Short Public Works Contract

Conditions

Office of Government Procurement

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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
- 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 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 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 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.

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 Contact.

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

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

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 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 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 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 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

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, 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 2018Prevention of Corruption Acts 1889 to 2010 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

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.

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

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

	Term	*Meaning*
(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	the difference between (I) the amount which is due in any Certificate (before deducting retention) less any amounts for price adjustments and Excluded Amounts and (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, excluding VAT
(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 1or 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

	Term	*Meaning*
		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.