

Investigation Contract

Conditions

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

Investigation Contract
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INVESTIGATION CONTRACT

CONDITIONS

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CONDITIONS

1. The Contract

1.1 In this contract

- 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 Investigation.
- **Data Protection Law** is all applicable data protection law, including the General Data Protection Regulation (Regulation (EU) 2016/679).
- The **Employer** is as named in the accepted tender.
- The **Employer's Representative** is as named in the Schedule or an engineer, architect, surveyor, or other person notified by the Employer, or if none, the Employer. References in this contract to the **Engineer** are to the Employer's Representative.
- The **Investigation** is described in the Scope.
- The **Performance Period** for a Task is given in the Tasks Table.
- **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 stated in the attached tender, as may be adjusted according to this contract.
- The **Scope** describes the Investigation and constraints on how it is to be done, and is in the documents listed in the Schedule. It may include a priced bill of quantities.
- The **Site** is the place where the Contractor is to do the Investigation according to this contract and anywhere else this contract says is part of the Site.
- A **Task** is one of the tasks listed in the Tasks Table.
- The **Works** are anything that the Contractor is to install or construct and hand over to the Employer as described in the Scope.

1.2 Unless the context indicates otherwise

- references to clause numbers are to the clauses of these Conditions
- words in the singular also mean the plural and the other way around
- words in a gender also mean other genders
- **person** includes incorporated and unincorporated organisations
- references to a **month** are to a calendar month and to a **day** are to a calendar day
- references to the parties are to the Employer and the Contractor
- references to a law include amendments, replacements and re-enactments
- the term **scheduled** refers to this Schedule, and references to the **Tasks Table** and the **Milestones Table** are to those tables in this Schedule.

1.3 This contract is the entire agreement between the parties about the Investigation and consists of:

- these Conditions and the attached forms and
- the completed tender, acceptance, and Schedule and
- the Scope.

1.4 If there is a discrepancy between these conditions and other documents in this contract, these conditions prevail. If a party discovers a discrepancy within or between the documents containing the Scope, 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 Investigation.

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- 1.6 The Contractor must complete the Investigation 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 Within 7 days after the Employer sends the Contractor written acceptance of the Contractor's tender, the Contractor must give the Employer all of the following (unless they were provided before acceptance of the tender):
- If the Schedule says that a performance bond is required, a performance bond in the form appended to this contract, executed by the Contractor and a surety approved by the Employer, in the amount stated in the Schedule.
 - If the Schedule states that the Contractor (or another person named by the Contractor in the Contractor's Proposals) is to be appointed project supervisor for the construction stage, the appointment of project supervisor for the construction stage in the form appended to this contract, executed by the Contractor (or person named in the Works Proposals)
 - Evidence of insurance as required under clause 12.8
- 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 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 Contractor is more than one person or legal entity, they are jointly and severally liable under this contract.

2. Instructions, information, facilities

- 2.1 If the Employer's Representative gives the Contractor a written instruction in relation to the Investigation, the Contractor must implement the instruction. This can include an instruction changing the Scope.
- 2.2 The Employer's Representative must give the Contractor any instructions that are necessary for the Contractor to do the Investigation, if the Contractor asks for them in writing. The 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.
- 2.3 The Employer must give the Contractor information and facilities described in this contract as being provided by the Employer, when required according to this contract and actual progress of the Investigation, whichever is later.

3. Contractor's Management

- 3.1 The Contractor's Proposals include
- The Contractor's programme showing the order in which the Contractor will do the Investigation and
 - a general description of the Contractor's arrangements and methods of working for the Investigation and
 - a general description of the Contractor's management arrangements for performing its other responsibilities
 - a description of the Contractor's quality assurance procedures for performing its responsibilities and to demonstrate compliance with this contract and
 - any other information required by the Scope.
- 3.2 The Contractor must implement the Contractor's Proposals and add to or otherwise change them as desirable for efficient performance, and in particular so that its programme shows actual and current planned progress.
- 3.3 The Contractor must keep the Employer's Representative fully informed in advance about its arrangements and their implementation.
- 3.4 The Contractor's Proposals and other submissions, and the Employer's Representative's responses or their absence, do not reduce any of the Employer's Representative's other powers or the Contractor's responsibilities or liability.

4. Starting and completing the Investigation

- 4.1 The Contractor must start each Task within 7 days after the Employer's Representative gives permission, perform each Task regularly and diligently and complete each Task within its Performance Period.
- 4.2 The timing for permission to start a Task is at the Employer's Representative's discretion, but if permission is not given by the Last Date for Permission for the Task in the Tasks Table, that will be taken as an instruction changing the Scope by omitting the Task, unless the reason for permission not being given is that the Contractor has failed to comply with clause 1.8.
- 4.3 Within 7 days after the Contractor notifies the Employer's Representative that a task or the Investigation is complete, the Employer's Representative will give the Contractor a certificate stating the date the Task or the Investigation was complete, or notify the Contractor that the Employer's Representative does not consider it 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.
- 4.4 After the Employer's Representative certifies the date that a Task or the Investigation is complete, the Contractor must complete any outstanding work promptly after the Employer so instructs. In doing so (and generally in performing this contract after completion of the Investigation) the Contractor must cause as little disruption as possible to occupiers and users of the Site. 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.
- 4.5 The Employer's Representative will extend the Performance Period for a Task by an amount corresponding to any delay to the completion of the Investigation caused by any of the following:
- loss of or damage to the Works not caused by the Contractor's negligence
 - a weather event under clause 4.6
 - 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 Closure, unless resulting from or in relation to anything done or not done by the Contractor or Contractor's Personnel
 - an instruction of the Employer's Representative changing the Scope, unless the instruction is to deal with a breach of this contract by the Contractor
 - failure or delay of a person other than the Contractor or Contractor's Personnel to do what this contract says they will do
 - breach of this contract by the Employer
 - interference with the Investigation by other work being done on the Site by Employer's other contractors acting within their contracts
 - physical conditions (including contamination) on the Site that could not reasonably have been foreseen by an experienced contractor.
- 4.6 A **weather event** is when a weather measurement is recorded at the weather station stated in the Schedule for a month during the Performance Period for a Task 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 Eireann and published most recently before the day 10 days before the final date for submission of tenders for this contract.
- 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).
- A weather measurement for a month means:
- number of days with rainfall exceeding 10mm
 - number of days with minimum air temperature less than 0 degrees Celsius
 - number of days with maximum mean 10 minute wind speed exceeding 15 metres per second.

If no weather station is named above, the Met Eireann station nearest the Site is used. If the station named above, or the nearest one, does not make or record a weather measurement, the station nearest to the Site that records the weather measurement is used.

5. Co-operation

- 5.1 The Employer, subject to constraints as a public authority, and the Contractor must support reciprocal co-operation for efficiency and public benefit.
- 5.2 Either party may request clarifications, consultations, workshops, exchange of information or expertise, or investigations, although not provided for elsewhere in this contract. The request must specify purposes and, as relevant, proposed participants, arrangements, methods, and any proposals for recording or agreeing results.
- 5.3 The parties may agree to consult or communicate, without prejudice. In any case, offering or giving co-operation does not imply admission of responsibility or alter either party's rights or duties unless otherwise agreed in writing.
- 5.4 A party is not entitled to payment or a time extension to the extent that it is increased by its own failure to co-operate or to take advantage of co-operation offered.

6. Site operations and Works

- 6.1 Provided that the Contractor has complied with clauses 1.8 and 12.8, and subject to the Scope, the Employer must allow the Contractor access to the relevant parts of the Site as necessary for the Contractor to do the Investigation.
- 6.2 The Contractor is responsible for the safety and stability of the Works, and of all operations on the Site connected with the Investigation, including temporary works.
- 6.3 The Contractor must carry out the Investigation according to good practice, and must only use goods and materials that are of good quality and (unless this contract says otherwise) new for the Works.
- 6.4 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 and
 - keep the Site in good order and free from unnecessary obstructions and
 - as far as practicable, secure the safety of persons on the Site and protect them and users, owners and nearby areas from hazards and interference resulting from the Investigation.
- 6.5 As far as practicable, the Contractor must not, and must ensure that Contractor's Personnel and the Investigation 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.
- 6.6 The Contractor must not, and must ensure that Contractor's Personnel do not, damage the Site or property on or near the Site, unless that is the unavoidable consequence of doing the Investigation according to the Scope.
- 6.7 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. The Contractor is responsible for the correct positioning of all parts of the Works.
- 6.8 The Contractor must ensure that the Employer, and persons authorised by the Employer, are able to have access to the Site and other places where the Investigation is being done or goods or materials for or from the Investigation (including samples and cores) are produced, stored, extracted, or prepared, and there to inspect, test, and observe the Investigation, goods, materials, and activities. The Contractor must give the Employer the information the Employer's Representative requires or requests to do this.
- 6.9 The Contractor must inform the Employer's Representative in good time before any part of the Works is covered or goods or materials for the Works that are to be inspected are packed or made difficult or impossible to inspect, and in each case give the Employer's Representative a proper opportunity to inspect them.
- 6.10 The Employer may arrange for work to be done on the Site by the Employer's personnel or other contractors.

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- 6.11 The Employer's Representative may instruct the Contractor to uncover, dismantle, re-cover, or re-erect work; test, inspect, or provide facilities for testing and inspection; or any combination of these. If it is found that the Investigation complied with this contract and the instruction was not required because of the Contractor's breach of this contract the instruction will be considered a change to the Scope.
- 6.12 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.
- 6.13 Until the relevant Task (or part of the Investigation requiring them on the Site) is complete, the Contractor must not remove from the Site any Works, goods or materials for the Investigation, or plant used or to be used for the Investigation, without the Employer's Representative's consent.
- 6.14 The Employer's Representative may instruct the Contractor to suspend all or part of the Investigation. The Contractor must, during the suspension, protect, store, and secure any affected Works and goods, materials, samples, cores, reports and documents for the Investigation, and maintain the insurances required by this contract. The Contractor must resume the Investigation promptly after the Employer's Representative so instructs. If the instruction to suspend did not result from a breach of the Contractor's obligations, it will be considered a change to Scope, and clause 7.5 will apply. 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 for permission to proceed; and if the Employer does not give permission within 28 days of being asked:
- if the suspension affected all the Investigation, the Employer will be considered to have terminated the Contractor's obligation to complete the Investigation and
 - if the suspension affected part of the Investigation, the Employer will be considered to have given an instruction to change the Scope omitting that part of the Investigation.
- 6.15 If the Contractor discovers a national monument or archaeological object (each as defined in the National Monuments Act 1930 as amended) or human remains on the Site, the Contractor must not disturb them, and must take all necessary steps to preserve them, and promptly notify the Employer and comply with the Employer's instructions. As between the parties, these items are the Employer's property. An instruction to deal with these items will be considered a change to the Investigation, and clause 7.5 will apply.
- 6.16 If the Contractor encounters physical conditions (including contamination) on the Site that could not reasonably have been foreseen by an experienced contractor, taking into account the information about the Site in this contract, the Contractor must notify the Employer's Representative as soon as practicable, and give the Employer's Representative details of any anticipated effects of the condition, and how the Contractor proposes to deal with them. If the conditions require a change to the Scope, the Employer's Representative will give an instruction to deal with them as soon as practicable.
- 6.17 The Contractor, and not the Employer, is responsible for the suitability and availability of access routes to and through the Site, and any required maintenance and upgrading of them, and charges for their use. The Contractor is also responsible for obtaining and providing all facilities, power, water, and other services it requires to complete the Investigation, other than those the Scope requires the Employer to provide.

7. The Price and payment

- 7.1 For completing the Investigation according to this contract the Employer must pay the Contractor the Price in instalments as scheduled.
- 7.2 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 of the amount due within 14 days after receiving the statement. The Contractor shall send an invoice for the amount certified to the Employer after receiving the certificate. The Employer must pay the amount due within 30 days after receiving the invoice.
- 7.3 If a Task is not completed within its Performance Period, the Price will be reduced at the rate in the Tasks Table from the day after the last day of the Performance Period until the day that the Task is complete, and amounts to be paid reduced accordingly.
- 7.4 The Price will not be adjusted except 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.
- 7.5 If the Employer's Representative gives the Contractor a written instruction that changes the Scope, the Employer's Representative will adjust the Price according to this clause 7.5. The amount of the adjustment will be the amount of an agreed quotation under clause 7.6, 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 the Scope, if there are any and they are suitable, and if not by assessing the effect of the change on the Contractor's cost of doing the Investigation. The Contractor's right to an adjustment is subject to clause 7.7.
- 7.6 If the Employer's Representative so requests before, on, or after giving an instruction, the Contractor must give the Employer, within 5 days of receiving the request, a quotation for any change to the Price and to any applicable Performance Periods as a result of an instruction or proposed instruction to change the Scope. If the Employer accepts the quotation or agreement is reached, the Employer's Representative may issue the instruction, and adjust the Price and any applicable Performance Periods to match the accepted or agreed quotation. If the Employer 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 Price and any applicable Performance Periods under clauses 7.5 and 4.5 respectively or
 - if the instruction has not yet been given, decide not to proceed with it, unless it is required under clause 2.2.
- 7.7 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 notice of the claim within 14 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 21 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 for an instruction for which the Contractor was requested to and gave a quotation under clause 7.6).
- 7.8 Any provisional sums included in the priced Bill of Quantities are at the entire disposal of the Employer's Representative and can only be used by the Contractor as the Employer's Representative may instruct. The provisional sums are for the exclusive use of the Employer. To the extent that a provisional sum is not used, it will be deducted from the Price.
- 7.9 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.
- (1) The Contractor's completed form of tender states whether, and to what extent, the Price includes VAT.
 - (2) 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.

- (3) To the extent that the Price includes VAT,
 1. adjustments to the Price will be on a net-of-VAT basis, and the appropriate sum for VAT will be added or subtracted and
 2. any VAT included in the Price that the Employer is required to pay to the Revenue Commissioners (by Law or their practice) will be deducted from the Price.
- (4) So therefore, if the Price includes VAT chargeable at the standard rate only, then the Employer must pay the Contractor (or the Revenue Commissioners when required by the Law or their practice)
 3. the Price, including the VAT chargeable at the standard rate that is included in the Price, and also
 4. 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.

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

The Contractor must send the Employer, for each payment, an invoice complying with section 66 of the Value-Added Tax Consolidation Act 2010.

- 7.10 The Employer may withhold and deduct any amount on account of tax required by law or the practice of the Revenue Commissioners.
- 7.11 The Employer may deduct from amounts due to the Contractor any amount that the Employer considers is due, or likely to become due, to the Employer from the Contractor under this contract or another contract.

8. Representation and communications

- 8.1 If the Employer's Representative is not named in the Schedule, the Employer must, promptly after the date of this contract, have appointed the Employer's Representative and notify the Contractor. The Employer may change the Employer's Representative, and must notify the Contractor of any change.
- 8.2 The Contractor must appoint a representative, with authority to act on the Contractor's behalf in all matters concerning the Investigation. 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 must keep the Employer's Representative fully informed of the identity of its representative and supervisor. If they are named in the Contractor's Proposals, the Contractor must appoint the persons named. The Contractor is considered to be aware of matters (including communications and instructions) of which its representative or supervisor is aware. 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 so requires because of the representative's or supervisor's misconduct, negligence, or incompetence.
- 8.3 All communications provided for in this contract must be in English, unless this contract requires Irish, and in writing.

9. **Contractor's Personnel**

- 9.1 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.
- 9.2 The Contractor must remove from the Investigation and the Site any Contractor's Personnel that the Employer's Representative instructs be removed.
- 9.3 The Contractor may not subcontract the whole of the Investigation to one or more subcontractors. The Contractor may not subcontract part of the Investigation without the Employer's Representative's consent, unless the subcontracting is allowed or required by the Scope.

10. **Pay and conditions of employment of workers**

- 10.1 The Contractor must prominently exhibit copies of this clause 10 for the information of persons at the Site. In this clause **worker** means a person employed by (or otherwise working for) the Contractor or the Contractor's Personnel on or near the Site.
- 10.2 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.
- 10.3 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.
- 10.4 If the Employer so requests, the Contractor must, within 7 days after the request, give to the Employer a statement showing the amount of wages and other payments due at the date of

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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.

- 10.5 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.
- 10.6 If the Contractor has not complied with this clause, the Employer may (without limiting its other rights or remedies) estimate the amount that should have been paid to workers and contributions that should have been made on their behalf, and the Employer may withhold the estimated amount from any payment due to the Contractor, until the Employer is satisfied that the required amounts have been paid. If it has still not been paid by the time of the final payment, the estimated amount is deducted from the Price.
- 10.7 The Contractor must give the Employer's Representative with each statement under clause 7.2 a certificate that, for the work to which the statement relates, the Contractor has complied in full with this clause. If there is a form for the statement included in this contract, the certificate must be in that form. Payment due for the work covered by the statement will only be due if the certificate is given. If the certificate has still not been given by the time of the final payment, the portion (of the value of work that the Contractor has not given a certificate for) that the Employer determines is the labour portion is deducted from the Price.
- 10.8 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.

11. Loss and damage

- 11.1 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.
- 11.2 To the extent that the Works involve alteration of existing structures owned by the Employer, and to the extent that the Employer uses or occupies the Works, the Employer bears the risk of loss of or damage to those structures and the part of the Works used or occupied by the Employer caused by any of the following perils (as defined in standard fire and specified periods insurance policies available in Ireland): fire, storm, tempest, flood, bursting or overflowing of water mains, apparatus or pipes, explosion, impact, aircraft, riot, civil commotion, malicious damage.
- 11.3 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 the Investigation or relevant Task was complete, unless the loss or damage is due to:
- the Contractor not complying with this contract
 - an occurrence before completion of the Investigation or relevant Task or
 - activities of the Contractor or Contractor's Personnel.
- 11.4 The Contractor bears the risk of loss of and damage to the Investigation (including the Works, goods, materials and equipment for the Works, samples, cores, reports, and documents) that does not result from an Employer risk listed above.
- 11.5 The Contractor must promptly put right loss or damage to the Investigation (including the Works, goods, materials and equipment for the Works, samples, cores, reports and

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documents) that is at the Contractor's risk. The Contractor is not entitled to payment for this except for any insurance proceeds. If the insurance is insufficient, the Contractor must put the loss and damage right at its own expense.

11.6 If the Works are lost or damaged before the Investigation is complete, and the loss or damage is at the Employer's risk, the Contractor must put it right if the Employer so instructs in writing. That instruction will be considered an instruction to change the Scope.

11.7 The Contractor must indemnify the Employer against:

- claims, liability, and proceedings, and
- loss of and damage to the Employer's property (except for loss or damage at the Employer's risk under this clause 11))

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

11.8 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.

12 Insurance

12.1 From the date the Employer allows the Contractor access to the Site, the Contractor must insure the Investigation (including the Works, goods, materials, and equipment for the Works, samples, cores, reports and documents) and the Contractor's equipment against loss and damage. The Employer must be named as a co-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 Contractor must maintain this insurance until the Employer's Representative certifies the date that the Investigation was complete, and must extend the insurance to cover loss and damage at the Contractor's risk.

12.2 The proceeds of the insurance of the Investigation, except the portion for the Employer's professional fees, 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 7.1 and 7.2, 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.

12.3 From the date the Employer allows the Contractor access to the Site, the Contractor must have public liability and employers liability insurance, with indemnity limits at least as scheduled. The Contractor's public liability policy must insure the Employer and Contractor as co-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 Employer's Representative certifies the date for Investigation was complete, 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 Investigation.

12.4 If so stated in the Schedule, from the date of this contract until 6 years after the Investigation is completed as certified by the Employer's Representative, the Contractor must maintain professional indemnity insurance for its performance of this contract, with an indemnity limit at least as scheduled. The insurance must include retroactive cover to when the Contractor's work on the Investigation started.

12.5 The Contractor must place the insurances required by this contract with reputable insurers approved by the Employer. The levels of excess must be no higher than scheduled.

12.6 The insurance on which the Employer is to be co-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 and
- the insurer waives all rights of subrogation and other action against each insured person.

12.7 The Contractor must comply with the terms of the insurance policies required under this

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contract.

- 12.8 Within the time required by clause 1.8, and within 10 days of being requested to do so, the Contractor must give the Employer evidence that the insurances required by this contract are in effect, including copies of policies and receipts for premiums.
- 12.9 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.
- 12.10 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.
- 12.11 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.

13. Property

- 13.1 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.
- 13.2 The Contractor must ensure that ownership of and all copyright and other intellectual property rights in reports and documents for the Investigation, except the Contractor's internal office notes, transfer automatically to the Employer when the reports and documents are made, on the date of this contract if they were made before. This obligation does not apply to any documents so scheduled: as to those documents, the Contractor must ensure that the Employer is entitled to use, copy, modify, adapt, and translate them for any purpose. The Contractor has no liability for the Employer's use of the Contractor's reports or documents for any purposes other than those for which they were provided.
- 13.3 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 Investigation, unless covered by the Employer's indemnity in clause 13.4
 - use by the Employer of the Investigation (including the Works, goods, materials, reports and documents provided by the Contractor for the Investigation) for the purposes for which they were provided.
- 13.4 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 executing them in accordance with the Scope.
- 13.5 Subject to complying with the law and this contract, the Contractor must not disclose the Employer's confidential information.

14 Termination

- 14.1 The Employer may terminate the Contractor's obligation to complete the Investigation on giving written notice to the Contractor. If this happens, the Contractor's obligation to complete the Investigation will terminate 14 days after the notice was given, or a different date stated in the notice, and:
- the Contractor must deliver to the Employer all complete and incomplete reports and documents for the Investigation, and all goods, materials, samples and cores for the

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Investigation that it has

- the Contractor must leave the Site in an orderly manner, but must not remove any goods, materials, samples or cores, or property of the Contractor or Contractor's Personnel used or to be used for the Investigation, unless the Employer so instructs
- the Contractor must remove from the Site any property of the Contractor or Contractor's Personnel that the Employer 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 has required to be left on the Site to complete the Investigation, including details
- the Employer's Representative will, within 14 days after receiving the Contractor's statement of the termination value, issue a certificate stating the termination value, with reasons
- the Employer may employ others and do anything necessary to complete the Investigation.

14.2 This clause 14.2 applies if the Employer has terminated the Contractor's obligation to complete the Investigation because:

- of a substantial breach by the Contractor of this contract or
- a liquidator, examiner, supervisor, receiver, administrator, administrative receiver, trustee, encumbrancer or the like has been appointed for the Contractor or any of its assets, or the Contractor has ceased or threatened to cease carrying on business, or is insolvent or unable to pay its debts as they fall due or
- the Contractor died or became bankrupt or 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.

When the Investigation has been completed the Employer's Representative must give the Contractor a statement of the total of the following (the **termination amount**):

- the Employer's additional cost of completing the Investigation compared with the cost the Employer would have incurred if the Investigation 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 Investigation within 6 months after the termination, the Employer's Representative must give the above statement 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 14 days of receiving the Employer's Representative's certificate.

14.3 If the Employer terminates the Contractor's obligation to complete the Investigation, and clause 14.2 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. The Employer must pay the amount due within 30 days of receiving the Contractor's invoice. The Employer has no other liability in relation to the termination (including no liability for lost profit or contribution to overhead).

15 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 Investigation, and nor will they commit any such offence.

16 Law and disputes

- 16.1 Irish law governs this contract and its interpretation. Subject to clause 16.2, the parties submit to the jurisdiction of the Irish courts.
- 16.2 Any dispute under this contract will be decided by arbitration. An arbitrator's award is final and binding. The arbitration rules stated in the Schedule apply. If no arbitrator is agreed, the arbitrator will be nominated at the request of either party by the person stated in the Schedule.
- 16.3 The parties have recourse to adjudication in accordance with the Construction Contracts Act, 2013.

17 Covid-19 Mandatory Closure

17.1 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 in the Scope 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 this contract.

17.2 Covid-19 General Provisions

- (1) The Contractor's sole remedies for a Covid-19 Mandatory Closure shall be those stated in sub-clause 4.5 for an extension to the Performance Period for a Task and Site Closure Costs under this clause 16. The provisions of clause 7.7 shall apply in respect of any adjustment to the Price for the Site Closure Costs under this clause 17 in respect of a Covid-19 Mandatory Closure.

17.3 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[s]. The Employer's Representative will assess the amount of any adjustment in accordance with the Site Closure Costs Supplement and this clause 17.
- (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 7.7, clause 17 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 17.3(1) shall be paid as part of the instalments under sub-clause 7.1.

18 Limit on Liability

- 18.1 Subject to sub-clause 18.2, 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**").
- 18.2 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 sub-clause 12.1 is intended to respond;
 - any liability which the Contractor cannot lawfully exclude or limit.

End of Conditions