

## **Public Works**

# **Term Maintenance and Refurbishment Works Contract**

Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation

**PUBLIC WORKS TERM MAINTENANCE AND REFURBISHMENT WORKS CONTRACT**

Public Works Term Maintenance and Refurbishment Works Contract

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Government Buildings

Upper Merrion Street

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## CONDITIONS

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## CONDITIONS

### 1. This Contract

- 1.1 This contract is for the Contractor to execute work according to Task Orders issued from time to time by the Employer. The Employer may procure that work in other ways, and does not guarantee the Contractor that any particular work will be procured under this contract.
- 1.2 In this contract
- The **Building Control Regulations** are the Building Control Regulations 1997-2014 and any amendments thereto.
  - The **Contractor** is as named in the accepted Tender.
  - The **Contractor's Personnel** are the Contractor's:
    - representative and supervisor
    - subcontractors and suppliers of any tier and
    - employees and other persons working for the Contractor, subcontractors or suppliers of any tier or otherwise assisting the Contractor for the Works.
  - **Data Protection Law** is all applicable data protection Law, including the General Data Protection Regulation (Regulation (EU) 2016/679).
  - The **Employer** is as named in the accepted Tender.
  - The **Employer's Representative** an engineer, architect, surveyor, or other person notified by the Employer, or if none, the Employer.
  - The **Maximum Payment** is the amount stated as such in the Schedule.
  - **Personal Data** shall have the meaning set out in the General Data Protection Regulation in respect of any such personal data processed on behalf of the Employer.
  - The **Pricing Document** is the document identified as such in the Schedules.
  - A **Site** is a place where the Contractor is to carry out a Task according to a Task Order and anywhere else a Task Order says is part of a Site.
  - The **Schedule** is the schedule attached to the Contractor's Tender, and "**Scheduled**" refers to the Schedule.
  - A **Task** is work described in a Task Order.
  - A **Task Order** is a written order given to the Contractor under clause 3.1 in the form included in this contract.
  - The **Term** is the period delimited in clause 2.1
  - The **Works** are what the Contractor is to complete and hand over to the Employer as described in Task Orders.
  - The **Works Requirements** are the documents identified as such in the Schedule, as may be amended by instruction of the Employer's Representative according to this contract.
  - **Covid-19** means Covid-19 or such variant thereof as each is listed in the schedule to the Infectious Diseases Regulations 1981.
  - **Covid-19 Mandatory Closure** means the closure of the Site due to Covid-19 mandated by law and/or mandated by order of a public authority exercising authority under law, that did not arise as a result of or in connection with an act, omission or breach of law of the Contractor or the Contractor's Personnel or a breach of the Contract by the Contractor.
  - **Site Closure Costs** has the meaning set out in the Site Closure Costs Supplement.
  - **Site Closure Costs Supplement** means the document of the same name listed in part 1.4 of the Schedule or, if there is none, the version of the document of the same name published on the Capital Works Management Framework website most recently before the day 10 days before the final date for submission of tenders for this contract.

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- 1.3 Unless the context indicates otherwise
- References to clause numbers are to the clauses of these Conditions.
  - Words in the singular also mean the plural and the other way around.
  - Words in a gender also mean other genders.
  - **Person** includes incorporated and unincorporated organisations.
  - References to a **month** are to a calendar month and to a **day** are to a calendar day.
  - References to the parties are to the Employer and the Contractor.
  - References to a law include amendments and replacements.
- 1.4 This contract is the entire agreement between the parties about the Works and consists of:
- these conditions and the appended forms and
  - the appended executed agreement (referred to in clause 1.11) and
  - the completed tender, acceptance, and Schedule and
  - the Works Requirements and
  - the Pricing Document.
- 1.5 If there is a discrepancy between these conditions and other documents in this contract, these conditions prevail. If there is a discrepancy between the Works Requirements and the Pricing Document, the Works Requirements prevail. If there is a discrepancy between the Works Requirements and a Task Order, or the Pricing Document and a Task Order, the Task Order prevails. If a party discovers a discrepancy within the Works Requirements, it must notify the other as soon as practicable, and the Employer's Representative may resolve the discrepancy by an instruction.
- 1.6 Any quantities in the Pricing Document are notional quantities only, included only for tender assessment purposes. They do not describe the extent of the Works to be executed under this contract.
- 1.7 This contract comes into effect when the Employer sends the Contractor written acceptance of the Contractor's tender for this contract.
- 1.8 The Contractor must perform this contract at its own expense, complying with this contract, each Task Order, the Employer's Representative's written instructions, and the law.
- 1.9 The Contractor may not assign this contract or any part of it without the Employer's consent.
- 1.10 The Contractor should have given the Employer the documents listed below before the Employer sends the Contractor written acceptance of the Contractor's tender for this contract, failing which the Contractor must do so within 7 days after the Employer has sent the Contractor written acceptance of the Contractor's tender:
- The appointment of project supervisor for the construction stage in the form included in this contract, executed by the Contractor (if the tender provides for the Contractor to be so appointed)
  - Evidence of insurance as required under clause 11.5
  - Confirmation that the Contractor has entered subcontracts with any Specialists named in the Schedule for the work referred to
  - The Contractor's tax clearance certificate and C2 certificate.
- 1.11 Within 14 days after the Employer sends the Contractor written acceptance of the Contractor's tender for this contract, the parties must execute the agreement in the form appended to these conditions.
- 1.12 Neither the Employer nor the Contractor has relied on any agreement, understanding, or statement that is not written or referred to in this contract.
- 1.13 This contract can only be changed in writing, signed by authorised representatives of the Employer and the Contractor.
- 1.14 The Contractor must inform the Employer if there is any material change in any information provided by the Contractor to the Employer in connection with the award procedure for this contract. The

Contractor must provide any updates to such information requested by the Employer.

1.15 The Contractor agrees that:

- (a) the Contractor shall process Personal Data only in accordance with the Contract and Data Protection Law;
- (b) the Contractor shall ensure persons authorised by the Contractor to process Personal Data are subject to confidentiality obligations as provided under Data Protection Law;
- (c) the Contractor must take appropriate technical and organisational security measures as are required to comply with Data Protection Law;
- (d) the Contractor may engage sub-processors to perform processing on its behalf, provided it gives prior written notice and informs the Employer of any changes concerning the status of such sub-processors and allows the Employer reasonable opportunity to object to such changes;
- (e) where any sub-processor of the Contractor will be processing Personal Data on behalf of the Employer, the Contractor shall ensure that a written contract exists between the Contractor and the sub-processor containing clauses equivalent to those imposed on the Contractor by the Contract;
- (f) the Contractor shall delete or return all Personal Data as directed by the Employer's Representative and not later than when the Contractor completes its contractual duties relating to such data processing;
- (g) the Contractor shall: (i) make available to the Employer all information necessary to demonstrate compliance with this Clause; and (ii) allow for and assist with audits, including inspections, conducted by or on behalf of the Employer, in order to ensure such compliance, provided however that the Employer shall be entitled, at its discretion, to accept adherence by the Contractor to an approved code of conduct or an approved certification mechanism to aid demonstration by the Contractor that it is compliant;
- (h) the Contractor shall inform the Employer's Representative immediately if, in its opinion, it receives an direction which infringes Data Protection Law;
- (i) the Contractor shall notify the Employer's Representative within 24 hours of becoming aware of any act or omission [including breach of security] leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to Personal Data transmitted, stored or otherwise processed and shall provide co-operation and assistance to the Employer as is required to mitigate the effects of, and comply with applicable reporting obligations in respect of, such act or omission; and
- (j) no Personal Data shall be transferred outside the European Economic Area by the Contractor or any of its agents or sub-processors without the prior written consent of the Employer, and the Contractor shall comply with Data Protection Law in respect of Personal Data transfers outside the European Economic Area which the Employer has consented to.

## **2 Duration of Term**

- 2.1 The Term starts on the date the Employer accepts the Contractor's Tender and ends on the earliest of
- the end of the period stated in the Schedule
  - the date of termination under clause 2.3
  - the date on which the cumulative amount claimed by the Contractor under clause 6 reaches the Scheduled percentage of the Maximum Sum.

- 2.2 When the Term ends the Contractor must complete any outstanding Task Orders given during the Term unless otherwise instructed by the Employer's Representative.
- 2.3 The Employer may terminate the Term at any time, without cause, by written notice to the Contractor. The Term will end on the date stated in the notice. The Employer's only liability on termination of the Term will be to pay amounts due under clause 6.

3 **Task Orders and Instructions**

- 3.1 If, during the Term, the Employer's Representative gives the Contractor a Task Order, the Contractor must execute the Task as soon as practicable. If the Works Requirements or a Task Order states a time for starting or completing the Task or both, the Contractor must start and, as far as practicable, complete the Task within the time stated.
- 3.2 If the Employer's Representative gives the Contractor an instruction in relation to a Task the Contractor must implement the instruction. This can include an instruction changing a Task Order.
- 3.3 The Employer's Representative must give the Contractor any further instructions that are necessary for the Contractor to do the Works, if the Contractor asks for them in writing. The instruction must be given within a reasonable time, taking into account when the Contractor asked for it and when the Contractor needs it to avoid delay.
- 3.4 Instructions are normally given in writing (which can include email). In an emergency, the Employer's Representative may give the Contractor an oral instruction, in which case the Employer's Representative must confirm it in writing within 48 hours after it was given, failing which the Contractor must confirm the instruction in writing to the Employer's Representative within 72 hours after the oral instruction was given.
- 3.5 Except as this contract says otherwise, all communications provided for in this contract must be in English and in writing.
- 3.6 Task Orders and instructions given according to order management procedures in the Works Requirements are considered to be given by the Employer's Representative. The Contractor must comply with those procedures.

4 **Completing Tasks**

- 4.1 Promptly after completing a Task the Contractor must return the Task Order to the Employer's Representative with the certificate of completion of the Task completed.
- 4.2 Within 7 days after receiving the Task Order back from the Contractor with the certificate of completion of the Task completed, the Employer's Representative must send it back to the Contractor with either
  - acknowledgement of receipt of the certificate of completion or
  - notification that the Employer's Representative does not consider the Task complete or disagrees with the stated completion date, with reasons.

Neither acknowledgement of receipt of the certificate nor notification that the Employer's Representative does not consider the Task complete (or reasons given) relieves the Contractor of any responsibility or liability.

- 4.3 If completion of a Task is or will be delayed, the Contractor must notify the Employer's Representative of the delay within 24 hours after becoming aware of the delay and keep the Employer's Representative informed of progress.
- 4.4 If the Contractor fails to comply with a Task Order or with this contract in relation to a Task, or if the Contractor ceases to meet the minimum requirements for selection for tender for this contract, or if an **insolvency event** occurs, the Employer may terminate any uncompleted Task Order and have the Task completed by others. In this event no further payment for the Task will be due to the Contractor until the Task has been completed, and the Contractor will be liable for the Employer's additional costs of completing the Task. **Insolvency event** means any of the following: a petition being presented to wind up the Contractor; a meeting of the Contractor's creditors or members being held for the purpose of considering a petition to wind it up; the Contractor entering or proposing to

enter an arrangement for the benefit of its creditors; a petition being presented to appoint an examiner of the Contractor; a liquidator, examiner, supervisor, receiver, administrative receiver, trustee, encumbrancer, or similar being appointed for the Contractor or any of its assets; the Contractor ceasing or threatening to cease its business or becoming insolvent or unable to pay its debts as due or becoming bankrupt or incapable of performing this contract.

- 4.5 Communications under this clause must comply with any order management procedures in the Works Requirements, including as to the timing and format.
- 4.6 The Employer's Representative will extend the time stated for completion of a Task by an amount corresponding to any delay to the completion of the Task caused by a Covid-19 Mandatory Closure. The Employer's Representative will assess the amount of any adjustment to the value of the completed Works stated in the Task Order in accordance with the Site Closure Costs Supplement and this sub-clause 4.6.

## **5 Quotations for Tasks**

- 5.1 The Employer's Representative may give the Contractor details of a proposed Task Order (or a proposed instruction changing a Task Order) with a request for a quotation.
- 5.2 If so requested, the Contractor must give the Employer a lump sum fixed price quotation for the proposed Task described by the Employer, using Contract rates and prices if they apply, together with a detailed programme and any other information requested by the Employer's Representative. The Contractor must give this quotation to the Employer's Representative within the time specified by the Employer's Representative and, if no time is specified, within 10 days after the Employer's Representative sends the request.
- 5.3 After receiving the quotation the Employer's Representative may do one or more of the following:
- issue a Task Order including the Contractor's quotation
  - request the Contractor to revise the quotation, following which Employer's Representative may take any of the other steps in this Clause 5.3
  - issue a Task Order as though there had been no quotation
  - abandon the process and issue no Task Order.
- 5.4 After the cumulative amount claimed by the Contractor under clause 6 has reached the Scheduled percentage of the Maximum Sum, the Employer's Representative may only give Task Orders that include an accepted quotation, and the accepted quotation may not exceed the Scheduled percentage of the Maximum Sum.

## **6 Payment**

- 6.1 Subject to this contract the Employer must pay the Contractor the value of completed Works according to this contract, up to the Maximum Sum.
- 6.2 For Task Orders including a price quoted by the Contractor, the value of the Works is that price as stated in the Task Order. Works done by a specialist named in the Task Order are valued at rates in the Task Order. For other Task Orders the Works are valued using the rates and prices in the Pricing Document and if there is no rate or price in the Pricing Document, by making a fair valuation or, if the Employer's Representative so instructs, on the basis of the labour rates tendered in the Pricing Document and the time properly spent by workers executing the Works, the reasonable cost of materials properly used plus the markup tendered in the Pricing Document, and the reasonable cost of plant properly used, all as documented to the Employer's satisfaction.
- 6.3 Each month and not later than 5 days after the date agreed between the parties to be the payment claim date the Contractor shall give the Employer's Representative a payment claim notice, in the form of a detailed statement of the contract value of the Works in those Tasks for which the Contractor has received in the previous month an acknowledgement of receipt of the certificate of completion of the Task under clause 4.2 (less any interim payment for these Works). It must comply with any procedures in the Works Requirements. The statement must be broken down by Task, and show details of how the value is calculated.

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- 6.4 The Employer has no liability whatsoever in connection with any Task for any amount not detailed in statements given to the Employer's Representative within 2 months after work on the Task ceased.
- 6.5 The Employer's Representative may state in a Task Order that the Employer will make interim monthly payments. In that case the Contractor may include in its monthly statements the Scheduled percentage of the contract value of completed Works in the Task, less previous payments for those Works.
- 6.6 Within 14 days after receiving the payment claim notice the Employer's Representative shall issue a response to the payment claim notice, to the Contractor and the Employer in the form of a certificate stating the amount that the Employer's Representative considers due for the Works covered by the statement. If the certificate states that an amount is due to the Contractor, the Contractor shall send an invoice to the Employer for that sum. The Employer must pay the Contractor the amount due on the invoice within the Scheduled period after receiving the invoice.
- 6.7 Within 28 days after receiving the Employer's Representative's response under clause 6.6 (or within 28 days after the Employer's Representative's time to respond expired with no response given, in which case the response will be taken to be that no payment is due) the Contractor or the Employer may notify the other that it disputes the response and refer the disputed issue for resolution under clause 14. If neither party does so within the time allowed the Employer's Representative's response is final and binding on the parties.
- 6.8 If a payment is not made within the time allowed in this contract, it carries interest at the rate in the European Communities (Late Payment in Commercial Transactions) Regulations 2012.
- 6.9 The Maximum Sum and the rates and prices in the Pricing Document exclude VAT. The Employer must pay the Contractor (or the Revenue Commissioners when required by law or their practice) any VAT applicable to the Works.
- 6.10 The Employer may withhold and deduct any amount on account of tax required by law or the practice of the Revenue Commissioners
- 6.11 The Employer may deduct from amounts due to the Contractor any amount that the Employer considers is due, or likely to become due, to the Employer from the Contractor under this contract or another contract.

## **7 Site operations and Works**

- 7.1 The Employer must allow the Contractor access to the relevant parts of the Site as necessary for the Contractor to execute a Task
- 7.2 The Contractor is responsible for the safety and stability of the Works, and of all operations on the Site connected with the Works, including temporary works.
- 7.3 The Contractor (including Contractor's Personnel) must carry out the Works according to good practice in conformance with the Building Regulations, and must only use goods and materials that are of good quality and (unless this contract or a Task Order says otherwise) new. Where requested by the Employer's Representative, the Contractor shall provide the certification necessary to comply with the Building Control Regulations.
- 7.4 From when the Employer allows the Contractor access to any part of the Site, the Contractor must (in relation to parts to which access is allowed):
- as far as practicable, secure the Site and keep off the Site persons not entitled to be there and
  - keep the Site in good order and free from unnecessary obstructions and
  - as far as practicable, secure the safety of persons on the Site and protect them and users, owners and nearby areas from hazards and interference resulting from the Works.
- 7.5 As far as practicable, the Contractor must not, and must ensure that Contractor's Personnel and the Works do not unnecessarily or improperly
- cause a nuisance or inconvenience to the public or users, owners, occupiers of land, roads, or footpaths on or near the Site, or
  - interfere with the use of land, roads, or footpaths.

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- 7.6 The Contractor must not, and must ensure that Contractor's Personnel do not, damage the Site or property on or near the Site, unless that is the unavoidable consequence of executing a Task.
- 7.7 The Contractor must set out the Works by reference to any points, lines, and levels in a Task Order or instructions of the Employer's Representative. Before setting out the Works, the Contractor must make all reasonable efforts to verify the accuracy of these points, lines, and levels. The Contractor is responsible for the correct positioning of all parts of the Works.
- 7.8 The Contractor must ensure that the Employer, and persons authorised by the Employer, are able to have access to the Site and other places where the Works are being done or goods or materials for or from the Works are produced, stored, extracted, or prepared, and there to inspect, test, and observe the Works, goods, materials, and activities. The Contractor must give the Employer the information the Employer's Representative requires or requests to do this.
- 7.9 The Contractor must inform the Employer's Representative in good time before any part of the Works is covered or goods or materials for the Works that are to be inspected are packed or made difficult or impossible to inspect, and in each case give the Employer's Representative a proper opportunity to inspect them.
- 7.10 The Employer may arrange for work to be done on the Site by the Employer's personnel or other contractors.
- 7.11 At any time during the Term the Employer's Representative may instruct the Contractor to uncover, dismantle, re-cover, or re-erect work, test, inspect, or provide facilities for testing and inspection, or any combination of these. If it is found that the Works complied with this contract and the instruction was not required because of the Contractor's breach of this contract the instruction will be considered an instruction changing the Task Order, otherwise the Contractor must bear the cost of complying with the instruction.
- 7.12 At any time during the Term the Employer's Representative may instruct the Contractor to remove from the Site and replace any Works, or goods or materials for the Works, that do not comply with this contract, or otherwise to put right (in a manner instructed by the Employer's Representative) any part of the Works that do not comply with this contract. The Contractor must bear the cost of complying with such an instruction. If the Contractor fails to comply with the instruction promptly, the Employer may do the work itself, or have it done by others, and the Contractor must pay or allow the Employer's cost of the work.
- 7.13 If the Contractor discovers a national monument or archaeological object (each as defined in the National Monuments Act 1930 as amended) or human remains on the Site, the Contractor must not disturb them, and must take all necessary steps to preserve them, and promptly notify the Employer's Representative and comply with the Employer's Representative's instructions. As between the parties, these items are the Employer's property.
- 7.14 If the Contractor encounters physical conditions (including contamination) on the Site that could not reasonably have been foreseen by an experienced contractor, taking into account the information about the Site in this contract, the Contractor must notify the Employer's Representative as soon as practicable, and give the Employer's Representative details of any anticipated effects of the condition, and how the Contractor proposes to deal with them.
- 7.15 Unless otherwise stated in a Task Order, the Contractor, and not the Employer, is responsible for the suitability and availability of access routes to and through the Site, and any required maintenance and upgrading of them, and charges for their use. The Contractor is also responsible for obtaining and providing all facilities, power, water, and other services it requires to complete the Works, other than those a Task Order states the Employer will provide.

## **8 Contractor's Personnel**

- 8.1 The Contractor must ensure that Contractor's Personnel are suitably qualified, trained, and experienced, are competent to carry out their tasks and, when required by the Works Requirements or Task Order, have Garda Síochána clearance. The Contractor must ensure that Contractor's Personnel carry out their tasks in compliance with the Contractor's obligations under this contract. The Contractor is liable for acts and omissions of Contractor's Personnel as if they were acts or

omissions of the Contractor.

- 8.2 The Contractor must ensure that the specialists named in the Schedule or a Task Order (or others to whom the Employer's Representative has agreed in advance) perform the work types for which they are named. If so required by the Employer's Representative, the Contractor must ensure that specialists named in the Schedule enter into collateral warranties with the Employer. The collateral warranties must be in the form published in the model forms on [www.constructionprocurement.gov.ie](http://www.constructionprocurement.gov.ie) or another form required by the Employer. They must require the specialist to have professional indemnity insurance as Scheduled.
- 8.3 The Contractor must remove from the Tasks and the Site any Contractor's Personnel that the Employer's Representative instructs be removed.
- 8.4 The Contractor may not subcontract the whole of the Tasks to one or more subcontractors. The Contractor may not subcontract part of the Works without the Employer's Representative's consent, unless the subcontracting is allowed or required by this contract.
- 8.5 The Contractor must indemnify the Employer against claims, liability, and proceedings resulting from any worker or other person claiming to be an employee or former employee of the Contractor or Contractor's Personnel relating to employment or non-employment or engagement or non-engagement by the Contractor or Contractor's Personnel, including claims for breach of contract, wrongful or unfair dismissal, loss of office, redundancy, or loss or earnings and also including claims, liability, and proceedings of any kind under the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003. The Employer holds this indemnity for the benefit of itself and any other contractor it appoints to replace the Contractor.
- 8.6 When so required by the Employer, the Contractor must, to the extent allowed by law, give the Employer details of people employed or engaged wholly or mainly for work under this contract, including their job titles, ages, length of service, and terms of employment.

## 9 Pay and conditions of employment of workers

- 9.1 The Contractor must prominently exhibit copies of this clause 9 for the information of persons at the Site. In this clause **worker** means a person employed by (or otherwise working for) the Contractor or the Contractor's Personnel on or near the Site.
- 9.2 The Contractor must ensure that the rates of pay and the conditions of employment (including in relation to pension contributions) of each worker comply with all applicable law, and that those rates and conditions are no less favourable than those for the relevant category of worker in any sectoral employment orders, employment regulation orders or registered employment agreements implemented in accordance with the Industrial Relations Acts 1946 to 2015 (including any such agreements registered prior to the Industrial Relations (Amendment) Act 2015, which have not otherwise been superseded).
- 9.3 The Contractor must, and must ensure that the employers of all workers, do all of the following:
- pay all wages and other money due to each worker
  - ensure that workers' wages are paid in accordance with the Payment of Wages Act 1991 and are never more than 1 month in arrears or unpaid
  - pay all pension contributions and other amounts due to be paid on behalf of each worker
  - make all deductions from payments to workers required by law, and pay them on as required by law
  - keep proper records (including time sheets, wage books and copies of pay slips) showing the wages and other sums paid to and the time worked by each worker, deductions from each worker's pay and their disposition, and pension and other contributions made in respect of each worker, and produce these records for inspection and copying by persons authorised by the Employer, whenever required by the Employer
  - produce other records relating to the rates of pay, deductions from pay, conditions of

employment, rest periods and annual leave of workers for inspection and copying by persons authorised by the Employer, whenever required by the Employer

- respect the right under the law of workers to be members of trade unions
- observe, in relation to the employment of workers on the Site, the Safety, Health and Welfare at Work Act 2005, and all employment law including the Employment Equality Act 1998 to 2015, the Industrial Relations Acts 1946 to 2015, the National Minimum Wage Act 2000 and 2015 and regulations, codes of practice, legally binding determinations of the Labour Court and sectoral employment orders, employment regulation orders or registered employment agreements determined under those laws.

- 9.4 If the Employer so requests, the Contractor must, within 7 days after the request, give to the Employer a statement showing the amount of wages and other payments due at the date of the request to and in respect of each worker, or, in respect of workers not employed by or otherwise working for the Contractor, ensure that their employer or the person for whom they are working does the same.
- 9.5 The Employer may seek information under the above provisions of this clause only for the purpose of ensuring the obligations described in this clause to workers have been properly discharged. All information provided under the above provisions of this clause will be returned to the person providing it or destroyed if the Employer is satisfied that the person providing the information has complied with legal obligations to workers.
- 9.6 If the Contractor has not complied with this clause, the Employer may (without limiting its other rights or remedies) estimate the amount that should have been paid to workers and contributions that should have been made on their behalf, and the Employer may withhold the estimated amount from any payment due to the Contractor, until the Employer is satisfied that the required amounts have been paid. If it has still not been paid by the time of the final payment, the estimated amount is deducted from the Price.
- The Contractor must give the Employer's Representative with each statement under clause 6 a certificate that, for the work to which the statement relates, the Contractor has complied in full with this clause. If there is a form for the statement included in this contract, the certificate must be in that form. Payment due for the work covered by the statement will only be due if the certificate is given. If the certificate has still not been given by the time of the final payment, the portion (of the value of work that the Contractor has not given a certificate for) that the Employer determines is the labour portion is deducted from the Price.
- 9.7 The Contractor must give the Employer's Representative with each statement under clause 6 a certificate that, for the work to which the statement relates, the Contractor has complied in full with this clause. If there is a form for the statement included in this contract, the certificate must be in that form. Payment due for the work covered by the statement will only be due if the certificate is given. If the certificate has still not been given by the time of the final payment, the portion (of the value of work that the Contractor has not given a certificate for) that the Employer determines is the labour portion is deducted from the Price.
- 9.8 If the Contractor does not comply with this clause, it must pay to the Employer any costs the Employer incurs in investigating and dealing with the non-compliance.

## **10 Loss and damage**

- 10.1 This clause 10.1 applies unless the Schedule states that clause 15 applies, in which case this clause 10.1 does not apply.
- The Employer bears the risk of loss of or damage to the Works (and to any Employer's property to be altered or extended by the Works) caused by any of the following perils (as defined, where applicable, in standard fire and specified periods insurance policies available in Ireland): fire, storm, tempest, flood, bursting or overflowing of water mains, apparatus or pipes, explosion, impact, aircraft, riot, civil commotion, malicious damage, war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, pressure waves caused by aircraft or other airborne objects travelling at sonic or supersonic

speeds, contamination by radioactivity or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or its components, terrorism, use or occupation of the Works or facilities by the Employer, design of the Works by the Employer or by others for whom the Employer is responsible. But the Contractor bears the risk of and must indemnify the Employer against 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 clause 11.1.

- 10.2 The Contractor must indemnify the Employer against claims, liability, and proceedings, that happen in the course or as a result of the Works. This indemnity does not apply to the Employer's liability under this contract to the Contractor, nor to the extent that the matter is covered by the Employer's indemnity in clause 10.3.
- 10.3 The Employer must indemnify the Contractor against claims, liability, and proceedings that happen in the course of the Works and are for
- death, injury or illness of any person or loss of or damage to physical property caused solely by the Employer's negligence or
  - loss of or damage to physical property that is the unavoidable result of executing the Works in accordance with this contract.

## **11 Insurances**

- 11.1 During the entire Term the Contractor must have public liability and employer's liability insurance, with indemnity limits at least as stated in the Schedule. The Contractor's public liability policy must insure the Employer and Contractor as insured, with a cross-liability clause. The Contractor's employer's liability policy must indemnify the Employer against the liability for which it indemnifies the Contractor, including costs. The Contractor must maintain these insurances until it has completed all the Works and after that must have these insurances in place any time the Contractor or Contractor's Personnel return to a Site in connection with the Works.
- 11.2 The Contractor must place the insurances required by this contract with reputable insurers approved by the Employer. The levels of excess must be no higher than stated in the Schedule.
- 11.3 The insurance on which the Employer is to be insured must provide that the term 'insured' applies to each insured person as if a separate policy had been issued to each (without increasing the overall limit of indemnity) and non-compliance by the Contractor or any other insured person does not affect the Employer's rights.
- 11.4 The Contractor must comply with the terms of the insurance policies required under this contract.
- 11.5 Within the time required by clause 1.10, and within 10 days of being requested to do so, the Contractor must give the Employer evidence that the insurances required by this contract are in effect, including copies of policies and receipts for premiums.
- 11.6 The Contractor must not make any material reduction to the insurance policies required by this contract unless approved in advance by the Employer. The Contractor must promptly notify the Employer of any cancellation, renewal, non-renewal, or material reduction by the insurer of the terms of any insurance policy required by this contract.
- 11.7 If the Contractor fails to maintain any of the insurances in the terms required by this contract, the Employer may (without affecting its other rights) take out the insurance and pay the premiums, and the Contractor must pay or allow the amount of the premiums to the Employer.
- 11.8 The Contractor bears the risks allocated to it under this contract regardless of whether the risk is, or is required to be, insured. This includes losses and liability falling below insurance excess levels and exceeding indemnity limits.

## **12 Property**

- 12.1 The Contractor must ensure that goods and materials for the Works become the property of the Employer when they are delivered to the Site, if owned by the Contractor, and, in any event, when they are incorporated in the Works or the Employer pays for them, whichever is first.

- 12.2 The Contractor must ensure that the Employer is entitled to use, copy, modify, adapt, and translate for any purpose the documents that the Contractor is to provide to the Employer under this contract. The Contractor has no liability for the Employer's use of the Contractor's reports or documents for any purposes other than those for which they were provided.
- 12.3 The Contractor must indemnify the Employer against claims, liability, and proceedings resulting from any of the following infringing the property (including intellectual property) rights of any person:
- anything that the Contractor does for the Works
  - use by the Employer of the Works (including goods, materials, reports, and documents provided by the Contractor for the Works) for the purposes for which they were provided.
- 12.4 Subject to complying with the law and this contract, the Contractor must not disclose the Employer's confidential information.

**13 Ethics in Public Office**

The Contractor warrants to the Employer that neither the Contractor nor any person on the Contractor's behalf has committed any offence under the Prevention of Corruption Acts 1889 to 2010 or the Ethics in Public Office Acts 1995 and 2001 in connection with this contract or the Works, and nor will they commit any such offence.

**14 Law and disputes**

- 14.1 Irish law governs this contract and its interpretation and the parties' rights and duties in connection with it.
- 14.2 The parties agree to observe the following conciliation procedure:
- If a dispute arises under this contract, either party may, by notice to the other, refer the dispute for conciliation. Within 10 working days of the referral of a dispute to conciliation, the parties must jointly appoint a conciliator, and if they fail to do so, or if a person appointed refuses to act or becomes unable to act, the conciliator will be appointed by the president or vice-president of the body stated in the Schedule. If there is a fee for making the appointment, the parties share it equally. If one party pays the entire fee, it is entitled to reimbursement of the other party's share from the other party on demand.
  - Each party must, within the period set by the conciliator, send to the conciliator and the other party brief details of the dispute stating its contentions about the facts and the parties' rights and obligations concerning the dispute. The conciliator may, for this purpose, suggest further actions or investigations that may be of assistance. The parties must promptly make available to the conciliator all information, documents, access to the Site, and appropriate facilities that the conciliator requires to resolve the dispute.
  - The conciliator will consult with the parties in an attempt to resolve the dispute by agreement.
  - The conciliator may meet the parties separately from each other or together and consider documents from one party not sent or shown to the other, conduct investigations in the absence of the parties, make use of specialist knowledge, establish the procedures to be followed in the conciliation and make recommendations to the parties.
  - The conciliator will not be an arbitrator and the Arbitration Act 2010 and the law of arbitration will not apply to the conciliation.
  - If the dispute is not resolved by agreement within 42 days after the conciliator was appointed, or a longer period proposed by the conciliator and agreed by the parties, the conciliation will be taken to have ended.
  - The conciliation will be confidential, and the parties must respect its confidentiality. All documents provided by a party in connection with conciliation must be returned when the conciliation ends.
- 14.3 The parties have recourse to adjudication in accordance with the Construction Contracts Act 2013. Where an adjudicator reaches a decision on a dispute referred under the Construction Contracts Act 2013, that same dispute may not be referred to conciliation under the Contract.

If a dispute between the Parties is referred to adjudication, any conciliation relating to that dispute immediately adjourns. In the event that no decision is reached by the adjudicator, the parties may continue to resolve the dispute under the conciliation. In the event that a decision is reached by the adjudicator, the conciliation for that dispute shall be terminated.

14.4 The parties submit to the jurisdiction of the Irish courts in relation to all matters concerning the contract.

**15 (Optional) Contractor's risk of loss and damage to the Works and Employer's existing facilities**

15.1 This clause 15 applies only if the Schedule says so.

15.2 The Employer bears the risk of loss of or damage to the Works (and any Employer's property to be altered or extended by the Works) caused by war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, pressure waves caused by aircraft or other airborne objects travelling at sonic or supersonic speeds, contamination by radioactivity or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or its components, terrorism, use or occupation of the Works or facilities by the Employer (except as provided for in this contract or to the extent that the loss or damage is caused by the negligence of the Contractor or Contractor's Personnel), and design of the Works by the Employer or by others for whom the Employer is responsible.

15.3 The Contractor has full responsibility for the care of, and risk of loss of and damage to the Works, goods and materials for the Works, and any existing facilities to be altered or extended by the Works, from the date the Contractor starts work on the Task concerned (or an earlier date stated in its Task Order) until the date of completion stated in the Employer's Representative's acknowledgment of receipt of the certificate of completion of the Task. After that date the Contractor is responsible for loss and damage due to defects, occurrences before that date, and activities of the Contractor or the Contractor's Personnel. The Contractor's responsibility under this clause 15.3 excludes loss and damage at the Employer's risk under clause 15.2.

15.4 The Contractor must promptly rectify any loss and damage for which it is responsible under clause 15.3 at its own expense (even if there are insufficient insurance proceeds).

15.5 The Employer may issue a Task Order for the Contractor to rectify loss and damage at the Employer's risk under clause 15.2.

15.6 The Contractor must indemnify the Employer against loss of and damage to the Employer's property, (including the Site and existing facilities to be altered or extended by the Works) arising from or in the course of the Contractor's performance or non-performance of this contract, unless the loss or damage is at the Employer's risk under clause 15.2.

15.7 From the date the Contractor starts work on the Task concerned the Contractor must insure the Works, goods and materials for the Works, and any Employer's facilities to be altered or extended by the Works against loss and damage. The Employer must be named as an insured. The insurance of the Works and goods and materials for the Works must be for the full reinstatement value of the property insured, including cost of demolition, removal of debris, delivery, Employer's professional fees, profit, and inflation during the construction and reinstatement periods. The sum insured for professional fees must be at least 15% of the contract value of the Works. The insurance of the facilities to be altered or extended by the Works must be for the amount stated in the Schedule. The Contractor must maintain this insurance until the date of completion stated in the Employer's Representative acknowledgment of receipt of the certificate of completion of the Task.

15.8 The proceeds of the insurances required by this clause 15 (except the portion for the Employer's professional fees, which must be paid directly to the Employer) must be paid into a bank account in the joint names of the Employer and the Contractor, and paid out to the Contractor on completion of the reinstatement or, at the Employer's option, in instalments on the basis of the contract value of the work done and goods and materials delivered to the Site for the reinstatement, and also paid out to the Employer for its costs. Any balance in the account after the work is done will be paid to the Employer.

15.9 Clause 11 applies also in regard to the insurance required by this clause 15.

*End of Conditions*