NEC4 Engineering and Construction Contract Option C Contract Data

Clongriffin to City Centre Core Bus Corridor Scheme

Revision: T01

Where no recorded data are available	Assumed values for the ten year weather return *weather data* for each *weather measurement* for each calendar month are

If there are additional compensation events	These are additional compensation events

- An event described in Z14.2 occurs (60.1(22))
- A utility service as described in Z14.3 is encountered (60.1(23))

8 Liabilities and insurance NOT USED – REFER TO ADDITIONAL CLAUSE Z17

~~If there are additional *Client's* liabilities~~ ~~These are additional *Client's* liabilities~~

(1)

(2)

(3)

~~The minimum amount of cover for insurance against loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor* Providing the Works for any one event is~~

~~The minimum amount of cover for insurance against death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with the contract for any one event is~~

~~If the *Client* is to provide Plant and Materials~~ ~~The insurance against loss of or damage to the *works*, Plant and Materials is to include cover for Plant and Materials provided by the *Client* for an amount of~~

~~If the *Client* is to provide any of the insurances stated in the Insurance Table~~ ~~The *Client* provides these insurances from the Insurance Table~~

~~(1) Insurance against~~

~~Minimum amount of cover is~~

~~The deductibles are~~

(23) The *Contractor* encounters a utility service which

- is within the Site, and
- is not a service or supply to an individual property as identified in Appendix 1/16 Table S2700_/16.4 of section S2700 of the Scope, and
- is not indicated in the Site Information (including the information referred to in it), and
- is not evident from a visual inspection of the Site or reasonably discoverable at the time of becoming aware of it.

Z15 – Limitation of liability X18

At Option X18.5, between 1st and 2nd bullet points, add a further bullet point as follows:

- liability which is covered by an insurance policy which the *Client* or the *Contractor* is to take out or maintain under this contract, to the extent the *Contractor* is able to recover amounts under such insurance policy or would have been able to recover those amounts but for any act or omission on the part of the *Contractor,*

OPTION X18: LIMITATION OF LIABILITY

Limitation of liability **X18**

X18.1 Each of the limits to the *Contractor's* liability in this clause apply if a limit is stated in the Contract Data.

X18.2 The *Contractor's* liability to the *Client* for the *Client's* indirect or consequential loss is limited to the amount stated in the Contract Data.

X18.3 For any one event, the liability of the *Contractor* to the *Client* for loss of or damage to the *Client's* property is limited to the amount stated in the Contract Data.

X18.4 The *Contractor's* liability to the *Client* for Defects due to its design which are not listed on the Defects Certificate is limited to the amount stated in the Contract Data.

X18.5 The *Contractor's* total liability to the *Client* for all matters arising under or in connection with the contract, other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the *law of the contract*.

The excluded matters are amounts payable by the *Contractor* as stated in the contract for

- loss of or damage to the *Client's* property,
- liability which is covered by an insurance policy which the *Client* or the *Contractor* is to take out or maintain under this contract, to the extent the *Contractor* is able to recover amounts under such insurance policy or would have been able to recover those amounts but for any act or omission on the part of the *Contractor*,
- delay damages if Option X7 applies,
- low performance damages if Option X17 applies and
- *Contractor's* share

X18.6 The *Contractor* is not liable to the *Client* for a matter unless details of the matter are notified to the *Contractor* before the *end of liability date*.

Z16 – *Contractor's* Liabilities 81

At clause 81.1, add a final bullet point as follows:

- Without prejudice to the provisions of clause 80, the *Contractor* shall be liable to indemnify the *Client* in respect of any damage, injury or death to the extent that such loss, damage, injury, or death is due to the negligence, omission, default or breach of statutory duty of the *Contractor*.

***Contractor's* liabilities**	**81**	
	81.1	The following are *Contractor's* liabilities unless they are stated as being *Client's* liabilities. • Claims and proceedings from Others and compensation and costs payable to Others which arise from or in connection with the *Contractor* Providing the Works. • Loss of or damage to the *works*, Plant and Materials and Equipment. • Loss of or damage to property owned or occupied by the *Client* other than the *works*, which arises from or in connection with the *Contractor* Providing the Works. • Death or bodily injury to the employees of the *Contractor*. • Without prejudice to the provisions of clause 80, the *Contractor* shall be liable to indemnify the *Client* in respect of any damage, injury or death to the extent that such loss, damage, injury, or death is due to the negligence, omission, default or breach of statutory duty of the *Contractor*.

Z17 – Insurance Cover 83, Insurance Policies 84, If the *Contractor* does not insure 85, and Insurance by the *Client* 86

Clauses 83, 84, 85 and 86 deleted and replaced with Z17 Insurance.

Z17.1.1 Without prejudice to its obligation to indemnify or otherwise be liable to the *Client* under this contract, the *Contractor* takes out and maintains or procures the taking out and maintenance in full force and effect, with insurers of good repute and financial standing who are authorised to provide services in Ireland, insurance in accordance with the requirements specified in clause Z17.1.A, *Insurances to be Procured and Maintained by the Contractor*. The *Contractor* ensures that the insurances are effective in each case not later than the date on which the relevant risk commences until the latter of the Defects Certificate, or a termination certificate, has been issued.

Z17.1.2 Without prejudice to its obligation to indemnify or otherwise be liable to the *Contractor* under this contract, the *Client* takes out and maintains or procures the taking out and maintenance in full force and effect, with insurers of good repute and financial standing who are authorised to provide services in Ireland, insurance in accordance with the requirements specified in clause Z17.1.B, *Insurances to be Procured and Maintained by the Client*. The *Client* ensures that the insurances are effective in each case not later than the date on which the relevant risk commences until the latter of the Defects Certificate, or a termination certificate, has been issued.

Z17.1.3 If the *Contractor* is in breach of clause Z17.1.1 above the *Client* may pay (at its option) any premiums, insurance premium tax, levies and insurance broker costs required to keep such insurance in force or itself procure such insurance, and in either case, recover such amounts from the *Contractor* on demand, together with all expenses incurred in procuring or maintaining such insurance.

Z17.1.4 The *Contractor* does not take any action or permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person.

Z17.1.5 The *Client* does not take any action or permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person.

Z17.1.6 The *Contractor* provides to the *Project Manager*, for and on behalf of the *Client*, not less than two weeks before the date on which the relevant risk commences, on each renewal of each insurance policy and whenever requested by the *Client* or the *Project Manager*, evidence in a form satisfactory to the *Client* that the insurances required under clause Z17.1.A (*Insurances to be Procured and Maintained by the Contractor*) are in full force and effect. Neither the inspection of, nor receipt by, the *Client* or the *Project Manager* of such evidence constitutes acceptance of the terms of any insurance policy or operates as a waiver of, or limitation upon, the *Contractor's* obligations, liabilities or responsibilities under this contract.

Z17.1.7 The *Client* provides to the *Contractor*, through the *Project Manager*, not less than two weeks before the date on which the relevant risk commences, on each renewal of each insurance policy and whenever requested by the Contractor, evidence in a form satisfactory to the *Contractor* that the insurances required under clause Z17.1.B (*Insurances to be Procured and Maintained by the Client*) are in full force and effect. Neither the inspection of, nor receipt by, the *Contractor* of such evidence constitutes acceptance of the terms of any insurance policy or operates as a waiver of, or limitation upon, the *Client*'s obligations, liabilities or responsibilities under this contract.

Z17.1.8 Where the *Contractor* receives notification from insurers of any proposal to cancel, suspend or terminate any insurance in accordance with the requirements specified in clause Z17.1.A, the *Contractor* shall immediately notify the *Project Manager*, for and on behalf of the *Client*, of such proposed cancellation, suspension or termination.

Z17.1.9 Where the *Client* receives notification from insurers of any proposal to cancel, suspend or terminate any of the insurance in accordance with the requirements specified in clause Z17.1.B the *Project Manager*, for and on behalf of the *Client*, shall immediately notify the *Contractor* of such proposed cancellation, suspension or termination.

Z17.1.10 The *Contractor* pays any excess or deductible applicable to a claim made under any insurance policy maintained by either Party under this contract and pays such excess or deductible in full when due. Any excess or deductible paid by the *Contractor* does not form part of Defined Cost except to the extent that the *Project Manager* determines that the event giving rise to the claim was wholly or partly the legal liability of the *Client* under the contract. Where the *Project Manager* makes such a determination, the *Client* reimburses the *Contractor* the corresponding proportion of the excess or deductible. Any such reimbursement is included in Defined Cost and is not treated as a Disallowed Cost. In determining responsibility for the event giving rise to the claim, the *Project Manager* applies the findings included in the liability report prepared by any loss adjuster or liability adjuster appointed by the relevant insurer, and the findings are binding on the Parties for the purposes of determining liability under this contract. Any dispute regarding liability apportionment or reimbursement of the excess or deductible is resolved in accordance with the dispute resolution procedures stated in clause Z11. The loss adjuster's determination shall be binding only in respect of the amount recoverable under the insurance policy and shall not affect the *Project Manager's* assessment of compensation events, Defined Cost, Disallowed Cost, Completion Date, or any other matter under the contract.

Z17.1.11 The *Contractor* ensures that all Subcontracts are entered into on the basis that the insurance required to be procured and maintained by the *Client* under clause Z17.1.2 is not to be procured by any Subcontractor. The *Contractor* ensures that no amount payable to any Subcontractor at any tier includes any allowance, charge, premium, brokerage fee, commission, administration fee or other cost in respect of insurance required to be procured and maintained by the *Client* under clause Z17.1.2. The *Contractor*, upon request, provides such records and evidence as the *Project Manager* may reasonably require to demonstrate compliance with this clause.

Z17.1.A Insurances to be Procured and Maintained by the Contractor

Z17.1.A.1 Professional Indemnity Insurance

Insured
Contractor

Interest
To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay (including claimants' costs and expenses) as a result of claims first made against the Insured during the period of insurance by reason of any negligent act, error and/or omission arising from or in connection with the performance of this contract.

Limit of Indemnity
Not less than €6,500,000 in respect of any one claim or €10,000,000 in the aggregate per annum.

Period of Insurance
From the *starting date* and renewable on an annual basis unless agreed otherwise by the *Client* in writing (a) until the latter of the Defects Certificate, or a termination certificate, has been issued and (b) for a period of six (6) years thereafter.

Principal Cover Features and Extensions

- Retroactive date no later than the *starting date*, not to exclude liability arising from work undertaken in connection with the works prior to policy inception.
- Legal defence costs and expenses payable in addition
- Mitigation / Rectification Costs where insurable
- Liability arising from acts, errors or omissions of *subcontractors*, *subconsultants* and designers engaged by the *Contractor* with joint and several liability
- Infringement of intellectual property rights
- Collateral warranties and equivalent third-party rights (provided such obligations are no more onerous than those under this contract)
- Liability arising from dishonest or fraudulent acts of employees, provided that such acts were not condoned by senior management.
- Automatic reinstatement provisions (if applicable)

Z17.1.A.2 Employers’ Liability Insurance

Insured
Contractor

Interest
To indemnify the insured against legal liability to pay (including claimants’ costs and expenses) compensation in respect of injury sustained by any employee arising out of and in the course of the employment or engagement of such person by the Insured in connection with the business during the period of insurance.

Limit of Indemnity
Not less than €13,000,000 any one occurrence inclusive of costs, the number of occurrences being unlimited during the period of insurance.

Period of Insurance
From the date on which the risk commences until the latter of the Defects Certificate, or a termination certificate, has been issued.

Principal Cover Features and Extensions

- Indemnity to Principal (the *Client*, and any other party having an insurable interest in the works or the Site, including statutory authorities, utility providers, and landowners)
- Subrogation Waiver (against the *Client*, statutory authorities, utility providers, landowners and any other insured or indemnified party to the extent permitted by law).
- Cross Liabilities
- Extended Definition of Employee and Labour-Only Subcontractors
- Health and Safety Defence Costs

Z17.1.A.3 *Contractor's* Pollution Liability Insurance

Insured
Contractor

Interest
To indemnify the Insured in respect of all sums which the Insured becomes legally liable to pay (including claimants' costs and expenses) as damages, compensation, remediation costs, clean-up costs and legal defence costs arising from pollution conditions, environmental impairment or contamination caused by or arising out of the performance of the works during the period of insurance.

Limit of Indemnity
Not less than €10,000,000 any one occurrence and in the aggregate for all claims occurring during the period of insurance, inclusive of claimants' costs and expenses.

Period of Insurance
From the date on which the risk commences until the latter of the Defects Certificate, or a termination certificate, has been issued.

Principal Cover Features and Extensions

- Indemnity to Principal (the *Client*, and any other party having an insurable interest in the works or the Site including statutory authorities, utility providers, and landowners)
- Subrogation Waiver (against the *Client*, statutory authorities, utility providers, landowners and any other insured or indemnified party to the extent permitted by law).
- Cross Liabilities
- Gradual Pollution
- Clean-Up and Remediation Costs
- Third Party Bodily Injury and Property Damage
- Natural Resource Damage
- Transportation Pollution
- Waste Disposal Liability
- Emergency Response Costs
- Legal Defence Costs
- Regulatory Investigation Costs
- Contractors' Pollution Liability for Subcontractors
- Extended Reporting Period (minimum 12 months)

Z17.1.A.4 Motor and Construction Plant Liability Insurance

Insured
Contractor

Interest
To indemnify the Insured in respect of all sums which the Insured becomes legally liable to pay (including claimants' costs and expenses) as damages, compensation and legal defence costs arising from the ownership, use, maintenance or operation of any mechanically propelled vehicle, construction vehicle, mobile plant or equipment used in connection with the works during the period of insurance.

Limit of Indemnity
Not less than €6,500,000 in respect of any one occurrence for third-party property damage.
Not less than the minimum indemnity required by the Road Traffic Acts and any regulations made thereunder.
The number of occurrences shall be unlimited during the period of insurance.

Period of Insurance
From the date on which the risk commences until the latter of the Defects Certificate, or a termination certificate, has been issued.

Principal Cover Features and Extensions

- Indemnity to Principal (being the *Client*), and any other party having an insurable interest in the works or the Site (including statutory authorities, utility providers, and landowners)
- Contractual Indemnities
- Subrogation Waiver (against the *Client*, statutory authorities, utility providers, landowners and any other insured or indemnified party to the extent permitted by law).
- Construction Vehicles and Mobile Plant
- Attached and Detached Plant
- Loading and Unloading
- Movement of Third-Party Vehicles
- Contingent Motor Liability
- Employees' Vehicles
- Legal Defence Costs

Z17.1.B Insurances to be Procured and Maintained by the Client

Insureds
National Transport Authority
Contractor
Sub-Contractors to Insureds of any tier (to the extent required by contract)
Statutory authorities, utility providers, landowners, and other parties having an insurable interest in the works
each for their respective rights and interests

Period of Insurance
From the date on which the risk commences until the latter of the Defects Certificate, or a termination certificate, has been issued.

Maximum Deductible Threshold
Not to exceed €20,000 for each and every occurrence.

Z17.1.B.1 Third Party Public Liability Insurance

Interest
To indemnify the insured in respect of all sums that the insured may become legally liable to pay whether contractually or otherwise (including claimants' costs and expenses) as damages in respect of accidental:
death or bodily injury, illness or disease contracted by any person;
loss or damage to property;
interference to property or any easement, right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities;
happening during the period of insurance and arising out of or in connection with this contract.

Period of Insurance
From the date on which the risk commences until the latter of the Defects Certificate, or a termination certificate, has been issued.

Limit of Indemnity
Not less than €25 million in respect of any one occurrence, the number of occurrences being unlimited during the period of insurance, but in the aggregate in respect of pollution liability (to the extent covered by the policy).

Principal Cover Features and Extensions
- Co-Insureds
- Waiver of Subrogation against any co-insured party (to the extent permitted by law)
- Cross Liabilities
- Legal Defence Costs
- Temporary Occupation and Use of Land
- Underground Services
- Loading and Unloading
- Emergency Response Costs
- Contractual Indemnities

Z17.1.B.2 Construction "All Risks" Insurance (CAR)

Insured Property

The permanent and temporary works, materials, goods, Plant and Equipment for incorporation into the works, together with all materials and items intended to form part of the completed works.

Coverage
"All Risks" of physical loss of, damage to, or destruction of the Insured Property from any cause not specifically excluded by the policy.

Period of Insurance
From the date on which the risk commences until the latter of the Defects Certificate, or a termination certificate, has been issued.

Sum Insured
At all times an amount not less than the full reinstatement or replacement value of the Insured Property.

Excluded Property
Contractor's Plant and Equipment.
Subcontractors' Plant and Equipment.
Hired-in plant and equipment not intended for incorporation into the works.

Principal Cover Features and Extensions

- Co-Insureds
- Waiver of Subrogation against any co-insured party to the extent permitted by law
- Cross Liabilities
- Off-Site Storage
- Transit
- Professional Fees
- Debris Removal
- Expediting Expenses
- Temporary Works
- Testing and Commissioning
- Maintenance Period Cover
- Existing Structures
- Non-Negligent Liability
- Mitigation Costs
- Underground Services