

Conditions of Contract
for
Private Sector Building and Engineering Works
Designed by the Employer



Conditions

Version 1.0 – 27 March 2020

PREAMBLE

The Construction Industry Federation (CIF), Engineers Ireland, (EI) and The Society of Chartered Surveyors Ireland (SCSI), as the three sponsoring bodies, have published this Conditions of Contract for all medium to large scale building or civil engineering works where the design is provided by the Employer.

This Conditions of Contract has been drafted with the object of achieving a fair and balanced allocation of risk between the parties in order to promote long-term sustainable efficiency in the Irish construction industry. Specifically, risk has generally been allocated to the party best able to bear and manage it.

This Conditions of Contract, together with ancillary and related documents, is being made available free of charge in electronic form only. It uses as a template the Government's Public Works form of contract (PWC) and the use of this is gratefully acknowledged. While numerous amendments have been made to the original template, the structure and format of the PWC has been retained and, hopefully, this will allow for ease of use.

The three sponsoring bodies have established a Standing Committee which is to be responsible for the management and maintenance of this, and any ancillary or related, document. It is intended these documents will be updated on a regular basis.

DISCLAIMER

These Conditions of Contract are published free of charge and in good faith by the three sponsoring bodies, Construction Industry Federation, Engineers Ireland and the Society of Chartered Surveyors Ireland, for the benefit of the construction industry in the Republic of Ireland. The three sponsoring bodies, either collectively or individually, make no warranty, promise or representation as to the suitability, applicability, or fitness-for-purpose of these Conditions of Contract and assume no duty of care, responsibility or liability to any user thereof or to any third party (including any contractual counterparty). By using these Conditions of Contract, the user accepts and agrees that the three sponsoring bodies shall have no legal or other liability whatsoever, whether to the user or any third party (including any contractual counterparty) in connection with such use. The user should, and is expected to, obtain appropriate professional and expert advice with regard to the particular intended use and suitability of these Conditions of Contract for the Project concerned.

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1. THE CONTRACT

1.1 Definitions

The following terms have the following meanings in the Contract:

Term	Meaning
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.
Assigned Certifier	the competent, registered professional person assigned by the Employer to inspect and certify works in accordance with the Building Control Regulations.
Building Control Regulations	the Building Control Regulations 1997 – 2015 and any amendments thereto.
BIM Protocol	the CIC Building Information Modelling Protocol for use in projects using Building Information Models, the relevant edition being that most recently published prior to the Designated Date.
Change Order	an instruction of the Employer's Representative to change [including add to or omit from] the Works or to change [including impose or remove] constraints in the Contract on how the Works are to be executed.
Code of Practice for Inspecting and Certifying Buildings and Works	the current code of practice published by the Department of Housing, Planning, Community and Local Government with reference to Article 20G of the Building Control Regulations.
Consent	planning permission, order, approval, certificate, Ancillary Certificate, fire certificate, licence, permit, environmental impact statement, or other consent required by Legal Requirement for the execution or completion of the Works, or identified as a Consent in the Works Requirements.
Contract Date	the date the parties become bound in Contract.
Contract Sum	the amount identified in the Agreement as the initial Contract Sum, as adjusted in accordance with the Contract.
Contractor's Documents	drawings, specifications, manuals, reports, and other [eye readable and machine readable] written material relating to the Works that the Contractor uses, prepares or gives to the Employer or any other person, or is to use, prepare or give to the Employer or any other person: <ul style="list-style-type: none"> » under the Works Requirements or » under any Legal Requirement or » to obtain any Consent or » in connection with the proposal under sub-clause 4.8.

Term	Meaning
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, 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.
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, and, if the Schedule states a period, the last day of that period, starting on the Contract Date, in either case as adjusted in accordance with the Contract.
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 8.7.3.
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's Personnel	any of the following: <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. » any person engaged by the Employer to comply with a Law. » Assigned Certifier.
Employer's Representative	an individual appointed by the Employer as its representative in accordance with the Contract.
Inspection Plan	the document prepared by the Assigned Certifier in accordance with Section 7.1 of 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 from time to time.

Term	Meaning
Inspection Notification Framework	the document prepared by the Assigned Certifier and agreed with the Contractor and the Employer in accordance with Section 7.3 of the Code of Practice for Inspecting and Certifying Buildings and Works identifying stages or items of work that individual certifiers and the Assigned Certifier are to be notified of by the Contractor as they are ready for inspection.
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	a requirement that applies to the Works as a result of any of the following: <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 Acceptance	the Employer's letter to the Contractor accepting the Contractor's tender.
Named Specialist	a Subcontractor or supplier of a Works Item, named in the Contract by the Employer.
Nominated Specialist	a Subcontractor or supplier of a Works Item, selected by the Employer and proposed after the Designated Date.
Novated Specialist	a Subcontractor, or supplier of a Works Item, to be engaged by the Contractor in accordance with sub-clause 5.4.3
Prime Cost Sum	a sum or rate, net of any discount, included in the Bill of Quantities by the Employer as a provision to meet a payment by the Contractor to a Nominated Specialist.
Section	a part of the Works identified as a Section in the Schedule, part 1G.
Site	any place: <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 » that the Works Requirements identify as part of the Site.
Starting Date	the day the Contractor proposes to start executing the Works, as notified by the Contractor to the Employer's Representative under sub-clause 9.1.
Subcontractor	a person to whom the execution of part of the Works is subcontracted [by the Contractor or another Subcontractor].

Term	Meaning
Substantial Completion of the Works or a part of the Works [including a Section]	<p>all of the following have happened:</p> <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (a) Defects accepted by the Employer under sub-clause 8.6.4 or (b) Minor Defects to which all of the following apply: <ul style="list-style-type: none"> (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, and that are necessary for the Works or the part to be used for their intended purposes, 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 and that are necessary for the Works or part to be used for their intended purposes (4) the Contractor has provided such documents as are required from it and from Contractor's Personnel to enable registration under Part IV of the Building Control Regulations.
VAT	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.

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 written document 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 **current programme** are to the programme in the Works Proposals, if there is one, or, 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**
- (17) References to the **Agreement and Schedule** are to the attached agreement and completed schedule.
- (18) References to the **Works Requirements, Works Proposals** and the **Bill of Quantities** are to the Works Requirements, Works Proposals and Bill of Quantities 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.
- (19) References to **Delay Events** and **Compensation Events** are to events identified as Delay Events and Compensation Events in the Schedule, part 1K.
- (20) 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.
- (21) The term **Not Used** is a reference to a sub-clause in the Public Works Contract which has not been used for the purpose of this Contract.

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.

1.3. Inconsistencies

- 1.3.1.** Except when the Contract states otherwise, the documents in the Contract are to be taken as mutually explanatory of each other if possible. If there is an inconsistency between the documents, they take precedence as follows:
- » First, the Agreement, even if it has not been executed
 - » Second, the attached Schedule and the Letter of Acceptance (if any) and any post-tender clarifications.
 - » Third, the Contractor's completed form of tender (excluding other documents in the tender)
 - » Fourth, these Conditions
 - » Fifth, the Works Requirements and the Bill of Quantities.
 - » 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.** Where inconsistencies are found to exist between the Works Requirements and the Bill of Quantities, the Works Requirements take precedence except in relation to quantity and price where the Bill of Quantities shall prevail.

1.4. Not Used

1.5. Performance Bond

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

1.6. Not Used

1.7. Joint Ventures

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

1.8. Assignment

Neither party may assign the benefit of the Contract, or any part of it, without the written consent of the other party; such consent shall not be unreasonably withheld.

1.9. Miscellaneous

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

1.10. Not Used

2. THE LAW

2.1. Law Governing the Contract

Irish law governs the Contract and its interpretation.

2.2. Compliance with Legal Requirements

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

2.3. Consents

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

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

2.4. Project Supervisor

2.4.1. Where the Contractor is 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, or a project including the Works, the Contractor shall accept the appointment by entering into the appointment in the form in the Works Requirements. In addition the Contractor represents and warrants to the Employer that the Contractor is competent and will allocate adequate resources to enable it to perform its duties under the Construction Regulations.

2.4.2. Where the Contractor is appointed project supervisor for the construction stage under sub-clause 2.4.1, the Contractor shall have the insurances required of the project supervisor under its appointment.

2.4.3. The Contractor shall [without adjustment to the Contract Sum or extension of time] comply with all 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.

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

2.5. Safety, Health and Welfare at Work Act 2005 and Safety, Health and Welfare at Work (Construction) Regulations 2013

- 2.5.1.** The Contractor shall [without limiting other obligations] ensure, so far as is reasonably practicable, that the Works are constructed to be safe and without risk to health, and that the Works comply in all respects, as appropriate, with the relevant statutory provisions.
- 2.5.2.** The Contractor represents and warrants to the Employer that the Contractor is, and will, while performing the Contract, be a competent person for the purpose of ensuring, so far as is reasonably practicable, that the Works are constructed to be safe and without risk to health and that they comply in all respects, as appropriate, with the relevant statutory provisions.
- 2.5.3.** The Contractor represents and warrants to the Employer that the Contractor is and will, while performing the Contract, be a competent person to carry out the Works and has allocated and will allocate sufficient resources to enable 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. Building Control (Amendment) Regulations 2014

- 2.6.1.** The Contractor shall comply, with the relevant provisions of the Building Control Regulations 1997 - 2015 and also with The Code of Practice for Inspecting and Certifying Buildings and Works issued by the Department of Housing, Planning, Community and Local Government.
- 2.6.2.** For the purposes of the Building Control Regulations 1997 – 2015 and the Code of Practice for Inspecting and Certifying Buildings and Works, the Contractor is to be taken as the Builder [as defined in those documents] while the Employer is to be taken as the Building Owner.

2.7. Not Used

3. LOSS, DAMAGE AND INJURY

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

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

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

3.2. Care of the Works

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

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

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

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

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

3.3. Insurance of the Works and Other Risk Items

- 3.3.1.** Unless provided otherwise, from the Starting Date, the Contractor shall insure the Works and other Risk Items against loss and damage. The insurance shall name the Contractor, the Employer and any other persons the Employer requires as insured.
- 3.3.2.** 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.
- 3.3.3.** 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.
- 3.3.4.** 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.
- 3.3.5.** The proceeds of the insurance of the Works, less the portion to cover professional fees that the Employer is to pay, shall be paid into a bank account in the joint names of the Employer and the Contractor. They shall be paid out of the account to the Contractor in instalments on the basis of interim payment certificates of the Employer's Representative of the Contract value of the work done and Works Items delivered to the Site to rectify the loss or damage, following generally sub-clause 11.1, and also paid out of the account to the Employer for its other costs. Any balance remaining in the account after the work of rectification is complete shall be paid to the Employer.

3.4. Contractor's Indemnity

- 3.4.1.** The Contractor shall indemnify the Employer and the Employer's employees against
- (1)** liability for death, injury, or illness of any person or loss of or damage to any physical property that the Employer incurs to the extent caused by the negligence of the Contractor or the Contractor's Personnel 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

- 3.5.1** The Employer shall indemnify the Contractor against:
- (1)** liability for death, injury, or illness of any person or loss of or damage to any physical property that the Contractor incurs in the course of performing the Contract and to the extent caused by the negligence of the Employer or the Employer's Personnel and
 - (2)** liability for property damage that is the unavoidable result of executing the Works in accordance with the Works Requirements
- 3.5.2** From the Starting Date, the Employer shall insure against its risks under sub-clause 3.5.1.

3.6. Public Liability and Employer's Liability Insurances

- 3.6.1.** From the Starting Date until the date the Defects Certificate is issued, the Contractor shall insure the Employer and the Contractor against their respective liabilities for
- (1)** death, injury or illness of any person and
 - (2)** loss of or damage to any physical property and
 - (3)** obstruction, loss of amenities, nuisance, trespass, stoppage of traffic and infringement of light, easement or quasi-easement
- resulting from an accident arising from or in the course of the performance or non-performance of the Contract except to the extent covered by the Employer's indemnities in sub-clause 3.5 or sub-clause 6.2.2(2).
- 3.6.2.** From the Starting Date until the date the Defects Certificate is issued, the Contractor shall insure itself against liability for death, injury or illness of Contractor's Personnel. For employees of Subcontractors, this obligation may be satisfied by ensuring that the Subcontractor maintains such insurance. The Contractor shall ensure that any such Subcontractor's insurance includes a provision that indemnifies the Employer against any liability for which the Contractor would be entitled to an indemnity, including costs, charges and expenses.
- 3.6.3.** The minimum indemnity limit of the Contractor's public liability and employer's liability insurances shall be as stated in the Schedule, part 1D.
- 3.6.4.** If the Contractor or the Contractor's Personnel return to the Site in connection with the Works after the Defects Certificate is issued, the Contractor shall ensure the insurances required by this sub-clause 3.6 are in place at all times that the Contractor or Contractor's Personnel are on Site.

3.7. Professional Indemnity Insurance

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

3.8. Existing Facilities and Use or Occupation by Employer

- 3.8.1.** 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, 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.
- 3.8.2.** From the Starting Date, the Employer shall insure against its risks under subclause 3.8.1. The insurance shall name the Contractor and the Employer as insured and the indemnity limit shall be as stated in the Schedule, part 1D.

3.9. General Requirements Concerning Insurance

- 3.9.1.** The insurance required by the Contract (the Insurance) shall be placed with reputable insurers.
- 3.9.2.** The only exclusions from the Insurance shall be those listed in the Schedule, part 1D. The levels of excess shall be no higher than stated in the Schedule, part 1D.
- 3.9.3.** The Insurance shall include any extensions and comply with any additional requirements in the Schedule, part 1D.
- 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.** Both parties shall comply with the terms of the Insurance policies. If either the Contractor or the Employer fails to comply with the conditions attaching to the insurances effected pursuant to the Contract, the party so failing to comply shall indemnify the other party against all losses and claims arising from such failure.
- 3.9.6.** Within 10 working days of being requested to do so, the Contractor or the Employer shall give evidence to the other's satisfaction that the Insurances are in effect, including copies of policies and receipts for premiums. For professional indemnity insurance, a certificate in the form included in the Works Requirements, or, if there is none, a form approved by the Employer, signed by the broker or underwriter, may be given instead of a copy of the professional indemnity policy.
- 3.9.7.** Neither the Contractor nor the Employer shall make any material reduction to the Insurance cover unless approved in advance by the other. The Contractor or Employer shall promptly notify the other of any cancellation, renewal, non-renewal or material reduction by the insurer of any Insurance policy.

- 3.9.8.** If the Contractor or Employer fails to maintain any of the Insurances in the terms required by the Contract, the other shall be entitled [without affecting its other rights] to take out the insurance and pay the premiums, and the party in default shall pay the amount of the premiums to the party making such payment on demand.

3.10. Limitation of Liability

- 3.10.1.** The total liability of the Contractor to the Employer under or in connection with the Contract, other than under clause 3.4.1, shall not exceed the initial Contract Sum or such other figure which may be agreed in writing by the parties.
- 3.10.2.** Where the Contractor's liability is covered by a policy of insurance, the limitation of liability shall be the initial Contract Sum, (or such other figure which may be agreed in writing by the parties) or the limitation of the insurers liability under the policy, whichever is the greater.
- 3.10.3.** This sub-clause shall not limit liability in any case of fraud, gross negligence, deliberate default or reckless misconduct by the Contractor.

4. MANAGEMENT

4.1. Co-operation

- 4.1.1.** The Employer and the Contractor shall support reciprocal co-operation for the Contract purposes, including co-operation with and between Contractor's Personnel and Employer's Personnel.
- 4.1.2.** Such support may be relevant particularly to any of the following:
- (1)** negotiation of agreements provided for in the Contract
 - (2)** 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)** 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 consult or communicate, without prejudice. In any case, offering or giving co-operation does not imply any admission of any responsibility or alter either party's rights or duties unless otherwise agreed in writing.
- 4.1.5.** If the BIM Protocol is a contract document, the Employer and the Contractor shall:-
- (1)** comply with their respective obligations set out in the BIM Protocol;
 - (2)** have the benefit of any rights granted to them in the BIM Protocol;
 - (3)** have the benefit of any limitations or exclusions of their liability contained in the BIM Protocol;

4.2. Contractor's Representative and Supervisor

- 4.2.1.** The Contractor shall appoint, before the Starting Date
- (1)** a representative with full authority, other than to amend the Contract, to act on behalf of the Contractor in all matters concerning the Contract and
 - (2)** a supervisor of all the Contractor's activities on the Site, with full authority to receive instructions and other communications on behalf of the Contractor in all matters concerning the Contract.

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

4.2.2. Matters of which the Contractor's representative or supervisor are aware [including communications and instructions] are presumed to be within the Contractor's knowledge.

4.2.3. If the Contractor's representative or supervisor are named in the Works Proposals, the Contractor shall appoint the individuals named. If not, or either of them is changed, the Contractor shall submit details of the proposed representative or supervisor to the Employer's Representative. If the Contractor's representative or supervisor dies, or becomes incapable of performing their role, or is no longer available to the Contractor, the Contractor shall appoint a suitable replacement, having submitted details to the Employer's Representative. If the Employer's Representative so requires because of the misconduct, negligence or incompetence of either of them, the Contractor shall remove its representative or supervisor and appoint a suitable replacement, having submitted details to the Employer's Representative.

4.3. Employer's Representative

4.3.1. If the Employer's Representative is not named in the Schedule, part 1A, the Employer shall, promptly after the Contract Date, appoint, and notify the Contractor of the identity of, the Employer's Representative. The individual appointed shall be suitably qualified and experienced to carry out the duties assigned to the Employer's Representative in the Contract. The Employer's Representative staff shall include suitably qualified construction professionals who are competent to carry out these duties.

4.3.2. The Employer's Representative shall have no authority to amend the Contract. If there are limitations on the authority of the Employer's Representative to perform its functions or powers under the Contract, they are stated in the Contract. However any act or instruction of the Employer's Representative under the Contract shall have effect as if within the Employer's Representative's authority, and the Contractor need not enquire 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 without delay of any delegation, and the names of representatives, and of any subsequent changes.

4.3.4. Except as provided otherwise in the Contract the Employer's Representative shall be deemed to act for the Employer whenever carrying out duties or exercising authority, specified in or implied by the Contract. Any opinion, certificate, determination, assessment or objection of the Employer's Representative under the Contract may be revised in accordance with clause 13.

4.3.5. Whenever the contract provides that the Employer's Representative shall agree or determine any matter, the Employer's Representative shall consult with each party in an effort to reach agreement. If agreement is not achieved, the Employer's Representative shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.

- 4.3.6.** The Employer may replace the Employer's Representative at any time, notifying the Contractor of the replacement, and shall do so promptly if the position of Employer's Representative becomes vacant during the performance of the Contract. 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
 - 1) directions in accordance with the Contract or
 - 2) 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.
- 4.5.4.** The Employer's Representative shall give an instruction that is, in the Employer's Representative's opinion, necessary for the completion of the Works. If, in the Employer's Representative's opinion, it is physically impossible or contrary to Legal Requirements to complete the Works in accordance with the Works Requirements, the Employer's Representative shall give a Change Order. The Employer's Representative shall give an instruction required under this sub-clause 4.5.4 within the time required by sub-clause 4.11.

- 4.5.5.** Instructions of the Employer's Representative shall be given in writing except when there is imminent danger to safety or health or of damage to property, in which case the Employer's Representative may give oral instructions, and shall confirm them in writing as soon as practicable.

4.6. Works Proposals

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

4.7. Required Contractor Submissions

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

- 4.7.1.** The Contractor shall give the document or a statement of the proposed action and all necessary supporting information to the Employer's Representative.
- 4.7.2.** The Employer's Representative may [but is not bound to] make a written objection to a Contractor's submission, giving reasons.
- 4.7.3.** If the Employer's Representative requires additional information, it must be sought as soon as practicable but in any event no later than 5 working days.
- 4.7.4.** The Employer's Representative's period for objection is 5 working days from when the Employer's Representative has received from the Contractor enough information to make an informed decision.
- 4.7.5.** The Employer's Representative may alter or withdraw an objection.
- 4.7.6.** The Contractor shall not implement any submission before the period has ended, or contrary to any outstanding objection given within the period.
- 4.7.7.** The Contractor shall make a new submission to meet any objection given within the period.
- 4.7.8.** The Contractor shall also make new submissions as necessary to perform its duties under the Contract [whether or not it has received any objection], and in particular so that its submitted programme shows actual and current planned progress.

- 4.7.9.** The Employer's Representative may only object on the grounds that to proceed according to the submission would not comply with the Contract or would be contrary to a Legal Requirement.
- 4.7.10.** Neither the Employer's Representative's rights to object, nor objections or their absence, reduce any of the Employer's Representative's other powers, or reduce any of the Contractor's responsibilities.

4.8. 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 execution of the Works, or otherwise be of benefit to the Employer.
- 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 calculation of the projected cost of the proposal and any proposed adjustment to the Contract Sum to reflect any saving
 - (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 determine an adjustment to the Contract Sum and/or the Date for Substantial Completion of the Works and any affected Section in accordance with the agreed proposal and the Contractor shall implement the agreed proposal. Where the proposal results in a saving, the Contract Sum shall be reduced by 50% of that saving. If the proposal is rejected, this shall be conclusive.
- 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.

4.9. Programme

- 4.9.1.** Before the Starting Date, the Contractor shall submit to the Employer's Representative a detailed programme which shall be of a quality that will permit effective monitoring of the Works.
- 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 10% of any payment subsequently becoming due to the Contractor until the revised programme is submitted.

4.10. Progress Reports

- 4.10.1** The Contractor shall give the Employer's Representative monthly progress reports from the Starting Date until the Contractor has completed all work outstanding on Substantial Completion of the Works. The first report shall cover the period from the Starting Date up to the end of the month in which it occurs, and each subsequent report shall cover one month. The Contractor shall give each progress report within 7 days after the end of the month it relates to. Each progress report shall be in a form agreed by the Employer's Representative and shall include a detailed description of progress of each stage of the Works against the Contractor's current programme and anything else relevant to a progress report that the Employer's Representative reasonably directs.
- 4.10.2.** If the Contractor fails to submit a monthly progress report within 10 working days of a request from the Employer's Representative, issued after the report was due, the Employer shall be entitled to withhold from the Contractor 10% of any payment subsequently becoming due to the Contractor until the monthly report in question is submitted.
- 4.10.3.** The maximum amount in the aggregate that can be withheld from any payment becoming due to the Contractor as a consequence of sub-clauses 4.9 and 4.10 is 10%.

4.11. Notice and Time for Employer's Obligations

- 4.11.1.** The Contractor shall give the Employer's Representative at least 10 working days advance notice of the date by which the Contractor requires any instructions that the Employer's Representative is to give, or Works Items or other things that the Employer is to give, 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. Not Used

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.
- 4.13.7.** The Contractor shall keep available on site, for reasonable access by the Employer's Personnel, a full current set of the Contract documents, which may include an unpriced Bill of Quantities.

4.14. Communications

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

4.15. Meetings

- 4.15.1.** The Contractor's representative and the Employer's Representative shall attend regular meetings scheduled by the Employer's Representative and any special meeting called by either of them to discuss a particular issue identified when calling the meeting. The Employer's Representative may invite other Employer's Personnel and the Contractor may invite Contractor's Personnel to attend meetings. The Contractor shall arrange for the attendance at a meeting of any Contractor's Personnel requested by the Employer's Representative. The time and place of meetings shall be set by the Employer's Representative, after consulting the Contractor, acting reasonably.
- 4.15.2.** Within 5 working days after each meeting the Employer's Representative shall issue minutes of the meeting to the Employer and the Contractor. The Contractor shall notify the Employer's Representative of any objection to the minutes within 5 working days of receiving them, otherwise, unless clearly wrong, they shall be considered correct. All minutes issued by the Employer's Representative shall highlight the provisions of this sub-clause.

4.16. Confidentiality and Secrecy

- 4.16.1.** The Contractor shall [and shall ensure that the Contractor's Personnel shall] keep confidential 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 Bill of Quantities or provided in accordance with the Contract, and any records given by the Contractor under the Contract that the Contractor notifies the Employer's Representative are confidential.

4.16.3. This sub-clause 4.16 shall not prevent disclosure of information, to the extent permitted by Law:-

- (1) to the Contractor's Personnel, the Employer's Personnel or other professional advisors to the Contractor or Employer, who have first entered an undertaking in the terms of this sub-clause 4.16, to the extent necessary for the execution of the Works or to enforce the Contract or
- (2) when required by Law or order of a court or, in the case of disclosure by the Employer, for governmental, parliamentary, statutory, administrative, fiscal or judicial purposes, or the publication of an award notice or
- (3) that has, except as a result of breach of confidentiality, become available or generally known to the public at the time of the disclosure.
- (4) to the extent necessary for the enforcement of legal entitlements.

4.16.4. The Contractor's and the Employer's obligations under this sub-clause 4.16 shall expire when the commercial sensitivity of the relevant information has ceased.

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 as if they were the Contractor's acts and omissions. The Contractor's responsibility for design carried out by Contractor's Personnel is set out in sub-clauses 8.1 and 8.2.

5.2. Qualifications and Competence

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

5.3. Pay and Conditions of Employment

The Contractor shall ensure that the rates of pay and the conditions of employment comply with all applicable Law.

5.4. Subcontractors; Named and Novated 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 Subcontractor, except when the Contract provides for other procedures.

5.4.2. The Contractor shall ensure that Named and Novated Specialists are engaged for and perform the work for which they are named.

5.4.3. If the Works Requirements include for a Novated Specialist whose contract with the Employer is to be novated to the Contractor, and include a copy of that contract, the Contractor shall accept the novation, and the parties shall, at the same time as entering the Agreement, enter the novation contract in the Works Requirements.

5.4.4. Where the Contractor is to enter a sub-contract with a Named Specialist, the sub-contract shall be an unamended form of sub-contract as identified in Schedule Parts 1F(3) and 1F(4) and the Contractor shall enter into the sub-contract with the Named Specialist before the Starting Date.

5.4.5. The Contractor shall fully comply with its obligations under any contract with a Named or Novated Specialist and shall not terminate, allow to be terminated or accept a repudiation of such a contract without first giving 7 days' notice to the Employer's Representative, except when an insolvency event, as set out in sub-clause 12.1, occurs in respect of the Named or Novated Specialist, or the Named or Novated Specialist has committed a serious breach of Law concerning safety, or the Named or Novated Specialist has failed to put or keep in effect insurance as required by the Named or Novated Specialist's contract.

5.4.6. On any termination, the Contractor shall replace the Named or Novated Specialist, having submitted details of the replacement to the Employer's Representative; no such replacement shall be made if the Employer raises a reasonable objection to it.

5.5. Nominated Specialists

- 5.5.1.** Where the Works Requirements and the Bill of Quantities provide for a Nominated Specialist to be proposed by the Employer's Representative, such proposal shall be made as soon as practicable and without unreasonable delay. No such specialist shall be appointed against whom the Contractor raises a reasonable objection or who will not enter into a subcontract which indemnifies the Contractor against the same obligations in respect of the subcontract as those for which the Contractor is liable under the Contract.
- 5.5.2.** The provisions of sub-clauses 5.4.3 and 5.4.4, by reference to Schedule Part 1F(4), shall also apply to any Nominated Specialist as if it were a Named or Novated Specialist allowing for all necessary changes.
- 5.5.3.** Where the contract of a Nominated Specialist is terminated, or there is a valid objection by the Contractor, the Employer's Representative shall either:
- (1)** nominate an alternative specialist;
 - (2)** vary the work to be done by the Nominated Specialist;
 - (3)** omit, in full or in part, the work to be done by the Nominated Specialist from the Contract; or
 - (4)** direct the Contractor to make a proposal under clause 10.4 for the carrying out of the work.
- 5.5.4.** Any action by the Employer's Representative under sub-clause 5.5.3 (1) to (3) inclusive shall be deemed a Change Order and the Contract Sum and the Date for Substantial Completion of the Works and any affected Section shall be adjusted accordingly.

5.6. Collateral Warranties

If the Works Requirements or the Schedule, Part 1F(1), states that a collateral warranty is required from any Subcontractor, the Contractor shall obtain from that Subcontractor and give the Employer a collateral warranty in the form set out in the Works Requirements. The minimum indemnity limit and maximum excess of professional indemnity insurance required of the Subcontractor shall be as stated in the Schedule, Part 1F(1). If the Works Requirements or the Schedule, Part 1F(1), states that a collateral warranty bond is required from any Subcontractor, the Contractor shall obtain the bond from that Subcontractor and give it to the Employer.

5.7. Removal of Workers

The Employer's Representative may direct the Contractor to remove from the Site any Contractor's Personnel where the Employer's Representative has reasonably concluded one of the following grounds applies:

- (1)** the Contractor's Personnel's negligence or incompetence; or
- (2)** the Contractor's Personnel's presence on the Site is not conducive to safety, health or good order.

5.8. Ancillary Certificates

If the Schedule, Part 1F(2), 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.]

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 incorporated in the Works
- (2) 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
 - (1) the Contractor or Contractor's Personnel or
 - (2) the Employer or any other person to complete the Works following termination of the Contractor's obligation to complete the Works
- (3) use by the Employer of the Works, Works Items, or the Contractor's Documents for the purpose for which they were given.

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

- (1) the use by the Contractor, in accordance with the Contract, of the Works Requirements or Works Items or other things provided by the Employer
- (2) the use or occupation of the Site by the Contractor in accordance with clause 7.1.

6.3. Works Requirements

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

6.4. Intellectual Property Rights

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 10, 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 transfer to the Employer when the Employer receives them.

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

7. THE SITE

7.1. Lands Made Available for the Works

7.1.1. The extent of the Site to be provided by the Employer for use and occupation by the Contractor in carrying out the Works shall be set out in the Works Requirements which will also specify when and under what conditions parts of the Site are to be made available. The date for the provision of the Site (or a part of the Site as set out in the Works Requirements) shall be on or before the latest of the following:

- (1)** the Starting Date
- (2)** the day after the Contractor has done what sub-clause 9.1.2 requires the Contractor to do before the Starting Date.
- (3)** the date stated in the Schedule, Part 1H, if any
- (4)** the day after the Contractor has submitted its programme according to sub-clause 4.9
- (5)** the date stated for work to start on that part in the Contractor's current programme.
- (6)** The date the Contractor requires the part of the Site in accordance with its actual progress.

7.1.2. The Contractor's right to occupy and use the Site, or any part of it, shall be subject to any limitations in the Works Requirements. The contractor shall not be entitled to exclusive possession of the Site, 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 Site, or any part of it, shall be solely for the purpose of performing the Contract.

7.1.3. The Contractor's right to occupy and use any part of the Site provided by the Employer shall end when the Employer's Representative certifies the Works or the relevant Section as Substantially Complete. After then the Employer shall allow the Contractor access to comply with sub-clause 8.6.1.

7.1.4. The Contractor's right to occupy and use part of the Site shall end if the Employer takes over the relevant part of the Works under sub-clause 9.7.

7.1.5. The Contractor's right to occupy and use any part of the Site provided by the Employer shall end if the Contractor's obligation to complete the Works is terminated.

7.2. Trespassers

After the Employer has allowed the Contractor to occupy and use any part of the Site, the Contractor shall take and maintain all reasonable measures to secure that part. The Contractor shall be liable for the consequences of any trespassers entering any such part of the Site.

7.3. Contractor Responsible for All Site Operations

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

7.4. Services for Employer's Facilities

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

7.5. Security and Safety of the Site and Nuisance

7.5.1. From and including the Starting Date until the Employer's Representative certifies the Works or the relevant Section as Substantially Complete, 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)** secure the Site and keep off the Site persons other than any of the following:
 - (1) the Contractor's Personnel and the Employer's Personnel
 - (2) any other person notified to the Contractor by the Employer or the Employer's Representative as authorised to enter the Site
 - (3) persons exercising public access to any roads, footpaths and areas on the Site
 - (4) persons having a right to enter the Site under Legal Requirements
- (2)** keep the Site in good order and free from unnecessary obstructions
- (3)** take all necessary steps to secure the safety of all persons entitled to be on the Site and to protect users, owners and occupiers of land adjacent to the Site from hazards and interference arising from the Works [including providing any required fences, lighting, guarding, watching, roads and footpaths]
- (4)** take all necessary steps to ensure that the Contractor, the Contractor's Personnel and the execution of the Works do not do any of the following:
 - (1) 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
 - (2) unnecessarily interfere with the use of any such land, road or footpath.

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

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

7.6. Other Contractors

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

7.7. Setting Out the Works

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

7.8. Archaeological Objects and Human Remains

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

7.9. Access and Facilities

7.9.1. Subject to the provisions of the Works Requirements, the Employer shall provide access, of a reasonable standard at a minimum, to the Site.

7.9.2. Subject to sub-clause 7.9.1 and the Works Requirements:

- (1)** The Contractor shall be responsible for all access routes [once provided by the Employer or otherwise], and any required maintenance or upgrading of them, and any charges for use of them
- (2)** The Contractor shall provide all necessary signs for directions along access routes, and shall obtain any permission which may be required from the relevant authorities for the use of routes, signs and directions

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

7.10. 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 or Section Contractor's Things not required to perform the Contractor's remaining obligations, and leave the Site 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. 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 agreed otherwise with the Employer's Representative or there is imminent danger to safety or health or damage to the Works or other property.

7.12. Charges

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

8. QUALITY, TESTING AND DEFECTS

8.1. Employer's Obligations

- 8.1.1.** The Employer shall be responsible for the design of the Works, other than any part of the Works required to be designed by the Contractor or any Named or Novated Specialist.
- 8.1.2.** The Employer shall be responsible for the integration and coordination of the design of the Works. The Employer shall identify in the Schedule, Part 1F(3) the scope and extent of design responsibility of any Named or Novated Specialist.
- 8.1.3.** The Employer shall provide to the Contractor such design information, including criteria and parameters, as may be necessary to enable the Contractor to comply with the Contract.
- 8.1.4.** All materials and goods supplied by the Employer shall be fit for the purpose for which they are to be used in the Works. The basis and manner in which such materials and goods are to be supplied shall be specified in the Works Requirements.

8.2. Contractor's Obligations

- 8.2.1.** The Contractor shall execute and complete the Works in accordance with all the requirements in, and reasonably inferred from, the Contract in a proper and workmanlike manner and using good practice.
- 8.2.2.** The Contractor shall design any part of the Works listed as its responsibility in the Schedule, Part 1B, and specified in the Works Requirements. The Contractor shall be responsible for any design carried out by a Named or Novated Specialist in compliance with sub-clause 8.1.2. The Contractor shall have no responsibility for any design carried out by a Nominated Specialist; however, the Contractor shall obtain, and give to the Employer, any collateral warranty from a Nominated Specialist where so stated in the Schedule, Part 1F (1)
- 8.2.3.** The Contractor shall design and provide any temporary works necessary for the completion of the Works.
- 8.2.4.** Design carried out by the Contractor shall be undertaken with the skill, care and diligence reasonably to be expected of a person with the qualifications and experience to perform such service.
- 8.2.5.** All Works Items provided by the Contractor for incorporation in the Works shall comply with the Contract and Legal Requirements and shall be of good quality and, unless the Contract provides otherwise, new. They shall also be fit for the purpose for which they are to be used in the Works.

8.3. Quality Assurance

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

8.4. Inspection

8.4.1. The Contractor shall ensure that the Employer's Representative, Assigned Certifier, and anyone authorised by the Employer's Representative, is able at all reasonable times to have access to all places where the Works are being executed [whether or not at the Site] and any place where any Works Items are produced, stored, extracted or prepared, or any other obligation of the Contractor under the Contract is being performed, and are able there to inspect, test, observe and examine all such items and activities.

8.4.2. 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.

8.4.3. 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.

8.5. Tests

8.5.1. The Contractor shall supply all Contractor's Things, documents, information, suitably qualified and experienced personnel, power, consumables and instruments required to carry out tests that the Contract requires the Contractor to do [both before and after Substantial Completion]. The Contractor shall agree with the Employer's Representative 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.

8.5.2. If a test is failed, the Contractor may elect to repeat the test, or the Employer's Representative may require that the test be repeated. The Contractor shall, on request, pay the Employer any costs the Employer reasonably incurs as a result of any re-testing.

8.5.3. 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.

8.6. Defects

- 8.6.1.** 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.
- 8.6.2.** 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.
- 8.6.3.** The Contractor shall comply with any direction under this sub-clause 8.6 within the reasonable times, if any, the Employer's Representative directs. If the Contractor fails to begin the work required to comply with the direction within the reasonable time directed, if any, or if none, to complete it as soon as practicable, the Employer may have the work done by others and the Contractor shall, on request, pay the Employer its cost of doing so.
- 8.6.4.** Alternatively, the Employer may accept the defect, either in whole or in part and subject to a possible change in the Works Requirements, and shall do so where the cost of remedying the defect is grossly disproportionate to the impact of the defect. Where the defect is accepted the Contract Sum shall be reduced by the amount that, in the opinion of the Employer's Representative, is the resulting decrease in the value of the Works to the Employer.
- 8.6.5.** 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.
- 8.6.6.** The Employer's Representative may give a direction under this sub-clause 8.6 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.]

8.7. Defects Period

- 8.7.1.** 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.
- 8.7.2.** The Employer's Representative shall prepare and issue a final list of Defects to the Contractor at least 28 days prior to the expiry of the Defects Period. That list shall include all defects then patent on the basis that any other defects, other than latent defects, have been accepted by the Employer's Representative. The Contractor shall promptly rectify the Defects so listed.
- 8.7.3.** The Employer's Representative may [without limiting the Employer's other rights] make an appropriate extension to the Defects Period where:
- (1)** Defects remain unrectified at the end of the Defects Period, or
 - (2)** work remains outstanding at the end of the Defects Period, or
 - (3)** the Contractor has completed significant work or rectified a major Defect after Substantial Completion of the Works, or relevant Section, and before the end of the Defects Period.

The extension to the Defects Period shall only apply to the work giving rise to the extension. The Defects Period for all other purposes shall be the period stated in the Schedule Part 11.

The Employer's Representative shall, at the time that the Defects Period would have ended without this extension, issue an interim payment certificate making an appropriate reduction in retention, and the Contractor shall be entitled to invoice the Employer for that amount.

8.8. 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 under sub-clauses 8.6.4 or 8.7.2.]

9. TIME AND COMPLETION

9.1. Starting Date

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

9.2. Suspension

- 9.2.1.** The Employer's Representative may at any time direct the Contractor to suspend all or part of the work under the Contract. The Contractor shall comply with the direction and, during suspension, shall protect, store and secure the affected Works Items against deterioration, loss and damage and maintain the Insurances.
- 9.2.2.** After a suspension under clause 9.2.1, the Contractor shall resume work when so directed by the Employer's Representative. When a direction to resume is given, the Contractor and the Employer's Representative shall jointly examine the Works and Works Items affected by the suspension. If the Contractor is entitled to an adjustment of the Contract Sum or an extension of time because of the suspension, the Contractor's cost of rectifying any deterioration in or loss of the Works or Work Items that the Contractor could not have avoided shall be included in the determination of the adjustment, and any resulting delay shall be taken into account in determining the extension.

- 9.2.3.** If a suspension, that did not result from a breach of the Contractor's obligations, has continued for more than 30 days, the Contractor may request the Employer's Representative's permission to proceed. If the Employer's Representative does not give permission within 14 days after being requested to do so, the Contractor may, by giving notice to the Employer's Representative
- (1)** if the suspension affects part of the Works, treat the suspension as a Change Order to omit that part of the Works or
 - (2)** if the suspension affects the whole of the Works, give notice to terminate the Contractor's obligation to complete the Works under the Contract.

9.3. Delay and Extension of Time

- 9.3.1.** If the Contractor becomes aware that work under the Contract is being or is likely to be delayed for any reason, it shall as soon as practicable notify the Employer's Representative of the delay and its cause. In addition, the Contractor shall promptly give any further information about the delay the Employer's Representative directs.
- 9.3.2.** Where the Contractor seeks an extension of time on the basis 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, 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. Not Used

9.5. Omissions and Reduction of Time

If a Change Order omits any of the Works, and the omission will result, or has resulted, in a reduction of the time required to complete the Works or any Section, the Date for Substantial Completion shall be reduced by any amount 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.

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 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. The retention amount to be withheld under sub-clause 11.3 from interim payments until Substantial Completion shall reduce by the same fraction.

9.8. Liquidated Damages

9.8.1. If the Works do not reach Substantial Completion by the Date for Substantial Completion of the Works, the Contractor shall pay the Employer [and the Employer may deduct from payments to the Contractor] liquidated damages calculated at the rate stated in the Schedule, part 1G, for the period from the Date for Substantial Completion of the Works to the date of substantial completion of the Works.

9.8.2. If a Section does not reach Substantial Completion by its Date for Substantial Completion, the Contractor shall pay to the Employer liquidated damages calculated at the rate stated in the Schedule for the period from the Date for Substantial Completion of the Section to the date of substantial completion of the Section (or, if earlier and if the Schedule states a rate of liquidated damages for the Works, to the Date for Substantial Completion of the Works).

9.8.3. In this sub-clause 9.8 date of substantial completion means the date certified by the Employer's Representative that the Works or Section reached Substantial Completion.

9.8.4. The entitlement to receive the benefit of liquidated damages under sub-clauses 9.8.1 and 9.8.2, is subject to the Employer's Representative certifying that the delay to which the liquidated damages apply is the Contractor's liability under the Contract.

10. CLAIMS AND ADJUSTMENTS

10.1. Compensation Event

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

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

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

10.2. Adjustments of Contract Sum due to Change in Quantities or Prime Cost Sum

10.2.1. Either party may seek a remeasure of the Bill of Quantities in relation to a specific item, or items, to establish if there is a discrepancy between what is measured or described in the Bill of Quantities and what has been executed in compliance with the Works Requirements.

10.2.2. The Contract Sum shall be adjusted to take account of any discrepancy established under this clause 10.2 provided the discrepancy is found to exceed €500.

10.2.3. Where an item to be remeasured is linked to another item, or items, such that an adjustment in one necessarily gives rise to an adjustment in the other item or items, then all such items shall be included in the remeasure.

10.2.4. Where the remeasure is requested by the Contractor, and no discrepancy is established, the Employer's cost of having the remeasure done shall be paid by the Contractor.

10.2.5. The use of Prime Cost Sums, included in the Contract for the payment of Nominated Specialists, shall be as directed by the Employer's Representative. Where the amount expended in relation to a Prime Cost Sum differs from what is provided in the Contract, the Contract Sum shall be adjusted accordingly taking account of any associated add-on items in the Bill of Quantities.

10.2.6. The notice requirements of clause 10.3 and clause 10.9 do not apply to a remeasure sought under this clause 10.2 or any adjustment under sub-clause 10.2.5. However, the Contractor may only seek a remeasure for a Bill of Quantities item within 42 days of completion of that item; in the absence of such a request, once that time period has passed the Contractor shall have no entitlement under this clause 10.2

10.3. Contractor Claims

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

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

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

10.3.2. If the Contractor does not give notice in accordance with and within the time provided in this sub-clause 10.3, except where the Contractor has been required to and has given a proposal complying in full with sub-clause 10.4 [notwithstanding anything else in the Contract] the Contractor shall not be entitled to an increase to the Contract Sum or extension of time [and the Employer shall be released from all liability to the Contractor in connection with the matter].

10.3.3. If the cause of the claim has a continuing effect, the Contractor shall update the information at monthly intervals

- (1)** stating the extension of time and adjustment to the Contract Sum claimed for delay and cost already incurred and
- (2)** so far as practicable, proposing a final adjustment to the Contract Sum and Date for Substantial Completion of the Works and any affected Section and
- (3)** providing any other information the Employer's Representative reasonably requires.

10.3.4. The Contractor shall keep detailed contemporary records to substantiate any aspect of an event or circumstance about which it has given, or is entitled to give, notice under this sub-clause 10.3, and its resulting costs. These shall include any records the Employer's Representative directs the Contractor to keep. The Contractor shall give the records to the Employer's Representative if so directed.

- 10.3.5.** If the Contractor gives notice in accordance with this sub-clause 10.3 but fails to give the details required within the time stipulated, the entitlement of the Contractor, if any, shall be reduced by the extent to which the Employer has been prejudiced by the Contractor's failure to provide such details. After the period of 20 working days for the provision of such details has expired, the Employer's Representative may at any time demand that those details are provided within 10 working days of the demand. If the details are not provided within that period, the Contractor shall not be entitled to an increase in the Contract Sum or extension of time and the Employer shall be released from all liability to the Contractor in connection with the matter. Such a demand for details shall prominently state that it is being given under this sub-clause 10.3.5.

10.4. Proposed Instructions

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

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

10.5. Employer's Representative's Determination

- 10.5.1.** If the Contractor has made a claim under sub-clause 10.3 or a or proposal under sub-clause 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 a revised proposal, in which case the Contractor shall do so within 10 working days and the Employer's Representative shall issue a determination in accordance with this sub-clause 10.5.1, within a further 10 working days. The Employer's Representative may not direct the Contractor to give additional information or a revised proposal after the expiry of the first 10 working days period.
- (2)** issue a determination saying whether the Contractor's proposal is agreed, and, if so, make any resulting adjustments to the Contract Sum, or extension to the Date for Substantial Completion of the Works and any affected Section
- (3)** issue a determination saying whether the claim is accepted in whole or in part, and, if so, make any resulting adjustments to the Contract Sum, or extension to the Date for Substantial Completion of the Works and any affected Section.

- 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 a period of 20 working days or reply within 10 working days to the contractor as set out in clause 10.5.1(1), the Contractor may give notice thereafter to the Employer's Representative requiring it to make a determination on the claim or proposal within a period of 10 working days from the date of delivery of the Notice. Such Notice will be stated to be given under this sub-clause 10.5.3. If the Employer's Representative fails to provide its determination within the said 10 working days it will be deemed to have made a determination that the Contract Sum be adjusted and that an extension of time be granted in accordance with the Contractor's claim or proposal. The determination will be deemed to have been made on the last day of the said period of 10 working days
- 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, or deemed to have been made under 10.5.3, 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 referring the dispute for resolution under clause 13.
- 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 referring the dispute for resolution under clause 13 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 referring the dispute for resolution under clause 13.

10.6. Adjustments to the Contract Sum

- 10.6.1.** Adjustments to the Contract Sum for a Compensation Event shall only be for the value of any additional, substituted, and omitted work required as a result of the Compensation Event under sub-clause 10.6.2 and any delay cost under sub-clause 10.7.
- 10.6.2.** Additional, substituted, and omitted work arising from a Compensation Event shall be valued by the Employer's Representative, following consultation with the Employer and the Contractor in an effort to reach agreement. If agreement is not reached the Employer's Representative shall make a determination as follows :
- (1)** If the Compensation Event requires additional, substituted or omitted work, similar to work for which there are rates in the Bill of Quantities, to be executed under similar conditions, the determination shall use those rates.

- (2) If the Compensation Event requires additional, substituted or omitted work that is not similar to work for which there are rates in the Bill of Quantities, or is not to be executed under similar conditions, the determination shall be on the basis of the rates in the Bill of Quantities when that is reasonable.
- (3) If the adjustment cannot be determined under the above rules, the Employer's Representative shall make a fair valuation. Any such valuation shall be based on rates for similar work in the locality, if available.

10.7. Delay Cost

- 10.7.1.** If the Date for Substantial Completion of the Works has been extended because of a Compensation Event [and not otherwise], there shall be added to the Contract Sum an amount for delay cost, either (whichever it says in the Schedule, part 1K)
 - (1) for each Site Working Day for which the Date for Substantial Completion of the Works has been extended because of the Compensation Event, the daily rate of delay cost stated in the Schedule, part 2D or
 - (2) the expenses unavoidably incurred by the Contractor as a result of the delay to the Date for Substantial Completion of the Works caused by the Compensation Event in respect of which that date has been extended under the Contract. The Contractor will in addition be entitled to 10% of the expenses to compensate it fully for all entitlements by way of profit, loss of profit and contribution to off-site overheads
- 10.7.2.** If the Schedule states more than one rate for delay cost, the rate for the period when the delay occurred or delayed part of the Works shall be used. This shall be determined by the Employer's Representative.

10.8. Not Used

10.9. Employer's Claims

- 10.9.1.** If the Employer or the Employer's Representative considers that, under the Contract, there should be a reduction of the Contract Sum (other than a reduction under clause 10.2), 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 and in any event within 20 working days after it became aware, or should have become aware (whichever is the earlier), of something that could result in such an entitlement, give notice of the event or circumstances to the other, and to the Contractor. The notice must be given according to sub-clause 4.14 and prominently state that it is being given under sub-clause 10.9 of the Contract. Within a further 20 working days after giving the notice, the Employer or the Employer's Representative shall give to the other and to the Contractor 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 or any amount due by the Contractor to the Employer.

- 10.9.2.** If the Employer or the Employer's Representative does not give notice in accordance with and within the time provided in this sub-clause 10.9, the Employer shall not be entitled to a decrease to the Contract Sum or any sum under the Contract [and the Contractor shall be released from all liability to the Employer in connection with the matter].
- 10.9.3.** The Contractor shall be entitled, within 20 working days of receipt of such notice and details, to give a response to the Employer's Representative. 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. If the determination is not made within the time provided, the Employer's Representative will be deemed to have disallowed the claim on the last day of the time period.
- 10.9.4.** A determination of the Employer's Representative under sub-clause 10.9.3 shall be final and binding on the parties unless, within 28 days after receiving notice of the determination or within 28 days of the date when the determination was deemed to be made, the Contractor or the Employer gives notice to the other referring the dispute for resolution under clause 13.
- 10.9.5.** The Employer may deduct from any amount due to the Contractor any amount determined by the Employer's Representative to be due from the Contractor to the Employer under the Contract.
- 10.9.6.** 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) not later than five days after the payment claim dates stated in the Schedule, part 1L,
- (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, 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. Any amounts sought in respect of Nominated Specialists shall be listed separately.
- (4) any supporting evidence the Employer's Representative reasonably requires. Where sought by the Employer's Representative, the Contractor shall provide confirmation that amounts previously certified in respect of Nominated Specialists have been paid to those specialists.

The interim statement given on Substantial Completion shall include all amounts due to the Contractor at that time for the Works or Section. The Contractor shall not give a payment claim notice if the amount considered due by it is less than the minimum amount stated in the Schedule, Part 1L, if any.

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

- (1) the Contract value of the Works properly executed by the Contractor [according to the Bill of Quantities, 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 under a price variation provision provided in the contract
- (5) amounts included in the Bill of Quantities for Contractor's Documents properly completed and supplied as required by the Contract.

11.1.3. Within 10 working days of receipt of a 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, together with calculations and the reasons for the opinion. The Employer's Representative shall itemise the amounts included in the certificate in respect of individual Nominated Specialists.

- 11.1.4.** If there is a sum due to the Contractor, the Contractor shall send an invoice to the Employer for that sum as specified in the interim payment certificate. The Employer shall pay the amount due on the invoice within 10 working days after receiving the Contractor's invoice.

11.2. Unfixed Works Items

The Employer's Representative shall include in certificates for interim payments any amount the Employer's Representative considers proper for each of the following:

- 11.2.1.** the Contract value of any Works Items that comply with all of the following requirements, all to the satisfaction of the Employer's Representative:
- (1)** they have been completed and are substantially ready to be incorporated in the Works
 - (2)** title to them has been vested in the Employer
 - (3)** they are stored suitably at the Site
 - (4)** they have not been delivered to the Site prematurely
- 11.2.2.** 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:
- (1)** they have been completed and are substantially ready to be incorporated in the Works
 - (2)** title to them has been vested in the Employer
 - (3)** 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
 - (4)** they are clearly identified in a list given to the Employer's Representative, together with documentary evidence that title is vested in the Employer
 - (5)** they are insured as required by the Contract, and will be insured as required while in transit

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

11.3. Retention

- 11.3.1.** There shall be deducted from each interim payment to the Contractor the retention percentage stated in the Schedule, part 1L.
- 11.3.2.** Upon issue of the certificate of Substantial Completion of the Works, the Employer's Representative shall issue an interim payment certificate to the Contractor, with a copy to the Employer, for half of the amount so retained.
- 11.3.3.** If, within 10 working days of the issue of the certificate of Substantial Completion of the Works, or another date agreed by the Employer's Representative, the Contractor provides to the Employer a retention bond in the form in the Work Requirements,

or, if there is none, a form approved by the Employer, for the amount retained by the Employer, and executed by a surety approved by the Employer, the Contractor shall be entitled to invoice the Employer for the balance of the money retained.

- 11.3.4.** Upon issue of the certificate of Substantial Completion of a Section of the Works, the retention amount to be withheld until issue of the certificate of Substantial Completion of the Works shall be reduced by the amount stated in the Schedule, part 1G, and the Contractor shall be entitled to invoice the Employer for that amount.
- 11.3.5.** The Employer shall pay the Contractor the amount due on an invoice under this sub-clause 11.3 within 10 working days after receiving the invoice [less any amount that the Employer is entitled to deduct according to sub-clause 10.9].

11.4. Full Payment

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

- 11.4.1.** If the Contractor has not given a collateral warranty by the date stated in the Schedule, part 1F(1) or as agreed under sub-clause 9.1.2(6), the Employer is entitled to withhold from any payment subsequently becoming due to the Contractor the amount stated in the Schedule part 1F(1) 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 withhold 10% from any payment subsequently becoming due to the Contractor until the programme or report has been submitted.
- 11.4.3.** Deductions from payments because of obligations that the Contractor has still not complied with by the date the Defects Certificate is issued shall be deducted from the Contract Sum.

11.5. Final Statement

- 11.5.1.** Within 2 months of the date the Employer's Representative issues the Certificate of Substantial Completion the Contractor shall give to the Employer's Representative a final statement. The Contractor shall include in that statement all money that the Contractor considers to be due from the Employer to the Contractor under or in connection with the Contract. The Employer shall have no liability to the Contractor under or in connection with the Contract for any matter not detailed in the final statement, except under the indemnities in the Contract or Compensation Events occurring after Substantial Completion of the Works was certified. If no final statement is given within the time required, the Employer shall be released from all liability to the Contractor under or in connection with the Contract.

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, if not already paid, and
- (2)** adjustments to the Contract Sum because of Compensation Events that happen after Substantial Completion of the Works is certified and
- (3)** amounts owed by the Contractor that were not included in the penultimate certificate [for example, for Defects that the Contractor has not rectified] and
- (4)** deductions from the Contract Sum under sub-clause 11.4 and
- (5)** other amounts that, according to the Contract, are to be paid after Substantial Completion of the Works [such as payments for testing after Substantial Completion].

11.5.4. If the penultimate or final payment certificate states that there is a sum owing to the Contractor, the Contractor shall issue an invoice to the Employer for that sum and the Employer shall pay the amount due on the invoice within 15 working days after receiving the invoice. If the penultimate or final payment certificate states that there is a sum owing to the Employer, the Contractor shall pay the amount due within 15 working days of receipt of the Employer's demand for payment. [Payments and certificates, including the penultimate and final payment certificates and the Defects Certificate, will not relieve the Contractor of any obligations, or be evidence of the value of work or that work has been completed satisfactorily].

11.6. Time for Payment and Interest

11.6.1. When a payment is to be made under the Contract, and no time for payment is stated, the amount due shall be paid within 30 days of receipt of a demand for payment.

11.6.2. Interest shall be added to any payment not made within the time provided in the Contract, from the date the payment was due under the Contract, at the rate provided in SI No 580 of 2012, the European Communities (Late Payment in Commercial Transactions) Regulations 2012.

11.7. Value Added Tax

11.7.1. The Contractor's completed form of tender states whether, and to what extent, the Contract Sum includes VAT. The individual items within the Bill of Quantities are exclusive of 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).

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

In the Contract 'standard rate' means the VAT rate specified in section 11(1)(a) of the Value-Added Tax Act 1972 (which was 23% on 1 January 2015).

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

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

11.8. Withholding Tax

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

12. TERMINATION

12.1. Termination on Contractor Default

12.1.1. The Employer may, without limiting any other right or remedy, terminate the Contractor's obligation to complete the Works by notice to the Contractor if any of the following occurs. In the case of 12.1.1(1) to 12.1.1(8) inclusive, where the failure can be rectified, the termination notice may only be issued where the Contractor has failed to put the matter right within a period of 7 days of receipt of a direction from the Employer's Representative to do so. The Employer may terminate immediately in the case of 12.1.1(9) or 12.1.1(10).

- (1)** the Contractor materially fails to comply, by way of a serious breach, with its obligations under the Contract.
- (2)** the Contractor abandons or, except where required or permitted by the Contract, suspends the execution of the Works
- (3)** the Contractor fails to proceed regularly and diligently with the execution of the Works
- (4)** the Contractor fails to maintain the required insurances or performance bond
- (5)** the Starting Date has not occurred or the Contractor has not started to execute the Works on the Site within 6 weeks of the date the Contract requires
- (6)** the Contractor has committed or caused the Employer to commit a serious breach of Legal Requirements concerning the Works
- (7)** the Contractor or Contractor's Personnel have committed a serious breach of the Safety, Health and Welfare at Work Act 2005 or any regulations or code of practice made under it concerning the Works
- (8)** the Contractor has subcontracted all or any substantial part of the Works in breach of the Contract
- (9)** any of the following insolvency events occur:
 - (1)** a petition is presented to wind up the Contractor and is not dismissed within 10 working days of presentation
 - (2)** 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
 - (3)** 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
 - (4)** 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
 - (5)** 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
 - (6)** a petition is presented to appoint an examiner to the Contractor, or an order is made appointing an examiner to the Contractor

(7) the Contractor, being an individual, becomes bankrupt

(8) 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

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

12.1.2. If the Contractor is more than one person, if any of the insolvency events occur in respect of any of them, the Employer may either

(1) terminate the Contractor's obligation to complete the Works or

(2) terminate the obligation to complete the Works of the person concerned and the others shall remain liable to perform the Contractor's obligations.

12.1.3. If any insolvency events occur in respect of any person who has guaranteed the Contractor's performance of the Contract to the Employer, or a guarantee ceases to be enforceable against the guarantor, the Employer may terminate the Contractor's obligation to complete the Works unless, within 10 working days of the event, the Contractor has arranged a replacement guarantee and guarantor to the Employer's satisfaction.

12.2. Consequences of Default Termination

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

12.2.1. The Contractor shall leave the Site in an orderly manner.

12.2.2. Payment of all sums of money that may then be due from the Employer to the Contractor shall be postponed, and the Employer shall not be required to make any further payment to the Contractor except as provided in this sub-clause.

12.2.3. The Employer's Representative shall, as soon as practicable, determine the amount due to the Contractor under the Contract for the Works completed in accordance with the Contract and unpaid (the termination value).

12.2.4. The Contractor shall not remove any Works Items or Contractor's Things from the Site unless directed to do so by the Employer or the Employer's Representative, and if directed, shall promptly remove from the Site any Works Items and Contractor's Things, as directed.

12.2.5. The Employer may engage other contractors, use any Works Items and Contractor's Things on the Site and do anything necessary for the completion of the Works.

12.2.6. The Contractor shall, if so directed by the Employer's Representative, assign to the Employer [without further payment] the benefit of any subcontract, contract for the supply of any Works Item, or other contract concerning the Contract.

12.2.7. The Employer may pay to any Subcontractor, or supplier, to the Contractor any amount due to it that the Employer's Representative certifies as included in any previous interim payment to the Contractor. The Contractor shall be liable to the Employer for any such payment made under this sub-clause unless the Contractor has already discharged its obligations to the Subcontractor or supplier.

12.2.8. The Contractor shall give the Employer all Works Requirements and Contractor's Documents it [or Contractor's Personnel] has.

12.2.9. When the Works have been completed and the termination amount as described below has been determined, the Employer's Representative shall give a certificate to the Contractor and the Employer setting out the total of the following (the termination amount):

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

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

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

12.3. Suspension by the Contractor

If the Employer fails to pay any amount due under clause 11, the Contractor may, on giving notice to the Employer, in accordance with the Construction Contracts Act 2013, suspend execution of the Works until the amount has been paid. On receiving the payment or notice has been served by either party referring the dispute to adjudication, the Contractor shall resume execution of the Works.

12.4. Termination by the Contractor

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

- (1)** the Contractor has suspended the execution of the Works in accordance with sub-clause 12.3, and the Employer has still not paid within 10 working days of the commencement of the suspension
- (2)** work has been suspended by direction of the Employer's Representative under sub-clause 9.2 and a right to terminate has arisen under that sub-clause

- (3) the execution of the Works or a substantial part of the Works has been suspended for a period of at least 3 months as a consequence of loss or damage that is at the Employer's risk under sub-clause 3.1
- (4) an event or circumstance outside the control of the parties makes it physically impossible or contrary to Law for the Contractor to fulfil its obligations under the Contract for a period of at least 6 months.

12.5. Termination at Employer's Election

- 12.5.1.** The Employer shall be entitled to terminate the Contractor's obligation to complete the Works at its election on 20 working days notice to the Contractor.
- 12.5.2.** The Employer may not terminate the Contractor's obligation to complete the Works under this sub-clause 12.5 for the purpose of retaining another contractor to execute the Works.
- 12.5.3.** The Employer shall return any performance bond given under sub-clause 1.5 to the Contractor on termination under sub-clause 12.4 and this sub-clause 12.5.

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

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

- 12.6.1.** The Contractor shall leave the Site in an orderly manner and remove any Contractor's Things.
- 12.6.2.** The Contractor shall give the Employer all Works Requirements documents and hand over Contractors' Documents, Plant, Materials and other work, for which the Contractor has received payment.
- 12.6.3.** The Contractor shall, as soon as practicable, give the Employer's Representative a statement of the total of the following (the termination sum):
 - (1) the unpaid value of the parts of the Works completed to the date of termination in accordance with the Bill of Quantities, disregarding any provision limiting the Employer's obligation to pay for partially completed work
 - (2) the Contractor's reasonable costs of removal from the Site as a consequence of the termination
 - (3) any other cost or liability which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the Works
- 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 Employer to the Contractor or Contractor to the Employer, including the termination sum in the calculation of the amount due from the Employer to the Contractor.
 - (1) In the case of termination under sub-clause 12.5, the amount certified shall include 2.5% of the difference between the Contract Sum and the sum that would otherwise be certified by the Employer's Representative under this sub-clause.

- (2) In the case of termination under sub-clause 12.4.1(1) to (3) inclusive [but not sub-clause 12.4.1(4)], the amount certified shall include 5% of the difference between the Contract Sum and the sum that would otherwise be certified by the Employer's Representative under this sub-clause to compensate the Contractor for loss of profit. The Contractor will also be entitled to recover from the Employer any additional loss, damage and expenses incurred by it as a result of the termination.
- (3) 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 15 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, 1.7, 1.8, 1.9, 2.1, 3.4, 3.5, 4.16, 4.17, clause 6, this clause 12 and clause 13.]

12.8. Payment

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

12.9. Not Used

13. DISPUTE RESOLUTION

13.1. Negotiated Resolution

- 13.1.1.** The parties agree to use their best endeavours to resolve any disputes that may arise between them in a speedy and proportionate manner.
- 13.1.2.** Where the Employer has named individuals in the relevant section of the Schedule, Part 1A, the parties agree to form a Project Board comprised of the individuals named in the Schedule, Parts 1A and 2A. The function of the Project Board shall be to minimise the impact of disagreements and disputes on the performance of the Contract. Its members shall attempt to resolve any dispute referred to it by either party. Subject to the agreement of the parties, it may also discuss any area of disagreement in an effort to prevent it becoming a dispute.
- 13.1.3.** Where a Project Board has been formed, the parties shall jointly appoint a conciliator for the duration of the Contract (Standing Conciliator). The Standing Conciliator may, subject to the agreement of the parties, attend meetings of the Project Board and may also, if agreed, chair such meetings

13.2. Adjudication and Conciliation

- 13.2.1.** Either party may refer a dispute relating to payment to adjudication at any time under the Construction Contracts Act 2013. If a dispute between the parties is referred to adjudication, any conciliation relating to that dispute shall stand adjourned.
- 13.2.2.** Any dispute arising in relation to the Contract, which has not been referred to adjudication under sub-clause 13.2.1, may be referred by either party to conciliation to be conducted in accordance with the Engineers Ireland Conciliation Procedure 2013. Any recommendation shall become final unless a notice of dissatisfaction is issued by either party within 21 days of receipt of the recommendation.
- 13.2.3.** If the conciliator has recommended the payment of money and a notice of dissatisfaction is given, the following shall apply:
- (1)** The paying Party shall pay 50% of the amount recommended by the conciliator. It shall pay the balance [the remaining 50%] provided that the other Party provides a bond equal to 50% of the amount recommended by the conciliator. The bond shall be 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.
 - (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 immediately repay the amount to which it was found not to be entitled.
- 13.2.4.** A conciliator appointed under sub-clause 13.1.3 or 13.2.2 shall act as conciliator for all disputes referred to conciliation unless the parties agree otherwise or the conciliator is unwilling or unable to act. The parties may jointly terminate the appointment of a conciliator and appoint a replacement.

- 13.2.5.** A party may seek to enforce compliance with a conciliator's recommendation through the Courts and any issue arising out of any such proceedings may be dealt with by the Courts without being referred to conciliation or arbitration.

13.3. Arbitration

- 13.3.1.** Any dispute arising in relation to this Contract shall be finally resolved by Arbitration where the place of any such Arbitration shall be Ireland and it shall be governed by the Arbitration Act 2010. Unless stated or agreed otherwise the Arbitration shall be carried out in accordance with the Engineers Ireland Arbitration Procedure 2011.
- 13.3.2.** Either party may refer a dispute, which has been dealt with under sub-clause 13.2, to Arbitration by sending a Notice to Refer to the other party in accordance with the Engineers Ireland Arbitration Procedure 2011.
- 13.3.3.** Where the amount sought in the Notice to Refer is less than €1,000,000 the Arbitration shall be conducted in accordance with the Engineers Ireland 100 Day Arbitration Procedure.