the Employer's Representative certifies the Works or the relevant Section as Substantially Complete, or the Employer takes over the relevant part of the Works under sub-clause 9.7, the Contractor shall do all of the following [without limiting other obligations]:

- (1) be responsible for securing the Site and for keeping off the Site persons other than any of the following:
 - (i) the Contractor's Personnel and the Employer's Personnel
 - (ii) any other person notified to the Contractor by the Employer or the Employer's Representative as authorised to enter the Site
 - (iii) persons exercising public access to any roads, footpaths and areas on the Site
 - (iv) 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, dust mitigation and noise mitigation]
- (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:
 - (i) 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
 - (ii) 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 co-ordinate their activities with the design by the Contractor [to the extent specified in the Works Requirements] and 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 Contractor [and not the Employer] shall be responsible for securing access to and through the Site and possession and use of any parts of the Site that are not the Area Provided by the Employer.
- 7.9.2 The Contractor [and not the Employer] shall be responsible for the suitability and availability of access routes to and within the Site, and any required maintenance or upgrading of them, and any charges for use of them.
- 7.9.3 The Contractor shall take all reasonable steps to ensure that its traffic [including Contractor's Personnel's traffic]
 - (1) complies with the restrictions concerning laden weight and dimensions in the Law and
 - (2) does not damage roads [except for ordinary wear], bridges or other property.
- 7.9.4 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 Condition of Site on Completion

As soon as practicable after the Works or any Section reaches Substantial Completion, the Contractor shall remove from the Site Contractor's Things not required to perform the Contractor's remaining obligations, and leave the Works or Section in an orderly manner. At the end of the Defects Period, the Contractor shall remove from the Site any remaining Contractor's Things not required to perform the Contractor's remaining obligations in respect of the Facility Maintenance Services. In this sub-clause 7.10, Contractor's Things includes temporary works that have not become part of the Works.

7.11 Working Times

The Contractor shall ensure that the Contractor's Personnel work on the Site only during the working times set out in the Works Requirements, if any, unless

- (1) there is imminent danger to safety or health or of damage to the Works or other property or
- (2) otherwise agreed with the Employer's Representative.

7.12 Access for Training and Familiarisation and Fit-out

- 7.12.1 The Contractor acknowledges that the Employer will from time to time require, and the Contractor hereby agrees to provide, access to the Site and the Works for a range of groups and users including but not limited to equipment suppliers, contractors engaged by the Employer or a Beneficiary, maintenance staff and personnel who will be involved with the delivery of patient care and the operation and maintenance of the new hospital when completed, for training and familiarisation purposes. The Contractor shall make available relevant parts of the Site and the Works (together with all necessary and proper means of access to such parts of the Site and the Works) to ensure the achievement of this aim, in accordance with the Works Requirements including but not limited to (2) clinical engineering department as more particularly described in the Works Requirements no later than 3 months before the Date for Substantial Completion of the Works.
- 7.12.2 The Contractor acknowledges that the access permitted under this clause and the implications thereof have been taken into account by him in his programme and all costs associated with such proper access have been taken into account in the Contract Sum
- 7.12.3 The access permitted as set out in sub-clause 7.12.1 above shall not be deemed to constitute Substantial Completion and/or partial possession or use, occupation or possession of the Works or any portion thereof as provided in sub-clause 9.7 of this Contract.
- 7.12.4 The Contractor shall not be entitled to any extension of time or adjustment to the Contract Sum by reason of such access.

8 QUALITY, TESTING AND DEFECTS

8.1 Standards of Workmanship and Works Items

The Contractor shall ensure all of the following:

- (1) that the Works are designed by the Contractor [to the extent specified in the Works Requirements], executed and completed
 - (i) 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
 - (ii) 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]
 - (i) comply with the Contract and the Legal Requirements and
 - (ii) are of good quality and, unless the Contract provides otherwise, new
- (3) that all materials and goods that are Works Items [whether or not the Contractor is required to select them] are fit for the purpose for which they are normally used
- (4) without derogating from any other provision in this Contract, the Contractor warrants that it shall use the standards of skill, care, and professional conduct reasonably to be expected from a Contractor with qualifications and experience suitable for the Works, including but not limited to, in delivering data required by and in accordance with the BIM Documents and/or BIM Information Requirements in the Works Requirements.
- (5) the Contractor warrants to the Employer that it shall comply with the Employer's reasonable instructions in relation to the BIM Documents in the Works Requirements.
- (6) that in selecting Works Items or undertaking any design [including by any Specialist (including, for the avoidance of doubt, any Named Specialist)] the Contractor has exercised and will continue to exercise the standard of skill, care and diligence reasonably to be expected of properly qualified persons providing works, services or supply comparable in value, size, scope, complexity and quality to that required under the Contract.

Quality Assurance

8.2

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, Assigned Certifier, any Beneficiary 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 designed by the Contractor or 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 and the Assigned Certifier all particulars the Employer's Representative and the Assigned Certifier 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 and the Assigned Certifier 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.

- 8.3.4 The Contractor shall provide to the Employer and/or Assigned Certifier (and shall procure from each sub-contractor in favour of the Employer and/or Assigned Certifier) an undertaking, indemnity or warranty that it has exercised reasonable skill, care and diligence in respect of all of its responsibilities and duties under the Building Control Regulations against all losses, damages, costs (including legal costs) and professional and other expenses of any nature whatsoever incurred or suffered by the Employer and / or Assigned Certifier arising out of the relevant party's breach of said undertaking.

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 [including the Inspection Plan] requires the Contractor to do [both before and after Substantial Completion]. The Contractor shall agree with the Employer's Representative and the Assigned Certifier 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 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, re-covering 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 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 Contractor and the Employer's Representative may, with the Employer's consent, agree that the Employer will accept the Defect, either in whole or subject to any change to the Works Requirements that the Employer's Representative directs. In this case, 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. If the Employer's Representative notifies the Contractor that the Employer will not accept a Defect, this shall be conclusive.
- 8.5.5 If a Defect deprives the Employer of substantially the whole benefit of the Works or any Section or other material part of the Works, the Employer's Representative may reject the Works or the relevant part of the Works (as the case may be) and [without limiting the Employer's other rights], the Contractor shall pay the Employer all sums the Employer has paid the Contractor for the Works or the relevant part, together with the Employer's financing costs and the cost of dismantling and removing the Works, clearing the Site and returning the Works Items to the Contractor.
- 8.5.6 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 conclusively 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 accepted by agreement under sub-clause 8.5.4.

9 TIME AND COMPLETION

9.1 Starting Date

9.1.1 The Starting Date shall be the date specified in the Agreement.

9.1.2 Before the date specified in the Agreement [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
- (3) a parent company guarantee, if required by the Contract
- (4) 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
- (5) evidence that the insurances required to be effected by the Contractor are in effect
- (6) any collateral warranties required by the Contract
- (7) certified copy of signed agreement with Specialists (unless a later date is agreed with the Employer's Representative).

However, collateral warranties may be given on such later date as the Employer's Representative agrees to.

9.1.3 On the Starting Date, the Contractor shall start the Phase A Works under the Contract, provided that the Contractor may start the Enabling Works and Works under the Letter of Intent prior to the Starting Date.

The Contractor shall start the Phase B Works under the Contract when so instructed by the Employer's Representative. [Provided that the Adjusted Contract Sum has first been ascertained by the Parties or determined by the Expert], the Employer's Representative may issue such an instruction at any time after the Starting Date.

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.

For the avoidance of doubt, the Contractor shall not commence and shall have not have an entitlement to commence or receive payment for the Phase B Works unless and until instructed to commence in writing by the Employer's Representative.

Nothing in this Contract shall prohibit the Employer from seeking tenders for all or part of the Phase B Works and/or Facility Maintenance Services and/or engaging another contractor to carry out Phase B Works and/or Facility Maintenance Services prior to an instruction to the Contractor to start the Phase B Works.

If, after the end of the first 9 (nine) months after the Starting Date, the Employer's Representative instructs the Contractor to proceed with the Phase B Works, [subject to sub-clause 10.7.2], there shall be added to the Contract Sum an amount for the expenses for the Contractor's procurement team [excluding profit and loss of profit and any costs associated with the Works] unavoidably incurred by the Contractor to provide the support and co-operation required by the Employer from the end of the first 9 (nine) months after the Starting Date until the conclusion of the Pre-Phase B Engagement Process.

9.1.4 The Contract shall apply to any part of the Works carried out before the Starting Date.

9.2 Suspension

9.2.1 The Employer's Representative may at any time direct the Contractor to suspend all or part of the Works or all or part of the Facility Maintenance Services 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 sib-clause 9.2.1, the Contractor shall resume work or the Facility Maintenance Services 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 3 months, the Contractor may request the Employer's Representative's permission to proceed. If the Employer's Representative does not give permission within 28 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 and/or part of the Facility Maintenance Services, treat the suspension as a Change Order to omit that part of the Works or that part of the Facility Maintenance Services or
 - (2) if the suspension affects the whole of the Works and/or the whole of the Facility Maintenance Services, give notice to terminate the Contractor's obligation to complete the Works and/or the Facility Maintenance Services under the Contract.
- 9.2.4 Notwithstanding sub-clauses 9.2.2 and 9.2.3, an instruction under this Clause 9 resulting from the Contractor's breach of the Contract is a direction.

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, sub-clause 9.4 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 by agreement with the Contractor under sub-clause 9.5 when work has been omitted.

9.4 Programme Contingency

- 9.4.1 In sub-clause 9.4.3
- references to the **first threshold** or **T₁** and to the **second threshold** or **T₂** are to the first threshold and the second threshold in the Schedule, part 1K
 - references to **delay** or **D** are to the total number of Site Working Days' delay to Substantial Completion of the Works caused by Compensation Events for which the Contractor would otherwise be entitled to an extension and Delay Cost, but for this sub-clause 9.4
 - references to **extensions** or **E** are to the total of extensions to the initial Date for Substantial Completion of the Works for delay caused by Compensation Events for which the Contractor is entitled to Delay Cost.
- 9.4.2 The Contractor has included in the initial Contract Sum and shall include in its programme a contingency for delays to the Date for Substantial Completion of the Works caused by Compensation Events or any suspension under the Construction Contracts Act 2013.
- 9.4.3 The programme contingency is applied to derive extensions as follows:

- (1) Unless delay exceeds the first threshold, there are no extensions.
- (2) If delay exceeds the first threshold but is less than or equals the sum of the first threshold and twice the second threshold, extensions equal half of the result obtained by subtracting the first threshold from delay.
- (3) If delay is more than the sum of the first threshold and twice the second threshold, extensions equal delay minus the first threshold minus the second threshold.

[This can be expressed by the following rules:

Rule 1: If $D \leq T_1$ then $E = 0$

Rule 2: If $T_1 < D$ but $\leq (T_1 + 2T_2)$ then $E = \frac{(D - T_1)}{2}$

Rule 3: If $D > (T_1 + 2T_2)$ then $E = D - T_1 - T_2$

For example, if the first threshold (T_1) is 20 Site Working Days and the second threshold (T_2) is 30 Site Working Days

- if delay (D) is 10 Site Working Days, the Contractor would be entitled to no extensions, applying rule 1
- if delay (D) is 28 Site Working Days, the Contractor would be entitled to 4 Site Working Days' extensions, applying rule 2
- if delay (D) is 38 Site Working Days, the Contractor would be entitled to 9 Site Working Days' extensions, applying rule 2
- if delay (D) is 90 Site Working Days, the Contractor would be entitled to 40 Site Working Days' extensions, applying rule 3.]

9.4.4 This sub-clause 9.4 does not apply to extensions to the Date for Substantial Completion of a Section, nor to extensions of time resulting from Delay Events that are not Compensation Events.

9.4.5 Use of the programme contingency provided for in this sub-clause shall be claimed and determined in accordance with this Clause 9 and Clause 10. Programme contingency may be drawn-down when Substantial Completion has been, is being, or will be delayed beyond the Date for Substantial Completion minus the unused part of the first and second thresholds. In making a determination under sub-clauses 9.3 and 10.5 in respect of a delay to Substantial Completion of the Works, the Employer's Representative shall notify the Contractor and the Employer of how much of the first threshold and the second threshold have been used-up by delays to Substantial Completion of the Works caused by Compensation Events.

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 agreed between the Employer's Representative and the Contractor. If there is no agreement, there shall be no reduction.

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.

But if the Schedule, part 1H, so states, the Employer's Representative shall not be required to certify Substantial Completion of the Works or a Section before its Date for Substantial Completion. 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 Taking Over Part of the Works

- 9.7.1 The Employer may take over a part of the Works before Substantial Completion of the Works or any Section including the part, provided that the Employer's Representative first issues a notice to the Contractor at least 5 working days before the Employer intends to take over the part, the notice stating all of the following:
- (1) the part to be taken over by the Employer
 - (2) any work remaining to be completed in that part
 - (3) the value, when it gets to Substantial Completion, of the part to be taken over and the proportion of the Contract Sum that this value represents
 - (4) the date the part will be taken over.
- 9.7.2 The Contractor shall have no liability for delay in completing the part to be taken over occurring after the date stated in the notice. The rate of liquidated damages for delay in achieving Substantial Completion of the Works and any relevant Section shall reduce by a fraction equal to the fraction of the Contract Sum represented by the Contract value of the part of the Works taken over, as certified by the Employer's Representative.
- 9.7.3 For the avoidance of doubt the Employer shall not be deemed to have taken over or be in occupation of any part of the Works by virtue of the Employer or the Employer's Personnel accessing any part of the Site for the purpose of training, familiarisation or the carrying out any fit-out works, installation, commissioning or training at the Site.

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 In the event that the Employer instructs the Contractor to commence the Phase B Works, the liquidated damages for the Phase A Works shall cease to apply.

10 CLAIMS AND ADJUSTMENTS

- 10.1A For the avoidance of doubt there shall be no adjustment to the Contract Sum or extension to the Date for Substantial Completion of the Works (other than in respect of or arising from the Phase A Works or an adjustment pursuant to sub-clause 9.1.3 due to a delayed instruction to commence the Phase B Works) unless and until the instruction to commence the Phase B Works is issued. This sub-clause 10.1A shall cease to apply upon issue of the instruction to commence the Phase B Works.
- 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 and details 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 **Not used**
- 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, 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 the programme contingency referred to in sub-clause 9.4 should be used or that there should be an extension of time, the information required under sub-clause 9.3, and, so far as practicable, a proposal, based on that information for any use of the programme contingency or any 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 and details 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 or use of the programme contingency referred to in sub-clause 9.4 [and the Employer shall be released from all liability to the Contractor in connection with the matter]. The notice must also state if the Contractor considers the claim relates to a Category 1 – Scope Change or Category 2 – Capped Change Order, failure to so state shall not preclude the Contractor from entitlement under the Contract, nor shall the Contractor stating that the claim relates to a Category 1 – Scope Change preclude it from an entitlement to a Category 2 – Capped Change Order (or vice versa).

- 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 use of the programme contingency referred to in sub-clause 9.4 or 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, use of the programme contingency referred to in sub-clause 9.4 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, use of the programme contingency referred to in sub-clause 9.4 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 under sub-clause 10.5.1(3) that there be no adjustment to the Contract Sum, no use of programme contingency referred to in sub-clause 9.4, and no extension to any Date for Substantial Completion. The determination will be taken 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 sub-clause 13.1.1 disputing the determination and referring the dispute to the Project Board (other than in relation to any matter the subject of Clause 14 which may only be determined by the Expert in accordance with Clause 14).
- 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 the Project Board (other than in relation to any matter the subject of Clause 14 which may only be determined by the Expert in accordance with Clause 14); 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 sub-clause 13.1.1 referring the dispute to Project Board (other than in relation to any matter the subject of Clause 14 which may only be determined by the Expert in accordance with Clause 14).

10.6 Adjustments to the Contract Sum

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 this sub-clause 10.6 and any delay cost under sub-clause 10.7. [Where an adjustment to the Contract Sum arises from additional, substituted or omitted Named Specialist Works, the percentage addition tendered by the Contractor for that Named Specialist, and included in the Schedule Part 3B, for that Named Specialist shall be taken into account in the valuation]. Additional, substituted, and omitted work shall be valued as follows:

- 10.6.1 If the Compensation Event requires additional, substituted or omitted work, similar to work for which there are rates in the Pricing Document, to be executed under similar conditions, the determination shall use those rates.
- 10.6.2 If the Compensation Event requires additional, substituted or omitted work that is not similar to work for which there are rates in the Pricing Document, or is not to be executed under similar conditions, the determination shall be on the basis of the rates in the Pricing Document when that is reasonable.
- 10.6.3 If the adjustment cannot be determined under the above rules, the Employer's Representative shall make a fair valuation based on rates for similar work in the locality, if available.
- 10.6.4 Instead of sub-clauses 10.6.1, 10.6.2 and 10.6.3 applying, the Employer's Representative may conclusively direct that additional or substituted work required as a result of a Compensation Event be determined (in full or in part) on the basis of the cost of performing the additional or substituted work, compared with the Contractor's cost without the Compensation Event, determined as follows:
- (1) the number of hours worked or to be worked by each category of work person stated in the Schedule, part 2D, and engaged on the work to which the Compensation Event relates, on or off the Site, multiplied in each case by the tendered hourly rate for that category stated in the Schedule, part 2D (But if any of the tendered hourly rates are less than 75% of the relevant rate (in the case of Craftspersons this means 75% of the Craftsman's rate, or in the case of General Operatives, 75% x 88% of the Craftsman's rate, or in the case of Apprentices, 75% x 62% of the Craftsman's rate) in the construction industry registered employment agreement current on the Designated Date, they will be read instead as 75% of the relevant rate in that agreement (in the case of Craftspersons this means 75% of the Craftsman's rate, in the case of General Operatives, 75% x 88% of the Craftsman's rate, in the case of Apprentices, 75% x 62% of the Craftsman's rate)) and
 - (2) the cost of materials used in that work, taking into account discounts and excluding VAT, plus the percentage adjustment tendered by the Contractor and stated in the Schedule, part 2D (But if the percentage adjustment tendered is negative or blank it will be read as 0%) and
 - (3) the cost of plant reasonably used for that work, whether hired or owned by the

Contractor, at the rates in the document listed in the Schedule, part 1K (as that document may be modified according to the Schedule, part 1K) plus or minus the percentage adjustment tendered by the Contractor and included in the Schedule, part 2D (But if the percentage adjustment tendered is a deduction of more than 100% it will be read as a deduction of 100% or if the entry is blank it will be read as 0%). If the document listed in the Schedule does not give a rate for a plant item, a market rental rate shall be used, plus or minus the percentage adjustment.

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, and subject to sub-clause 10.7.2], 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 tendered by the Contractor 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, and reasonable profit thereon.
- 10.7.2 If the Works are concurrently delayed by more than one cause, and one or more of the causes is not a Compensation Event, there shall be no increase to the Contract Sum for delay cost for the period of concurrent delay.
- 10.7.3 If, as a result of a Compensation Event, the Date for Substantial Completion of the Works has been extended, so that there is a period of 7 or more consecutive non-working days in the time between the Starting Date and the Date for Substantial Completion of the Works, and that would not have occurred without the Compensation Event happening, then the Contractor's expenses [excluding profit and loss of profit] unavoidably incurred because of this delay shall be included in the determination of the addition to the Contract Sum for delay cost. **Non-working day** means a day that, for good reason, is not a Site Working Day [such as a trade holiday].
- 10.7.4 Except as provided in this sub-clause 10.7 [notwithstanding anything else in the Contract] losses or expenses arising from or in connection with delay, disruption, acceleration, loss of productivity or knock-on effect shall not be taken into account or included in any increase to the Contract Sum, and the Employer shall have no liability for such losses or expenses.
- 10.7.5 [There shall be no delay cost paid as a result of extensions to the Date for Substantial Completion of a Section].
- 10.7.6 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 Price Variation

Amounts certified under Clause 11 shall be adjusted for inflation in accordance with Appendix 4 of the Agreement.

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

- (i) 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
 - (ii) upon issue of the certificate of Substantial Completion for the Works or any Section
- the Contractor shall give a payment claim notice to the Employer's Representative, in the form of an interim statement, [the date of receipt of the payment claim notice shall be the payment claim date], showing all of the following:
- (1) the progress of the Works
 - (2) the instalment of the Contract Sum that the Contractor considers should, under the Contract, be paid on an interim basis
 - (3) a detailed breakdown using the Pricing Document, reasonable proof that all Named Specialists' accounts included in previous certificates have been duly discharged (or if they have not been so discharged, to the extent they have not an explanation as to why they have not been so discharged) and individually detailing proposed payments to Named Specialists so that payments to each Specialist are easily distinguished from each other
 - (4) any supporting evidence the Employer's Representative requires.

The interim statement given on Substantial Completion shall include all amounts due to the Contractor at that time 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 designed [to the extent specified in the Works Requirements] and 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) any amount to be paid according to sub-clause 10.8 and
- (5) amounts included in the Pricing Document for Contractor's Documents properly completed and supplied as required by the Contract.

11.1.3 Within 14 days of receipt of the payment claim notice the Employer's Representative shall issue a response to the payment claim notice to the Contractor in the form of 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 deductions under sub-clause 11.4], together with calculations and the reasons for the opinion. The Employer's Representative shall include with such certificate details for each Named Specialists, details of the gross and net amount included within each certificate for each Named Specialist.

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 response to the payment claim notice. If the invoice is received on a Monday (or where a Monday is a bank holiday, on the next day), the Employer shall pay the amount due on the invoice within 15 days after receiving the invoice. If the invoice is received on any other day the Employer shall pay the amount due on the invoice within 21 days after receiving the invoice.

11.2 Unfixed Works Items

At the discretion of the Employer's Representative, but only when so provided in the Schedule, part 1L, interim payments may include 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 sub-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.]

11.2A. Advance Payment

- 11.2A.1 The Employer may in its discretion (acting reasonably) make advance payment(s) to the Contractor for accrued liabilities. No advance payment shall be made unless and until the Contractor submits an on-demand advance payment bond in accordance with this sub-clause 11.2A in respect of the amount of the proposed advance payment. The total advance payment, the number and timing of instalments (if more than one), and the applicable currencies and proportions, shall be as determined by the Employer (acting reasonably).
- 11.2A.2 Unless and until the Employer receives the advance payment bond, or if the total advance payment is not agreed to in writing by the Employer in its absolute discretion, this sub-clause 11.2A shall not apply.
- 11.2A.3 The Employer's Representative shall issue an interim payment certificate for the first instalment after receiving a statement (under sub-clause 11.1.1) and after the Employer receives (i) the Contractor's performance bond in accordance with sub-clause 1.5 and (ii) the advance payment bond in the form in the Works Requirements, or if there is none, in a form approved by the Employer. The advance payment bond(s) shall be in the amount and currencies equal to the advance payment.
- 11.2A.4 The Contractor shall ensure that the advance payment bond is valid and enforceable until the relevant advance payment has been repaid by the Contractor as set out in the interim payment certificate. If the terms of the advance payment bond specify its expiry date, and the advance payment has not been repaid by the date 56 days prior to the expiry date, the Contractor shall extend the validity of the advance payment bond accordingly, until the advance payment has been repaid. In the event that the Contractor is required to extend the advance payment bond and fails to do so no later than 28 days prior to expiry the advance payment shall become immediately repayable.
- 11.2A.5 The advance payment shall be repaid through deductions in payment certificates for Contract value of the Works to which the advance payment relates properly executed by the Contractor.
- 11.2A.6 If the advance payment has not been repaid prior to the Date for Substantial Completion of the Works or prior to termination of the Contract (for any reason), the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Employer.

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 up to the maximum amounts stated in the Schedule, part 1L.
- 11.3.2 Upon issue of the certificate of Substantial Completion of the Works, the retention percentage shall reduce as set out in the Schedule, part 1L. If the total amount of retention held at Substantial Completion is more than the amount to be held after Substantial Completion the Contractor shall be entitled to invoice the Employer for the difference. 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 14 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 Not used
- 11.3.5 The Employer shall pay the Contractor the amount due on an invoice under this sub-clause 11.3 within 21 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 the Schedule, part 1F(i), the Employer is entitled to deduct from payment to the Contractor the amount stated in the Schedule, part 1F(i) 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 15% of each payment to the Contractor until the programme or report has been submitted or given.
- 11.4.3 If the Contractor has not complied with sub-clause 5.3, the Employer is entitled to make the deduction provided for in sub-clause 5.3.6.
- 11.4.4 If the Contractor does not give the certificate required by sub-clause 5.3.7 with an interim statement, there shall be no payment due under sub-clause 11.1 for the relevant Work Item until the certificate is given.
- 11.4.5 Deductions from payments because of obligations that the Contractor has still not complied with by the date the Defects Certificate was issued shall be deducted from the Contract Sum. In the case of a deduction from the Contract Sum because of failure to give the certificate required by sub-clause 5.3.7, the amount deducted shall be the portion of the Contract value of the relevant Work Item that the Employer determines to be the labour portion. The Contractor shall give the Employer any information the Employer requires for this determination.

11.5. Final Statement

- 11.5.1 Within 2 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 or in respect of Facility Maintenance Services being performed after Substantial Completion of the Works is certified. If no final statement is given within the time required, the Employer shall be released from all liability to the Contractor under or in connection with the Contract save in respect of Facility Maintenance Services being performed after Substantial Completion of

the Works is certified.

- 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 and Facility Maintenance Services].
- 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 or the Facility Maintenance Services 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 2012.

11.7 Value Added Tax

- 11.7.1 The Contract Sum excludes 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 46 (1)(a) of the Value-Added Tax Consolidation Act 2010.

- 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 66 of the Value-Added Tax Consolidation Act, 2010.

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.

11.9 **Saving Share**

- 11.9.1 When the Adjusted Contract Sum is ascertained, separate portions of the Adjusted Contract Sum (and Guaranteed Maximum Price) will be identified for the work of the mechanical Reserved Specialist, the electrical Reserved Specialist, the lift Reserved Specialist and all other work. Any Saving Share shall be ascertained separately for each of these elements.
- 11.9.2 Any Saving Share shall be calculated and paid as part of the penultimate payment certificate under sub-clause 11.5.
- 11.9.3 Payments under this clause are subject to applicable Retention and other deductions under the Contract.
- 11.9.4 Saving Share shall be particularised to show savings in respect of the mechanical Reserved Specialist, the electrical Reserved Specialist and the lift Reserved Specialist. The Contractor shall pay to the Reserved Specialist, in accordance with the relevant Reserved Specialists' sub-contract, any Saving Share shown by the Employer's Representative as applicable to the relevant Reserved Specialist. For the avoidance of doubt, the Contractor shall pay any Saving Share due to the relevant Reserved Specialists if the guaranteed maximum price in the relevant Reserved Specialist's sub-contract as adjusted is greater than the Reserved Specialist's sub-contract contract sum, notwithstanding the value of the Contractor's Saving Share (if any).

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 and/or Facility Maintenance Services by notice to the Contractor if any of the following occurs:

- (1) the Contractor 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 Contractor's design or execution of the Works and/or Facility Maintenance Services
- (3) the Contractor fails to proceed regularly and diligently with the Contractor's design or execution of the Works
- (4) the Contractor fails to maintain the required insurances in accordance with Clause 3 or performance bond in accordance with sub-clause 1.6 or parent company guarantee in accordance with sub-clause 1.6
- (5) the Starting Date has not occurred or the Contractor has not started work under the Contract within 6 weeks of the date the Contract requires
- (6) any of the Contractor's warranties in sub-clause 2.5 or sub-clause 2.6 are untrue
- (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 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) the Contractor has not complied with sub-clauses 5.3.2 or 5.3.3 either (a) within 14 days after notice from the Employer requiring a failure to be put right or (b) persistently
- (10) the Contractor has subcontracted all or any 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.
- (13) the Employer's Representative, acting independently, issuing a certificate that the

Contractor was not performing the Facility Maintenance Services regularly and diligently and following written notice from the Employer's Representative, has still not taken sufficient steps to so perform the Facility Maintenance Services

- 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 and the Facility Maintenance Services 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 and/or the Facility Maintenance Services 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, 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 10 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 Clause 11, the Contractor may make of the Employer a written demand for payment, and if the payment has not been made by the day after the day on which the amount was due under the Contract, the Contractor may, on giving notice in writing at least 7 days before the proposed suspension (such notice shall specify the grounds on which it is intended to suspend) to the Employer, suspend the Contractor's design and execution of the Works and/or the Facility Maintenance Services (as applicable) until the amount has been paid. The Contractor shall resume execution of the Works and/or the Facility Maintenance Services (as applicable) and/or shall not suspend

(1) on receiving the payment, or

(2) if either party has disputed the amount, or

(3) after notice has been served by either party under section 6(2) of the Construction Contracts Act 2013 in relation to a dispute relating to payment of the amount concerned.

12.4 Termination by the Contractor

The Contractor shall be entitled to terminate the Contractor's obligation to complete the Works and/or the Facility Maintenance Services (as applicable) by notice to the Employer if any of the following occur:

(1) the Contractor has suspended the execution of the Works and the Facility Maintenance Services (as applicable) for 15 working days in accordance with sub-clause 12.3, and the Employer has still not paid

(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 6 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 9 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 or any Section and/or the Facility Maintenance Services at its election on 20 working days' notice to the Contractor.

12.5.2 In the event that the Employer exercises its right to terminate the Contractor's obligation to complete the Phase B Works and/or Facility Maintenance Service under sub-clause 12.5.1 prior to an instruction to start the Phase B Works the Employer may do so under this sub-clause 12.5 for the purpose of retaining another contractor to carry out such Phase B Works and/or Facility Maintenance Services. Nothing in this Contract shall prohibit the Employer from seeking tenders for all or part of the Phase B Works and/or Facility Maintenance Services prior to an instruction to the Contractor to start the Phase B Works. If the Employer exercises its right under sub-clause 12.5.1 to terminate the Contractor's obligation to complete the Works prior to commencement of the Phase B Works, or elects not to cause the Contractor to be instructed to proceed with the Phase B Works, neither party shall have any liability whatsoever to the other party in connection with the Phase B Works.

12.5.3 The Employer shall return any performance bond required under this Contract to the Contractor on termination under 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 and all Contractors' Documents.

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) all other amounts due to the Contractor under the Contract [including under sub-clause 11.10] but not damages.

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, 1.10, 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 and to perform the Facility Maintenance Services, 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 **Reference to Conciliation**

- 12.9.1 The Employer may [but is not required to] refer to conciliation under sub-clause 13.2 the issue of whether the Employer has become entitled to terminate the Contractor's obligation to complete the Works and to perform the Facility Maintenance Services under sub-clause 12.1 without obligation to refer to the Project Board.
- 12.9.2 Sub-clause 13.2 shall apply to the conciliation, except that the conciliator's time to give the recommendation shall be 21 days after appointment. Sub-clause 13.6 shall also apply.
- 12.9.3 If the conciliator recommends that the Employer is entitled to terminate the Contractor's obligation to complete the Works and to perform the Facility Maintenance Services under sub-clause 12.1, and the Employer does so within 63 days after receiving the conciliator's recommendation, and it is subsequently found that the Employer was not entitled to do so, then the following shall apply:
- (1) the termination shall stand [even if the circumstances have changed] and have effect as if the Employer's termination notice under sub-clause 12.1 was a valid termination notice under sub-clause 12.5.1
 - (2) sub-clauses 12.6.1 to 12.6.4 inclusive shall apply retrospectively from the date of the termination notice under sub-clause 12.1
 - (3) sub-clause 12.5.2 shall not apply
 - (4) the Contractor shall have no other rights or remedies under the Contract or otherwise at law for the termination.

12.10 **Saving Share upon termination**

- 12.10.1 If the Contract is terminated following a Contractor default, the Contractor is not entitled to any Saving Share.
- 12.10.2 If the Contract is terminated and there has been no Contractor default the termination value includes any Saving Share where this arises under the Contract

13 DISPUTES

13.1 Dispute Management Procedure.

13.1.1 If a dispute arises under sub-clause 10.5.4 or 10.5.5 of the Contract, either Party may subject to sub-clause 10.5.4 or 10.5.5, by notice to the other, refer the dispute for resolution under this sub-clause 13.1. The notice shall state that it is given under sub-clause 13.1 of the Contract. No dispute may be referred to the Project Board unless the party referring the dispute has first complied with the provisions of sub-clause 10.5.4 or 10.5.5.

13.1.2 The dispute management procedure for resolution of disputes arising under sub-clause 10.5.4 or 10.5.5 of the Contract consists of meetings of the Project Board as detailed in this Clause.

The Project Board:

(1) shall be established on the on the date of the Contract and shall be comprised of the individuals identified in the Schedule Part 1A and Part 2A of the Contract subject to their being able and willing accept appointment to the Project Board:

Three senior representatives from the Employer

- Three senior representatives from upper management level in the Contractor and senior to the Contractor's representative

(collectively referred to as the “**Project Board**”)

(2) shall in advance of the first meeting, agree the operating procedure by which the Project Board hears and discusses the disputes, which shall include:

(i) any member of the Project Board may nominate a designate to act on his or her behalf. Either party can replace any one or more members of the Project Board if a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment subject to a similarly suitably qualified replacement with equivalent authority to reach agreement as their predecessor. Proposed changes to any of the individuals shall be communicated to all members of the Project Board in advance of any replacement being made.

(ii) additional representatives [including of the Contractor and the Reserved Specialists] may be invited to attend meetings and

(iii) an equal number of Contractor representatives and Employer representatives must attend each meeting of the Project Board.

(3) shall meet at least every 25 (twenty five) working days (and such other times as required by the Employer) to review disputes referred under sub-clause 13.1 and may, by agreement of the Project Board, call an interim Project Board Meeting sooner than the next scheduled date for a Project Board Meeting, to review disputes referred. Where no disputes are referred the Project Board may, by agreement of the Project Board, defer scheduled Project Board meetings until a dispute arises under sub-clause 13.1. There shall be a minimum of 1 member from each Party and a maximum of 3 members from each Party, as named in Schedule Part 1A and 2A, at all Project Board meetings;

(4) shall ensure that all unresolved disputes at the end of a scheduled Project Board Meeting or interim Project Board Meeting are so notified to the Parties on the next Working Day after the Project Board meeting (“date of notification”). Either Party may refer such unresolved disputes to conciliation [in accordance with sub-clause 13.2] within 14 days of the date of notification to the Parties by the Project Board, otherwise the Employer’s Representative’s determination issued under sub-clause 10.5 shall be binding;

(5) shall communicate orally or in writing on a “without prejudice” basis, including all communications between the Project Board members and to the Standing Conciliator, [where appointed], and such communications may not be relied upon by either Party in subsequent dispute resolution proceedings under this Contract, other than the signed agreement as set out in sub-clause 13.1.2.(4);

(6) shall ensure all agreements to resolve a dispute between the Parties are in writing and signed by the Parties. This agreement is binding on the Parties;

(7) may, where the relevant appointment has been made, agree to have the Standing Conciliator or conciliator draft the binding agreement to be signed by the Parties. If the agreement is not signed by both Parties within 14 days of the date of issue of the agreement by the Standing Conciliator or conciliator, either Party may refer the dispute to conciliation as per 13.1.(2) above within a further 14 days. If the dispute is not referred to Conciliation within

this further 14 day period the Employer's Representative determination issued under sub-clause 10.5 shall be binding;

(8) may agree to have the Standing Conciliator, where one has been appointed, attend or chair any of the Project Board meetings;

(9) may agree to seek advice or opinion from the Standing Conciliator at the Project Board meeting, where one is appointed, either orally or in writing, in an effort to resolve disputes referred.

- 13.1.3 Either Party may, at any time give notice to the other Party of its intention to refer a dispute to the Project Board for resolution. The notice shall set out a brief description of the dispute and a copy of the notice shall be provided to the Project Board. If a scheduled Project Board meeting is not due to be held within 15 (fifteen) working days of the date that such notice is delivered, an extraordinary meeting of the Project Board shall be convened for the purpose of discussing and attempting to resolve the Dispute.
- 13.1.4 If the Project Board is unable to resolve the dispute within 25 (twenty five) working days of referral of a dispute to the Project Board or either Party is dissatisfied with the resolution provided to the Parties or failure to resolve of the Project Board within the said 25 (twenty five) working days, then either Party may, within 10 (ten) working days of the date of the Project Board meeting at which the Dispute was addressed, notify the other Party of an intention to refer the Dispute to conciliation in accordance with Clause 13 otherwise the Employer's Representative determination issued under sub-clause 10.5 shall be binding.
- 13.1.5 In the event that a Party fails to comply with any decision of the Project Board, then the other Party may, without prejudice to any other rights to may have, refer the failure itself to conciliation in accordance with Clause 13.

13.2 Conciliation

- 13.2.1 Where the Schedule Part 1N so states that a Standing Conciliator shall be appointed, the Standing Conciliator shall take the place of the conciliator in this clause for all dispute referred to conciliation under sub-clause 13.2.
- 13.2.2 If a dispute arises under the Contract [or where a dispute referred to the dispute management procedure has not been resolved], either party may, by notice to the other, refer the dispute for conciliation under this sub-clause 13.2. The notice shall state that it is given under sub-clause 13.2 of the Contract. Provided that no dispute may be referred to the Standing Conciliator unless it as first been referred to, and considered in a meeting by, the Project Board in accordance with the provisions of Clause 13.1 (save for Clause 12.9.1).
- 13.2.3 Except in the case where a Standing Conciliator has been appointed, [and in such cases the Standing Conciliator shall be the conciliator] or where the appointed Standing Conciliator will not hear the dispute or has become incapable of hearing the dispute within 10 working days of the referral of a dispute to conciliation, the parties shall jointly appoint a conciliator who is competent to adjudicate upon the dispute and independent of the parties. If the Parties fail to appoint a conciliator within 10 working days of the referral, or if a person appointed refuses to act or becomes unable to act, the conciliator shall be appointed by the appointing body or person named in the Schedule, part 1N, on the application of either Party. If there is a fee for making the appointment, the parties shall share it equally. If one Party pays the entire fee, it shall be entitled to reimbursement of the other Party's share from the other party on demand.
- 13.2.4 Each Party shall, within the period set by the conciliator, send to the conciliator and the other Party brief details of the dispute stating its contentions as to the facts and the parties' rights and obligations concerning the dispute. The conciliator may, for this purpose, suggest further actions or investigations that may be of assistance. For the avoidance of doubt, the Standing Conciliator shall not comment on or discuss any correspondence regarding a dispute further to receipt of correspondence from either Party under sub-clause 4.10 or 4.15 until a dispute is referred to conciliation in accordance with this Clause 13.
- 13.2.5 The Parties shall promptly make available to the conciliator all information, documents, access to the Site and appropriate facilities that the conciliator requires to resolve the dispute.
- 13.2.6 The conciliator shall consult with the parties in an attempt to resolve the dispute by agreement, other than where sub-clause 13.2.6(6) of the Contract applies. The conciliator may do any of the following, or any combination of them:
- (1) meet the Parties separately from each other or together and consider documents from one Party not sent or shown to the other
 - (2) conduct investigations in the absence of the Parties

- (3) make use of specialist knowledge
- (4) obtain technical or legal advice
- (5) establish the procedures to be followed in the conciliation
- (6) draft the wording of any settlement agreement arising from referral of a dispute to the Project Board;
- (7) make such site visits and inspections as he considers appropriate
- (8) open up, review and revise any decision, approval, recommendation or determination made, notice or certificate given by the Employer or the Employer's Representative.

Where the dispute has been referred to the dispute management procedure and sub-clause 13.1.2(7) or 13.1.5 of the Contract applies, the conciliator, with the agreement of the Parties, may forgo the requirements of sub-clauses 13.2.6(1) to 13.2.6(8) inclusive and give the Parties a written recommendation in accordance with sub-clause 13.2.9.

13.2.7 The conciliator shall not be an arbitrator and the Arbitration Act 2010 and the law relating to arbitration shall not apply to the conciliation.

13.2.8 The conciliator's terms of appointment shall be those in the Works Requirements or, if there are none, those agreed by the Employer and the Contractor with the conciliator.

13.2.9 If the dispute is not resolved by agreement within 42 days after the conciliator was appointed or after referral of the dispute to conciliation where a Standing Conciliator has been appointed, or a longer period proposed by the conciliator and agreed by the parties, the conciliator shall give both Parties a written recommendation. The conciliator shall base the recommendation on the Parties' rights and obligations under the Contract.

All recommendations shall be reasoned. Where related to issues of payment or non-payment to be made shall set out the clause, sub-clause and the Schedule Part 1K category under which a Compensation Event or Delay Event has occurred.

13.2.10 If either Party is dissatisfied with the conciliator's recommendation, it may, within 20 days after receiving the conciliator's recommendation, so notify the other Party. The notice shall state that it is given under sub-clause 13.2 of the Contract, and shall state the matters in dispute and the reasons for dissatisfaction. If the conciliator has failed to give a recommendation within 42 days after appointment, either Party may give a notice of dissatisfaction. If notice of dissatisfaction has been given in accordance with this clause, either Party may refer the failure itself to Adjudication, [where the dispute relating is a dispute relating to payment] or initiate proceedings in respect of such dispute.

13.2.11 If neither Party gives notice of dissatisfaction within 20 days after receiving the conciliator's recommendation, the recommendation shall be conclusive and binding on the Parties, and the Parties agree to comply with it. If, in such circumstances, a Party fails to comply with the conciliator's recommendation, the other Party may [without limiting its other rights] initiate proceedings in respect of the failure itself, and need not invoke this sub-clause 13.2 in respect of such failure.

13.2.12 If the conciliator has recommended the payment of money and a notice of dissatisfaction is given, the following shall apply:

- (1) The Party concerned shall make the payment recommended by the conciliator, provided that the other Party first
 - (a) initiated proceedings in respect of the same dispute and
 - (b) gave the paying Party a bond executed by a surety approved by the paying party, acting reasonably, in the form included in the Works Requirements, or if there is none, a form approved by the paying Party, acting reasonably, for the amount of the payment.
- (2) If, when the dispute is finally resolved, it is found that the Party receiving payment on the conciliator's recommendation was not entitled to some or all of the amount paid, then that Party shall repay the amount it was paid and found not to be entitled to, together with interest.
- (3) When the dispute is finally resolved, interest will be deducted from final payment under the award or judgment.
- (4) Interest under this sub-clause is calculated at the reference rate referred to in the European Communities (Late Payment in Commercial Transactions) Regulations 2002 plus 2% per year and runs from the date of the original payment to the date of the repayment or final payment.
- (5) This provision for interest is confidential under sub-clause 13.2.14, and in particular shall not be taken into account or referred to in any proceedings until all other matters

are resolved.

A conciliator's recommendation shall be binding in the event that the existing conditions of 13.2.12 (1) (a) and (b) are met until a different decision is reached upon reference of a payment dispute (under Clause 14) or the Irish Courts.

- 13.2.13 Any reference under Clause 4 of Exhibit A to Appendix 2 of the Agreement shall be referred under Clause 14 and shall not be referred to conciliation under sub-clause 13.2.
- 13.2.14 The conciliation shall be confidential, and the Parties shall respect its confidentiality, except when any of the exceptions in sub-clause 4.16 apply, or to the extent necessary to enforce a recommendation that has become conclusive and binding. All documents provided by a Party in connection with a conciliation shall be returned when the conciliation is concluded.
- 13.2.15 The Standing Conciliator's retainer shall be paid by the Employer. The costs of the Standing Conciliator in connection with any conciliation between the parties shall be shared equally between the parties. If one party pays the entire fee relating to a conciliation, it shall be entitled to reimbursement of the other party's share from the other party on demand. The Standing Conciliator shall be required to attend site to discuss disputes referred to them from the Project Board at a minimum every quarter.
- 13.2.16 The Parties agree that the Standing Conciliator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as Standing Conciliator unless the act or omission is in bad faith and any employee or agent of the Standing Conciliator shall be similarly protected from liability.

13.3 **Jurisdiction**

Subject to the above provisions of this clause, the Parties submit to the jurisdiction of the Irish courts to settle any dispute that may arise out of or in connection with the Contract or the Works.

13.4 **Agent for Service**

If an agent for service of legal proceedings on the Contractor is named in part 2A of the Schedule, the Contractor confirms to the Employer that it has irrevocably appointed the named person as its agent for the service of all documents relating to legal proceedings, and that failure of the agent to notify the Contractor of receipt of a document will not invalidate any proceedings or the service of the document.

13.5 **Continuing Obligations**

Despite the existence of a dispute, the Parties shall continue to perform their obligations under the Contract.

13.6 **Adjudication**

- 13.6.1 The parties have recourse to Adjudication in accordance with the Construction Contracts Act 2013
- 13.6.2 Where an adjudicator reaches a decision on a dispute referred under the Construction Contracts Act 2013, that same dispute shall not be referred to the dispute management procedure or conciliation under sub-clause 13.1 of the Contract.
- 13.6.3 If a dispute between the Parties is referred to Adjudication, any dispute management procedure under sub-clause 13.1 of the Contract or conciliation relating to that dispute immediately adjourns. In the event that no decision is reached by the adjudicator, the parties may continue to resolve the dispute under the dispute management procedure under sub-clause 13.1 or conciliation from the date the dispute was referred to Adjudication. In the event that a decision is reached by the adjudicator, the dispute management procedure under sub-clause 13.1 or conciliation for that dispute shall be terminated.

14 EXPERT DETERMINATION

14.1 During the Pre-Phase B Engagement Process, either party may, by notice to the other, refer the following to the Expert:

- (i) any reference under Clause 4 of Exhibit A to Appendix 2 of the Agreement;
- (ii) any claim for an extension of time; or
- (iii) the value of the Phase A Works as undertaken;

each a "Referral".

The Expert shall not accept a Referral under (ii) or (iii) above if the Expert is of the opinion (acting reasonably) that a decision cannot be delivered on the applicable Referral within the time specified at item 3 below. In the event that the Expert does not accept the Referral under (ii) or (iii) or having accepted such Referral, fails to issue the decision within the time specified, either party may refer the Referral to be resolved in accordance with Clause 13.

For the avoidance of doubt the Employer's Representative shall make all other determinations as set out in the Contract and any dispute or difference in respect of such determination shall be resolved in accordance with Clause 13.

The following shall apply to any reference for the Expert:

1. The referring Party shall give written notice to the other Party and, for any Referral under (i) above, any relevant Reserved Specialist of a Referral to the Expert.
2. The Expert shall be such person named in the Schedule, part 1N or if no person is named or if such person named is no longer able to act, it shall be a person nominated by the Employer.
3. The Expert shall reach a decision in writing with reasons within 28 days beginning with the day on which the Referral is made or such longer period as may be requested by either Party to the Expert provided that such longer period may not extend beyond eight months from the Starting Date without the agreement of the Employer.
4. The Employer, Contractor and relevant Reserved Specialist are entitled to make submissions to the Expert [including oral submissions] and will provide (or procure that others provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.
5. The Expert may in his reasonable discretion determine such other procedures to assist with the conduct of the determination as he considers just or appropriate including (to the extent he considers necessary) instructing professional advisers to assist him in reaching his determination.
6. The Employer, Contractor and relevant Reserved Specialist shall with reasonable promptness supply each other with all information and give each other access to all documentation and personnel and/or things as the other party may reasonably require to make a submission under this clause.
7. The Expert shall act as an expert and not as an arbitrator. The Expert's written decision on the matters referred to him shall be final and binding on the Employer, Contractor and relevant Reserved Specialist in the absence of manifest error or fraud provided that nothing in this clause shall prevent the Employer from exercising its right under sub-clause 12.5 or its right not to instruct the Contractor to commence the Phase B Works before, during or after the Expert determination.
8. The Expert may correct his or her decision so as to remove a clerical or typographical error arising by accident or omission but may not reconsider or re-open any aspect of the decision.
9. The Expert is not liable for anything done or omitted in the discharge or purported discharge of his or her functions as Expert unless the act or omission is in bad faith, and any employee or agent of the Expert is similarly protected from liability.
10. The Employer, Contractor and relevant Reserved Specialist shall bear their own costs incurred in connection with the determination.
11. In addition to the provisions of this Clause, if a Referral is referred to the Expert, and the Expert fails to issue his or her decision within the period set out in this Clause 14,

no decision shall be deemed to have been given by the Expert.

12. All matters concerning the process and result of the determination by the Expert shall be kept confidential between the Employer, Contractor and relevant Reserved Specialist and the Expert.

SOCIAL INCLUSION

- 15.1 The Contractor shall comply with the social inclusion requirements appended to the Works Requirements.

End of Conditions.