



<i>Project Name:</i>	ULSTER CANAL PHASE 3.1 AND PHASE 3.2
<i>Project Number:</i>	CC004
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<i>Report Title:</i>	1 of 10 CONTRACT DATA PART ONE
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<i>Checked by:</i>	RH
<i>Approved by:</i>	CD

1 of 10 - CONTRACT DATA PART ONE
(incl. conditions of contract)

The table below identifies the Documents which together form the Tender Documents for this contract.

REFERENCE		TITLE		
IFT		Instructions For Tendering Appendix A1 Tender Declaration (For Information Only) Appendix B Model Tender Assessment Sheet (Separate Document)		
TENDER DOCUMENTATION	CONDITIONS OF CONTRACT	1 of 10 Contract Data Part One [Inc Conditions of Contract]		
	METHOD OF MEASUREMENT	2 of 10 Method of Measurement		
	SCOPE	3 of 10 General Requirements		
		4 of 10 Specification - Works Specific Requirements (Sub-Folder)		
		5 of 10 Specification - Additional Requirements (Sub-Folder)		
		6 of 10 Contract Drawings		
		7 of 10 Pre-Construction Information		
		8 of 10 Special Requirements		
		9 of 10 Statutory Approvals		
	SITE INFORMATION	10 of 10 Site Information		
	TENDER SUBMISSION PACKAGE	TS- PART 1	Contract Forms	
		TS-PART 2	Minimum Standards	
		TS-PART 3	Quality Submission	
		TS-PART 4A	Contract Data Part Two	
		TS-PART 4B	Bill of Quantities	
		Additional Addendum (Submit as Required)	TS-Part 2A	Group of Economic Operators and Other Entities – Member Addendum
			TS-Part 2B	Financial Addendum
			TS-Part 2C	Health & safety Addendum
			TS-Part 2D	Quality Management System Addendum
			DOWNLOAD	Assessment of Organisations Providing 3 rd Party H & S Management Systems
			DOWNLOAD	Assessment of Organisations Providing 3 rd Party EMS certification

CONTENT		PAGE NUMBER
Contract Data Part One		
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5	Payment	
6	Compensation Events	
8	Risks and Insurance	
Optional Statements		
Option B	Bill of Quantities	
X Clauses	X2, X4, X5, X7, X9, X11, X13, X15, X16, X18, Y(UK)2,	
Z Clauses		

Contract Data**PART ONE – DATA PROVIDED BY THE CLIENT****1 General**

The *conditions of contract* are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Engineering and Construction Contract June 2017 (with amendments January 2023)

- Main Option: **B**
- Option for resolving and avoiding disputes: **W2**
- Secondary Options: **X2, X4, X5, X7, X9, X11, X13, X15, X16, X18, Y(UK)2,**
- The *works* are: all the permanent and temporary works associated with **Ulster Canal Phase 3.1 and Phase 3.2.**
- The *Client* is
Name: **Waterways Ireland**

Address for communications: **2 Sligo Road, Enniskillen, BT74 7JY**

Address for electronic communications: **ryan.egerton@waterwaysireland.org**
- The *Project Manager* is
Name: **Doran Consulting**

Address for communications: **Flax House, 83-91 Adelaide Street, Belfast, BT2 8FE**

Address for electronic communications: **campbell.davis@doran.co.uk**
- The *Supervisor* is
Name: **Doran Consulting**

Address for communications: **Flax House, 83-91 Adelaide Street, Belfast, BT2 8FE**

Address for electronic communications: **campbell.davis@doran.co.uk**
- The Scope is in: The following documents:
 - 3 of 9 *General Requirements*
 - 4 of 9 *Works Specific Requirements*
 - 5 of 9 *Additional Requirements*
 - 6 of 9 *Contract Drawings*
 - 7 of 9 *Pre-Construction Information*
 - 8 of 9 *Special Requirements*and all documents referred to within these documents.

- The Site Information is in: **Site Information** and all documents referred to within this document.
- The *boundaries of the site are*: shown on drawing **CC004-DCL-SW-0100-D-C-0001**
- The *language of the contract* is: **English**
- The *law of the contract* is the law of: **Northern Ireland, subject to the jurisdiction of the courts of Northern Ireland**
- The *period for reply* is **4 weeks**
- The following matters will be included in the Early Warning Register
- Early warning meetings are to be held at intervals no longer than: **4 weeks**

2 The Contractor's main responsibilities

- The **key dates** and *conditions* to be met are

Undertaking of Dredging Works in River Finn

all in stream works *to be undertaken and completed between* **1 June and 30 September inclusive**

3 Time

- The *starting date* is: **14 September 2026 (or such date that is stated in the contract award letter)**
- The *access dates* are **the start date**
- The *Contractor* submits revised programmes at intervals no longer than: **4 weeks**
- The *completion date* for the whole of the *works* is: **80 calendar weeks after the start date**
- The *Client* is **not** willing to take over the *works* before the Completion Date
- The period after the Contract Date within which the *Contractor* is to submit a first programme for acceptance is: **4 weeks**

4 Quality management

- The period after the Contract Date within which the *Contractor* is to submit a quality policy statement and quality plan is: **4 weeks**
- The period between Completion of the whole of the *works* and the *defects date* is **52 weeks with the exception of re-setting ironwork, road markings, reflective road studs, all M&E works for which the period is 104 weeks after Completion, and planting which is 104 weeks.**
- The *defect correction period* is **four weeks** except that
 - The *defect correction period* for **the Lock operating system** is **3 days**
 - The *defect correction period* for **Canal Water supply system** is **24 hours**
 - The defect correction period for **Safety Critical items** is **24 hours**
 - The defect correction period for **Environmental incidents** is **24 hours**

5 Payment

- The *currency of the contract* is the: **Euros (€)**
- The *assessment interval* is: **one calendar month**
- The *interest rate* is 8% per annum above the base rate of the Bank of England bank

6 Compensation Events

- The place where weather is to be recorded is: **Derrylin (Cornahoule)**
- The *weather measurements* to be recorded for each calendar month are
 - the cumulative rainfall (mm)

- the number of days with rainfall more than 5mm
- the number of days with minimum air temperature less than 0 degrees Celsius
- the number of days with snow lying at 07.00 hours GMT
- The *weather measurements* are supplied by: Northern Ireland Met Office
- The *weather data* are the records of past weather measurements for each calendar month which were recorded at: **Derrylin (Cornahoule)**
- and which are available from: Northern Ireland Met Office
- The *value engineering percentage* is **50%**
- The *method of measurement* is: **CESSM4 published by the Institution of Civil Engineers**

8 Liabilities and insurance

- The minimum amount of cover for insurance against loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor* Providing the Works for any one event is **€13M**
- The minimum amount of cover for insurance against death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with the contract for any one event is **€13M**
- The insurance against loss of or damage to the *works*, Plant and Materials is to include cover for Plant and Materials provided by the *Client* for an amount of: **The value of the Works +15%.**
- The *Client* **does not provide any** insurances from the Insurance Table
- The *Contractor* provides these additional insurances
 - (1) Insurance against:

Construction “All Risks” Insurance with a minimum indemnity not less than **€13M** per incident as per the requirements of [Construction Toolkit](#) Annex I – Liability in Government Infrastructure Projects extended to Design Improvement Exclusion (DE5)
 - (2) Insurance against: Professional indemnity insurance for all activities of a professional nature including design liability with a limit of not less than that specified below – aggregate

Professional Indemnity insurance	
Role	Minimum amount of cover
Main Contractor	€5M

Mechanical building services contractor	€2M
Electrical building services contractor	€2M
Structural steelwork contractor	€2M
Mechanical engineer	€2M
Electrical engineer	€2M

Minimum amount of cover is: as per the above table

The deductibles are: **N/A**

Resolving and avoiding disputes

- The *tribunal* is: arbitration
- The *arbitration procedure* is: the **latest version of the Institution of Civil Engineers Arbitration Procedure in force when the arbitrator is appointed**
- The place where arbitration is to be held is: **Belfast**
- The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the *arbitration procedure* does not state who selects an arbitrator is: **the Institution of Civil Engineers**
- The *Senior Representatives* of the *Client* are

Name (1) **To be agreed**

Address for communications:

Address for electronic communications:

Name (2) **To be agreed**

Address for communications:

Address for electronic communications:

- The *Adjudicator* is

Name: **To be agreed**

Address for communications:

Address for electronic communications:

- The *Adjudicator nominating body* is: **the Institution of Civil Engineers**

X1: Price adjustment for inflation (not used)

X2: Change in the Law (used)

X3: Multiple currencies (not used)

X4: Ultimate Holding Company Guarantee (used)

X5: Sectional Completion (not used)

X6: Bonus for early Completion (not used)

X7: Delay damages (used)

- Delay damages for Completion of the whole of the *works* are: **€1,100.00** per day

X8: Undertakings to the *Client* or Others (not used)

X9: Transfer of Rights (used)

X10: Information modelling (not used)

X11: Termination by the Client (used)

X12: Multiparty collaboration (not used)

X13: Performance Bond (used)

- The amount of the performance bond is **10%**

X14: Advanced payment to the *Contractor* (not used)

X15: The Contractor's design (used)

- The *period for retention* following Completion of the whole of the *works* or earlier termination is: **12 years**
- The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use the skill and care normally used by professionals designing works similar to the *works* is, in respect of each claim: **€5M**
- The period following Completion of the whole of the works or earlier termination for which the *Contractor* maintains insurance for claims made against it arising out of its failure to use the skill and care is: **12 years**

X16: Retention (used)

- The retention free amount is: **Nil**
- The retention percentage is: **3 %**
- The *Contractor* may not give the Client a retention bond.

X17: Low performance damages (not used)

X18: Limitation of liability (used)

- The *Contractor's* liability to the *Client* for indirect or consequential loss is limited to: **€13M**

- For any one event, the *Contractor's* liability to the *Client* for loss of or damage to the *Client's* property is limited to: **€13M**
- The *Contractor's* liability for Defects due to its design which are not listed on the Defects Certificate is limited to: **€13M**
- The *Contractor's* total liability to the *Client* for all matters arising under or in connection with the contract, other than excluded matters, is limited to: **The Tender Price**
- The *end of liability* date is **12 years** after the Completion of the whole of the *works*

X20: Key Performance Indicators (not used)

X22: Early Contractor involvement (not used)

X29: Climate change (not used)

Y(UK)1: Project Bank Account (not used)

Y(UK)2: The Housing, Grants, Construction and Regeneration Act 1996 (used)

- The period for payment is **fourteen** days after the date on which payment becomes due

Y(UK)3: The Contracts (Rights of Third Parties) Act 1999 (not used)

Z: Additional conditions of contract

- The *additional conditions of contract* are :

Z1: Option Z – Additional conditions of contract

Z1.1 The *additional conditions of contract* stated in the Contract Data are part of the contract.

Z2: Identified and defined terms

Add Clauses:

From Z5:

- 11.2(120) The Notice of Written Warning and the Notice of Unsatisfactory Performance are Notices which are issued to the *Contractor* if it has performed unsatisfactorily and has not improved performance within a specified time set by the *Client*:

A *Contractor* concurrently in receipt of multiple Notices of Written Warning on one or more Government contracts may be excluded from future procurement competitions, undertaken by Centres of Procurement Expertise on behalf of bodies covered by Northern Ireland Public

Procurement Policy, for a period of 12 months from the date of issue of the last Notice of Written Warning.

A *Contractor* in receipt of a Notice of Unsatisfactory Performance on a Government contract may be excluded from future procurement competitions, undertaken by Centres of Procurement Expertise on behalf of bodies covered by Northern Ireland Public Procurement Policy, for a period of 3 years from the date of issue of the Notice.

Further information on the process associated with the issue of these notices can be found in the Protocol for Managing Poor Supplier Performance contained within Annex K of the Construction Toolkit

[Construction Toolkit](#)

11.2(121) A Contracting Authority is a contracting authority as defined in The Public Contracts Regulations 2015, or relevant succeeding rules. Contracting Authorities include Departments of the Northern Ireland Civil Service.

11.2(122) A Department is a body subject to Northern Ireland Public Procurement Policy including Northern Ireland Civil Service Departments, their Agencies, Non-Departmental Public Bodies and Public Corporations.

From Z3

11.2(123) An Unqualified Person is as defined in Article 62(2) of the Fair Employment and Treatment (Northern Ireland) Order 1998.

From Z10

11.2(124) FOIA is the Freedom of Information Act 2000.

From Z11

11.2(125) Fraud is any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the contract or defrauding or attempting to defraud or conspiring to defraud the Crown.

11.2(126) Staff are all persons employed by the *Contractor* to perform its obligations under the contract together with the *Contractor's* servants, agents, suppliers and Subcontractors used in the performance of its obligations under the contract.

11.2(127) Good Industry Practice is standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

From Z14

11.2(128) An Occasion of Tax Non-Compliance is:

- any tax return of the *Contractor*, submitted to a Relevant Tax Authority on or after 1 October 2012, found on or after 1 April 2013 to be incorrect as a result of:
 - a Relevant Tax Authority successfully challenging the *Contractor* under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;

- the failure of an avoidance scheme which the *Contractor* was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime.

- any tax return of the *Contractor* submitted to a Relevant Tax Authority on or after 1 October 2012 giving rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion.

11.2(129) DOTAS is the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

11.2(130) General Anti-Abuse Rule is the legislation in Part 5 of the Finance Act 2013 and any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.

11.2(131) Halifax Abuse Principle is the principle explained in the CJEU Case C-255/02 Halifax and others.

11.2(132) Relevant Tax Authority is HM Revenue & Customs or, if applicable, a tax authority in the jurisdiction in which the *Contractor* is established.

From Z22

11.2(133) A Leaseholder is a person having or acquiring a leasehold interest in the *works* or any part of them.

11.2(134) A Freeholder is a person having or acquiring a freehold interest in the *works* or any part of them.

11.2(135) A Funder is a person providing finance for the *works* or any part of them.

11.2(136) A Person is any firm and any entity having legal capacity.

From Z23

11.2(137) Intellectual Property Rights are all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other Intellectual Property Rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

From Z27

11.2(138) The Construction Notice is the notice given by the *Project Manager* to the *Contractor* notifying of the *Client's* decision to cause the Construction Period to commence.

- 11.2(139) The Pre-Construction Period is the period from the Contract Date to the date of the Construction Notice.
- 11.2(140) The Construction Period is the period commencing on the date of the Construction Notice.
- 11.2(141) The Pre-Construction Period Services are the services specified in the Scope to be provided during the Pre-Construction Period.
- 11.2(142) The *condition date* is the date specified in the Contract Data Part one after which either of the Parties may terminate, provided that such termination may not be effected, after the commencement of the Construction Period.
- 11.2(143) The Construction Period Services are the services specified in the Scope to be provided during the Construction Period.
- 11.2(144) The Pre-Construction Fee is the fee due to the *Contractor* for providing the Pre-Construction Period Services. It is set out in the Contract Data with instalments linked to dates or the achievement of milestones.
- 11.2(145) The Construction Period Services Fee is the fee due to the *Contractor* for providing the Construction Period Services.

From Z28

- 11.2(146) Documents are the Scope, drawings, details, photographs, reports, surveys, specifications and calculations and all other documents which have been or are prepared by the *Contractor* relating to the works and the designs contained in them for any purpose connected with the works.

From Z10

- 11.2(147) Confidential Information is designated as such by the *Client*. It shall include all material non-public information, written or oral, disclosed directly or indirectly, through any means of communication or observation by the *Client* or any of its affiliates or representatives to or for the benefit of the *Client*.

From Z17

- 11.2(148) The *Contractor's* Quality Submission is all information provided by the *Contractor* at Invitation to Tender stage in response to quality questions and quality award criteria which has been requested by the *Client*.

From Z10

- 11.2(149) The Information Sharing Agreement is an agreement that sets out the basis for the use and sharing of Confidential Information as designated by the *Client*.

Z3: Subcontracting

Z3.1: Delete the text in clause 26.2 and replace with the text below:

- 26.2 The *Contractor* appoints each *Key Subcontractor* named in the Contract Data for the relevant key subcontract stated in the Contract Data.

The *Contractor* submits the name of each proposed Subcontractor to the *Project Manager* for acceptance. A reason for not accepting the Subcontractor is that:

- its appointment will not allow the *Contractor* to Provide the Works,

- it is not the *Key Subcontractor* for the key subcontract named in the Contract Data, or
- it is an Unqualified Person.

The *Contractor* does not appoint a proposed Subcontractor until the *Project Manager* has accepted it. The *Contractor* may submit the name of a replacement *Key Subcontractor* for acceptance by the *Project Manager*. The *Contractor* submits the reason for the replacement and details of the capacity, technical and professional ability and experience of a proposed replacement *Key Subcontractor* to the *Project Manager* for acceptance. A reason for not accepting the replacement is that:

- there is not a compelling reason for the replacement, or
- the relevant experience, financial standing, technical capacity and technical and professional ability of the replacement are not equivalent or as good as that of the *Key Subcontractor* who is being replaced.

The *Project Manager* may instruct the *Contractor* to replace a Subcontractor if:

- the Subcontractor becomes an Unqualified Person,
 - the Subcontractor fails to enter into a collateral warranty agreement with the *Client*, to be delivered by the *Contractor*, in the form and by the date required in the Contract Data.

An instruction by the *Project Manager* to replace a Subcontractor is not a compensation event.

The *Contractor* does not replace a Subcontractor unless accepted by the *Project Manager*. A reason for not accepting the replacement Subcontractor is that:

- It is a *Key Subcontractor* and there is no compelling reason for replacement.
- The reason for replacement is not in accordance with the subcontract terms and conditions.

Z3.2: Delete the text in clause 26.3 and replace with the text below:

26.3 The *Contractor* submits the proposed subcontract documents, except any pricing information for each subcontract to the *Project Manager* for acceptance unless

- the proposed subcontract is an NEC contract which has not been amended other than in accordance with the *additional conditions of contract* or
- the *Project Manager* has agreed that no submission is required.

The *Contractor* does not appoint a Subcontractor on the proposed subcontract documents, except any pricing information until the *Project Manager* has accepted them. A reason for not accepting them is that:

- they will not allow the *Contractor* to Provide the Works,
- they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation, or
- they are not consistent with these *conditions of contract*, amongst other things, with regard to payment (including the Fair Payment Charter), liability, risk and insurance cover.

if the Subcontractor is a *Key Subcontractor* :

- they do not include a condition for the Subcontractor to enter into a collateral warranty agreement with the *Client* in the form and by the date specified in the Contract Data,
- they do not include a term that a person or organisation who is not one of the Parties to the proposed subcontract may enforce a term under the Contracts (Rights of Third Parties Act 1999) if the term and the person or organisation are stated in the Contract Data,

if the Subcontractor is to provide a professional service necessary to Provide the Works, the proposed subcontract documents, except any pricing information:

- are not the NEC4 Professional Service Contract amended in accordance with the *additional conditions of contract*,
- are not to be executed in the form of a deed of appointment, or
 - do not include a term that the Subcontractor maintains professional indemnity insurance (in accordance with clause Z18).

The *Contractor* provides the *Client* with a certified copy of the Subcontractor deed of appointment within 7 days of appointing the Subcontractor.

The *Contractor* ensures that each *Key Subcontractor* executes and delivers a deed of warranty in favour of the *Client* in the form and by the date stated in the Contract Data.

Z4: Payment

Z4.1: Delete the text in clause 51.1 and replace with:

The *Contractor* submits information to assist the Project Manager to assess the amount due not less than three days before the assessment date. The Project Manager certifies a payment within one week of each assessment date. Within 7 days the *Contractor* submits a VAT invoice for the amount payable certified by the Project Manager. If the *Contractor* fails to submit an invoice within 7 days then the final date for payment is postponed by the same number of days as the time taken to submit the invoice exceeds 7 days.

The first payment is the amount due. Other payments are the change in the amount due since the previous assessment. A payment is made by the *Contractor* to the *Client* if the change reduces the amount due. Other payments are made by the *Client* to the *Contractor*. Payments are in the *currency of the contract* unless otherwise stated in the contract.

Z5: Termination

Z5.1: Delete 'or R22' and replace with 'or R22-R24' in row 1 of the '*Client*' reasons for termination, in the Termination Table of clause 90.2.

Z5.2: Replace 'or R22' with 'or R22-R24' in line 3 of clause 90.3.

Z5.3: ADD the following bullet point between the existing two bullet points in clause 53.1:

‘four weeks after the *Client* completes the whole of the *works* (if applicable), where the *Client* has terminated for a reason within R1 to R15 or R18 or R22 – R24 or

Z5.4: Add clause 91.9:

91.9 The *Client* may terminate if the *Contractor* becomes an Unqualified Person. The *Client* may terminate if a Subcontractor becomes an Unqualified Person unless, within six weeks of the date of the Subcontractor becoming an Unqualified Person, the *Contractor* appoints a replacement Subcontractor accepted by the *Project Manager* (R23)

Z5.5: Add clause 91.10:

91.10 If the *Contractor* fails to comply with any of its contractual obligations the *Client* may regard this as poor performance and is to manage the *Contractor's* poor performance using the Protocol for Managing Poor Supplier Performance. The *Client* may terminate if the *Contractor* has, in accordance with the Protocol for Managing Poor Supplier Performance and in relation to this contract, been issued with any of the following Notices and has not sufficiently improved its performance within the time specified in the notification (R24):

- Notice of Written Warning
- Notice of Unsatisfactory Performance.

Z5.6: DELETE A3 in clause 93.2 and substitute:

A3: A deduction of the forecast of additional cost to the *Client* of completing the whole of the *works* (if applicable) and any direct loss and/or damage caused to the *Client* as a result of the termination’.

Z6: Option W2

Z6.1: DELETE the words ‘(the United Kingdom Housing Grants, Construction and Regeneration Act 1996 applies) from the first two lines in Option W2 and replace with: ‘(the Construction Contracts (Northern Ireland) Order 1997 as amended by the Construction Contracts (Amendment) Act (Northern Ireland) 2011 applies)’.

Z7: Option Y(UK)2

Z7.1: Delete the words ‘The Housing Grants, Construction and Regeneration Act 1996’ in Y(UK)2 and replace with. ‘The Construction Contracts (Northern Ireland) Order 1997 amended by the Construction Contracts (Amendment) Act (Northern Ireland) 2011’.

Z7.2: Delete clause Y2.1(1) and replace with ‘Y2.1(1) The Order is The Construction Contracts (Northern Ireland) Order 1997 as amended by the Construction Contracts (Amendment) Act (Northern Ireland) 2011.’

Z7.3: Delete the words ‘Section 116 of the Act’ in line 2 of clause Y2.1(2) and replace with ‘Section 39 of the Interpretation Act (Northern Ireland) 1954’.

Z7.4: Delete the word ‘Act’ in line 1 of clause Y2.4 and replace with ‘Order’.

Z7.5: Delete the word ‘certificate’ in line 5 of Y2.2 and replace with ‘notification’.

Z8: Assignment and novation

Z8.1: Delete the text in clause 28.1 and replace with the text below:

The *Client* may assign, novate or otherwise dispose of its entire rights and obligations under this contract or any part thereof without the consent of the *Contractor* to:

- any Contracting Authority, or
- any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Client*,

provided always that where such assignment, novation or other disposal increases the burden of the *Contractor's* obligations under this contract, the *Contractor* is entitled to such additional payment as may be reasonable to compensate for such additional burden. References to the *Client* shall include its permitted assignees.

Z8.2: Add new clause 28.2. The *Contractor* shall not without the written consent of the *Client* assign, novate or in any way dispose of the benefit and/or the burden of the contract or any part of the contract. The *Client* may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, novation or disposal. The *Contractor* shall be responsible for the acts and omissions of its Subcontractors as though those acts and omissions were its own.

Z9: Recovery of sums

Add new clause Z9

Z9.1: The *Client* is permitted to deduct and withhold from any sums otherwise due to the *Contractor* under this contract any sum of money due from the *Contractor* to the other parties under

- the contract,
- any other agreement between the *Contractor* and the *Client* or
- any other agreement between the *Contractor* and any Contracting Authority,

provided that the terms of such other agreement provide for sums of money due from the *Contractor* under that agreement to be recovered by way of a deduction from sums of money due to the *Contractor* under the contract or any other contracts.

Z10: Information and data

Add new clause Z10

Confidentiality, Transparency and Publicity

Z10.1: Subject to clause Z10.2, each Party shall:

- treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
- not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the contract.

Z10.2 Notwithstanding clause Z10.1, a Party may disclose Confidential Information which it receives from the other Party:

- where disclosure is required by applicable law or by a court of competent jurisdiction;
- to its auditors or for the purposes of regulatory requirements;
- on a confidential basis, to its professional advisers;
- to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
- where the receiving Party is the *Contractor*:
 - to the Staff on a need to know basis to enable performance of the *Contractor's* obligations under the contract provided that the *Contractor* shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause shall observe the *Contractor's* confidentiality obligations under the contract.
- where the receiving Party is the *Client*:
 - on a confidential basis to the employees, agents, consultants and Contractors of the Client;
 - on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Client transfers or proposes to transfer all or any part of its business;
 - to the extent that the Client (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
 - in accordance with clause Z10.5.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the *Client* under clauses Z10.2 and Z10.3.

Z10.3: The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the contract is not Confidential Information and the *Contractor* hereby gives its consent for the *Client* to publish this contract in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the contract agreed from time to time. The *Client* may consult with the *Contractor* to inform its decision regarding any redactions, but shall have the final decision in its absolute discretion whether any of the content of the contract is exempt from disclosure in accordance with the provisions of the FOIA.

Z10.4: The *Contractor* shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the contract or any part of the contract in any way, except with the prior written consent of the *Client*.

Z10.5: When handling *Client* data and / or confidential information, the Contractor shall ensure the security of the data is maintained in line with the security requirements of the *Client* as notified to the *Contractor* from time to time.

Freedom of Information

Z10.6: The *Contractor* acknowledges that the *Client* is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:

- provide all necessary assistance and co-operation as reasonably requested by the *Client* to enable the *Client* to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
- transfer to the *Client* all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- provide the *Client* with a copy of all Information belonging to the *Client* requested in the Request for Information which is in its possession or control in the form that the *Client* requires within 5 Working Days (or such other period as the *Client* may reasonably specify) of the *Client's* request for such Information; and
- not respond directly to a Request for Information unless authorised in writing to do so by the *Client*.

Z10.7: The *Contractor* acknowledges that the *Client* may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the *Contractor* or the Services (including commercially sensitive information) without consulting or obtaining consent from the *Contractor*. In these circumstances the *Client* shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the *Contractor* advance notice, or failing that, to draw the disclosure to the *Contractor's* attention after any such disclosure.

Z10.8: Notwithstanding any other provision in the Agreement, the *Client* shall be responsible for determining in its absolute discretion whether any Information relating to the *Contractor* or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

Information Sharing Agreements

Z10.9: Where information is to be exchanged or shared between the *Contractor* and the *Client*, an Information Sharing Agreement will be required. The Agreement will clearly define what Information is to be shared and by whom, including which party owns/controls the information and which party processes that information.

Z10.10: When necessary, the Information Sharing Agreement will stipulate the levels of control, access, procedures, and IT systems required to process or transfer the information securely. At all times sensitive information must be protected against inappropriate use or disclosure. This may involve defining the levels of security required for transfer of information between the *Contractor* and the *Client*. This will include electronic and internet security controls. The level of security will be proportionate to the type of information being exchanged. It must take into account the damage that could result from a breach of it.

Z11: Prevention of fraud

Z11 Add new clause Z11

Z11.1 The *Contractor* shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the *Contractor* (including its shareholders, members, directors) in connection with the receipt of monies from the *Employer*.

Z11.2 The *Contractor* shall notify the *Employer* immediately if it has reason to

suspect that any Fraud has occurred or is occurring or is likely to occur.

Z11.3 If the *Contractor* or its Staff commits Fraud in relation to this or any other contract with any Contracting Authority (including the *Employer*), the *Employer* may:

terminate the *Contractor's* obligation to Provide the Works, in accordance with clause 90 reason R11, and recover from the *Contractor* the amount of any loss suffered by the *Employer* resulting from the termination, including the cost reasonably incurred by the *Employer* of making other arrangements for the completion of the whole of the works and any additional expenditure incurred by the *Employer* throughout the remainder of the contract period; or

recover in full from the *Contractor* any other loss sustained by the *Employer* in consequence of any breach of this clause.

Z12 Bribery Act 2010

Z12 Add new clause Z12

Z12.1 The *Contractor* is to:

have and maintain in place throughout the contract period policies and procedures to ensure compliance with all applicable Law relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and will ensure that all such policies and procedures are enforced;

comply with all applicable Law relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and with their own anti-bribery and anti-corruption policies (including any relevant industry code on anti-bribery and anti-corruption), in each case as may be updated from time to time; and

not engage in any activity, practice or conduct which constitutes an offence under the Bribery Act 2010 (or which would constitute such an offence if the offending activity, practice or conduct had been carried out in the United Kingdom).

Z12.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Works in accordance with clause 90 reason R11 if the *Contractor* or its Staff breaches clause Z12.1. If the breach is due to a Subcontractor, the *Employer* may not terminate providing the *Contractor* replaces the Subcontractor within 30 days.

Z12.3 The *Employer* may terminate the *Contractor's* obligation to Provide the Works in accordance with clause 90 reason R11 if the *Contractor* fails to replace within 30 days a Subcontractor who has breached clause Z12.1

Z13: Contract monitoring

Add new clause Z13

Z13.1: Construction Contract Monitor

- The *Client* may appoint a Construction Contract Monitor (CCM) from a list of persons or organisations held by the *Client*. The objectives of the appointment of

the CCM, the role of the CCM and the obligations of the *Contractor* in respect of the CCM are stated in the Scope.

- The *Contractor* co-operates with the CCM as stated in the Scope.
- The CCM acts as stated in this contract and in a spirit of mutual trust and co-operation.
- The *Client* does not appoint as the CCM any person or organisation that provides or has provided within 5 years of the starting date any accountancy, audit or legal services to the *Contractor* or to the *Contractor's* ultimate holding company or to a company with the same ultimate holding company as the *Contractor*.
- The *Client* may replace the CCM at any time after it has notified the *Contractor* of the name of the replacement.

Z13.2: Other Matters

- The following are additional compensation events.
- If the *Contractor* is required to pay fees to external accountants, auditors or solicitors in relation to any requests from or requirements of the CCM, but excluding any fees incurred in challenging or disputing a decision of the CCM.
- If the *Contractor* is asked to comply with a specific security requirement of the CCM that would have been deemed unreasonable to have allowed for, given its experience and the following considerations:
 - its knowledge of the area in which the works are being carried out,
 - any information provided by the *Client* in this contract,
 - any information available from a visual inspection of the area in which the works are being carried out, and
 - any other information which an experienced contractor could reasonably be expected to have or to obtain.

Only the difference between the security required by the CCM and that which it would have been reasonable to have allowed for is taken into account in assessing a compensation event.

- Any information provided in accordance with this clause to the *Client*, the *Project Manager* or the CCM may be used by any Governmental Department or Agency for statistical or information publications. Where such information is used it will not identify any individuals or organisations, except to the extent set out in the notification table in the Scope.

Z14: Tax compliance

Add new clause Z14

Z14.1: The *Contractor* represents and warrants that, at the Contract Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in, that is in connection with any Occasions of Tax Non-Compliance;

Z14.2: If, at any point during the contract, an Occasion of Tax Non-Compliance occurs, the *Contractor* shall:

- notify the *Client* in writing of such fact within 5 Working Days of its occurrence; and
- promptly provide to the *Client*:

- details of the steps which the *Contractor* is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
- other such information in relation to the Occasion of Tax Non-Compliance as the *Client* may reasonably require.

Z 14.3: In the event that:

- the warranty given by the *Contractor* pursuant to Clause Z14.1 is materially untrue; or the *Contractor* commits a material breach of its obligation to notify the *Client* of any Occasion of Tax Non-Compliance as required by Z14.2; or
- the Contractor fails to provide details of proposed mitigating factors, which in the reasonable opinion of the Client are acceptable, the Client shall be entitled to terminate the Contractor's obligation to Provide the Works in accordance with clause 90 reason R11.

Z15: Application to Northern Ireland

Add new clause Z15

Z15.1: Where this contract refers to an Act of Parliament and/or a regulation which does not extend to Northern Ireland, the clause is amended to refer to the relevant Northern Ireland legislation and/or regulation.

Z17: Compensation events

Z17.1: Delete clause 60.1(12), clause 60.2 and clause 60.3 (physical conditions)

Z17.2: Delete clause 60.1 (20) (quotation for instruction not accepted).

Z17.3: At Clause 60.1(1) add a third and a fourth bullet point:

- a change to the commitments contained in the *Contractor's* Quality Submission which is made either at the *Contractor's* request or to comply with the Scope.
- a change to the Scope to achieve the *Contractor's* commitments as set out in the *Contractors* Quality Submission.

Z17.4: Delete clause 63.2 and replace with the following:

"The *Project Manager* may instruct that rates and lump sums will be used to assess a change to prices instead of Defined Costs, and the *Contractor* will comply forthwith."

Z17.5: Delete clause 63.8 and replace with the following:

"Assessment of the effect of a compensation event includes risk allowances for cost and time for matters which have a significant chance of occurring and are not compensation events. Where the compensation event consists of additional or substituted work which is of similar character to work set out in the Bill of Quantities, in which case any cost and time risk will be deemed to be included in the Bill of Quantities rate".

Z17.6: Add the following after the end of clause 11.2 (23)

If a rate exists in the Bill of Quantities and the work is of substantially similar nature the existing rate is to be used as defined cost. The judgement of the similarity of work is at the discretion of the *Project Manager*.

Z18: Liabilities and insurance

Z18.1: Add after the words 'Plant and Materials' in line 14 of clause 80.1:

'other than loss of or damage which gives rise to a claim for compensation under the Criminal Damage (Compensation) (Northern Ireland) Order 1977 (as the same may be amended from time to time) or any scheme for the time being in force for the compensation of criminal damage to property in Northern Ireland'

Z18.2: Delete text from clause 83.2 and replace with:

83.2: The Contractor provides the insurances stated in the Insurance Table except any insurance, which the Client is to provide as stated in the Contract data. The Contractor provides and ensures the Subcontractors provide additional insurances as stated in the Contract Data.

Z18.3: Delete text from clause 83.3 (do not delete the Insurance Table) and replace with:

83.3: The insurances in the Insurance Table are in the joint names of the Parties except the fourth insurance stated. The insurances provide cover for events which are at the Contractor's liability,

- for the insurances stated in the Insurance Table from the starting date until the Defects Certificate or a termination certificate has been issued; and
- for additional insurances stated in the Contract Data from the Contract Date until the end of the periods stated in the Contract Data.

Z 18.4 Delete clause 84.1 and replace with:

84.1: The Contractor submits, for acceptance certificates which state that the insurance required by the contract is in force,

To the Project Manager

- for the insurances stated in the Insurance Table, before the starting date and on each renewal of the insurance policy until the defects date; and
- for the additional insurances stated in the Contract Data, on or before the Contract Date and on each renewal of the insurance policy, until the defects date.

To the Client

- for the additional insurances stated in the Contract Data, after the Defects Certificate or a termination certificate has been issued and on each renewal of the insurance policy, until the end of the period stated in the Contract Data.
- The certificates are signed by the Contractor's insurer or insurance broker. The Project Manager accepts the certificates if the insurance complies with the contract and if the insurer's commercial position is strong enough to carry the insured liabilities.

Z21: Short Schedule of Cost Components – Not Used

Z22: Contractor's Warranty

Add new clause Z 22

Z22.1: The *Contractor* enters into *collateral warranty agreements* with any Contracting Authority, Funder, Freeholder, Leaseholder or Person in the form and by the date set out in the Contract Data.

Z22.2: If the *Contractor* fails to, by the date stated in the either the Contract Data or Scope:

- enter into collateral warranty agreements,
- give an ultimate holding company guarantee
- give the Client a performance bond

one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the *Contractor* has complied with the *Client's* request.

Z23: Intellectual Property Rights and indemnity

Add new clause Z23

Z23.1: All Intellectual Property Rights in any materials:

- provided to the *Contractor* by or on behalf of the *Client* for the purposes of the contract shall remain vested in the *Client* and its licensors; and
- prepared by or for the *Contractor* solely to Provide the Works under the contract, will vest in the *Client*. If, and to the extent, that such materials do not vest automatically in the *Client*, the *Contractor* hereby assigns (with full title guarantee and free from all third party rights) all Intellectual Property Rights in such materials to the *Client*.

Z23.2: The *Contractor* hereby grants to the *Client* a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the *Contractor* owns, or has developed, prior to the Contract Date and which the *Client* reasonably requires in order to exercise its rights and take the benefit of the contract including the *works* provided.

Z23.3: The *Contractor* will indemnify, and keep indemnified, the *Client* in full against all cost, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the *Client* as a result of or in connection with any claim made against the *Client* for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the provision or use of the *works*, to the extent that the claim is attributable to the acts or omission of the *Contractor* or Staff.

Z24: Value engineering

Z24 Add new clause 24

Z24.1 The *Contractor* may submit to the *Project Manager* for acceptance written proposals to change the Works Information which if implemented will in the *Contractor's* opinion

- enhance the quality or durability of the works,
- improve the efficiency of carrying out the works or
- reduce the cost to the Employer of maintaining the works.

- Z24.2 The *Contractor* includes with his proposals
- the value of any savings that will arise,
 - the effect if any on the Accepted Programme and
 - proposed changes to the Prices.
- Z24.3 If the *Project Manager* accepts the *Contractor's* proposal he gives an instruction to the *Contractor* within 21 days which changes the Works Information. Any consequential effects of implementing the proposals, including time or cost overruns, are borne by the *Contractor*. Any savings are shared between the *Contractor* and the *Employer* as follows
- the Project Manager assesses the *Contractor's* share of the savings,
 - the *Contractor's* share is the value of the saving multiplied by the
 - Contractor's* value engineering share percentage and
 - Prices are reduced by the value of the savings.

Z25: Dispute Resolution Procedure (DRP)

- Z25 Add new clause Z25.1
- Z25.1 Notwithstanding clause W2, the Parties may agree in writing to refer a dispute to the Dispute Resolution Procedure (DRP), set out in the Works Information, where this procedure is considered by them to be more appropriate to the relevant dispute. The Parties will endeavour to resolve any failure to agree matters or any disputes by direct negotiations between senior representatives of those Parties employing the DRP.

Z26: Building Information Modelling (BIM) / Not Used

Z28: Using the *Contractor's* design

Z28 Delete clause 22 and replace with:

The *Contractor* grants to the *Client* an irrevocable, non-exclusive, royalty-free licence to use and reproduce any of the Documents for any purpose connected with the works and to grant sub-licences in the terms of this licence but the copyright in the Documents shall remain vested in the *Contractor*. The *Contractor* is not liable for any use of the Documents for any purposes other than those for which the same are or were prepared. The *Client* shall on written request, be entitled to be supplied by the *Contractor*, with copies of the Documents as stated in the Scope.

The *Contractor* warrants that the use of the Documents for the purposes of the works will not infringe the rights of any third person. The *Contractor* will indemnify, and keep indemnified, the *Client* in full against all cost, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the *Client* as a result of or in connection with any claim made against the *Client* for actual or alleged infringement of a third party's copyright arising out of, or in connection with, the construction or use of the works, to the extent that the claim is attributable to the acts or omission of the *Contractor* or Staff.

The *Contractor* obtains from a Subcontractor equivalent rights for the *Client* to those outlined in the preceding two paragraphs in relation to Documents prepared by the Subcontractor.

