

KINSALE REGIONAL MUSEUM ESSENTIAL CONSERVATION WORKS

INFORMATION PACK



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1.0

PRELIMINARY HEALTH & SAFETY PLAN



Preliminary Health and Safety Plan

For Works to:

Kinsale Regional Museum

Old Courthouse, Market Square, Kinsale, Co. Cork. P17 D962

Tender Stage

May 2026

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1. Introduction

James Bourke Architects has undertaken a preliminary Health & Safety plan prior to the commencement of Works to Kinsale Regional Museum.

2. Summary & Objectives

The proposed works are required to carry out essential repairs to the external walls, windows, lath and plaster ceilings, fire door and the rainwater goods, as well as the installation of a fixed ladder to access the attic. All works will be carried out in accordance with recognised principles of good conservation practice.

3. Project Team

Client – Cork County Council

Conservation Architect – James Bourke, James Bourke Architects

Conservation Engineer – John Kelly, David Kelly Partnership

PSDP – James Bourke, James Bourke Architects

4. Team Responsibilities

Each of the above has a defined set of regulatory duties which are described as below.

- Client - The Safety, Health and Welfare at Work (Construction) Regulations 2013 defines 'client' as a person for whom a project is carried out. The regulations place certain duties on Clients. These duties are intended to ensure that the project is designed and constructed by competent persons.
- PSDP - The duty of the project supervisor for the design process is to ensure co-ordination of the work of designers throughout the project.
- PSCS - The role of the project supervisor construction stage is to manage and co-ordinate health and safety matters during the construction stage.
- Contractor - A Contractor means any employer whose employees carry out construction work and includes both main contractor and sub-contractor.
- Designer - The duties of designers are in addition to those under Section 16 of the Safety, Health and Welfare at Work Act, 2005 which requires designers to ensure that the project is capable to being constructed to be safe, can be maintained safely and complies with all relevant health and safety legislation.

5. Project Supervisor Construction Stage

To be performed by the appointed contractor. The primary duties of the Project Supervisor Design Stage under the 2013 Safety, Health & Welfare Regulations (Construction) are:

- Identify hazards arising from the design or from the technical, organisational, planning or time related aspects of the project.
- Where possible, eliminate the hazards or reduce the risks.
- Communicate necessary control measure, design assumptions or remaining risks to the PSCS so they can be dealt with in the safety and health plan.
- Ensure that the work of designers is coordinated to ensure safety.
- Organise co-operation between designers.
- Prepare a written safety and health plan for any project where construction will take more than 500 person days or 30 working days or there is a particular risk and deliver it to the client prior to tender.
- Prepare a safety file for the completed structure and give it to the client.

6. Contact Details of the Project Team

Raymond Higgins:	Cork County Council Headquarters, County Hall, Carrigrohane Road, Cork, Ireland. Eircode: T12 R2NC. raymond.higgins@corkcoco.ie 086 0671915
James Bourke:	James Bourke Architects Attiquin, Castlemartyr, Co. Cork bourke@jbarch.ie 021 4667073 / 0863923234
Martha Stapleton:	mstapleton@jbarch.ie 021 4667073 / 0894095804
John Kelly:	David Kelly Partnership Nelson House, Emmet Pl, Youghal-Lands, Youghal, Co. Cork 024 92412 / 087 2257918

7. Scope of Works

General Scope

The proposed works are required to carry out essential repairs to the external walls, windows, lath and plaster ceilings, fire door and the rainwater goods, as well as the installation of a fixed ladder to access the attic.

7.1 Preliminaries

- Erect temporary access as required to carry out the full scope of works.
- Obtain necessary permissions from the council prior to commencement. Applications are typically required at least 14 days before works begin.
- Prepare and submit a Work Method Statement.
- Prepare and implement a Traffic Management Plan to ensure safety and compliance during works.

7.2 External Walls

- The vegetation on the high-level cornice on the northeastern (front) elevation is to be carefully removed during works.
- The masonry cracks on both the southwestern and southeastern elevations are to be stitched repaired and grouted using a lime-based grout. The corresponding cracks internally are to first be pointed prior grouting works.
- The brick on the external walls is to be raked and repointed throughout using traditional lime mortar to prevent from spalling in the future.
- The cracks in the 2 No. arches on the northeastern (front) elevation are to be stitched repaired with brick replacement works carried out as required.
- 3.5 NHL haunching is to be applied to top of all 6 No. piers on the front /northeastern elevation to ensure the effect run off of water.
- Loose paint shall be removed from the external walls. The walls shall then be cleaned using the DOFF / THERMATECH or similar approved system throughout, followed by repainting using a clay-based paint, 'Earthborn' or similar approved. .
- The brickwork and slate are also to be cleaned using the DOFF / THERMATECH or similar approved system.

Note: Exemplars of external rendering, jointing, brickwork, and masonry repairs shall be prepared the Conservation Architect for submission to National Monuments for approval before works to which those exemplars relate are carried out, and such works shall not proceed otherwise than in accordance with such approval.

7.3 Internal Walls

- The southeastern wall of Store 1 on the first floor, where the plaster is coming away from the underlying masonry, is to be replastered using a traditional lime-based plaster. The surface area of the subject section of wall to be plastered is approx. 3.16sqm.

- The internal cracks on the external walls which correspond to the cracks visible externally are to be repointed using a traditional lime mortar prior the grouting works.
- There is crack sticking to be carried out to the spine wall at first floor level next to the stairwell were indicated on the section drawings. To help prevent further cracking in the spine wall, there are structural works to the staircase required as detailed in the following section.
- Following internal crack repairs, the corresponding walls are then to be painted with a breathable clay-based painted as approved by the conservation architect.
- Further to the painting works mentioned above, the walls of the ground floor Arcade, first floor Display Area 3 and the two stores adjacent to the display area are to be painted with a breathable clay-based painted as approved by the conservation architect.

7.4 Staircase

- The ground floor arcade ceiling next to the stairwell is to be opened up locally for inspection by the engineer to confirm the extent of works required.
- An allowance is to be made for the installation of a 200x75x23 PFC channel at approx. 3.8 linear meters at first floor level in the stairwell to prevent further deflection in the stairs.

7.5 Windows

- Repair/replacement works are to be carried out to 2 No. first floor windows on the southeastern elevation.
- The remaining timber windows and doors are to be stripped and repainted to match existing colour.
- Large centre window on the northeastern (front) elevation - install a lead trim under lead sill, fold and secure existing lead sill to trim and include welded joint.
- The suspected OPC render is to be carefully removed from all window reveals on the northeastern (front) elevation and 1 No. window reveal at first floor level on the northwestern elevation. The window reveals are to be re-rendered with a traditional lime render with smooth finish.
- Any slates that may become loose or damaged during works are to be reinstated or replaced to match existing.

7.6 Works to the Ceilings

- The existing historic Lath & Plaster ceilings in the ground floor Entrance Arcade and first floor Display Area 3 and adjacent stores are to be repaired / replaced as required with any reinstatement works carried out using traditional lath and lime plaster.
- The ceiling is to be painted on completion using a breathable clay-based paint as approved by the conservation architect.
- The works will involve the temporary removal and disconnection of surface-mounted fixtures, which shall be reinstated and reconnected upon completion of the works.
- There are vents in the ceiling above the arcade which are to be maintained on completion of works.

- The timber floor finish above the ground floor arcade ceiling shall be temporarily lifted in its entirety to assess the condition of the joists to determine of any required remedial works, including joist replacement or sistering. The lifting of the floor finish will also facilitate the execution of works required to suspend the ceiling below. The floor will be reinstated on completion of repair works to the ceiling below.

7.7 Repair of Fire doors

- The fire doors on the southwestern elevation, including timber doors, hinges and fixings, are to be repaired on a like for like basis and the door rehung on completion.

7.8 Rainwater Goods

- The existing rainwater goods shall be removed in full and replaced with new cast iron rainwater goods to be sized up throughout.
- 2 No. new traditional style cast iron hoppers are to be installed at the northern and eastern corners of the building.
- All downpipes are to be connected into existing surface water drains with new gulleys installed if required.

7.9 Attic Access Ladder

- A new fixed access ladder complying with I.S. EN ISO 14122-4 is to be installed with the existing hatch altered so that the door swings clear of the ladder.
- The existing hatch will be partially closed up and finished to match surround ceiling fabric, namely traditional lath & plaster.
- The new hatch with a 30 minute fire rated access panel will measure 940 mm x 500 mm and be positioned 3,520 mm from the floor.
- Trimmers are to be installed on all side using double 225x44mm trimmers fixed together with M10 bolts.

7.10 Anchor Points

- Install 2 No. safety anchor points are to be installed to the timber frame of attic hatches that lead out to the roof valleys. Final positions shall be confirmed by the engineer following inspection of the existing structure and verification of suitable load-bearing substrate.
- Specification - PEWAG PLGW-PSA MAX (160MM) M12 FALL PROTECTION ANCHORAGE EYE BOLT-1 PERSON
- The anchors are to be tested following installation, to certify that they comply with The Safety, Health and Welfare at Work (General Application) Regulation 2007 SI no. 299 of 2007.

8. Drawings & Specifications

JBA, Architectural Specifications:

- 250102 Kinsale Museum_Vol1_Tender_Method Statement
- Drawings: 250102_TV1_001 - 250102_TV1_007

9. Site Constraints and Contractor Operational Requirements

- The subject site is an operational public museum. The museum will remain open to the public for the duration of the works, with the exception of the month of September, during which the museum will close to facilitate internal ceiling works.
- No dedicated parking facilities are available within the immediate vicinity of the site. The Employer will provide three (3) parking spaces for the Contractor's use within the library car park, located approximately 200 metres west of the site. The Contractor shall make all necessary arrangements for personnel access and material transportation between the parking area and the site.
- Water and ESB connections required for the execution of the Works shall be supplied from the subject building. The Contractor shall coordinate all temporary connections and usage requirements with the Employer and ensure that existing services are not disrupted during the course of the Works.
- The existing staff toilet located at ground floor level within the subject building shall be made available for use by the Contractor's personnel for the duration of the Works. The Contractor shall ensure that the facility is maintained in a clean and hygienic condition at all times.
- Available compound and storage areas are severely restricted in size. The Contractor shall take account of these limitations when planning site logistics, material deliveries, storage arrangements, welfare provision, and sequencing of the Works.
 - Northwest compound area: approximately 4.0m × 1.8m
 - Northeast compound area: approximately 5.0m × 1.8m
- Existing external artefacts and planters located to the southwest of the building, together with those situated within the compound area to the northeast of the building, shall be carefully removed, protected, and temporarily stored in a designated area within the library car park for the duration of the Works. The Contractor shall ensure that all items are adequately protected from damage and reinstated to their original locations upon completion of the Works.
- The building is bounded on all sides by public roads, with each elevation located in close proximity to active vehicular and pedestrian routes. Particular care shall therefore be taken in the planning and execution of all external Works.
- All scaffolding required to facilitate the Works shall be designed, erected, and operated to accommodate existing structures, materials, site constraints, and any other obstructions located within the compound areas.
- Scaffolding and associated access arrangements shall be erected and dismantled in carefully phased stages to ensure that road closures are minimised and that traffic and pedestrian circulation can be maintained safely at all times. Any required traffic management measures shall be coordinated with the relevant local authority and implemented in accordance with statutory requirements.
- The Contractor shall be fully responsible for the security, safety, and protection of the site, the Works, stored materials, and the public for the duration of the Contract.

- The Contractor shall cooperate fully with adjoining property owners, museum management and staff, members of the public, and the local authority in relation to access, safety, noise control, deliveries, and general coordination of the Works.
- All Works shall be planned and executed so as to minimise disruption to the operation of the surrounding area, adjacent properties, public access routes, and local traffic movements, while ensuring that all contractual obligations and programme commitments are achieved.

10. Project Completion Time

It is projected that the project will last approximately 3 months, from August to October approximately.

11. Existing Services

There is a mains water supply and an ESB connection within the subject building that can be accessed by the contractor.

12. Design & Particular Risks

The First Schedule of S.I. No. 504 of the 2013 Safety, Health & Welfare Regulations (Construction) sets out the following non-exhaustive list of work involving particular risks to the Health and Safety of persons. The Project Supervisor for the Design Phase has outlined below each item what items, if any, fall under each category. It should be noted that many of the risks on the project arise out of working method which are at the discretion of the Contractor and as such cannot be determined by the Project Supervisor for the Design Process.

1. Work which puts persons at work at risk of - (a) falling from a height, (b) burial under earthfalls, or (c) engulfment in swamp-land.

a) Working from temporary access/scaffolding structures during works to the externals, rainwater goods and ceilings.

2. Work which puts persons at work at risk from chemical or biological substances constituting a particular danger to the safety and health of such persons or involving a statutory requirement for health monitoring.

- *Potential mould spores in decayed timbers behind lath & plaster ceiling fabric due for repair and at attic hatch requiring alteration works. Mould spores are allergens and inhaling them can trigger allergic reactions.*
- *Lime dust from existing lath & (lime) plaster ceilings and repair works using lime-based plaster which can affect skin, eyes, and respiratory system.*
- *Rats may be present in the structure and thus there may be droppings which can carry infectious diseases.*

3. Work with ionising radiation requiring the designation of controlled or supervised areas as defined in Directive 96/29/Euratom4.

- *None envisaged*

4. Work near high voltage power lines.

- *No work near high voltage lines envisaged*

5. Work exposing persons at work to the risk of drowning.

- *None envisaged*

6. Work on wells, underground earthworks and tunnels.

- *None envisaged*

7. Work carried out by divers at work having a system of air supply.

- *None envisaged*

8. Work carried out in a caisson with a compressed-air atmosphere.

- *None envisaged*

9. Work involving the use of explosives.

- *None envisaged*

10. Work involving the assembly or dismantling of heavy prefabricated components

- *The project will require temporary removal of the heavy cast iron rainwater goods and their reinstatement following repair/replacement works.*

13. Specific Risks

- The subject building is located within the curtilage of a Protected Structure and also within a Zone of Archaeological Potential. Accordingly, great care must be taken when carrying out works in and around the existing building and associated structures to avoid damage to historic fabric or archaeological material. All delivery personnel and subcontractors shall be made aware of these constraints, and deliveries will require careful monitoring and supervision.
- The site is situated within a constrained urban environment in the centre of a busy town, with public roads bounding all sides of the property. There is therefore an increased risk of collisions or accidents involving members of the public. Clear demarcation and signage of the site boundary shall be maintained at all times, and the movement of vehicles in and around the site shall be carefully managed.

- The front entrance to the building opens directly onto a public roadway. Particular care will therefore be required during works to the ground floor arcade ceiling to prevent members of the public entering the work area and to ensure construction operatives do not inadvertently step onto the roadway. Appropriate barriers, exclusion zones, and signage shall be maintained throughout the works.
- The project includes works to external walls, rainwater goods, and ceilings requiring the use of temporary access equipment and scaffolding. As such, there will be risks associated with working at height, including falls from height and falling objects. All access equipment and scaffolding shall be erected, inspected, and maintained in accordance with relevant safety standards.
- The works will involve the removal of mould and decayed fabric, including existing lath and lime plaster ceilings. There is therefore a risk of inhalation of mould spores, dust, and lime particles during demolition and repair works, including when handling lime-based materials. Appropriate respiratory protection and dust suppression measures shall be implemented.
- Rats may be present within the structure, and rodent droppings may carry infectious diseases. Appropriate precautions shall therefore be taken when accessing concealed or contaminated areas, including the use of suitable PPE and hygiene controls.

14. Communication & Co-ordination

- It shall be the responsibility of all the design members and contractors to notify the Project Supervisor for the design and construction stages of any changes in writing.
- The Project Supervisor for the design process shall prepare an amended Preliminary Safety Plan (in the same format as this Preliminary Safety Plan). This shall be passed on to the project Supervisor for the constructions stage who shall update the Safety and Health Plan for the amended project.
- The following procedures shall be in place with respect of considering the Health and Safety implications of design decisions, which remain to be made or where design changes occur or where time required for the completion of the project or phases of the project occur.
- The Project Supervisor (Construction Stage) will promptly bring to the attention of the Project Supervisor (Design Process) any design decisions that he is aware of.
- The Project Supervisor (Design Process) will notify the Project Supervisor (Construction Stage) of any design decisions and provide them with sufficient information i.e., copies of documentation etc, in order for them to carry out the necessary assessments before the revised work is carried out and to give directions regarding same when the assessment has been completed.
- The Project Supervisor (Design Process) will be copied with the minutes of all onsite meetings where design decisions are involved, and all written instructions or confirmation of verbal instructions issued by the Design Team.
- The Project Supervisor (Design Process) and the Project Supervisor (Construction Stage) shall meet as necessary to co-ordinate information received from all designers. The frequency of such

meetings (at a minimum monthly but ideally fortnightly) are matters to be addressed by the Project Supervisor (Construction Stage) in the developed Health and Safety Plan.

- Health and Safety must be headed up as an item to be addressed at all Project Site meetings, including the contractor's meetings with designer's sub-contractors, suppliers, employees etc and ensure the meetings have minutes documented.

ONGOING COMMUNICATION IS EXPECTED IN REGARD TO THE FOLLOWING:

- Method Statements.
- In the event of unforeseen circumstances or situations occurring on site particularly where they may affect Particular Risk elements or the time scale for the project.
- Report of any accidents or incidents/dangerous occurrences that may occur.
- Report any visits by the Health & Safety Authority.
- Whether delays changes to the programme result in health & safety issues.

The Contractors and the Subcontractors should bring to the attention of the Health and Safety Coordinator any significant safety issues or concerns as soon as possible.

15. Safety File

At the conclusion of the Construction Phase, the PSCS will hand over the Health & Safety File to the PSDP. Along with the Health & Safety File, the following will have to be handed over:

- Finalised Design Drawings.
- As Built Drawings.
- Manuals for Mechanical & Electrical Components of the building, including air-conditioning, heating system, lights, windows.
- Safety Data Sheets for materials used in the construction, such as paints, adhesives etc.
- Construction drawings, specifications, and bills of quantities, used and produced throughout the construction process.
- The general design criteria.
- Details of the equipment and maintenance facilities within the structure.
- Maintenance procedures and requirements for the structure.
- Manuals, certificates, produced by specialist contractors and suppliers which outline operating and maintenance procedures and schedules for plant and equipment installed as part of the structure, typically lifts, electrical and mechanical installations and window cleaning.
- Details of the location and nature of utilities and services, including emergency and firefighting systems.
- Any other relevant information required for the safe running and maintenance of the facility.

- Any amendments to the design that happens during the course of the construction phase.

16. Safety Plan Revisions

This Preliminary Health & Safety Plan is written by the PSDP. It can only be edited by the PSDP. Any design changes that happen prior to the Preliminary Health & Safety Plan being handed over the PSCS should be notified to the PSDP in writing in order for this change to be reflected in the design risk assessments. The Health & Safety Plan is written by the PSCS and builds upon the Preliminary Health & Safety Plan. Any revisions to the Health & Safety Plan can only be done by the PSCS. Should any change in the design or during construction happen the PSCS should be notified in writing in order for this change to be reflected in the Health & Safety Plan.

17. Appendices

DESIGNERS INITIAL RISK ASSESSMENT BY JAMES BOURKE, JAMES BOURKE ARCHITECTS

DESIGNERS INITIAL RISK ASSESSMENT BY JAMES BOURKE, JAMES BOURKE ARCHITECTS.

Designers non exhaustive Assessment of Safety during Design Construction and Maintenance taking account of the Principles of Prevention								
Company: James Bourke Arch			Designer: James Bourke			Date: 14/04/2026		
Project: Kinsale Regional Museum			Checked: MS			Revision:		
Design Stage		Initial Risk			Residual Risk			
Activity	Description	S	L	R	Decisions/Actions	S	L	R
Work which puts persons at work at risk from falling from a height, burial under earthfalls, or engulfment in swampland, where the work is particularly aggravated by the nature of the work.	The project will require work at height presenting risks of falls. Particular areas of risk include use of temporary access/scaffolding to carryout works to the external walls, rainwater goods and ceilings.	2	3	6	Contractor to provide adequate protection. A site-specific method statement should be provided to include how any temporary access / scaffolding will be managed, installed, checked and removed.	2	1	2
ITEMS TO BE BROUGHT TO THE CONTRACTORS ATTENTION								

DESIGNERS INITIAL RISK ASSESMENT BY JAMES BOURKE, JAMES BOURKE ARCHITECTS.

Designers non exhaustive Assessment of Safety during Design Construction and Maintenance taking account of the Principles of Prevention								
Company: James Bourke Arch			Designer: James Bourke			Date: 14/04/2026		
Project: Kinsale Regional Museum			Checked: MS			Revision:		
Design Stage		Initial Risk			Residual Risk			
Activity	Description	S	L	R	Decisions/Actions	S	L	R
Work which involves the assembly or dismantling of heavy prefabricated elements.	The project will require temporary removal of the heavy cast iron rainwater goods and their reinstatement following repair/replacement works.	2	2	4	Contractor to put in place systems for control and mitigation of risk.	2	1	2
ITEMS TO BE BROUGHT TO THE CONTRACTORS ATTENTION								

DESIGNERS INITIAL RISK ASSESMENT BY JAMES BOURKE, JAMES BOURKE ARCHITECTS.

Designers non exhaustive Assessment of Safety during Design Construction and Maintenance taking account of the Principles of Prevention								
Company: James Bourke Arch			Designer: James Bourke			Date: 14/04/2026		
Project: Kinsale Regional Museum			Checked: MS			Revision:		
Design Stage		Initial Risk			Residual Risk			
Activity	Description	S	L	R	Decisions/Actions	S	L	R
Danger of Collison with Plant or Machinery with public or workers.	Use of temporary access /scaffolding during works to the and walls rainwater goods externally around the building which is surrounded on all side by public roads. The museum will remain open to the public during these works.	2	3	6	<p>There will need to be traffic management in place when temporary access is in place and works are being carried out to the walls and rainwater goods.</p> <p>The site is to be effectively secured.</p> <p>This will include areas for material storage and deliveries.</p>	2	1	2
ITEMS TO BE BROUGHT TO THE CONTRACTORS ATTENTION								

Designers non exhaustive Assessment of Safety during Design Construction and Maintenance taking account of the Principles of Prevention								
Company: James Bourke Arch			Designer: James Bourke			Date: 14/04/2026		
Project: Kinsale Regional Museum			Checked: MS			Revision:		
Design Stage		Initial Risk			Residual Risk			
Activity	Description	S	L	R	Decisions/Actions	S	L	R
Works on or near site boundaries or existing structures.	<p>Works to the walls, rainwater goods given the building is surrounds on all side of the building.</p> <p>Works to the ground floor arcade ceilings given that the front entrance to the building immediately steps out onto a public road.</p>	2	2	4	<p>There will need to be traffic management in place when temporary access is in place and works are being carried out to the walls and rainwater goods.</p> <p>Access to the building is to be secured during works to the ceilings so as not to endanger members of the public attempting to entre or construction workers that might accidently step out on to the public road.</p> <p>The museum is to remain closed during works to the ceilings.</p>	2	1	2
ITEMS TO BE BROUGHT TO THE CONTRACTORS ATTENTION								

Designers non exhaustive Assessment of Safety during Design Construction and Maintenance taking account of the Principles of Prevention

Company: James Bourke Arch **Designer:** James Bourke **Date:** 14/04/2026

Project: Kinsale Regional Museum **Checked:** MS **Revision:**

Design Stage		Initial Risk			Residual Risk			
Activity	Description	S	L	R	Decisions/Actions	S	L	R
Danger of slips, trips and falls.	On temporary access /scaffolding structures used for the repair of the external walls, rainwater goods and ceilings.	1	3	3	Contractor to ensure that the temporary access structures are always free from debris.	1	2	2

ITEMS TO BE BROUGHT TO THE CONTRACTORS ATTENTION

Designers non exhaustive Assessment of Safety during Design Construction and Maintenance taking account of the Principles of Prevention

Company: James Bourke Arch **Designer:** James Bourke **Date:** 14/04/2026

Project: Kinsale Regional Museum **Checked:** MS **Revision:**

Design Stage		Initial Risk			Residual Risk			
Activity	Description	S	L	R	Decisions/Actions	S	L	R
Danger of injury to members of the public.	<p>Members of the public may walk in or near the site given its location in the middle of a busy town and bordering public roads.</p> <p>The building will remain open to the public for the majority of the works, except for when works to the ceilings are being carried out.</p>	2	4	8	<p>Adequate hoarding to be erected on site to prevent access/ interaction between members of the public and site works.</p> <p>Clear signage of site boundary and careful movement of vehicles in and around the site.</p>	2	1	2

ITEMS TO BE BROUGHT TO THE CONTRACTORS ATTENTION

2.0

MODEL FORMS

Appointment of Project Supervisor

(PW-CF6)

THIS AGREEMENT is made on BETWEEN

1. *The Client*

*Whose principal office is
at*

and

2. *The Project Supervisor*

*Whose registered office is
at*

BACKGROUND

A. By a contract (the **Contract**) made on or about ¹, the Client, as employer, has appointed ² as contractor (the **Contractor**) for

Name of Contract

(the **Works**).

B. This Agreement is collateral to the Contract.

C. Terms defined in the Contract have the same meaning in this Agreement. The terms **competent person** and **relevant statutory provisions** are construed according to section 2 of the Safety, Health and Welfare at Work Act 2005 and any amendment to it.

IT IS AGREED AS FOLLOWS:

1. The Client appoints the Project Supervisor as project supervisor for the construction stage according to the Safety, Health and Welfare at Work (Construction) Regulations 2013 and any amendment to them (the **Construction Regulations**) for the project comprising

the Works

³

(the **Project**).

2. The Project Supervisor's appointment starts on the date of this Agreement and continues for as long as, under the Construction Regulations, the Client is required to have a project supervisor for the construction stage for the Project, unless the appointment is terminated earlier.

3. The Project Supervisor accepts the appointment.

4. The Project Supervisor shall perform all of its duties under the Construction Regulations as project supervisor for the construction stage for the Project.

5. The Project Supervisor represents and warrants to the Client that the Project Supervisor is and will continue to be a competent person to carry out its duties under this Agreement and the Construction Regulations and has allocated and will allocate sufficient resources to enable

¹ Date of Tender acceptance

² Insert "the Project Supervisor" or the name of the Contractor, as appropriate.

³ Specify any additional scope for which this Project Supervisor is to be appointed – for example, a process installation.

SHORT PUBLIC WORKS CONTRACT

itself to comply with the requirements and prohibitions imposed on the Project Supervisor by this Agreement and under the relevant statutory provisions.

6. The Project Supervisor represents and warrants to the Client that the time allowed by the Contract for the completion of the Works is appropriate and sufficient to enable the Project Supervisor to perform its duties under this Agreement and the Construction Regulations.
7. The Project Supervisor represents and warrants to the Client that the information provided by the Client to the Project Supervisor about the state or condition of the Site (as defined in the Contract) and any premises on it is appropriate and sufficient to enable the Project Supervisor to perform its duties under this Agreement and the Construction Regulations.
8. The Project Supervisor shall ensure that it is insured by insurances in the same terms as the insurances the Contractor is required to have under clause 10.3 of the Conditions of the Contract, and that those insurances comply with all the requirements of the Contract, and are kept in force for the same period as required by the Contract, and include cover for death or injury resulting from the Project Supervisor's performance or non-performance of its duties under this Agreement and the Construction Regulations.
9. Payment for the Project Supervisor's service is provided for under the Contract. Accordingly, the Client is not liable under this Agreement for the Project Supervisor's fees or expenses.
10. If the Project Supervisor breaches its obligations or warranties under this Agreement, or if the Contractor's duty to complete the Works is terminated under the Contract, the Client may terminate the Project Supervisor's appointment under this Agreement.
11. Without limiting its obligations under the Construction Regulations, the Project Supervisor shall give the Client all documents it prepares in the course of and for the purpose of performing its duties under this Agreement (**Project Supervisor's Documents**). If the Project Supervisor's appointment under this Agreement terminates, the Project Supervisor shall give all Project Supervisor's Documents to the Client immediately. Ownership of and copyright in the Project Supervisor's Documents shall become the Client's when the Project Supervisor delivers them to the Client, or the appointment is terminated, whichever is earlier. The Project Supervisor shall indemnify the Client against any liability resulting from the use or copying of the Project Supervisor's Documents infringing the property (including intellectual property) rights of any person.
12. This Agreement is governed by and construed according to Irish law. The parties submit to the jurisdiction of the Irish courts in relation to all matters concerning it.

SHORT PUBLIC WORKS CONTRACT

Given under the Client's seal

Affix Client's seal

*Signatures of persons
authorised to authenticate the
seal*

OR

Signed on behalf of the Client

Signature of authorised person

--

In the presence of

Name of witness

Signature of witness

Witness's occupation

Witness's address

SHORT PUBLIC WORKS CONTRACT

Given⁴ under the Project Supervisor's common seal

Affix Project Supervisor's common seal

--

Signatures of persons authorised to authenticate the seal

--

OR

Signed and delivered as a Deed by

Name of attorney

--

Signature of attorney

--

As lawful attorney of the Project Supervisor under a power of attorney dated

--

In the presence of

Name of witness

--

Signature of witness

--

Witness's occupation

--

Witness's address

--

OR

Signed on behalf of

Name of the Project Supervisor

--

Signature of authorised person

--

In the presence of

Name of witness

--

Signature of witness

--

Witness's occupation

--

Witness's address

--

⁴ If the Project Supervisor is not incorporated in Ireland, execution will be in accordance with the law of its jurisdiction of incorporation for execution in Ireland.

SHORT PUBLIC WORKS CONTRACT

OR (if the Project Supervisor is an individual)

Signed and delivered as a Deed by

Name of Project Supervisor

Signature of Project Supervisor

In the presence of

Signature of witness

Name of witness

Witness's occupation

Witness's address

OR

Signed by

Name of Project Supervisor

Signature of Project Supervisor

In the presence of

Name of witness

Signature of witness

Witness's occupation

Witness's address

Rates of Pay and Conditions of Employment Certificate

(Clause 7.7 of PW-CF6)

To:	<i>The Employer</i>		
	<i>Address of Employer</i>		
	<i>For the attention of</i>		
Date:			
From:	<i>The Contractor's Representative</i>		
Regarding:	<i>The Contract</i>		
		<i>Period of interim statement</i>	
		From	To

A Dhaoine Uaisle

We refer to the above Contract.

Terms defined in the Conditions of the Contract have the same meaning in this certificate.

The Contractor certifies that, in respect of the work to which the interim statement referred to above relates, clause 7 of the Contract has been observed by the Contractor and the employers of all work persons on the Site. This certification includes, but is not limited to, the following:

- the rates of pay and the conditions of employment (including in relation to pension contributions) of each work person comply with all applicable statutory provisions, and those rates and conditions have been no less favourable than those for the relevant category of work person 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).
- all wages and other money due to each work person have been paid in accordance with the Payment of Wages Act 1991 and have not been more than 1 month in arrears or unpaid
- payments due to be paid on behalf of each work person (including pension contributions, where applicable) have been paid
- all pension contributions and other amounts due to be paid on behalf of each work person, have been paid
- all deductions from payments to work persons required by law have been made and paid on, as required by Law
- in relation to the employment of work persons on the Site, the Safety, Health and Welfare at Work Act, 2005 to 2014 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, regulations, codes of practices, legally binding determinations of the Labour Court and sectoral employment orders, employment regulation orders or registered employment agreements determined under those Laws have been observed.

Is mise, le meas

SHORT PUBLIC WORKS CONTRACT

Signed by

<i>Name of Contractor</i>	
<i>Signature of Contractor i.e. Contractor's Representative</i>	

Site Closure Costs Supplement¹

DEFINITIONS

In this Supplement, the following terms have the following meanings:

Term	Meaning
<i>Site Closure Costs</i>	means the aggregate of Permissible Costs incurred during a Covid-19 Mandatory Site Closure calculated in accordance with this Supplement.
<i>Permissible Items</i>	means those items stated in Schedule I (Permissible Items).
<i>Permissible Costs(s)</i>	<p>means the cost of a Permissible Item, provided always that the cost of a Permissible Item:</p> <ul style="list-style-type: none"> • is the direct, reasonable cost reasonably incurred by the Contractor in performing its obligations under the Contract during a Covid-19 Mandatory Closure [or period thereof]; and • is accompanied by vouching records including, where there is not a rate or price in the Pricing Document, a complete and full break-down of the cost sought on a transparent and open-book basis; and • is that which the Contractor is not otherwise entitled to receive under the Contract; and • has not been otherwise excluded under the Contract; <p>and the Permissible Cost is calculated</p> <ul style="list-style-type: none"> • using the rates and/or prices for the Permissible Item in the Pricing Document; or • if there are no rates or prices for the Permissible Item in the Pricing Document, on the basis of any other suitable rates or prices in the Pricing Document; or • if there are no such suitable rates or prices, by assessing the Contractor's reasonable costs. <p>Any rates and prices for Permissible Items contained in the Preliminaries Section shall take precedence over any other rates or prices for Permissible Items contained elsewhere.</p>
<i>Pricing Document</i>	means that document stated in Part 1 the Tender and Schedule of the Contract ² .
<i>Preliminaries Section</i>	means that section of the Pricing Document referred to as the "Preliminaries".

¹ Clause 14 of PW-CF1-5; clause 16 of PW-CF6; clause 17 of PW-CF7; clause 7.10 of PW-CF8 & PW-CF11.

² Or, in the case of PW-CF6, the document which may be named at section 1.3 of the Schedule; in the case of PW-CF7, the document which may be named at section 1.1 of the Schedule; in the case of PW-CF11, the document named at section 1.4 of the Schedule.

NOTES TO SCHEDULE OF PERMISSIBLE ITEMS

Note Number	Note Description						
1	<p><i>Site Supervision & Co-ordination</i></p> <p>(a) General The Permissible Costs comprise the applicable percentage as stated below of the aggregate of the costs for those items relating to the provision of the Contractor’s on-site supervisory staff, where, such staff:</p> <ul style="list-style-type: none"> (i) were ordinarily engaged in the supervision of the Works in the week immediately preceding the commencement of the Covid-19 Mandatory Closure; and (ii) remained in the employment of the Contractor for the duration of the relevant period claimed for the Covid-19 Mandatory Closure; and (iii) are not otherwise or deployed on another project during a Covid-19 Mandatory Closure; and (iv) are not otherwise available to immediately return to the supervisory duties in respect of the Works; and (v) in respect of which the Contractor has not claimed or otherwise receive payment (or an element therein) under any scheme, relief, benefit or otherwise operated by the Revenue Commissioners (such as the Employment Wage Subsidy Scheme or any similar or successor scheme). <p>(b) Fixed Percentage:</p> <table border="1" style="width: 100%;"> <tr> <td style="width: 50%;">Where the aggregate of the period/(s) of Covid-19 Mandatory Closure(s):</td> <td style="width: 50%;">The fixed percentage to apply to the aggregate of the Site Supervision & co-ordination items for the purposes of calculating the Permissible Cost is:</td> </tr> <tr> <td>Does not exceed 6 months</td> <td align="center">50%</td> </tr> <tr> <td>Exceeds 6 months</td> <td align="center">75%</td> </tr> </table>	Where the aggregate of the period/(s) of Covid-19 Mandatory Closure(s):	The fixed percentage to apply to the aggregate of the Site Supervision & co-ordination items for the purposes of calculating the Permissible Cost is:	Does not exceed 6 months	50%	Exceeds 6 months	75%
Where the aggregate of the period/(s) of Covid-19 Mandatory Closure(s):	The fixed percentage to apply to the aggregate of the Site Supervision & co-ordination items for the purposes of calculating the Permissible Cost is:						
Does not exceed 6 months	50%						
Exceeds 6 months	75%						
2	<p><i>On-site office and welfare facilities</i></p> <p>The costs relating to the provision of serviced welfare and office facilities for the Contractor and the Employers Representative that are present on the Site during a Covid-19 Mandatory Closure.</p>						
3	<p><i>Site Security Measures</i></p> <p>The costs relating to the provision of security measures for the Site performed during a Covid-19 Mandatory Closure.</p>						
4	<p><i>Plant</i></p> <p>The costs relating to the provision of items of large plant associated with the hoisting, lifting, and distribution of materials that is located on the Site during a Covid-19 Mandatory Closure.</p>						
5	<p><i>Protection of the Works</i></p> <p>The costs relating to equipment and materials to protect the Works such as provision of temporary weatherproofing, de-watering during a Covid-19 Mandatory Closure.</p>						
6	<p><i>Vehicles</i></p> <p>The costs relating to the provision of vehicles used for the purpose of inspection of the Works that are located on the Site during a Covid-19 Mandatory Closure.</p>						

7	<i>Scaffolding</i>
	Hire of and attendance on (maintenance and periodic inspection and certification costs) of standing scaffolding on the Site.
8	<i>Insurances</i>
	The costs of maintaining the Contract insurances during a Covid-19 Mandatory Closure.
9	<i>Project Supervisor Construction Stage services</i>
	The costs relating to the performing the requirements of the Project Supervisor Construction Stage during a Covid-19 Mandatory Closure.
EXCLUSIONS	
<ul style="list-style-type: none"> • Profit and loss of profit are excluded from the Site Closure Costs [and the Permissible Costs]. • Any allowance in any rates and prices for profit and overheads is excluded from the Site Closure Cost. • Unless stated elsewhere in this Supplement, the costs of Contractor subcontractors, including Specialists, are excluded from the Site Closure Costs [and the Permissible Costs]. 	

[CONTRACTING AUTHORITY TO INCLUDE ADDITIONAL NOTES TO THE SCHEDULE IF REQUIRED]

DECLARATION RE Regulation 57 of SI 284 of 2016¹

Applicant Entry: DECLARATION ON OATH/SOLEMN DECLARATION [delete as appropriate] in relation to the grounds specified in Regulation 57 of Regulation 57 of SI 284 of 2016 (and Directive 2014/24/EU)

Name of Applicant	Applicant Entry
-------------------	-----------------

1. I hereby declare that the above named Applicant (or any member of an administrative, management or supervisory body of the Applicant or person who has powers of representation, decision or control therein), has not been the subject of a conviction by final judgment for one or more of the following reasons (save to the extent set out below in part 4 of this declaration):
- (a) participation in a criminal organisation, as defined² in Article 2 of Council Framework Decision 2008/841/JHA;
 - (b) corruption, within the meaning of (i) the Convention drawn up under the Council Act of 26 May 1997 on the basis of Article K.3 (2)(c) of the Treaty on the European Union, (ii) Article 2(1) of Council Framework Decision 2003/568/JHA, or (iii) the law of the member state in which the Applicant is established;
 - (c) fraud within the meaning of Article 1 of the Convention relating to the protection of the financial interests of the European Communities drawn up under Council Act of 26 July 1995;
 - (d) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA respectively, or inciting or aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision;
 - (e) money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council; or
 - (f) child labour and other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council.

CA Note: When preparing this Declaration, ensure the same discretionary grounds are selected below that were selected originally to apply in the Competition. If a ground does not apply, delete the text in the form field and insert "NOT USED"

2. I hereby declare that, save to the extent set out below in part 4 of this declaration:
- (a) the Applicant has not violated applicable obligations in the fields of environmental, social and labour law within the meaning of Regulation 18(4) of SI 284 of 2016
 - (b) the Applicant is not bankrupt, or the subject of insolvency or winding-up proceedings, its assets are not being administered by a liquidator or by the court, it is not in an arrangement with creditors, its business activities are not suspended and it is not in any analogous situation arising from a similar procedure under national laws;
 - (c) the Applicant is not guilty of grave professional misconduct, which renders its integrity questionable;

¹ Separate declarations must be provided by (as applicable): the Applicant, each member of the Applicant (where the Applicants a Joint Venture or Consortium), and each entity relied upon by the Applicant (or any member of the Applicant) (including any Specialist Skill Providers) for the purposes of meeting any Applicable Selection Criteria in the relevant Suitability Assessment Questionnaire (QC1 or QC2 as appropriate). Where the Applicant is a Partnership, one partner may make the declaration on behalf of the Partnership provided that the partner is duly authorised to do so.

- (d) the Applicant has not entered into agreements with other providers aimed at distorting competition;
- (e) there is no conflict of interest within the meaning of Regulation 24 of SI 284 of 2016;
- (f) there is no distortion of competition from the prior involvement of the Entity in the preparation of the procurement procedure;
- (g) the Applicant has not shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions;
- (h) the Applicant has not been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria, has not withheld such information and is able to submit the supporting documents required pursuant to Regulation 59 of SI 284 of 2016;
- (i) the Applicant has not undertaken to unduly influence the decision-making process of the contracting authority, to obtain confidential information that may confer upon it undue advantages in the procurement procedure, nor has it negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.

3. I hereby declare that the Applicant, save to the extent set out below in part 4 of this declaration,
- (a) has fulfilled its obligations relating to the payment of social security contributions; and
 - (b) has fulfilled its obligations relating to the payment of taxes.

4. To the extent that any of the circumstances described in Parts 1, 2 or 3 of this declaration apply to the Applicant (or, in respect of the circumstances set out in Part 1 of this declaration, to any director or secretary, or any member of an administrative, management or supervisory body of the Applicant or person who has powers of representation, decision or control therein), I hereby set out full details of same in this Part 4:

Applicant Entry

This declaration has been made to the best of my knowledge and belief for and on behalf of: Name of Applicant.

Signature/seal:	[Signature must be that of a Director/Principal and with date in hardcopy]	Date:	
Name	Text Entry [block capitals]		
Position/Capacity	Applicant Entry [block letters]		

Witnessed in the presence of: a Commissioner of Oaths: OR a Judicial Authority/ Administrative/ Notary/ Competent Profession or Trade Body in country of origin of the Entity or in the country whence that the Entity comes [delete as appropriate]

Signed :	[Commissioner of Oaths]	Date:	
Name :	Text Entry [block capitals]		

[On letter-headed paper of Applicant/Tenderer]

Letter of Confirmation that Declaration on Oath is still valid¹

To:	[Name and address of Contracting Authority]
Regarding:	[Title of contract]
Date:	

A Dhaoine Uaisle,

We confirm that since making the declaration on oath in accordance with your standard declaration form² that the legal situation regarding the circumstances stated in the declaration has not changed in any way that would prohibit this firm from making a new declaration on oath on exactly the same basis. We also confirm that in providing the declaration consent is given to you to check (as you consider necessary) the correctness of the statements made in the declaration with relevant third parties.

Is mise, le meas

Signed _____
On behalf of *[Name of Applicant]*

¹ Where the date of signature of the Applicant's Declaration re Regulation 57 under Oath pre-dates the date of submission required, this letter of confirmation must also be provided.

² In the form of Model Form 1.32 (Declaration under Oath re Regulation 57 of SI 284 of 2016).

Below Threshold National Guidelines Apply	Non-compliant Tender	Open Procedure	Ref. O.na1 Version 1.0 10 June 2013
--	----------------------	----------------	---

To *[Name and address of Tenderer]*

Re Invitation to *[Name of Contract]*
Tender

OJEU/etenders *[Insert reference no. e.g. 2013/s-xx/xxxxx]*
Contract
Notice
Reference No

Date

By¹ Email/fax/post/hand

A Dhaoine Uaisle

I write to inform you that we have assessed the tenders received for the above contract and have determined that, on this occasion, your tender was deemed to be non-compliant for the following reason(s):

-
-

Thank you for your interest in this competition.

Is mise, le meas

Signed _____
On behalf of *[Name of Contracting Authority]*

¹ Delete as appropriate

Below Threshold National Guidelines Apply	Potentially ALT	Open Procedure	Ref. O.na2 Version 1.0 10 June 2013
--	-----------------	----------------	---

To [Name and address of Tenderer]

Re Invitation to [Name of Contract]
Tender

OJEU/etenders [Insert reference no. e.g. 2013/s-xx/xxxxx]
Contract
Notice
Reference No.

Date

By¹ Email/fax/post/hand

A Dhaoine Uaisle

I refer to your tender for the above contract.

Having reviewed your tender, [insert name of contracting authority] considers that [insert appropriate text e.g. the tendered lump sum/ some of the tendered rates etc.] may be abnormally low.

In order to assist [insert name of contracting authority] in determining whether or not your tender is abnormally low, please provide comprehensive written details by [date] in respect of the following:

[insert as appropriate]

[Insert name of contracting authority] reserves the right to request further information from you before making a decision as to whether or not to reject your tender.

Is mise, le meas

Signed _____
On behalf of [Name of Contracting Authority]

¹ Delete as appropriate

Below Threshold National Guidelines Apply	Tenderer Elimination/ALT	Open Procedure	Ref. O.na3 Version 1.0 10 June 2013
--	--------------------------	----------------	---

To *[Name and address of Tenderer]*

Re Invitation to *[Name of Contract]*
Tender

OJEU/etenders *[Insert reference no. e.g. 2013/s-xx/xxxxx]*
Contract
Notice
Reference No.

Date

By¹ Email/fax/post/hand

A Dhaoine Uaisle

I refer to your reply to our letter of *[insert date of Potentially ALT letter]* seeking details of the constituent elements of your tender.

Upon review of the documentation that you have submitted *[insert name of contracting authority]* is of the view that your tender is abnormally low for the following reasons:

[insert reason(s)]

In accordance with the Instructions to Tenderers, you are herewith eliminated from any further participation in this competition.

Is mise, le meas

Signed _____
On behalf of *[Name of Contracting Authority]*

¹ Delete as appropriate

Below Threshold National Guidelines Apply	Verification of Declaration	Open Procedure	Ref. O.na4 Version 1.1 19 July 2013
--	-----------------------------	----------------	---

To *[Name and address of Tenderer]*

Re Invitation to *[Name of Contract]*
Tender

OJEU/etenders *[Insert reference no. e.g. 2013/s-xx/xxxxx]*
Contract
Notice
Reference No.

Date

By¹ Email/fax/post/hand

SUBJECT TO CONTRACT/CONTRACT DENIED

A Dhaoine Uaisle

I refer to your tender for the above contract.

Your tender has been identified as the apparently successful tender, subject to verification of your qualification status.

In order to allow *[insert name of contracting authority]* to verify your qualification status, please provide the following by *[insert date]*:

Documentary evidence that you meet the minimum criteria set out in form QW2¹/QC2¹; Suitability Assessment Questionnaire under 3.1, 3.2¹, 3.3 and 3.4 of that document.

Documentary evidence that you meet the minimum criteria set out in the supplements to form QW2; Suitability Assessment Questionnaire under 3.4.1¹, 3.4.2¹, 3.4.3¹ and 3.4.4¹.

²Documentary evidence that (each of) the specialist(s) proposed by you in response to the Specialist Areas identified at Section 1.6 of QW2 and named by you in Schedule Part 2E of the Form of Tender can meet the minimum criteria under 3.1, 3.2¹, 3.3 and 3.4 of form QW3; Suitability Assessment Questionnaire and under supplements 3.4.1 and 3.4.2¹ to that document.

We reserve the right to request further information from you if necessary.

Please note that no commitment of any kind, contractual or otherwise will exist unless and until a formal written contract has been executed for and on behalf of *[insert name of contracting authority]*. The conditional identification of your tender as being the apparently successful tender does not and will not give rise to any enforceable rights.

Is mise, le meas

Signed _____
On behalf of *[Name of Contracting Authority]*

¹ Delete as appropriate

² This paragraph is applicable to a tender for a works contract only – delete as appropriate.

Below Threshold National Guidelines Apply	Tenderer Elimination/SAQ	Open Procedure	Ref. O.na5 Version 1.0 10 June 2013
--	--------------------------	----------------	---

To *[Name and address of Tenderer]*

Re Invitation to *[Name of Contract]*
Tender

OJEU/etenders *[Insert reference no. e.g. 2013/s-xx/xxxxx]*
Contract
Notice
Reference No.

Date

By¹ Email/fax/post/hand

A Dhaoine Uaisle

I refer to your reply to our letter of *[insert date of Verification of Declaration letter]* seeking documentary evidence in support your self-declaration of the pre-qualification criteria.

I write to inform you that following verification of your qualification self-declaration, you were deemed not to have passed the qualification regarding *[list relevant criterion/criteria]*.

You are herewith eliminated from any further participation in this competition.

Is mise, le meas

Signed _____
On behalf of *[Name of Contracting Authority]*

¹ Delete as appropriate

Below Threshold National Guidelines Apply	Successful Tenderer	Open Procedure	Ref. O.na6 Version 1.3 18 July 2023
--	---------------------	----------------	---

To [Name and address of Tenderer]

Re Invitation to Tender [Name of Contract]

OJEU/etenders Contract Notice Reference No. [Insert reference no. e.g. 2022/s-xx/xxxxx]

Date¹

By² Email/fax/post/hand

SUBJECT TO CONTRACT/CONTRACT DENIED

A Dhaoine Uaisle

I refer to your tender for the above contract. I am pleased to inform you that your company has been identified as having submitted the [lowest price/most economically advantageous tender]³ for this project. [Your tender scored the following marks against the each criterion]⁴

•

This is not a Letter of Acceptance/Tender Acceptance⁵. [Insert name of contracting authority] has not accepted your tender. Please note that this letter does not purport to create binding legal relations.

I would be obliged if you would forward the following by [insert date]:

[insert required documents such as Tax Clearance/Notification of Determination, confirmation of bond, insurance details, etc.]⁶

[insert required documents such as Tax Clearance Certificate, Professional Indemnity Insurance Certificate (MF2.1), any other insurances, Safety and Health Declarations (MF2.4, MF2.5, MF2.6 as appropriate), collateral warranties for sub-consultants (MF2.3), appointment as PSDP, etc.]⁷

¹ Ensure issued on same date as all Letters to Unsuccessful Tenderer and not before those to eliminated tenderer letters. Failure to do so will mean that any period between notification and award will not be valid.

² Delete as appropriate

³ Delete as appropriate

⁴ If it is "the most economically advantageous tender" the criteria and marks should be listed in the space provided otherwise this should be deleted.

⁵ Delete as appropriate - a Letter of Acceptance will issue in relation to public works contracts PW-CF1 - 5 and for consultancy (service) contracts. A completed Tender Acceptance (FIS 6) will issue in relation to PW-CF6 and PW-CF7.

⁶ For public works contracts PW-CF6 and PW-CF7 only

⁷ For consultancy (service) contracts

Below Threshold National Guidelines Apply	Successful Tenderer	Open Procedure	Ref. O.na6 Version 1.3 18 July 2023
--	---------------------	----------------	---

Subject to satisfactory compliance with the above, [and to *[insert and other conditions such as the need to seek Departmental approval]*]⁸ it is our intention to issue a Letter of Acceptance/Tender Acceptance⁶ to you, no earlier than [**•**]⁹ days after the date of this letter (conditional on there being no legal challenge).

Is mise, le meas

Signed _____
On behalf of [*Name of Contracting Authority*]

⁸ Delete as appropriate

⁹ The period should be the same as the period in the Letter to Unsuccessful Tenderers

Below Threshold National Guidelines Apply	Unsuccessful Tenderer	Open Procedure	Ref. O.na7 Version 1.0 10 June 2013
--	-----------------------	----------------	---

To [Name and address of Tenderer]

Re Invitation to [Name of Contract]
Tender

OJEU/etenders [Insert reference no. e.g. 2013/s-xx/xxxxx]
Contract
Notice
Reference No.

Date¹

By² Email/fax/post/hand

A Dhaoine Uaisle

I write to inform you that we have assessed the tenders received for the above contract and have determined that the [lowest price/most economically advantageous tender]³ was submitted by [insert name of successful tenderer]. [The successful tender scored more highly than your tender under the following criteria]⁴

-
-

1. The characteristics and relative advantages of the successful tender are as follows:

Award Criterion ⁵	Characteristics and relative advantages of the successful tender

¹ Ensure issued on same date as Letter to Successful Tenderer and not before those to non-compliant tenderer letters. Failure to do so will mean any period between the notification and award will not be valid.

² Delete as appropriate

³ Delete as appropriate

⁴ If it is "the most economically advantageous tender" the criteria and marks should be listed in space provided otherwise this should be deleted.

⁵ If sub-criteria were used in the evaluation, they should be listed in the table.

Below Threshold National Guidelines Apply	Unsuccessful Tenderer	Open Procedure	Ref. O.na7 Version 1.0 10 June 2013
---	------------------------------	-----------------------	--

It is our intention, subject to satisfaction of certain conditions, to enter into the contract with *[insert name of successful tenderer]* no earlier than [**•**] days from the date of this letter.

I wish to thank you for your interest in this competition.

Is mise, le meas

Signed _____
On behalf of *[Name of Contracting Authority]*

3.0

PW-CF6 SHORT PUBLIC WORKS CONTRACT

Short Public Works Contract

Conditions

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

SHORT PUBLIC WORKS CONTRACT

Short Public Works Contract
Document Reference PW-CF6 v1.15
25th November 2025

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Published by:
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Government Buildings
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Dublin 2

CONDITIONS

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CONDITIONS

1. The Contract

1.1 In this Contract

- The **Assigned Certifier** is the person so assigned by the Employer to certify compliance with the relevant requirements under the Building Control Regulations.
- The **Building Control Regulations** are the Building Control Regulations 1997-2014 and any amendments thereto to the extent that they apply to the Works.
- **Compensation Event** is defined in clause 4.5.
- 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 **Defects Certificate** is a certificate issued by the Employer's Representative under clause 3.15 and may include a list of parts of the Works that do not comply with this Contract.
- The **Employer** is as named in the accepted tender.
- The **Employer's Representative** is named in the Schedule or an architect, engineer, surveyor or other person otherwise notified by the Employer according to clause 5.1.
- **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 **Price** is as stated in the accepted tender, as may be adjusted according to this Contract.
- The **Site** is the place where the Contractor is to construct the Works and anywhere else this Contract says is part of the Site.
- The **Time for Completion** is the period stated in the Schedule or, if not stated there, in another Contract document, in either case as may be extended under clause 2.7.
- The **Works** are what the Contractor is to complete and hand over to the Employer, as described in this Contract.

1.2 Unless the context indicates otherwise

- references to clause numbers in the Conditions or the Schedule are to the clauses of the 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 a **working day** are to a day other than Saturday, Sunday, a public holiday established under the Organisation of Working Time Act 1997, or Good Friday.
- references to **the parties** are to the Employer and the Contractor
- references to a law include amendments, replacements and re-enactments
- **substantially complete** and **substantial completion** mean that
 - the Works have reached a stage of completion that the Employer can take them over and use them and
 - if there are any defects, in the Employer's Representative's opinion both (a) the Contractor has good reason for not having rectified them already and (b) neither the defects nor their rectification are likely to prevent the Works from being used conveniently and safely and
 - any other requirements for substantial completion in this Contract have been met and

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- the details in the Certificate of Compliance on Completion of the Works or a part thereof have been included on the Register maintained under Part IV of the Building Control Regulations.
- 1.3 This Contract is the entire agreement between the parties about the Works and consists of
- these Conditions, the form of tender and acceptance, and the Schedule and
 - the documents listed in the Schedule as part of this Contract.
- 1.4 If there is a discrepancy between these Conditions and other documents in this Contract, these Conditions prevail. If there is a pricing document in this Contract, and there is a discrepancy between the pricing document and other documents in this Contract, the other documents prevail. If a party discovers a discrepancy within or between the documents describing the Works, it must notify the other as soon as practicable, and the Employer's Representative will resolve the discrepancy by an instruction.
- 1.5 This Contract comes into effect when the Employer sends the Contractor written acceptance of the Contractor's tender for the Works.
- 1.6 The Contractor must construct and complete the Works at its own expense, complying with this Contract, the Employer's Representative's written instructions and the law.
- 1.7 The Contractor may not assign this Contract or any part of it without the Employer's consent.
- 1.8 No rule of legal interpretation applies to the disadvantage of a party on the basis that the party provided this Contract or any of it or that a term of this Contract is for the party's benefit.
- 1.9 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

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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.

- 1.10 If the Schedule says that a performance bond is required, within 7 days after the Employer sends the Contractor written acceptance of the Contractor's tender, the Contractor must give the Employer the performance bond executed by the Contractor and a surety approved by the Employer, in the amount stated in the Schedule unless they were provided before acceptance of the tender).
- 1.11 If the Contractor is more than one person or legal entity, they are jointly and severally liable under this Contract.

2 The Site, starting and completing the Works

- 2.1 The Employer must allow the Contractor to occupy and use the Site within 5 working days after this Contract comes into effect, or any other date stated in this Contract, or (in either case) a later date by which the Contractor has demonstrated to the Employer that the insurances required by this Contract are in effect. The Contractor is not entitled to exclusive use of the Site. The Contractor's right to occupy and use the Site is solely for the purpose of constructing the Works. Other limitations on the Contractor's right to occupy and use the Site may be included in this Contract.
- 2.2 The Employer may arrange for work to be done on the Site by the Employer's personnel or other contractors.
- 2.3 The Contractor must start constructing the Works on the Site within 5 working days after the Employer allows the Contractor to occupy and use the Site, or another date agreed between the parties, and must substantially complete the Works within the Time for Completion.
- 2.4 Within 5 working days after the Contractor notifies the Employer's Representative that the Works are substantially complete, the Employer's Representative will give the Contractor a certificate stating the date the Works were substantially complete, or notify the Contractor that the Employer's Representative does not consider the Works substantially complete, with reasons. The certificate does not relieve the Contractor of any responsibility or liability. The certificate may include a list of work that remains to be done.
- 2.5 After the Employer's Representative certifies the date that the Works are substantially complete, the Contractor must complete any outstanding work promptly after the Employer's Representative so instructs. In doing so (and generally in performing this Contract after substantial completion of the Works) the Contractor must cause as little disruption as possible to occupiers and users of the Works. If the Contractor fails to comply with the instruction promptly and in compliance with this clause, the Employer may do the outstanding work itself, or have it done by others, and the Contractor must pay or allow the Employer's cost of the work.
- 2.6 If the Contractor does not substantially complete the Works within the Time for Completion, the Contractor must pay or allow the Employer liquidated damages at the rate in the Schedule from the day after the last day of the Time for Completion until the day that the Works are substantially complete.
- 2.7 The Employer's Representative will extend the Time for Completion by an amount corresponding to any delay to the substantial completion of the Works caused by any of the following and not resulting from the Contractor's or Contractor's Personnel's acts or omissions (except as an unavoidable result of complying with this Contract) or the Contractor's breach of this Contract:
 - Compensation Events
 - loss of or damage to the Works
 - a weather event
 - strikes or lock outs not confined to the Contractor's Personnel
 - order or other act of a court or other public authority, including a Covid-19 Mandatory

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Closure

- failure or delay of a person other than the Contractor or Contractor's Personnel to do what this Contract says they will do.

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

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

A **weather event** is when a weather measurement is recorded at the weather station named in the Schedule for a month during the Time for Completion that is shown to exceed the 90th percentile of past weather measurements for the corresponding month of the year at the same station, as determined by Met Éireann and published most recently before the day 10 days before the final date for submission of tenders for the Works.

If no weather station is named in the Schedule, the Met Éireann station nearest the Site is used. If the station named in the Schedule, or the nearest one, does not record the weather measurements, the station nearest to the Site that records the weather measurement is used.

A weather event also means any other event stated in the Schedule to be a weather event.

An extension of time for a weather event never exceeds the number of days in the relevant month by which the weather measurement exceeds the 90th percentile (as so determined).

2.9 The Contractor must ensure that goods and materials for the Works selected or designed by the Contractor (including Contractor's Personnel) are suitable for their intended purpose in the Works and shall provide the certification necessary to comply with the Building Control Regulations.

3 The Works

- 3.1 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.
- 3.2 The Contractor must construct the Works according to good practice, and must only use goods and materials that are of good quality.
- 3.3 From when the Employer allows the Contractor access to the Site, the Contractor must
- as far as practicable, secure the Site and keep off the Site persons not entitled to be there
 - keep the Site in good order and free from unnecessary obstructions
 - 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 and
 - as far as practicable, ensure that the Contractor, the 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.
- 3.4 Until the Employer's Representative issues the Defects Certificate, if the Employer's Representative gives the Contractor a written instruction in relation to the Works, the Contractor must implement the instruction. This can include an instruction changing the Works, or an instruction imposing or changing restrictions on how the Works are to be constructed.
- 3.5 The Employer's Representative will give the Contractor instructions that are necessary for the Contractor to construct the Works if the Contractor asks for them in writing. Such an instruction must be given in reasonable time, taking into account when the Contractor asked for it and when the Contractor needs it to avoid delay to the Works.
- 3.6 The Contractor must set out the Works by reference to the points, lines, and levels in this Contract and in written instructions from 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.
- 3.7 Until the Employer's Representative issues the Defects Certificate, the Contractor must ensure that the Employer, the Employer's Representative, the Assigned Certifier, and persons authorised by them, are able to have access to the Site and other places where the Works are being constructed or goods or materials for the Works are being produced, stored, extracted, or prepared, and there to inspect, test, and observe the Works, goods, materials, and

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- activities. The Contractor must give the Employer's Representative the information the Employer's Representative requires or requests to do this.
- 3.8 The Contractor must inform the Employer's Representative and the Assigned Certifier 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 and the Assigned Certifier a proper opportunity to inspect them.
- 3.9 Any time until the Employer's Representative issues the Defects Certificate, 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.
- 3.10 Any time until the Employer's Representative issues the Defects Certificate, 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. 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.
- 3.11 Until the Works are substantially complete, the Contractor must not remove from the Site any Works, goods or materials for the Works, or plant to be used for the Works, without the Employer's Representative's consent
- 3.12 The Employer's Representative may instruct the Contractor to suspend all or part of the Works. The Contractor must, during the suspension, protect, store, and secure the affected Works and maintain the insurances required by this Contract. The Contractor must resume the Works promptly after the Employer's Representative so instructs. If the suspension did not result from a breach of the Contractor's obligations and lasts for longer than 3 months, the Contractor may ask the Employer's Representative for permission to proceed; and if the Employer's Representative does not give permission within 20 working days of being asked
- if the suspension affected all the Works, the Employer will be considered to have terminated the Contractor's obligation to complete the Works and
 - if the suspension affected part of the Works, the Employer will be considered to have given an instruction to omit that part of the Works.
- 3.13 If the Contractor discovers fossils, coins, antiquities, monuments, or other items of value or of archaeological or geological interest 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.
- 3.14 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, except when this Contract states otherwise. The Contractor is also responsible for obtaining and providing all facilities, power, water, and other services it requires to construct the Works, other than those this Contract requires the Employer to provide.
- 3.15 In the time stated in the Schedule, the Employer's Representative will issue to the Contractor the Defects Certificate. But the Employer's Representative may defer issuing the Defects Certificate until the Contractor has completed outstanding work, including under clauses 3.9 or 3.10. Neither the Defects Certificate nor its deferral relieves the Contractor of any obligations.

4 The Price and payment

- 4.1 For completing the Works according to this Contract the Employer must pay the Contractor the Price, in instalments as follows:
- interim payments on account as Scheduled, less payments already made and any deductions permitted by this Contract
 - after the Employer's Representative certifies the date the Works were substantially complete, the percentage of the Price stated in the Schedule, less (a) payments already made, (b) the value of any remaining work, and (c) other deductions permitted by this Contract
 - after the Employer's Representative issues the Defects Certificate, the unpaid balance of the Price, less deductions permitted by this Contract.
- 4.2 When a payment is to be made, 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 amount to be paid. Within 14 days of receiving the payment claim notice, the Employer's Representative shall issue a response to the payment claim notice, to the Contractor, in the form of a certificate, setting out the amount the Employer's Representative considers the Contractor should be paid, with reasons for any difference between the amount in the certificate and the Contractor's 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 shall pay the amount due on the invoice within the period stated in the Schedule.
- 4.3 The Contractor shall give a penultimate statement within 30 days after the Employer's Representative certifies the date the Works were substantially complete, and a final statement of all amounts due under this Contract within 30 days after the Employer's Representative issues the Defects Certificate. The final statement shall be the same as the penultimate statement, except for amounts due for occurrences after the date of the penultimate statement. Within 14 days of receiving a statement, the Employer's Representative will give the Contractor a certificate setting out the amount the Employer's Representative considers the Contractor should be paid, with reasons for any difference between the amount in the certificate and the Contractor's 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 shall pay the amount due on the invoice within the period stated in the Schedule.
- 4.4 The Price will change only as expressly provided in this Contract. The Contractor's cost of performing this Contract is all at the Contractor's risk except to the extent that the Price is to be increased under this Contract.
- 4.5 In this Contract, **Compensation Event** means any of the following:
- the Employer's Representative gives the Contractor an instruction
 - that changes the Works or constraints in this Contract on how the Works are to be constructed
 - to search for defects or their cause under clause 3.9 and no defect is found, and the search was not required because of a failure by the Contractor to comply with this Contract
 - to suspend work
 - the Employer's Representative does not give an instruction when required under clause 3.5
 - other contractors working on the Site under clause 2.2 impede the Contractor and this was unforeseeable and not in accordance with this Contract
 - breach of this Contract by the Employer
 - the Employer instructs the Contractor to rectify loss or damage at the Employer's risk
 - the Contractor encounters on the Site unforeseeable ground conditions or unforeseeable man-made obstructions in the ground
 - owners of utility apparatus on the Site do not relocate or disconnect their apparatus as stated in this Contract, when the Contractor has complied with their procedures and the procedures in this Contract, and the failure is unforeseeable.

In the above definition, something is **unforeseeable** if an experienced Contractor tendering for the Works could not have reasonably foreseen it, having inspected the Site and taking into account all the information provided by the Employer.

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- 4.6 If a Compensation Event happens, the Employer's Representative will adjust the Price according to this clause. If the adjustment is an increase the Price can be increased only to the extent that all of the following apply:
- The Compensation Event is not a result of an act or omission of the Contractor or Contractor's Personnel, or the Contractor's breach of this Contract.
 - The Contractor makes all reasonable efforts to avoid and minimise the adverse effects of the Compensation Event.
 - The Contractor has complied with clause 4.8 in full.
 - This Contract does not provide otherwise.
- The amount of the adjustment will be the amount of an accepted or agreed quotation under clause 4.7, if a quotation is agreed. If there is no agreed quotation, the Employer's Representative will assess the amount of any adjustment using the rates and prices in this Contract, or on the basis of those rates and prices, if there are any and they are suitable, and if not by assessing the effect of the change on the Contractor's cost of constructing the Works. The Contractor's right to an adjustment under this clause is subject to clause 4.8, but the Employer's Representative may act on its own initiative.
- 4.7 If the Employer's Representative so requests, the Contractor must give the Employer's Representative, within 10 working days of receiving the request, a quotation for any change to the Price and the Time for Completion as a result of a proposed instruction. If the Employer's Representative accepts the quotation, it may issue the instruction, and adjust the Price and the Time for Completion to match the accepted quotation. If the Employer's Representative does not accept the quotation, or it is not given, and agreement is not reached, the Employer's Representative may either
- issue the instruction and assess any adjustment to the Time for Completion and the Price under clauses 2.7 and 4.6 respectively or
 - if the instruction has not yet been given, decide not to proceed with it, unless it is required under clause 3.5.
- 4.8 If the Contractor considers that under this Contract there should be an adjustment of the Price, or that it has any other entitlement against the Employer under or in relation to this Contract, the Contractor must give the Employer's Representative notice of the claim within 10 working days of when the Contractor became, or should have become, aware of it, and full details of the circumstances and the amount claimed within a further 15 working days after giving the notice. If the Contractor does not give the notice and details according to and within the time required by this clause the Contractor is not entitled to an increase in the Price and the Employer is released from all liability to the Contractor in relation to the matter (unless the Contractor's claim is about an instruction for which the Contractor was requested to and gave a proposal under clause 4.7).
- 4.9 If the Employer or the Employer's Representative considers that under this Contract there should be an adjustment to the Price, it must, as soon as practicable, give notice and full details of the circumstance and the amount claimed to the other and to the Contractor. The Contractor may, within 10 working days after receiving the notice, give a response to the Employer's Representative and the Employer's Representative may adjust the Price in accordance with this Contract.
- 4.10 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.
- 4.11 The Contractor's completed form of tender states whether, and to what extent, the Price includes VAT
- 4.12 To the extent that the Price excludes VAT, the Employer must pay the Contractor (or the Revenue Commissioners when required by Law or their practice) any VAT arising on the supply under this Contract in addition to the Price.
- 4.13 To the extent that the Price includes VAT,
- (1) adjustments to the Price shall be on a net-of-VAT basis, and the appropriate sum for VAT shall be added or subtracted and
 - (2) any VAT included in the Price that the Employer is required to pay the Revenue Commissioners (by Law or their practice) shall be deducted from the Price.
- 4.14 So therefore, if the Price includes VAT chargeable at the standard rate only, then the Employer shall pay the Contractor (or the Revenue Commissioners when required by Law or their

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practice).

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

In this Contract 'standard rate' means the VAT rate specified in section 46(1)(a) of the Value-Added Tax Consolidation Act, 2010.

- 4.15 Amounts in this Contract other than the Price exclude VAT, unless otherwise stated
- 4.16 For each payment the Contractor must give the Employer an invoice complying with section 66 of the Value-Added Tax Consolidation Act, 2010
- 4.17 The Price will be adjusted by the amount of any increase or decrease in the Contractor's cost of performing this Contract as a result of a change in law after the date of this Contract that changes customs or excise duties, requirements for licence to import or export any commodity or PRSI, except for when this Contract says otherwise.
- 4.18 The Employer may withhold and deduct any amount on account of tax required by law or the practice of the Revenue Commissioners
- 4.19 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.

5 Representation and communications

- 5.1 If the Employer's Representative is not named in the Schedule, the Employer must, promptly after the date of this Contract, appoint the Employer's Representative and notify the Contractor. The Employer must notify the Contractor of any limitations agreed with the Employer's Representative on how the Employer's Representative's functions under this Contract may be exercised. The Employer may change the Employer's Representative, and must notify the Contractor.
- 5.2 The Contractor must appoint a representative, with authority to act on the Contractor's behalf in all matters concerning the Works. The Contractor must also appoint a competent supervisor of all the Contractor's activities on the Site, who may be the same person as the Contractor's representative. The Contractor is considered to be aware of matters (including communications and instructions) of which its representative or supervisor is aware. The Employer's Representative will send the Contractor's representative copies of any instructions given to the Contractor's supervisor. If the Contractor's representative or supervisor dies, or becomes no longer able to perform her duties, or is no longer available to the Contractor, the Contractor must appoint a replacement. The Contractor must replace its representative or supervisor if the Employer's Representative so requires because of the representative's or supervisor's misconduct, negligence, or incompetence.
- 5.3 All communications provided for in this Contract must be in English, unless this Contract requires Irish, and in writing.

6 Contractor's Personnel

- 6.1 The Contractor must ensure that Contractor's Personnel are suitably qualified, trained, and experienced and are competent to carry out their tasks. 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.
- 6.2 The Contractor must remove from the Works and the Site any Contractor's Personnel that the Employer's Representative instructs be removed on the basis of their negligence or incompetence or that their presence on the Site is not conducive to safety, health, or good order.
- 6.3 The Contractor may not subcontract the whole of the Works 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 already provided for in this Contract.

7 Pay and conditions of employment of workers

- 7.1 The Contractor shall prominently exhibit copies of this clause 7 for the information of persons at the Site. In this clause **worker** means a person employed by, or otherwise working for, the

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Contractor or the Contractor's Personnel on or adjacent to the Site.

- 7.2 The Contractor shall ensure that the rates of pay and the conditions of employment, including pension contributions, comply with all applicable law and that those rates and conditions are at least as favourable as those for the relevant category of worker in any 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). This applies to workers who are posted workers (within the meaning of Directive 96/71/EC of the European Parliament and the Council of the 16 December 1996 as amended by Directive 2014/67/EU concerning the posting of workers in the framework provision of services), except that the Contractor's obligation to make pension contributions in accordance with an applicable sectoral employment order, registered employment agreement or employment regulation order under the Industrial Relations Act 1946-2015 does not apply to posted workers who already contribute, or whose contributions are paid, to a supplementary pension scheme established in another member state of the European Union.
- 7.3 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 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.
- 7.4 If the Employer so requests, the Contractor must, within 5 working 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.
- 7.5 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 documents and records received 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.
- 7.6 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 the Defects Certificate is issued, the estimated amount is deducted from the Price.
- 7.7 The Contractor must give the Employer's Representative with each statement under clause 4.2 and 4.3 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 certificate attached to these Conditions, 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 the Defects Certificate is issued, the portion (of the value of work that the Contractor

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has not given a certificate for) that the Employer determines is the labour portion is deducted from the Price.

- 7.8 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.
- 7.9 The Contractor shall ensure that in the event of an official of a trade union representing workers who are affected by a sectoral employment order, employment regulation order or which is a party to a registered employment agreement affecting workers having concerns in relation to the Contractor's or Contractor's Personnel's compliance with the order or agreement, that official will have access to a designated member of the Contractor's management who shall engage constructively to resolve all matters on this point.

8 Loss of and damage to the Works

- 8.1 The Employer bears the risk of loss of and damage to the Works resulting from
- war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped power
 - pressure waves caused by aircraft or other airborne objects travelling at sonic or supersonic speeds
 - contamination by radioactivity or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or its components, in each case not caused by the Contractor or the Contractor's Personnel
 - terrorism
 - use or occupation of the Works by the Employer except (a) as provided for in this Contract or (b) if the loss or damage is caused by the negligence of the Contractor or Contractor's Personnel, or the Contractor's breach of this Contract.
 - design of the Works by the Employer or by others for whom the Employer is responsible.

The Employer also bears the risk of loss of and damage to the Works after the Employer's Representative issues the certificate of the date they were substantially complete, unless the loss or damage is due to

- the Works not complying with this Contract
- an occurrence before substantial completion or
- activities of the Contractor or Contractor's Personnel.

The Contractor bears the risk of loss of and damage to the Works that does not result from an Employer risk listed above.

- 8.2 The Contractor must promptly put right loss of or damage to the Works and goods or materials for the Works that is at the Contractor's risk. The Contractor is not entitled to payment for this except any insurance proceeds. If the insurance is insufficient, the Contractor must put the loss and damage right at its own expense.
- 8.3 If the Works are lost or damaged before the Defects Certificate is issued, and the loss or damage is at the Employer's risk, the Contractor must put it right if the Employer so instructs in writing.
- 8.4 Only if the Works involve alteration or extension of existing facilities owned by the Employer, the Employer bears the risk of loss of or damage to those facilities and their contents owned by the Employer caused by fire, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, explosion, impact, aircraft, riot, civil commotion, or malicious damage. But the Contractor bears the risk of such loss and damage to the extent caused by the negligence of the Contractor or Contractor's Personnel to the extent (and up to the limit) required to be insured under clause 10.3.

9 Indemnity for claims and damage

- 9.1 The Contractor must indemnify the Employer against
- claims, liability, proceedings, and
 - loss of and damage to the Employer's property (except for loss or damage at the Employer's risk under clause 8.1))

that happen in the course or as a result of the Works.

The Contractor's indemnity in this clause does not apply to the Employer's liability under this

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Contract to the Contractor, nor to the extent that the matter is covered by the Employer's indemnity in clause 9.2.

- 9.2 The Employer must indemnify the Contractor against
- liability for death, injury or illness of any person or loss of damage to any physical property that the Contractor incurs in the course of performing this Contract to the extent caused by the negligence of the Employer and
- liability for property damage that is the unavoidable result of constructing the Works in accordance with this Contract.

10 Insurance

- 10.1 From the date the Employer allows the Contractor to occupy and use the Site, the Contractor must insure the Works and goods and materials for the Works against loss and damage. The Employer must be named as an insured. The insurance 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 Price. The Contractor must maintain this insurance until the Employer's Representative certifies the date that the Works were substantially complete, and must extend the insurance to cover loss and damage at the Contractor's risk until the Defects Certificate is issued.
- 10.2 The proceeds of the insurance of the Works and goods and materials for the Works (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 in instalments on the basis of the value of the work done and goods and materials delivered to the Site for the reinstatement, following generally clauses 4.1 and 4.2, 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.
- 10.3 From the date the Employer allows the Contractor to occupy and use the Site, the Contractor must have public liability and employers liability insurance, with indemnity limits of at least those 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 the Defects Certificate is issued, and after that must have these insurances in place any time the Contractor or Contractor's Personnel return to the Site in connection with the Works.
- 10.4 The Contractor must place the insurances required by this Contract with reputable insurers approved by the Employer. The level of excess must be no higher than stated in the Schedule.
- 10.5 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.
- 10.6 The Contractor must comply with the terms of the insurance policies required under this Contract.
- 10.7 On or before the date of renewal of any insurance policy and in any event within 10 working 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.
- 10.8 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.
- 10.9 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.
- 10.10 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.

11 Property

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- 11.1 The Contractor must ensure that goods and materials for the Works become the property of the Employer on the earliest of the following
- when they are delivered to the Site, if owned by the Contractor
 - when they are incorporated in the Works
 - when the Employer makes any payment for them.
- 11.2 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 these documents for any purposes other than those for which they were provided.
- 11.3 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 construction of the Works, unless covered by the Employer's indemnity in clause 11.4
 - use by the Employer of the Works and goods, materials, and documents provided by the Contractor for the Works for the purposes for which they were provided.
- 11.4 The Employer must indemnify the Contractor against claims, liability, and proceedings resulting from any of the following infringing the property (including intellectual property) rights of any person:
- use by the Contractor, in accordance with this Contract, of documents or goods provided by the Employer for the purposes for which they were provided
 - use or occupation of the Site by the Works that is the unavoidable result of constructing the Works in accordance with this Contract.

12 Termination

- 12.1 The Employer may terminate the Contractor's obligation to complete the Works on giving written notice to the Contractor. If this happens, the Contractor's obligation to complete the Works will terminate 10 working days after the notice was given, or a different date stated in the notice, and
- the Contractor must leave the Site in an orderly manner, but must not remove any goods or materials for the Works, or property of the Contractor or Contractor's Personnel used or to be used for the Works, unless the Employer or Employer's Representative so instructs
 - the Contractor must remove from the Site any property of the Contractor or Contractor's Personnel that the Employer or Employer's Representative instructs the Contractor to remove
 - the Contractor must, as soon as practicable, give the Employer a statement of the amount (the **termination value**) due to the Contractor under this Contract and unpaid, including in it the reasonable rental value of any property of the Contractor and Contractor's Personnel that the Employer or Employer's Representative has required to be left on the Site to complete the Works, including details
 - the Employer's Representative will, within 14 days after receiving the Contractor's statement of the termination value, issue a certificate stating what the Employer's Representative considers to be the termination value, with reasons
 - the Employer may employ others and do anything necessary to complete the Works.
- 12.2 This clause applies if the Employer has terminated the Contractor's obligation to complete the Works because
- of a substantial breach by the Contractor of this Contract or
 - any of the following (or similar event anywhere) occurring in relation to the Contractor —
 - a petition being presented to wind it up and not being dismissed within 14 days after presentation
 - a meeting of its creditors or members being held for the purpose of considering a resolution to wind it up
 - entering or proposing to enter an arrangement with or for the benefit of its creditors
 - a petition being presented to appoint an examiner
 - a liquidator, examiner, supervisor, receiver, administrative receiver, trustee,

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encumbrancer, or similar being appointed for it or any of its assets

- ceasing or threatening to cease its business
- becoming insolvent or unable to pay its debts as they fall due
- being an individual, becoming bankrupt or dying or becoming incapable of performing this Contract.

Payment of any money due by the Employer to the Contractor will be postponed, and the Employer is not required to make any further payment to the Contractor until required under this clause.

After the Works have been completed the Employer's Representative will give the Contractor a certificate of the total of the following (the **termination amount**):

- the Employer's additional cost of completing the Works compared with the cost the Employer would have incurred if the Works had been completed by the Contractor under this Contract
- other costs and losses incurred by the Employer as a result of the termination and its causes and
- amounts due to the Employer from the Contractor.

If the Employer does not begin to put in place arrangements to complete the Works within 6 months after the termination, the Employer's Representative will give the above certificate to the Contractor within 14 days after the 6 month period (based, if necessary, on estimates).

If the certified termination amount is less than the certified termination value, the Contractor may give the Employer an invoice for the difference after receiving the Employer's Representative's certificate, and the Employer must pay the amount due within 30 days after receiving the invoice. If the certified termination amount is more than the certified termination value, the Contractor must pay the Employer the difference within 10 working days of receiving the Employer's Representative's certificate.

- 12.3 This clause applies if the Employer terminates the Contractor's obligation to complete the Works, only if clause 12.2 does not apply.

The Contractor may give the Employer an invoice for the total of the termination value certified by the Employer's Representative and the Contractor's reasonable direct cost of removal from the Site as a result of the termination. If the Employer appoints another contractor to complete the Works within 12 months after the termination, the Contractor's payment under this clause will also include the percentage of the unpaid portion of the Price stated in the Schedule. The Employer must pay the amount due within 30 days of receiving the Contractor's invoice.

- 12.4 The Employer has no other liability in relation to termination, including no liability for lost profit or contribution to overhead.

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 Criminal Justice (Corruption Offences) Act 2018 or the Ethics in Public Office Acts 1995 to 2001 in connection with this Contract or the Works, and nor will they commit any such offence.

14 Project Supervisor for the Construction Stage

Subject to the Schedule, if the Employer appoints the Contractor as project supervisor for the construction stage of the Works according to the Safety, Health and Welfare at Work (Construction) Regulations 2013 and the Contractor must accept the appointment in writing, in the terms attached to these Conditions or other terms in this Contract, within 5 days after this Contract comes into effect, and before starting work on the Site. If this Contract provides that an individual or body corporate named by the Contractor or in this Contract is to be appointed as project supervisor for the construction stage, the Contractor must ensure that the person accepts the appointment in terms included in this Contract (if any, and if not, in terms required by the Employer) within 5 working days after this Contract comes into effect. If the Employer terminates the employment of the Contractor or person so named as project supervisor for the construction stage for failure to comply with the obligations of project supervisor, the Contractor must pay the Employer all the Employer's costs resulting from the termination.

15 Law, jurisdiction and disputes

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- 15.1 Irish law governs this Contract and its interpretation.
- 15.2 The dispute resolution procedure is as follows:
- (1) 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.
 - (2) 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.
 - (3) 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.
 - (4) The conciliator will not be an arbitrator and the Arbitration Act 2010 and the law of arbitration will not apply to the conciliation.
 - (5) 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.
 - (6) The conciliation will be confidential, and the parties must respect its confidentiality. All documents provided by a party in connection with a conciliation must be returned when the conciliation ends.
- 15.3 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.
- 15.4 The parties submit to the jurisdiction of the Irish courts.

16 Covid-19 Mandatory Closure

- 16.1 Covid-19 Definitions
- (1) **Covid-19** means Covid-19 or such variant thereof as each is listed in the schedule to the Infectious Diseases Regulations 1981.
 - (2) **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.
 - (3) **Site Closure Costs** has the meaning set out in the Site Closure Costs Supplement.
 - (4) **Site Closure Costs Supplement** means the document of the same name listed in part 1.3 of the Schedule or, if there is none, the version of the document of the same name published on the Office of Government Procurement website most recently before the day 10 days before the final date for submission of tenders for the Works.

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16.2 Covid-19 General Provisions

- (1) The Contractor's sole remedies for a Covid-19 Mandatory Closure shall be those stated in sub-clause 2.7 for an extension to the Time for Completion and Site Closure Costs under this clause 16. The provisions of clause 4.8 shall apply in respect of any adjustment to the Price for the Site Closure Costs under this clause 16 in respect of a Covid-19 Mandatory Closure.

16.3 Covid-19 Costs

- (1) In the event of a Covid-19 Mandatory Closure there shall be added to the Price the Site Closure Costs for the period of the Covid-19 Mandatory Closure. The Employer's Representative will assess the amount of any adjustment in accordance with the Site Closure Costs Supplement and this Clause 16.
- (2) The Contractor shall only be entitled to Site Closure Costs to the extent that all of the following apply:
 - the Site Closure Costs are not a result of the Contractor's or Contractor's Personnel's act or omission or the Contractor's breach of the Contract
 - if the Works are concurrently delayed by more than one cause, and one or more of the causes is not a Covid-19 Mandatory Closure, there shall be no increase to the Price for Site Closure Costs for the period of concurrent delay
 - the Contractor makes all reasonable efforts to avoid and minimise the adverse effects of the Covid-19 Mandatory Closure
 - the Contractor has complied with sub-clause 4.8, clause 16 and the Site Closure Costs Supplement in full [including giving notices and details within the time required] and continues to comply with its obligations under the Contract
 - the Contractor has not claimed or received as part of the Site Closure Costs, any costs in respect of which it is entitled to claim assistance or receive payment under any scheme, relief, benefit or otherwise [including under the Financial Provisions (Covid-19) (2) Act 2020 (Act No. 8 of 2020) or similar Law]
 - the Contract does not provide otherwise.
- (3) The Contractor warrants that the details that it provides as required by the Site Closure Costs Supplement are a complete and full break-down of the relevant costs, on a transparent and 'open book' basis.
- (4) Any adjustment to the Price in accordance with sub-clause 16.3(1) shall be paid as part of the interim payments under the first bullet point of sub-clause 4.1.

17 Limit on Liability

- 17.1 Subject to clause 17.2, the monetary amount of the Contractor's liability to the Employer under or arising out of this Contract shall not exceed the amount stated in the Schedule, or, where there is no amount stated, an amount equal to the Price (the "**Liability Cap**").
- 17.2 The Liability Cap shall not apply to or limit any liability of the Contractor in respect of (and the following shall not be taken into account in any way in any calculation of the Liability Cap):
 - fraud or fraudulent misrepresentation, wilful default, gross negligence;
 - death, injury or illness of any person;
 - loss of, or damage to, tangible or intangible property (except for the Works);
 - any liability to which insurance for the Works pursuant to clause 10.1, whether before or after the date upon which the Time for Completion falls, is intended to respond;
 - liquidated damages pursuant to clause 2.6;
 - any liability which the Contractor cannot lawfully exclude or limit.

18 PRICE VARIATION

18.1 Definitions

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For the purpose of this clause definitions are set out in Appendix 1 [as well as elsewhere in the Conditions].

18.2 **Contract Sum Adjustment**

The Price, excluding the amount of Labour, Plant and Non-Adjustable Overheads, shall be subject to adjustment for price fluctuations only in the circumstances set out in this clause 18.

18.3 **Proportions**

For the purpose of calculating adjustments to the Price, the proportions of Materials, Fuel, Non-Adjustable Overheads, Labour and Plant in the Price are set out in Appendix 3 [irrespective of the actual proportions of the work].

18.4 **Failure to Commence by the Starting Date**

Where a Recovery Date has been agreed or determined, adjustment of the Price in respect of the Works shall be effected by the Recovery Date Index Figures or the Designated Date Index Figures, whichever results in the most favourable adjustment to the Employer.

18.5 **Failure to Complete on Time**

If the Contractor fails to complete the Works by its Time for Completion, adjustment of the Price in respect of the Works after its Time for Completion shall be effected by the Index Figures applicable to the Adjustment Period in which the Date for Time for Completion occurs, or the Adjustment Period, whichever results in the most favourable adjustment to the Employer.

18.6 **Excluded Amounts**

The following are not subject to price adjustment (**Excluded Amounts**):

- (a) Adjustments or parts of adjustments of the Price valued in accordance with sub-clause 4.6 using a quotation that does not use rates and prices in the Contract
- (b) Amounts based on actual costs or current prices
- (c) Credits allowed for old materials arising from the Works
- (d) Amounts for work executed under an agreement containing specific price arrangements
- (e) [In addition to sub-clause 18.5] amounts by which any cost incurred by the Contractor has been increased by a default of the Contractor.

18.7 **Revisions of Index Figures**

If an Index Figure used for a Material Category or a Fuel Category is subsequently revised by the Central Statistics Office prior to the issue of the final Certificate, any adjustments in accordance with this Clause shall be recalculated on the basis of the revised Index Figures.

18.8 **Permitted Increases and Permitted Decreases for Material Categories and Fuel Categories**

18.8.1 **Weightings**

For the purpose of calculating any adjustments to the amount payable in respect of Materials and Fuel in an Certificate, the weightings of Material Categories and Fuel Categories in the Contract Sum are set out in Part 1A, Part 1B or Part 2 of Appendix 4, as applicable [irrespective of the actual constituents, weightings or proportions of the work].

18.8.2 **Materials and Fuel**

Subject to sub-clauses 18.4 and 18.5, the amount payable in respect of a Material Category and/or Fuel Category in a Certificate (other than amounts for price adjustments under this clause 18 or any Excluded Amounts) in respect of an Adjustment Period shall be adjusted for any Permitted Increase or Permitted Decrease in respect of that Material Category or Fuel Category, in accordance with the provisions of this clause 18. The total adjustment to the amount payable in such Certificate in respect of Materials and Fuel shall be equal to the net sum of any Permitted Increases and Permitted Decreases for each Material Category and Fuel Category, which adjustments shall be calculated using the relevant formula set out in Appendix 2.

18.9 **Efficiency**

[In addition to sub-clause 18.4 and 18.5,] increases of the Price will only apply so far as such increases occur despite the Contractor's efficient progress and procurement and reasonable efforts to minimise increases.

End of Conditions.

Appendix 1 to Clause 18

DEFINITIONS

	<i>Term</i>	<i>Meaning</i>
(a)	Adjustment Index Figure	the appropriate Index Figure for the Adjustment Month provided however that, the Index Figure for any Adjustment Month that occurs after the Time for Completion shall be determined in accordance with sub-clause 18.5.
(b)	Adjustment Month	the month during which the middle day of the Adjustment Period occurred (if the Adjustment Period is an even number of days the last day is not to be counted).
(c)	Adjustment Period	the period between the last preceding Certificate and the current Certificate or the final Certificate.
(e)	Designated Date	the date 10 days before the last day for receipt of the Contractor's tender for the Works, or, if there was none, 10 days before the Employer received the Contractor's tender for the Works.
(f)	Designated Date Index Figures	the Index Figures for the month and year in which the Designated Date occurs.
(g)	Effective Value	<p>the difference between</p> <p>(I) the amount which is due in any Certificate (before deducting retention) less any amounts for price adjustments and Excluded Amounts</p> <p>and</p> <p>(II) the amount included in the last preceding Certificate calculated in accordance with (I) above provided that in the case of the first Certificate the Effective Value shall be the amount calculated in accordance with (I) above,</p> <p>excluding VAT</p>
(h)	Certificate	a certificate provided by the Employer's Representative in accordance with sub-clause 4.3
(i)	Fuel and Fuel Category	any or all of the sources of energy listed in Appendix 4, Part 2 as appropriate.
(j)	Fuel Percentage	the percentage of the Contract Sum that consists of Fuel set out in Appendix 3.
(k)	Index Figures	those index figures compiled by or on behalf of the Central Statistics Office, Ireland (or such other public body as is authorised to perform this function) applicable to each Material or Fuel Category listed in Appendix 4, Part 1A, Part 1B or Part 2, as appropriate
(l)	Material(s) and Material Category	any or all of the materials listed in Appendix 4, Part 1 or Part 1B as appropriate.
(m)	Materials Percentage	the percentage of the Contract Sum that consists of Materials set out in Appendix 3, Part 1.
(n)	Non-Adjustable Overheads	the percentage of the Contract Sum that consists of non-adjustable overheads set out in Appendix 3, Part 1.
(o)	Plant	the percentage of the Contract Sum that consists of plant set out in Appendix 3, Part 1. (Plant means any machinery and/or equipment used in the construction of the Works but which does not form part

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<i>Term</i>		<i>Meaning</i>
		of the Works. Examples include, but are not limited to; large machinery, tools, reusable formwork, trench supports, scaffolding, propping etc.)
(p)	Permitted Increase Threshold	means the figure identified as such in Appendix 3, Part 2
(q)	Permitted Increase	means an increase to the Contract Sum permitted where, in respect of a particular Material Category or Fuel Category, the percentage change between the Designated Date Index Figure (or where a Recovery Date has been agreed, the Recovery Date Index Figure) and an Adjustment Index Figure exceeds the Permitted Increase Threshold. The amount of a Permitted Increase is calculated using the formula for Permitted Increases in Appendix 2
(r)	Permitted Decrease	means a decrease to the Contract Sum permitted where, in respect of a particular Material Category or Fuel Category, the percentage decrease between the Designated Date Index Figure (or where a Recovery Date has been agreed, the Recovery Date Index Figure) and an Adjustment Index Figure exceeds ten percent. The amount of a Permitted Decrease is calculated using the formula for Permitted Decreases in Appendix 2.
(s)	Recovery Date	the Designated Date adjusted by the period of delay to the Starting Date that results from the actions or omissions of the Contractor after the Contract Date, but prior to the Starting Date (the Contractor's Period of Delay) as is agreed by the Parties. If the Parties do not agree the Recovery Date then the Employer may deliver to the Employer's Representative full and detailed particulars of any claim to a Contractor's Period of Delay and the Recovery Date shall be the Designated Date adjusted by the Contractor's Period of Delay, if any, that the Employer's Representative certifies as fair and reasonable.
(u)	Recovery Date Index Figures	Where there is a Recovery Date, the Index Figures for the month and year in which the Recovery Date occurs.
(v)	Starting Date	the date in the Contract that the Contractor is to start executing the Works in accordance with sub-clause 2.3

Appendix 2 to Clause 18

PERMITTED INCREASES AND PERMITTED DECREASES FOR MATERIALS and FUEL

Permitted Increase

A Permitted Increase in respect of any Material Category or Fuel Category only arises where $((F1 - D1)/D1) - PIT > 0$

Where $((F1 - D1)/D1) - PIT > 0$ for a Material Category or Fuel Category, the formula for calculating a Permitted Increase pursuant to sub-clause 18.8.2 is:

$$N = (W * Y * EV * EPI)$$

Permitted Decrease

A Permitted Decrease in respect of any Material Category or Fuel Category only arises where $0 > ((F1 - D1)/D1 + 0.1)$

Where $0 > ((F1 - D1)/D1 + 0.1)$ for a Material Category or Fuel Category, the formula for calculating a Permitted Decrease pursuant to sub-clause 18.8.2 is:

$$N = (W * Y * EV * EPD)$$

where:

W = The weighting for the particular Material Category or Fuel Category, as applicable

Y = The Materials Percentage or the Fuel Percentage, as applicable

EV = Effective Value

EPI = Excess Index Figure Increase = $((\frac{F1-D1}{D1}) - PIT)$

EPD = Excess Index Figure Decrease = $((\frac{F1-D1}{D1}) + 0.1)$

D1 = Subject to 18.5, the Designated Date Index Figure corresponding to the particular Material Category or Fuel Category or, where a Recovery Date has been agreed or determined, the Recovery Date Index Figure, as applicable

F1 = Subject to 18.6, the Adjustment Index Figure for the particular Material Category or Fuel Category.

PIT = The Permitted Increase Threshold, (expressed as a decimal)

N = The amount of the Permitted Increase or Permitted Decrease recoverable in relation to price fluctuations in a particular Material Category or Fuel Category in a Certificate.